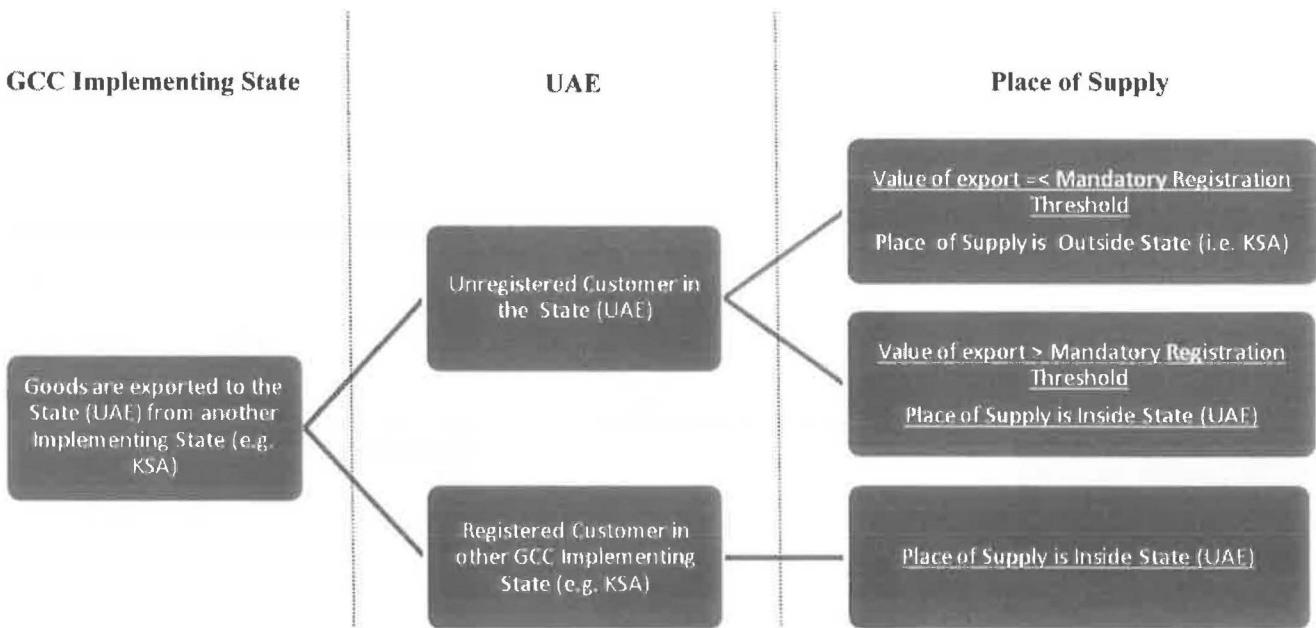


B. IMPORTS INTO UAE FROM ANOTHER VAT IMPLEMENTING STATE



As per Article 27 of Federal Decree Law on VAT, **Place of Supply shall be the State i.e. UAE** in case of imports of goods from another implementing states and if the recipient in the State is not registered for VAT in the State and if the value of the such import to State exceeds the mandatory registration threshold in the State.

Where Goods are imported by a Taxable Person through another Implementing State and the intended final destination of those Goods was the State at the time of Import, then the Taxable Person shall be entitled to treat the Tax paid in respect of Import of Goods into the Implementing State as Recoverable Tax in accordance with Article 54 (2) of Federal Decree Law on VAT.

Moreover, Where Goods were acquired by a Taxable Person in another Implementing State and then moved into the State, the Taxable Person shall be entitled to treat the Tax paid in respect of the Goods in the Implementing State as Recoverable Tax in accordance with Article 54 (3) of Federal Decree Law on VAT.

As regards, exports from UAE to customers in another GCC Implementing State, the same Article 27 also states that, **Place of Supply will be outside UAE i.e. another Implementing State** if both of the below stated conditions are fulfilled.

- i) The customer is unregistered in UAE; and
- ii) The value of such import from another implementing state doesn't exceed mandatory registration threshold.

Explanation 1: A dealer in KSA exported goods to an unregistered customer in UAE. The total value of supplies (exports) made by such dealer to UAE customer is above mandatory registration threshold in UAE i.e. he is required to get himself registered in UAE, then in such a case, POS will be inside State i.e. UAE. Such import will be subjected to UAE VAT.

Explanation 2: A dealer in KSA exported goods to an unregistered customer in UAE. The total value of supplies (exports) made by such dealer to UAE customer is below mandatory registration threshold in UAE i.e. he is not required to get himself registered in UAE, then in such a case, POS will be Outside State i.e. UAE. Such import will not be subjected to UAE VAT.

Explanation 3: A dealer in KSA exported goods to a registered customer in UAE. The total value of supplies (exports) made by such dealer to UAE customer is above mandatory registration threshold in UAE. In this case, POS will be Inside State i.e. UAE. Such supplies will be subjected to UAE VAT.

It can be summarized that place of supply will always be Inside State in case of imports to UAE from another Implementing State. The rationale behind this provision is that place of final consumption will be UAE in such cases. This is aligned with Destination based consumption principle.

However, there is an exception. Where the recipient of goods is not registered in UAE and the value of such export doesn't exceed the mandatory registration threshold i.e. AED 375,000. Place of Supply will be "Outside State" i.e. it will not be subjected to UAE VAT. This provision has been made only for the purpose of exercising greater administrative control only.

7.2.3 Place of Supply of Goods Imported from and Exported to Outside GCC

A. IMPORTS INTO UAE FROM OUTSIDE GCC IMPLEMENTING STATES

I. Import into UAE from outside of GCC in case Recipient in UAE is registered

In case of import of goods from outside GCC Implementing countries, **Place of Supply is UAE**. Provisions of Article 48 of Federal Decree Law on VAT may be taken as a reference for this purpose as it provides that

If the Taxable Person imports Concerned Goods or Concerned Services for the purposes of his Business, then he shall be treated as making a Taxable Supply to himself, and shall be responsible for all applicable Tax obligations and accounting for Due Tax in respect of these supplies.

In case the recipient in the State is a registered person with the Federal Tax Authority for VAT purposes, VAT would be due on that import using a reverse charge mechanism except where goods will be re-exported to another GCC State. It should be noted that Import has been defined under Article 1 of Decree Law as "The arrival of Goods from abroad into the State or receipt of Services from outside the State."

Under this, the businesses will not have to physically pay VAT at the point of import. The responsibility for reporting of a VAT transaction is shifted from the seller to the buyer (importer) under Reverse Charge Mechanism. Here the buyer reports the Input VAT (VAT on purchases) as well as the output VAT (VAT on sales) in their VAT return for the same quarter.

The importer has to disclose the amount of VAT under both Input VAT as well as Output VAT categories of the VAT return of relevant tax period. .

Reverse Charge Mechanism eliminates the obligation for the overseas seller to register for VAT in the UAE.

UAE VAT Reverse Charge Mechanism



Example 2:

Company ABC LLC is into production and distribution of a special kind of machinery used in construction. The main factory is in London. All the operations in the Middle East are controlled from their office in Dubai. **Goods are imported to Dubai from the factory in London.** Please advise how VAT in UAE will be applicable

When goods are imported to Dubai (UAE) there will be customs duty as applicable now. Place of supply will be UAE and VAT will be applicable on this import. VAT in UAE will be calculated on the gross price (purchase value + customs duty). However, the importer need not pay the VAT at the time of import. Here reverse charge mechanism will be applied for VAT purpose. The importer will record the 5% VAT on the gross value of import as output tax and the same amount will be recorded as input tax in the VAT return for the same period. This is only a book entry. There is no actual payment during import of goods. This is called reverse charge under VAT.

II. Import into UAE from outside of GCC in case Recipient in UAE is not registered

As we have seen above, place of supply in case of imports from outside GCC Implementing countries into UAE shall be UAE only.

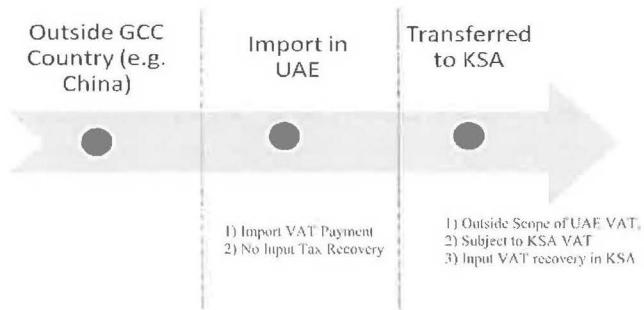
In case the recipient in the State is a non-registered person for VAT purposes, VAT would be paid on import of goods from a place outside the GCC. Such VAT will typically be required to be paid before the goods are released to the person. Article 50 of Executive Regulation on VAT provides that Where Concerned Goods are imported by a Person not registered for Tax, Tax shall be paid to the Authority by or on behalf of the Person before the Goods may be released.

B. IMPORTS INTO UAE FROM OUTSIDE GCC IMPLEMENTING STATES FOLLOWED BY MOVEMENT OF GOODS WITHIN GCC

When at the time of arrival of goods in the State i.e. UAE, the intention of the importer is that the goods will be transferred to another GCC Implementing State, the **Place of Supply shall still be UAE**.

The importer in such a case pay import VAT without using reverse charge. Article 48 (2) clearly provides that in case the final destination of the Goods when entering the State is another Implementing State, the Taxable Person shall pay the Due Tax on Import of Concerned Goods

This import VAT should be recoverable in the GCC Implementing State to which the goods are transferred.



C. EXPORTS FROM UAE TO OUTSIDE GCC IMPLEMENTING STATES

As regards exports from UAE to Outside GCC countries, Place of Supply rules are provided under Clause 3 of Article 27 of Federal Decree Law on VAT which inter alia provides that the **place of supply shall be Inside State i.e. UAE** if the supply includes exporting to a place outside the Implementing State. However, export of goods and service are zero rated i.e. these are subjected to zero rate of VAT. For details, refer Module 6: Zero Rated & Exempted Supply.

Example 3:

A local UAE company sold its products to an overseas buyer in United Kingdom through a buying agent in UAE. Therefore, the goods moved from a place in UAE to a place outside UAE with the agent acting on behalf of the overseas principal (buyer). This is the case of export and accordingly place of supply is UAE and the same will subjected to VAT at zero rate.

7.2.4 PLACE OF SUPPLY OF GOODS - DESIGNATED ZONES

Before we start our discussion on discussion on designated zones, we must first of all understand the meaning and significance of free zones for the businesses in UAE.

Free-trade zones in the United Arab Emirates are areas that have a special tax, customs and imports regime and are governed by their own framework of regulations (with the exception of UAE criminal law). The UAE has several free zones across all emirates of UAE. Free zones can be broadly categorized as sea port free zones, airport free zones, and mainland free zones. There are over 45 free zones in UAE and 20 in Dubai alone and each caters to a specific business category. These zones offer the following major advantages to the enterprise if they are set up in these zones.

1. Allows 100 per cent foreign national ownership of firm with no requirement of local sponsor or local service agent.
2. Waiver of corporate taxes (time-bound and renewable for further periods).
3. Exemption from personal taxes as well as import and export taxes.
4. 100 per cent repatriation of revenue and profits.

If we look at the definition of designated zone, VAT law has distinguished designated zones from free zones. These trade free zones are not necessarily be the “Designated or VAT Free” Zones.

The term “Designated Zone” has been defined under Article (1) of the Federal Law No. (8) of 2017 on VAT as “*Any area specified by a Cabinet Decision issued at the suggestion of the Minister, as a Designated Zone for the purpose of this Decree-Law.*” Accordingly, the following free zones have been notified by Cabinet Decision No. (59) of 2017 on Designated Zones.

1. Designated Zones (Abu Dhabi)	4. Designated Zones (Dubai)	5. Designated Zones (Fujairah)
Free Trade Zone of Khalifa Port	Jebel Ali Free Zone (North-South)	Fujairah Free Zone
Abu Dhabi Airport Free Zone	Dubai Cars and Automotive Zone (DUCAMZ)	FOIZ (Fujairah Oil Industry Zone)
Khalifa Industrial Zone	Dubai Textile City	
2. Designated Zones (Ajman)	Free Zone Area in Al Quoz	Umm Al Quwain Free Trade Zone in Ahmed Bin Rashid Port
Ajman Free Zone	Free Zone Area in Al Qusais	Umm Al Quwain Free Trade Zone on Sheikh Mohammed Bin Zayed Road
3. Designated Zones (Sharjah)	Dubai Aviation City	7. Designated Zones (Ras Al Khaimah)
Hamriyah Free Zone	Dubai Airport Free Zone	RAK Free Trade Zone
Sharjah Airport International Free Zone		RAK Maritime City Free Zone
		RAK Airport Free Zone

Let's now discuss the VAT aspect in case supply of goods is supplied involving designated zones. Our discussion relating to place of supply involving designated zones can be broadly grouped into the following.

- i) Goods supplied within or between designated zones
- ii) Goods supplied from UAE mainland to designated Zones
- iii) Goods supplied from designated zones to UAE mainland
- iv) Goods imported from overseas into designated zones
- v) Goods imported from outside UAE to designated zones
- vi) Goods exported from designated zones to Outside UAE

I) GOODS SUPPLIED WITHIN OR BETWEEN DESIGNATED ZONES

As per Article 50 of the Federal Decree Law on VAT read with Article 51 (1) of Executive Regulation, any Designated Zone specified by a decision of the Cabinet shall be treated as being outside the State and outside the Implementing States, subject to the following conditions:

- a. The Designated Zone is a **specific fenced geographic area** and has security measures and Customs controls in place to monitor entry and exit of individuals and movement of goods to and from the area.
- b. The Designated Zone shall have internal procedures regarding the method of keeping, storing and processing of Goods therein.
- c. The operator of the Designated Zone complies with the procedures set by the Authority.

**Place of Supply – Outside UAE**

Since, a designated zone is considered as being Outside State (Outside UAE), the place of supply in case goods are supplied between two designated zones shall be Outside State only. Accordingly, no VAT is chargeable on such supplies.

Clause 3 of Article 51 further states that **The transfer of Goods between Designated Zones shall not be subject to Tax if the following two conditions are met:**

- Where the Goods, or part thereof, are not released, and are not in any way used or altered during the transfer between the Designated Zones.
- Where the transfer is undertaken in accordance with the rules for customs suspension according to GCC Common Customs Law.

Example 4:

Company "ABC" in the designated zone makes supplies of goods to company "XYZ" located in another designated zone. In this case, supply of goods will be made without charging VAT.

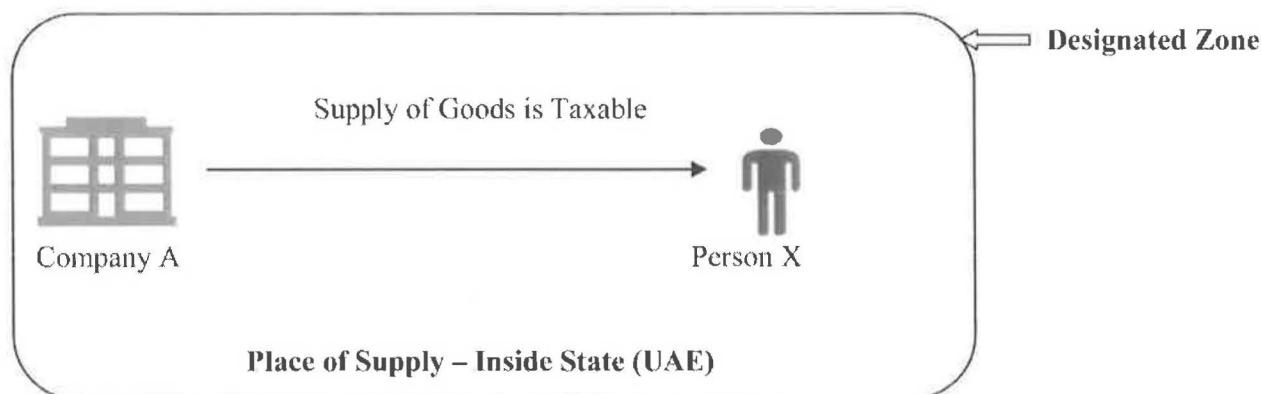
Example 5:

Company "ABC" in the designated zone makes supplies of goods to company "XYZ" located in the same designated zone. Again in this case too, supply of goods will be made without charging VAT.

Consumption of Goods in Designated Zone

Clause 5 of Article 51 of Executive Regulation provides that where a supply of Goods is made within a Designated Zone to a Person to be used by him or a third person, **then the place of supply shall be the State** unless the Goods are to be incorporated into, attached to or otherwise form part of or are used in the production or sale of another Good located in the same Designated Zone which itself is not consumed.

Say for instance, company "A" in the designated zone makes supplies into the same designated zone to a consumer. This supply will be subject to VAT @ 5% as the place of supply shall be considered inside UAE in this case.



Similarly, in accordance with Clause 8 of Executive Regulation on VAT, goods located in a Designated Zone which the owner has not paid Tax on will be treated as Imported into the State by the owner if:

- a. The Goods are consumed by the owner unless the Goods are incorporated into, attached to or otherwise form part of or are used in the production of another Good located in a Designated Zone which itself is not consumed.
- b. The Goods are unaccounted for.

II) SUPPLY OF GOODS BETWEEN UAE MAINLAND (WITHIN STATE) AND DESIGNATED ZONES

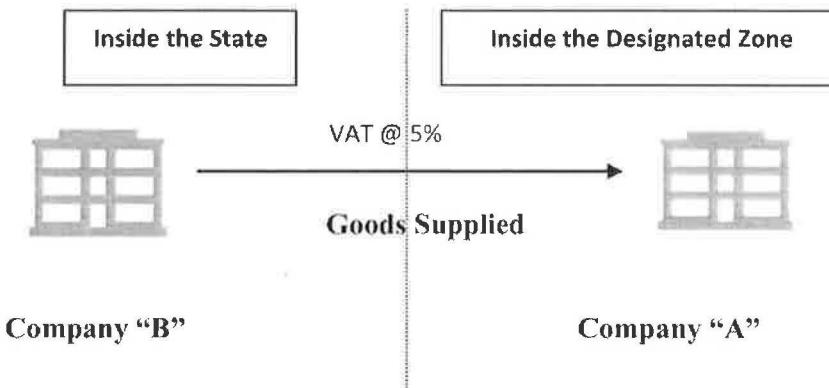
Goods Supplied from the State to Designated Zone

As per Article 50 the designated zones that meets the conditions specified in the Executive Regulations, would be considered to be places outside the UAE. But it is clarified in Clause 3 of Article 30 of Executive Regulation that **supply of Goods to a Designated Zone shall not be considered Export of those Goods. Place of Supply in such a case is the State i.e. UAE and accordingly, such supplies to designated zones will be subjected to VAT at standard rate i.e. 5 %.**

Let's consider an example.

Example 6:

Company "B", a supplier of goods inside the State, makes supplies to company "A" located in the designated zone. In such a scenario, company B shall charge 5 % VAT to company "A" and collect tax on the behalf of A. A can accordingly claim credit of the VAT paid to company "B".



Goods Supplied from Designated Zone to the State (UAE)

Let's consider 2 scenarios here.

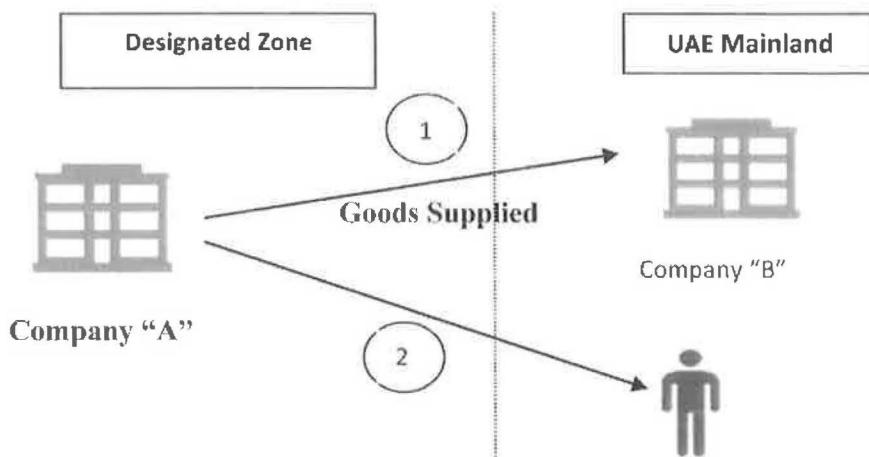
Scenario 1: Company "A" makes supplies of goods to company "B", then the importer of record into the State from the designated zone to the State accounts for the VAT as the same will be treated as import and place of supply shall be the State i.e. UAE.

Scenario 2: Company "A" makes supplies of goods to individual, (i.e. recipient who is not registered inside the State):

If Company "A" is registered: it shall charge 5% of VAT to the individual.

If Company "A" is not registered: tax shall be charged at customs point for goods by importer of record.

In this context it should be noted that any Person established, registered or which has a Place of Residence in a Designated Zone shall be deemed to have a Place of Residence in the State [Article 51 (9) of Executive Regulation]



III) SUPPLY OF GOODS BETWEEN DESIGNATED ZONE AND OUTSIDE STATE

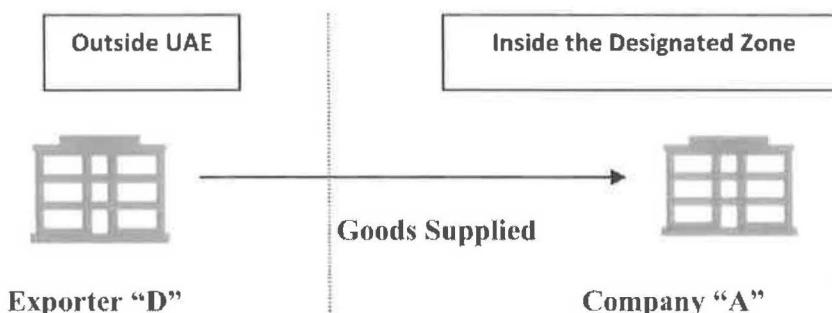
Supply of Goods from Outside State (GCC & Outside GCC Countries) to Designated Zone

Article 47 of the Executive Regulations that lays out general rules regarding Import of Goods, specifies that Goods shall not be treated as imported into the State where they are imported into a Designated Zone from a place outside the State.

Designated Zones will thus be treated as being outside of the UAE for imports under the VAT Decree Law. **Place of supply in such cases will be outside UAE** and hence, VAT will not be applicable. The recipient of goods in designated zone will not be required to account for tax under reverse charge mechanism as the same is treated as out of scope supply.

Example 7:

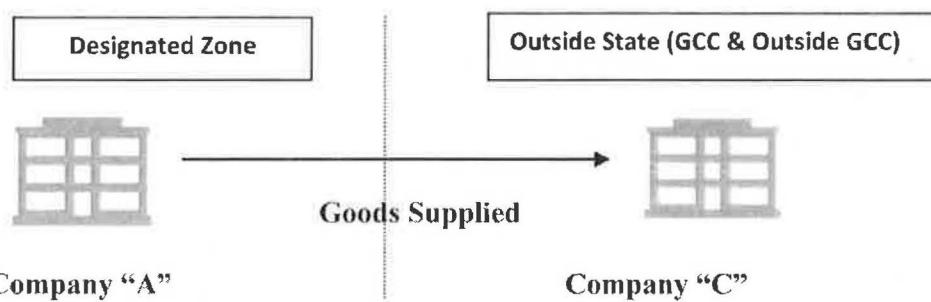
Exporter "D" from outside the State shall make supplies of goods to company "A" located in the designated zone without charging for VAT. Transaction is deemed performed outside the State and cannot be treated as import.



Supply of Goods from Designated Zone to Outside State (GCC and Outside GCC Countries)

As per Article 51 of Executive Regulation, any Designated Zone specified by a decision of the Cabinet shall be treated as being outside the State and outside the Implementing States. So, in cases where goods are supplied from designated zone in UAE to outside UAE and outside GCC implementing state, the supply of the same will be considered as taking place outside State i.e. UAE. **Accordingly, such supplies shall not be subjected to UAE VAT.**

For example: Company "A" in the designated zone made supplies to company "C" outside the State. No VAT shall be charged. Transaction is outside scope of UAE VAT and no VAT shall be charged.



7.3 PLACE OF SUPPLY OF INSTALLED OR ASSEMBLED GOODS

Article 27 (2) deals with place of supply where goods are supplied with installation or assembly. It provides that

The place of supply of installed or assembled Goods if exported from or imported into the State shall be:

- a. **In the State if assembly or installation of the Goods was done in the State.**
- b. **Outside the State if assembly or installation of the Goods was done outside the State.**

In other words, it can be concluded that supply of goods with installation is thus, subject to VAT in the country where the goods are installed or assembled.

For instance, a company in UAE supplies to an Egyptian company, components of machinery which needs to be installed in Egypt. In this case, place of supply shall be outside UAE and accordingly, UAE VAT will not be applicable on such supply.

Similarly, if a company "ABC" in UAE supplies goods which need to be assembled at site of another company "XYZ" in KSA. Company "XYZ" is an unregistered in KSA and its total turnover of last 12 months less than 100,000 USD in KSA. Now in this case, place of supply shall be KSA as the installation takes places in KSA only and accordingly UAE VAT cannot be paid against such supply.

In cases where goods are installed or assembled in UAE by a foreign supplier, place of supply shall be UAE and accordingly such supply shall be subjected to UAE VAT.

7.4 PLACE OF SUPPLY OF WATER AND ENERGY

Supply of water and all forms of energy does not follow the general principles of place of supply. There is a separate article in the Federal Decree Law on VAT which deals with place of supply of water and energy.

Article 28 of the Federal Decree Law on VAT provides as under.

1. The supply of water and all forms of energy specified in the Executive Regulation of this Decree-Law through a distribution system, shall be considered as done in the Place of Residence of the Taxable Trader in case the distribution was conducted by a Taxable Person having a Place of Residence in the State to a Taxable Trader having a Place of Residence in an Implementing State.
2. The supply of water and all forms of energy specified in the Executive Regulation of this Decree-Law through a distribution system shall be considered to have occurred at the place of actual consumption, if distribution was conducted by a Taxable Person to a Non-Taxable Person.

The above provision regarding the place of supply of water and energy can be summarized as under.

Supply	Supply By	Supplied To	Place of Supply		Place of Supply (Inside UAE/ Outside UAE)
Water & Energy	Taxable Person in UAE	Taxable Trader in UAE	Place of Residence of Taxable Trader	UAE	Inside UAE
		Non Taxable Person i.e. Final Consumer in UAE	Place of Actual Consumption	UAE	
	Taxable Person in UAE	Taxable Trader in Implementing State	Place of Residence of Taxable Trader	GCC Implementing State	Outside UAE
		Non Taxable Person i.e. Final Consumer in Implementing State	Place of Actual Consumption	GCC Implementing State	

As per the above table, it can be concluded that the place of supply shall be UAE where water and electricity is supplied or consumed inside UAE. However, if the same is supplied to a Taxable Trader in another Implementing State or consumed in another Implementing State, place of supply shall be Implementing State. Hence, supply to an implementing state from UAE will be outside the purview of UAE VAT and no tax shall be imposed thereon.

It has been further clarified under Clause 7 of Article 51 of Executive Regulation that the Place of supply of water or any form of energy shall be considered to be inside the State if the place of supply is in a Designated Zone. Hence, supply of water and energy to any designated zone in UAE will be subject to VAT.

7.5 PLACE OF SUPPLY OF SERVICES

The place of supply of Services shall be the **Place of Residence of the Supplier** with the exception of special rules for certain categories of supplies (e.g. cross border supplies between businesses).

Article 29: Place of Supply of Services

The place of supply of Services shall be the Place of Residence of the Supplier

As per Article 29, the place of supply of services is treated as made in the country where the supplier belongs. Therefore, the place of supply of services shall be UAE if the supplier has a place of residence in UAE. A supply of services is treated as made outside UAE if the supplier has a place of residence in a country other than UAE. It is important to identify from where the services are supplied. For example, a business consultant having his office in Dubai may travel to various locations while discharging his responsibilities towards his customer. Every such site that he visits while discharging his responsibilities does not become the place of residence of his business. They are merely the site of discharge of responsibilities and not the place of residence. Hence, the place of supply of services of this business consultant will continue to remain Dubai for all contracts.

"Place of Residence" has been defined under Article 1 of the Federal Law on VAT as "*The place where a Person has a Place of Establishment or Fixed Establishment, in accordance with the provisions of this Decree-Law*". Determination of place of establishment or fixed establishment becomes very relevant for the purpose of determining taxability of any supply of services.

Further, Article 32 of the Federal Decree Law on VAT stipulates as below.

Article 32: The Place of Residence of the supplier or Recipient of Services shall be as follows:

1. The state in which the Person's Place of Establishment is located or where he has a Fixed Establishment, provided that he does not have a Place of Establishment or owns a Fixed Establishment in any other state.
2. The state in which the Person's Place of Establishment is located or where he has a Fixed Establishment that is the most closely related to the supply if he has a Place of Establishment in more than one state or has Fixed Establishments in more than one state.

3. The state in which the usual Place of Residence of the Person is located if he does not have a Place of Establishment or a Fixed Establishment in any state.

Article 1: Definitions

Place of Establishment: The place where a Business is legally established in a country pursuant to the decision of its establishment, or in which significant management decisions are taken and central management functions are conducted.

Fixed Establishment: Any fixed place of business, other than the Place of Establishment, in which the Person conducts his business regularly or permanently and where sufficient human and technology resources exist to enable the Person to supply or acquire Goods or Services, including the Person's branches.

Place of residence of supplier and recipient of services are, therefore very important for the purpose of determining the taxability of any service.

Let's discuss the various possibilities here in terms of place of residence of supplier and recipient of services. We will then examine place of supply and tax impact in respect of such cases. There can arise 4 different situations where;

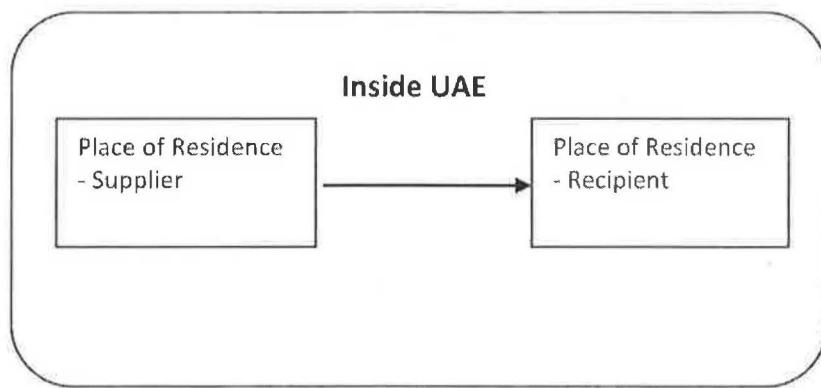
- i) Both Supplier and Recipient has Place of Residence in the State i.e. UAE.
- ii) Supplier has Place of Residence in UAE and the Recipient has Place of Residence outside UAE.
- iii) Supplier has Place of Residence in UAE and the Recipient has Place of Residence outside UAE.
- iv) Both Supplier and Recipient has Place of Residence outside the State i.e. UAE.

Now, let's analyse above scenarios one by one and find out the place of supply.

i) Both Supplier and Recipient has Place of Residence in the State i.e. UAE

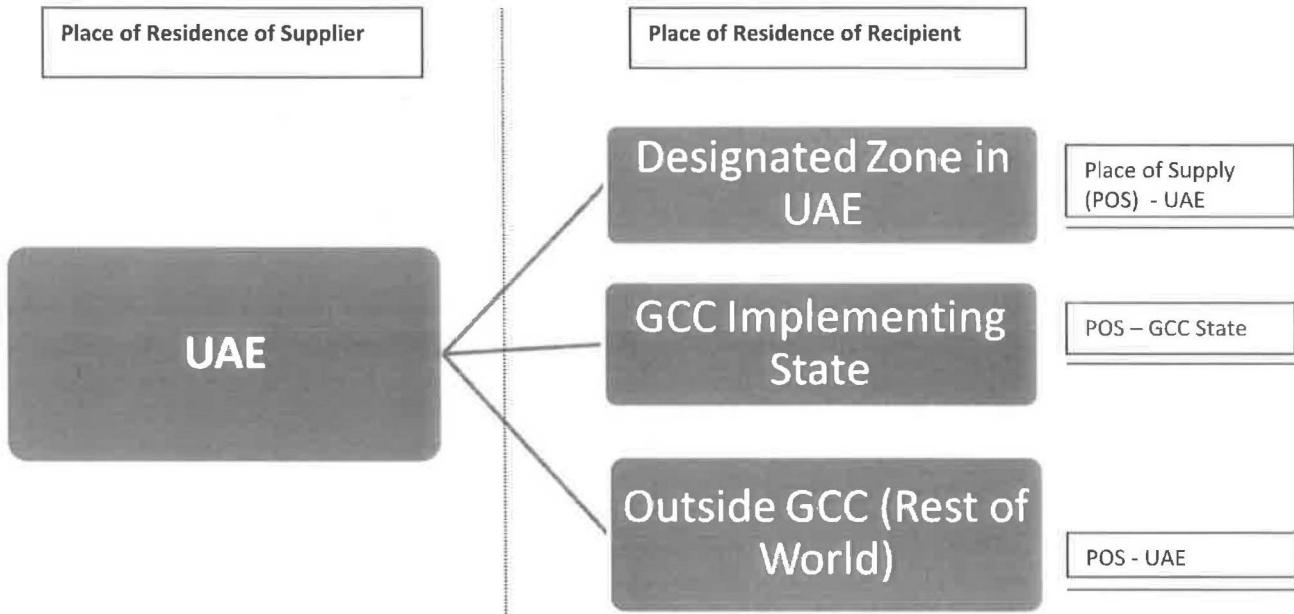
In cases where both Supplier and Recipient have Place of Residence in UAE, there will be no complexity in determining the place of supply. It is quite obvious that the place of supply of in all these cases will be the State (UAE) only, as the place of residence of the supplier is in UAE. Situations may become complex when either supplier or the recipient of service has place of residence in designated zone and the law considers designated zone to be outside of state without any exception.

However, the good thing is that the law provides that any **person established, registered or which has a Place of Residence in a Designated Zone shall be deemed to have a Place of Residence in the State** for the purposes of the Decree-Law. This clause 9 of Article 51 of Executive Regulation removes complexity while determining the tax impact on transactions related to designated zones. So, the treatment of designated zone will be similar to that of UAE mainland for the purpose of determination of VAT impact. If services are supplied to a designated zone company from outside state, it shall be considered as import as the place of supply is the State i.e. UAE. Similarly, if services are supplied from designated zone business to outside UAE, it shall be considered as export and hence, the supply will be zero-rated.



Example: Upon receiving an order from a customer in UAE, Supplier Co.'s head office in UK instructs its regional office "ABC LLC" in UAE to supply professional services to the customer in UAE. The supplier of the services belongs to UAE since the establishment which is most directly concerned with the supply is in UAE. Place of Supply in this case will be UAE and the same will be subjected to UAE VAT.

ii) Supplier has Place of Residence in UAE and the Recipient has Place of Residence outside UAE.



The above chart depicts 3 possibilities in context of place of residence of supplier which are being discussed below.

- Where the supplier having place of residence inside UAE makes supply of services to Recipient registered in any Designated Zone in UAE, place of supply shall be the UAE in accordance with Article 29 of Decree Law on VAT. Moreover, Article 51 (6) of Executive Regulation on VAT may be noted in this regard which provides inter alia that the Place of supply of Services is considered to be inside the State if the place of supply is in the Designated Zone. For more details, refer module on Designated Zone.

Example: Company "A" located in UAE mainland makes supplies of services to company "B" located in the designated zone (e.g.: insurance). Company "A" shall charge 5% of VAT to company "B".

- Where the supplier having place of residence in UAE makes supply of services to Recipient having place of residence in another GCC Implementing State, place of supply shall be the Place of Residence of Recipient i.e. another GCC Implementing State and on such supply no UAE VAT shall be charged in accordance with Clause 1 of Article 30 of Federal Decree Law on VAT. The said clause provides that where the Recipient of Services has a Place of Residence in another Implementing State and is registered for Tax therein, the place of supply shall be the Place of Residence of the Recipient of Services.

Example: A Company based in Dubai provides consultancy services in relation to a Saudi (KSA) based company. The place of supply of services shall be KSA because the place of residence of recipient is KSA. No UAE VAT will be applicable on such supply.

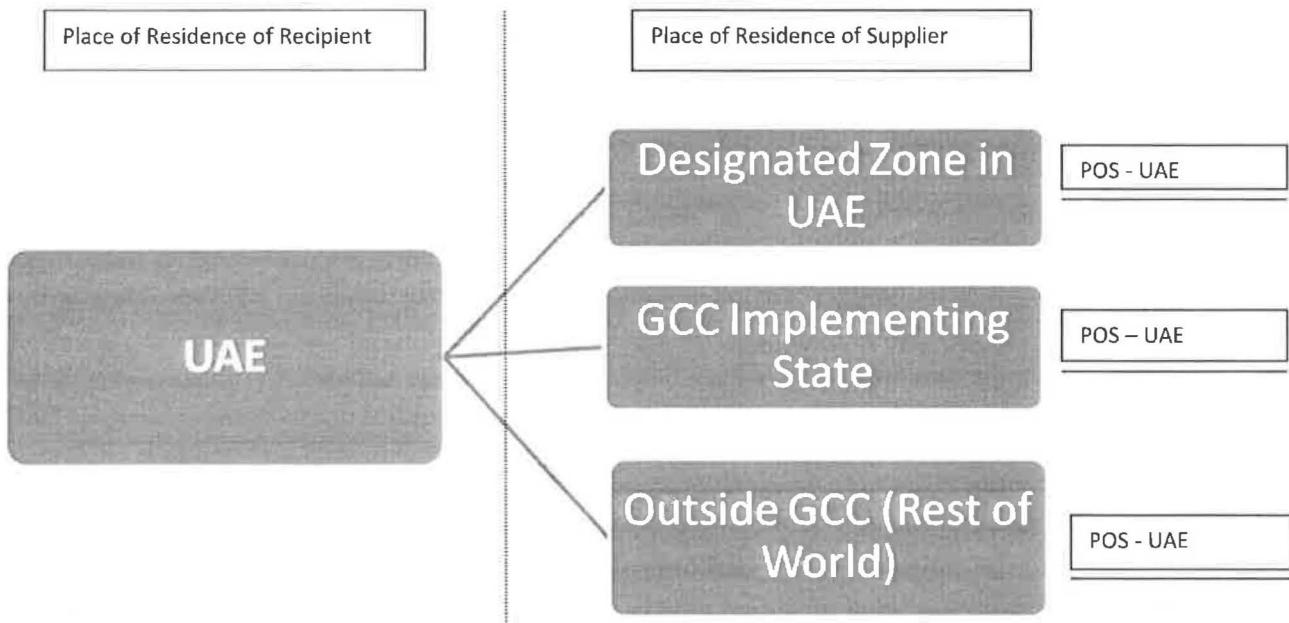
- Where the supplier having place of residence in UAE makes supply of services to Recipient having place of residence outside GCC Implementing State, place of supply shall be the UAE and accordingly such supply will be subjected

to UAE VAT as the place of residence of supplier is UAE. However, the same shall be treated as export of service and will be subjected to zero VAT rate.

Example 8:

A Company based in Dubai provides engineering services in relation to a highway construction project in Mumbai to a company located in India. The place of supply of services shall be UAE because the place of residence of supplier is UAE. Since such supply is made from UAE to a company which belongs in India, it is treated as an export of services and subject to VAT at zero-rate.

iii) The Recipient has Place of Residence in UAE and the Supplier has Place of Residence outside UAE.



The above chart depicts 3 possibilities in context of place of residence of supplier which are being discussed below.

- Where the supplier located in any Designated Zone in UAE makes supply of services to Recipient of mainland in UAE, **place of supply shall be the UAE** and accordingly such supply will be subjected to UAE VAT. Article 29 of Federal Decree Law provides that place of supply of services is the place of residence of supplier. So, in this case place of supply shall be the place of residence of supplier which is a designated zone. Moreover, Article 51 (6) of Executive Regulation on VAT provides that the Place of supply of Services is considered to be inside the State if the place of supply is in the Designated Zone. Thus, combined reading of both articles 29 and article 51 gives the understanding that the place of supply of services shall be the UAE if the service provider is located in designated zone. For more details, please refer module on Designated Zone.

Example 9:

Company "A" located in UAE designated zone makes supplies of services to company "B" based in Dubai mainland (e.g.: insurance). Company "A" shall charge 5% of VAT to company "B" as the same is subject to UAE VAT.

- Where the supplier having place of residence in any other GCC Implementing State makes supply of services to Recipient having place of residence UAE, **place of supply shall be the State i.e. UAE**. Such supply shall be subjected to UAE VAT as per Clause 2 of Article 30 of Federal Decree Law on VAT. The said clause provides that where the Recipient of Services is in Business and has a Place of Residence in the State, and the Supplier does not have a Place of Residence in the State, the place of supply shall be in the State

Example 10:

A Company based in KSA provides consultancy services to a UAE based company. The place of supply of services shall be UAE and accordingly UAE VAT will be applicable on such supply.

- Similarly, in the case of import of services where the supplier has place of residence outside GCC Implementing State and the Recipient has a place of residence in UAE, **place of supply shall be the UAE**. Clause 2 of Article 30 of Federal Decree Law on VAT shall be applicable which inter alia provides that where the Recipient of Services is in Business and has a Place of Residence in the State, and the Supplier does not have a Place of Residence in the State, the place of supply shall be in the State. The supply shall be treated as import of service and accordingly the recipient has to account for tax through reverse charge mechanism.

Example 11:

A UK firm provides legal consultancy services UAE registered business and charges AED 10,000. The place of supply of services in this case shall be UAE. It shall be treated as an import of service. The recipient has to account through reverse charge. The recipient should declare AED 500 (5 % of AED 10,000) as input tax and AED 500 as output tax.

iv) Both Supplier and Recipient has Place of Residence outside the State i.e. UAE.

Here for the purpose of this paragraph, “Outside the State” refers to the place both outside UAE and GCC Implementing State. In this paragraph, we are also not going to discuss supply in relation to designated zones as practically it has tax treatment similar to that of UAE mainland (Inside State). Supply of services in relation to implementing state is also not covered here as the same was discussed in previous sections separately.

This paragraph covers all the cases where supply has either been made between outside GCC Implementing State (e.g. countries excluding UAE & other GCC Countries) In all these situations, supply is treated to have been made outside UAE and hence, place of supply is considered outside UAE. It can be concluded that supplies of services among outside GCC countries will be out of scope of UAE VAT.

7.6 PLACE OF SUPPLY – SPECIAL CASES

Although the general rule regarding place of supply for services appears to be the origin based as we have seen in previous sections, this article provides the exception to the principle. As per the general rule of the place of supply of services is the place of residence of supplier. However, Place of supply of services in relation to special cases deviates from principle of origin to “destination principle. Let’s discuss all these exceptional cases below one by one.

Installation Services

1. For the Supply of Services related to Goods, such as installation of Goods supplied by others, the place of supply shall be the place where the said installation Services were performed.

For example, place of supply of installation services provided by a Dubai based company to its client based in South Africa shall be outside UAE. It will not be treated as a zero-rated export of services as place of supply in this case is outside UAE.

Lease of Means of Transport

For the Supply of means of transport to a person who is not a Taxable Person in the State and does not have a TRN in any of the GCC Implementing State, the place shall be where such means of transport were placed at the disposal of the person.

Restaurant Services

For the Supply of restaurant, hotel, and food and drink catering Services, the place shall be where such Services are actually performed.

Example 12:

"ABC Restaurant LLC" operates food outlets in Dubai. Although the owner of the restaurant is an Indian citizen, the place of supply is UAE because the services are performed in UAE. Therefore, supply from such food outlets are subject to UAE VAT.

Cultural, Artistic, Educational Service

For the Supply of any cultural, artistic, sporting, educational or any similar services, the place shall be where such Services were performed. The taxability of these services is again based on destination based consumption principle.

For example, when an Indian artist stages a performance in Dubai, the place of supply of services is in UAE only. Similarly, when a UAE artist performs overseas, the place of supply is outside UAE which again cannot be considered as zero-rated export and thus, not subjected to UAE VAT.

Real Estate Services

2. For the Supply of Services related to real estate as specified in the Executive Regulation of this Decree-Law, the place of supply shall be where the real estate is located.

Example 13:

ABC LLC a USA based company enters into contract for providing architectural services to a UAE company in respect of a building project located in Abu Dhabi. The Architect plans and designs the project in his office in USA. Since, the building is located in UAE, all related services including architecture services provided by real estate experts or agents shall be subject to UAE VAT. Place of supply of services related to real estate shall be the place is the place where real estate is located as per Article 30.

Article 21 of Federal Decree Law on VAT: Place of Supply of Services Related to Real Estate

1. For the purposes of the Decree-Law and this Decision, "real estate" includes as an example:
 - a. Any area of land over which rights or interests or services can be created.
 - b. Any building, structure or engineering work permanently attached to the land.
 - c. Any fixture or equipment which makes up a permanent part of the land or is permanently attached to the building, structure or engineering work.
2. A supply of Services is deemed to relate to a real estate where the supply of Services is directly connected with the real estate, or where it is the grant of a right to use the real estate.
3. A supply of Services directly connected with real estate includes:
 - a. The grant, assignment or surrender of any interest in or right over real estate.
 - b. The grant, assignment or surrender of a personal right to be granted any interest in or right over real estate.
 - c. The grant, assignment or surrender of a licence to occupy land or any other contractual right exercisable over or in relation to real estate, including the provision, lease and rental of sleeping accommodation in a hotel or similar establishment.
 - d. A supply of Services by real estate experts or estate agents.
 - e. A supply of Services involving the preparation, coordination and performance of construction, destruction, maintenance, conversion and similar work.

Transportation Services

3. For the Supply of transportation Services, the place of supply shall be where transportation starts. The Executive Regulation of this Decree-Law specifies the place of supply for transportation related Services and cases of multiple supplies.

Article 22 of Executive Regulation on VAT: Place of Supply of Certain Transport Services

1. The place of the supply of each transportation service is the place where the supply of that transportation service commences, where a trip includes more than one stop and consists of multiple supplies in accordance with Clause (5) of Article (4) of this Decision.
2. The place of supply of Transport-Related Services shall be the same as the place of supply of the transportation service to which they relate.

Example 14:

Fly Dubai provides transportation services to passengers on board a flight from DXB Airport to Bangkok International Airport, Thailand. Since the place of departure is UAE i.e. transportation commences from Dubai, UAE, the place of supply of international transportation service is in UAE. However, the same is treated as zero-rated services.

7.7 PLACE OF SUPPLY OF TELECOMMUNICATION AND ELECTRONIC SERVICES

Telecommunication Services

Article 31 of the decree law on VAT provides as follows;

1. For telecommunications and electronic Services specified in the Executive Regulation of the Decree-Law, the place of supply shall be:
 - a. In the State, to the extent of the use and enjoyment of the supply in the State.
 - b. Outside the State, to the extent of the use and enjoyment of the supply outside the State.
2. The actual use and enjoyment of all telecommunications and electronic Services shall be where these Services were used regardless of the place of contract or payment.

In simple words, Place of supply of telecommunications and electronic services is where the services are actually **used and employed by the recipient**.

Some examples of telecommunication services by telecom operations including **DU and Etisalat** in UAE are as follows.

- i) Fixed network domestic long distance and local telephone service
- ii) Mobile telecommunication services (including mobile data services, internet and other digital transmission services, toll free numbers)
- iii) Online Data base storage and retrieval services

Telecommunication services provided in UAE shall be subject to VAT provided these are used in UAE. Accordingly, sale of SIM cards, recharge card (prepaid services), prepaid services shall chargeable to VAT at standard rate (5%). However, those telecom services which are not used or consumed in UAE will not be chargeable to VAT since, the article 31 provides that place of supply shall be In the State to the extent these services are used and enjoyed in the State. Going by the said provision of law, VAT can be charged on international roaming services provided by the telecom service providers.

Electronic Services

Article 23 of Executive Regulation defines electronic as “Electronic services” means Services which are automatically delivered over the internet, or an electronic network, or an electronic marketplace. The definition given under the law is inclusive one and encompasses all kinds of transactions pertaining to the buying, selling and transfer of digital products (image, audio, text and software) using the internet. For the purpose of UAE VAT, supply of digital products is nothing but the electronic services.

The principal rule for determining place of supply of electronic services as per Article 31 is that place of supply shall be UAE prove the same is consumed or enjoyed in UAE. The same can be understood with the help of below example.

Example 15:

Virus protection software is purchased from a website. After payment the files are downloaded to the recipient company's server. The company is registered under UAE VAT. The website is owned and operated by a US controlled and owned corporation. In this case, place of supply shall be UAE and the same will be subject to VAT since this electronic services are used in UAE.

Article 23 of Executive Regulation on VAT: Telecommunication and electronic services

1. "Telecommunication services" means delivering, broadcasting, converting or receiving any of the services specified below by using any communications equipment or devices that transmit, broadcast, convert, or receive such service by electrical, magnetic, electromagnetic, electrochemical or electromechanical means or other means of communication, including:
 - a. Wired and wireless communications.
 - b. Voice, music and other audio material.
 - c. Viewable images.
 - d. Signals used for transmission with the exception of public broadcasts.
 - e. Signals used to operate and control any machinery or equipment;
 - f. Services of an equivalent type which have a similar purpose and function.
2. "Electronic services" means Services which are automatically delivered over the internet, or an electronic network, or an electronic marketplace, including:
 - a. Supply of domain names, web-hosting and remote maintenance of programs and equipment;
 - b. The supply and updating of software;
 - c. The supply of images, text, and information provided electronically such as photos, screensavers, electronic books and other digitized documents and files;
 - d. The supply of music, films and games on demand;
 - e. The supply of online magazines;
 - f. The supply of advertising space on a website and any rights associated with such advertising;
 - g. The supply of political, cultural, artistic, sporting, scientific, educational or entertainment broadcasts, including broadcasts of events;
 - h. Live streaming via the internet;
 - i. The supply of distance learning;
 - j. Services of an equivalent type which have a similar purpose and function.
3. "Electronic marketplace" means a distribution service which is operated by electronic means, including by a website, internet portal, gateway, store, or distribution platform, and meets the following conditions:
 - a. Which allows suppliers to make supplies of electronic services to customers.
 - b. The supplies made by the marketplace must be made by electronic means.

7.8 CONCLUDING SUMMARY

Determination of place of supply of goods and services is essential to determine the nature of supply so that person can discharge its tax liability to the appropriate government. Any error in determining the place of supply may result into non-payment of taxes or payment of tax to the wrong jurisdiction. The entire discussion on the place of supply goods and services has been summarised in the table below for the purpose of ease of understanding and providing more clarity to the readers.

MODULE 8

TIME OF SUPPLY

ARTICLES OF DECREE LAW ON VAT RELEVANT TO THIS MODULE	
Article (25)	Date of Supply
Article (26)	Date of Supply in Special Cases
ARTICLES OF EXECUTIVE REGULATION ON VAT RELEVANT TO THIS MODULE	
Article (19)	Due Tax at Date of Supply

8.1 INTRODUCTION

Every fiscal statute provides for the taxable event or the tax point. In case of VAT, supply of goods and services is the taxable event. So, the time of supply is the time when a supply of goods or services is treated as being made. It is important to determine the time of supply as a taxable person should charge VAT at the time when the supply treated to have been made. Consequently, VAT must be accounted for in the taxable period in which the time of supply occurs. However, it should be noted that taxable event i.e. time of supply can be different from the liability to pay tax. Determination of time of supply becomes important both for the taxable person and the government because of the following reasons.

- The time of supply helps decide what VAT period the transaction falls under. Therefore, it becomes very crucial for the taxpayer to know the time of supply precisely otherwise, it may attract penalties and have legal consequences.
- Also, this is important because it will have cash flow implications both for the government as well as for taxpayer.

8.2 TIME OF SUPPLY

Our study on time of supply can be systematically categorized as below.

- I. Basic Tax Point for Supply of Goods
- II. Basic Tax Point for Provision of Services
- III. Overriding the Basic Tax Point

A tax point fix the time at which supply is treated to have been taken place for the purpose of VAT. Basic Tax point rules are the rules for determining the time of supply in general cases. However, in certain cases these basic tax point rules are overridden by specific set of rules. Let's now discuss these below one by one.

I. Basic Tax Point for Supply Of Goods:

The basic rule for determination of date of supply is the date of transfer of goods if such transfer was under the supervision of the supplier. However, if the transfer of goods is not made under the supervision of supplier, the date of supply shall be the date on which the Recipient of Goods took possession of the Goods.

1. If the goods are transferred under the supervision of the supplier, the date of such transfer will be considered as the time of supply.

For example, ABC Electronics LLC registered in Dubai, supplies electronic components to XYZ Mobile LLC, a mobile phone manufacturing company located in Sharjah, UAE. ABC LLC delivers the goods to the factory gate of XYZ LLC. As per the contract, all the risk and reward passes to the buyer only after the goods reach the factory gate of XYZ. Here, the goods are transferred under the supervision of the supplier i.e. ABC LLC . Accordingly, the date of supply shall be the date of transfer i.e. the date on which goods are received at factory gate of XYZ LLC.

2. If the transfer of goods is not under the supervision of the supplier, the date on which the recipient took possession of the goods will be considered as the time of supply.

In the same example above, if ABC Electronics LLC, supplies electronic components to XYZ Mobile LLC on ex-works basis, then it shall be the case of transfer of goods without supervision of supplier. In other words, the XYZ Mobile LLC took the delivery of goods from the warehouse of ABC LLC. In such a case, date of supply shall be the date on which the buyer took lawful possession of goods.

3. Goods supplied with Assembly and Installation

In case the supply involves an installation of the goods, the date of supply will be the date when the assembly or installation is completed. It is to be noted here that the date of transportation of the goods by the supplier to the site where such assembly installation is required to be carried out is not the date of supply. Rather, it is the date when the services of assembly and installation of goods are completed.

4. Import of Goods

In the case of imports, the date of supply will be the date of import of the goods. Reference should be made to customs legislation so as to determine the date of import. It is pertinent to note that date of entry or arrival of the vessel into UAE cannot be considered to be the date of import. Similarly, bill of lading date or airway bill date cannot be directly assumed to be date of import by default.

5. Goods supplied under “Sale on Approval” or Returnable basis

If a supply of goods is on a sale on approval or similar terms, the date of supply will be **the date on which the Recipient of Goods accepted the supply or the date not later than twelve months from the date the goods were sent to the consignee**, whichever is the earlier.

Let's understand this with the help of example given below.

A mobile phone vendor supplied 1,000 units of phones to a Supermarket on 30th January 2017. The contract between the mobile phone vendor and the Supermarket is that of Sale on Approval basis. As per the contract, the Supermarket will make payment to the vendor only after the sale of such goods to end consumer from the super market is effected. As per the practice, the Supermarket issues Statement of sales on 15th and 30th of every month to all its vendors. On the basis of such statement of sales, tax invoice is issued by the vendor. Payment is then made within 30 days from the date of receipt of such Tax Invoice.

The Supermarket accordingly issued Tax Invoice on 15th February in respect of sales made on February 10 indicating a sale of 100 units. After 12 months from 30th January 2017, the remaining balance of 900 units had not been sold or the consignor did not receive any statement of sales from the consignee.,



In the given example, the date of actual sale from supermarket can be considered as the date of acceptance of goods by the Supermarket. Hence, date of supply shall be 10th of February in respect of 100 units. Against, the remaining unsold stock of 900 units, the consignor needs to issue a tax invoice within 14 days after the 12 months period has lapsed.

II. Basic Tax Point for Services:

In case of services, the date of supply shall be the date of completion of the services. Here, for the purpose of taxability of services, it is imperative that the services are completely performed. Parties cannot artificially manipulate or redesign the completion of the service for the purpose of tax avoidance. A proper system to record the date of completion of the service may be developed and maintained in order to justify the date of completion of the service.

Example: ABC Chartered Accountant is an audit firm. The firm conducts audit of its client and submit an audit report in respect of previous financial year. The audit accordingly started on 5th February 2017. By 1st March 2017, the firm completes the report and sent it to one of its client. In this case, the basic tax point is 1st March 2017 which is the end date of an audit i.e. when services are performed. Accordingly, VAT has to be accounted for during the tax period ending March 2017 if it is monthly.

III. Overriding the Basic Tax Point

In the previous sections, we have discussed the rules for determining the basic tax point i.e. the date of supply of goods and services. A summary of the same has been tabulated below for quick reference.

Nature of Supply	Date of Supply
Transfer supervised by supplier	Date of Transfer
Transfer without supervision of supplier	Date of Possession of goods by Recipient
Goods Supplied with Assembly and Installation	Date of Assembly or Installation
Import under custom legislation	Date of Import as per Custom Legislation
Supply under "Sale on Approval" basis	Date of acceptance of goods by the recipient or 12 months from the date of delivery
Provision of Services	Date of completion of services

Now, in this section we are going to discuss the provisions which override these basic rules. The overriding rule provides that **if a supplier issues a tax invoice or receives any payment before the time of supply mentioned in cases above, the time of supply for the amount invoiced or payment received will be the date of the invoice issued or the date of the payment received, whichever is the earlier.**

Article 19 of Executive Regulation on VAT: Due Tax at Date of Supply

For the purposes of Articles (25), (26) and (80) of the Decree-Law, where Tax is due because a payment is made or a Tax Invoice is issued in respect of a supply of Goods or Services, the Tax shall be due to the extent of the payment made or stated in the Tax Invoice, and the remainder of Due Tax on that supply shall be payable according to the provisions of the Decree-Law.

It is pertinent to note that, only in those cases where receipt of payment/Issuance of tax invoice occurs before the actual transfer of goods/completion of service, this overriding clause come into effect. Thus, where supply of goods and services takes place before receipt of consideration or issuance of invoice, no overriding rule will apply and date of supply will be determined as per basic point of tax rules.

Example 1: Invoice before basic tax point

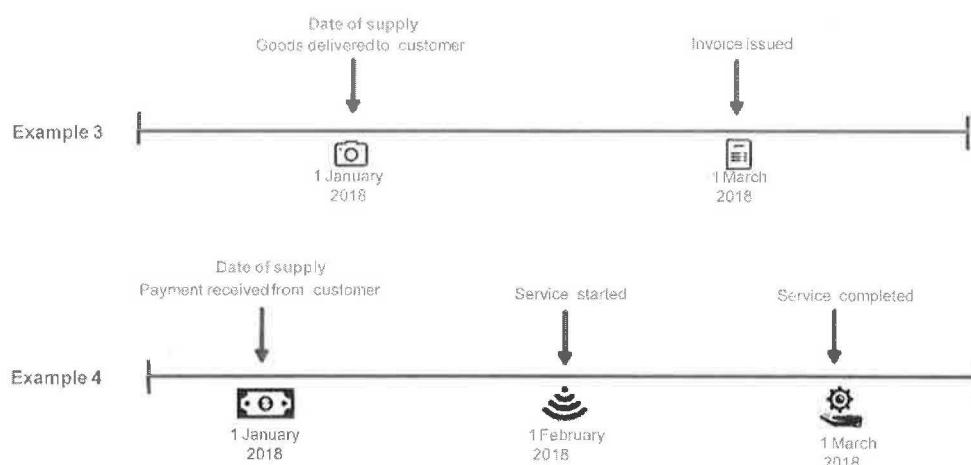
Company A sells and delivers a goods to Company B on 10th February 2018. The value of the goods is AED 10,000 excluding VAT. Company A however, issues a tax invoice for AED10,500 to Company B on 2nd January 2018 when Company B places the order. Company B also pays a deposit of AED 1,050 on the same day. Company B pays the remaining balance of AED 9,450 on 10th February 2018.

The time of supply in this case shall be 2nd January 2018 as the invoice is issued before actual delivery of goods.

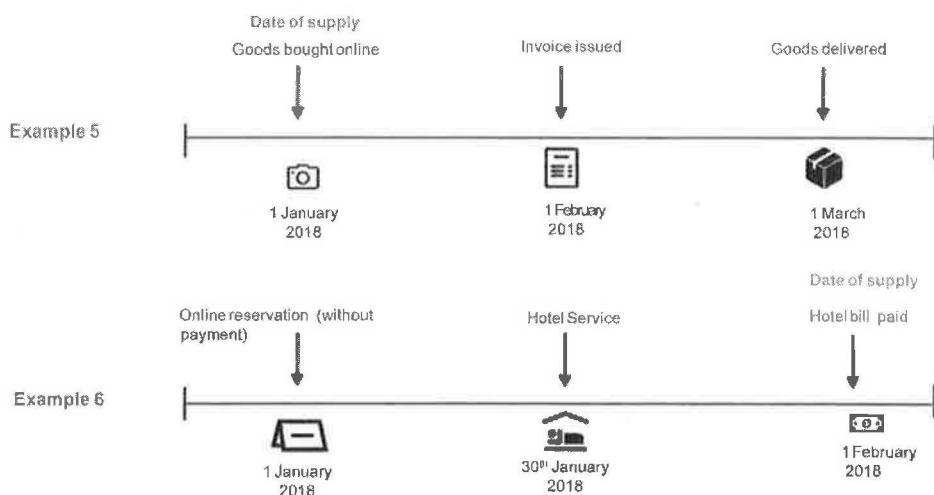
Example 2: Part payment before basic tax point

Company A sells and delivers laptops to Company B on 20th January 2018. When Company B places the order on 10th January 2018, it pays a part payment of AED 5,000. The value of the laptops is AED 10,000 and the VAT chargeable is AED 500. Company A issues a tax invoice for the whole amount of AED 10,500 on 6th February 2018. Company B later pays the balance amount of AED 5500 to Company A on 5th February 2013.

The time of supply for VAT due on advance payment of AED 5000 10th January 2013 and the time of supply for VAT due on balance amount of AED 5,500 is 6th February 2013.



Specific examples in Consumer Business Industry



Article (25) of Federal Decree on VAT: Date of Supply

Tax shall be calculated on the date of supply of Goods or Services, which shall be earlier of any of the following dates:

1. The date on which Goods were transferred, if such transfer was under the supervision of the supplier.
2. The date on which the Recipient of Goods took possession of the Goods, if the transfer was not supervised by the supplier.
3. Where goods are supplied with assembly and installation, the date on which the assembly or installation of the Goods was completed.
4. The date on which the Goods are Imported under the Customs Legislation.
5. The date on which the Recipient of Goods accepted the supply, or a date no later than (12) months after the date on which the Goods were transferred or placed under the Recipient of Goods disposal, if the supply was made on a returnable basis.
6. The date on which the Services were completed.
7. The date of receipt of payment or the date on which the Tax Invoice was issued.

8.3 DATE OF SUPPLY - SPECIAL CASES

There are general rules for determining the time of supply. However, in certain cases and in particular situations, there is specific time of supply rules to be applied. It is essential to note that where a specific time of supply rule applies, it will override the general rule.

I. DATE OF SUPPLY IN CASE OF CONTINUOUS SUPPLY OF GOODS AND SERVICES

This clause shall be applicable only when the following conditions are met.

- o Goods and/or services are supplied under the contract on an ongoing basis.
- o Payment are made periodically and/or consecutive invoices are issued against such supplies.

Clearly, this clause covers the cases of continuous supply and recurrent supply. The term “recurrent” means regularly or frequently. In the case of continuous supply, the process of provision of supply remains uninterrupted. A contract by a transporter with a petrol pump for supply of fuel for its trucks on regular basis or a contract by an office with a drinking water supplying firm for supply of water bottles are examples of recurrent supply. A contract for providing security on 24 X 7 basis is continuous supply of service. Telecom and internet services provided by telecom companies are other examples of continuous supply of services.

In all such cases of continuous or recurrent supply of goods and services which involves periodic payment, the date of supply shall be the earliest of following subject to the condition that it does not exceed one year from the date of the provision of such Goods and Services

- a. The date of issuance of any Tax Invoice.
- b. The date payment is due as shown on the Tax Invoice.
- c. The date of receipt of payment.

II. SUPPLY THROUGH MACHINES OR DEVICES OPERATED BY COINS

The time of supply for supplies made through machines or devices operated by coins and the like, such as vending and amusement machines, is the **date on which funds are collected from the machine**.

Nowadays, it is not very uncommon to find supply of consumer goods through vending machines. These machines itself dispense the goods once the consumer select the items and make payment by inserting cash in the machine.

There are 3 major steps involved in the supply of goods through machines.

- i) Delivery of the goods by the supplier to store such goods into the machine
- ii) Dispensing of the goods by the machine to the customer and making payment via the machine.
- iii) Collection of money from the machine by the supplier.

Delivery of the goods by the supplier to store such goods into the machine, due to this provision, is not to be considered a supply. The dispensing of the goods by the machine to the customer is also not to be considered a supply. But when the supplier visits the place where such machines are located and unload the payment that has been deposited into the machine by the customer, it will be treated as the date of supply of the goods so dispensed to the customer.

III. DATE OF DEEMED SUPPLY

Article 11 of Federal Decree Law on VAT considers deemed supply in 4 cases. These are

- i) A supply of Goods or Services, which constituted the whole assets of a Taxable Person or a part thereof, but are no longer considered to be as such, provided that the supply was made without Consideration – In this case **the date of supply or disposal of such goods or services** shall be treated as the date of supply.
- ii) The transfer by a Taxable Person of Goods that constituted a part of his business assets from the State to another Implementing State, or from the Taxable Person's business in an Implementing State to his Business in the State – **The date of transfer or disposal of business asset** shall be considered as date of supply for the purpose of this clause.
- iii) A supply of Goods or Services for which Input Tax may be recovered but the Goods or Services were used, in part or whole, for purposes other than Business, and such supply shall be considered as deemed only to the extent of the use for non-business purposes – In such cases, the date of deemed supply shall be **the date of change of usage of the goods or services**. In simple words, the date when such goods or services are used for non business purpose.
- iv) Goods and Services that a Taxable Person owns at the date of Tax Deregistration – In this case **date of deemed supply shall be the date of tax deregistration**.

Clause 3 of Article 11 clearly stipulates that the date of Deemed Supply of Goods or Services is the date of their supply, disposal, change of usage or the date of Deregistration, as the case may be.

IV. DATE OF SUPPLY OF VOUCHERS

As we have discussed in the previous module on supply of goods & services, issuance of vouchers cannot be treated as a taxable supply itself as these are neither goods nor deemed as supply of goods.

As per Clause 1 of Article 7 of Federal Decree Law on VAT, the sale or issuance of any Voucher shall be considered as supply only when **the received Consideration at the time of supply or sale of voucher exceeds its advertised monetary value**. In such a case, it shall be considered as supply and taxable accordingly. The point of tax of supply of vouchers when received consideration exceeds its advertised monetary value shall be the **date of issuance of such vouchers**.

Article (26) of Federal Decree Law on VAT: Date of Supply in Special Cases

1. The date of supply of Goods or Services for any contract that includes periodic payments or consecutive invoices is the earliest of any of the following dates, provided that it does not exceed one year from the date of the provision of such Goods and Services:
 - a. The date of issuance of any Tax Invoice.
 - b. The date payment is due as shown on the Tax Invoice.
 - c. The date of receipt of payment.

2. The date of supply, in cases where payment is made through vending machines, shall be the date on which funds are collected from the machine.
3. The date of Deemed Supply of Goods or Services is the date of their supply, disposal, change of usage or the date of Deregistration, as the case may be.
4. The date of a supply of a voucher is the date of issuance or supply thereafter.

8.4 CONCLUDING SUMMARY

Our entire discussion on time of supply goods and services has been summarised and tabulated below for quick reference.

Date of supply: When to account for output VAT on supplies			
S. No.	Nature of Supply	Date of Supply	Reference
1	Goods	<p>The date of supply shall be earliest of the following dates</p> <ul style="list-style-type: none"> ▪ Date of removal of goods (in case of supply of goods with transportation) ▪ Date on which goods made available to customer (where no transportation) ▪ Date of assembly/installation ▪ Date of receipt of payment ▪ The date of a VAT Invoice 	Article 25 of Federal Decree Law No. 8 of 2017 on VAT
2	Supply of goods made on Returnable basis	<p>The date of supply shall be earliest of the following dates</p> <ul style="list-style-type: none"> ▪ Date of acceptance of supply by recipient (in case of supply) ▪ Date no later than (12) months after the date of delivery to recipient ▪ Date of receipt of payment ▪ The date of a VAT Invoice 	
3	Import of Goods	Date of Importation under Customs Legislation	
4	Services	<p>The date of supply shall be earliest of the following dates</p> <ul style="list-style-type: none"> ▪ Date on which performance of service is complete ▪ Date of receipt of payment ▪ The date of a VAT Invoice 	
5	Continuous or recurrent supply of goods and services	<p>The date of supply shall be earliest of the following dates</p> <ul style="list-style-type: none"> ▪ The date of issuance of any Tax Invoice. ▪ The date payment is due as shown on the Tax Invoice. ▪ The date of receipt of payment. 	Article 26 of Federal Decree Law No. 8 of 2017 on VAT
6	Supply of goods through vending machines	The date on which funds are collected from the machine.	
7	Supply of a voucher	The date of issuance of voucher or supply thereafter	
8	Case of Deemed Supply	The date of their supply, disposal, change of usage or the date of Deregistration, as the case may be	

MODULE 9

RECOVERABLE INPUT TAX

ARTICLES OF DECREE LAW ON VAT RELEVANT TO THIS MODULE

Article (53)	Calculation of Due Tax
Article (54)	Recoverable Input Tax
Article (55)	Recovery of Recoverable Input Tax in the Tax Period
Article (56)	Input Tax Paid before Tax Registration
Article (57)	Recovery of Tax by Government Entities and Charities
Article (58)	Calculating the Input Tax that may be Recovered
Article (59)	Conditions and Mechanism of Input Tax Adjustment
Article (60)	Capital Assets Scheme
Article (74)	Excess Recoverable Tax

ARTICLES OF EXECUTIVE REGULATION ON VAT RELEVANT TO THIS MODULE

Article (52)	Input Tax Recovery in Respect of Exempt Supplies
Article (53)	Non-recoverable Input Tax
Article (54)	Special cases of Input tax
Article (55)	Apportionment of Input Tax
Article (56)	Adjustment of Input Tax Post-Recovery

9.1 INTRODUCTION

The whole essence of the VAT system is in the recovery or credit of Input Tax. As per the Federal Decree Law, registered person has the right to claim input tax credit (ITC) i.e. recover Input Tax paid on purchase of goods and services and utilize against Output VAT. The ITC process allows them to offset the total Input VAT against the total Output VAT when filing the VAT return for the taxable period. **In other words, Input tax can be claimed or recovered by offsetting against the output tax.**

Such a system of credit or recovery of input tax ensures that there is no cascading effect of taxes, only the value added at each stage is taxed and thus double taxation is avoided.

This ability for a taxable person to get back the tax that has been paid to its supplier on purchase of goods and services is called Recovery of Input Tax or Input Tax Credit.

Article 53 of the Federal Decree Law No. 8 of 2017 on VAT in this regard provides that, “*The Payable Tax for any Tax Period shall be calculated as being equal to the total Output Tax payable pursuant to this Decree-Law and which has been done in the Tax Period less the total Recoverable Tax by said Taxable Person over the same Tax Period.*”

- Net VAT payable or credit recoverable will be calculated as the following



Let's understand the accounting aspect of Recoverable Input Tax with the help of an example given below.

Example 1: ABC Manufacturing LLC, a manufacturer of Furniture items got itself registered under UAE VAT during the month of March 2018. The manufacturer sells those items to different wholesalers across UAE. The manufacturer is required to file monthly tax return. The total value of sale during the tax period of March 2018 amounts to AED 1,000,000. The manufacturer acquired raw materials amounting to AED 735,000 locally (inclusive of VAT) during the period. In the VAT return for March 2018, the manufacturer has to account and pay VAT on the following:

Output Tax: AED 1,000,000 x 5% = AED 50,000

Input Tax: AED 735,000 x 5/105 = AED 35,000

Amount payable to FTA during the tax period of March 2018 = AED 50,000 – AED 35,000 = AED 15,000 (Output Tax – Input Tax)

The following accounting entries should be passed in respect of the above transaction for the month of March 2018.

i) At the time of purchase of Input Goods and Services

Purchase Account	Dr. (Value of Purchases)	AED 700,000
Input Tax/VAT Account	Cr. (Input VAT on Purchases)	AED 35,000
Cash or Bank or Customer Account	Cr. (Value of Purchase + Input VAT)	AED 735,000

Input VAT amount paid to the supplier is not a cost to the recipient as the same is recoverable. Hence, the same is treated as an asset in books of account. For details, refer module “Books of Account and Record Keeping”

ii) At the time of purchase of Input Goods and Services

Cash or Bank or Customer Account	Dr. (Value of Sales + VAT output)	AED 1,050,000
Sales Account	Cr. (Value of Sales)	AED 1,000,000
Output Tax/VAT Account	Cr. (VAT on Sales)	AED 50,000

Output VAT amount collected from the recipient cannot be treated as income rather it should be treated as liability as the same is payable to the government. For details, refer module “Books of Account and Record Keeping”

iii) At the time of offsetting Recoverable Input Tax against Output Tax.

If the Output Tax for the tax period exceeds the Input Tax during the tax period, the difference will be transferred to VAT/Tax payable account. However, if the Input Tax exceeds the Output Tax, the same is transferred to VAT receivable account (asset) at the end of tax period. For details, refer module “Books of Account and Record Keeping”

Output Tax	Dr. (VAT on Sales)	AED 50,000
Input Tax	Cr. (VAT on Purchases)	AED 35,000
Output Tax/VAT Payable Account	Cr. (Difference)	AED 15,000

iv) At the time of payment of Tax liability.

On or before the due date of filing return, the liability as appearing in the VAT payable account shall be discharged by making payment to the government. In case there is receivable, the taxable person has the option to apply for refund of Input Tax else the same is carried forward for subsequent tax period. For details, refer module “Books of Account and Record Keeping”

Output Tax/VAT Payable Account	Dr. (Output Tax minus Input Tax)	AED 15,000
Bank Account	Cr.	AED 15,000

9.2 RECOVERABLE INPUT TAX

1. As per Article 54 of the Federal Decree Law on VAT, any VAT registered business will be able to recover VAT on purchases of goods and services to the extent those purchases are used for business purposes, and subject to certain conditions.
 - a. **The goods or services acquired are used or intended to be used for making taxable supplies inside UAE.**

Local Taxable Supplies

Input tax can be fully recovered if it relates to a taxable supply made. Taxable supplies include both standard-rated and zero-rated supplies. For more details, refer to previous module “Supply”

Example 2:

A VAT registered Super Market in UAE can claim VAT paid on its trading stocks at the time of purchase which are supplies subject to standard rate of tax i.e. 5% such as biscuits, chocolates, soft drinks, fruits vegetables, household appliances etc .

Similarly, if the goods are exported outside Implementing State, the same will be considered as zero-rated supply and accordingly, VAT incurred on purchase of such goods exported outside Implementing State will be eligible for recovery.

Exports

As exports of goods and services are zero rated supplies, input tax incurred in respect of goods or services thus acquired to be used or intended to be used for making zero-rated supplies are also eligible for Input Tax recovery.

Imports (Input Tax Recovery in case of Reverse Charge Supplies)

As per Article 48 (1) of Federal Decree Law No. 8 of 2017 on VAT, If the Taxable Person imports Concerned Goods or Concerned Services for the purposes of his Business, then he shall be treated as making a Taxable Supply to himself, and shall be responsible for all applicable Tax obligations and accounting for Due Tax in respect of these supplies.

Since, imports are treated as a taxable supply under the aforesaid article, importer shall be eligible to recover or claim input tax in respect of import VAT accounted for under reverse charge mechanism.

Exempt Supplies

Certain supplies are exempt under UAE VAT Laws, such as supply of local passenger transport, supply of bare land, financial services etc. For details, refer previous Module “Zero-rated and Exempted Supply”. A registered taxable person cannot recover Input Tax paid on purchase of inputs used to make these exempt supplies.

Example 3: ABC Transport Services LLC a VAT registered company in Dubai purchases computers amounting to AED 10,000. VAT paid on the purchase @ 5% is AED 500. Since, the company provides only passenger transportation services which are exempted under law, it will not be eligible to recover AED 500 paid on purchase of computers.

- b. **Inputs used for making taxable supplies outside UAE which would be taxable supplies had they been made in UAE.**

Input tax incurred can be claimed in respect of the supplies made outside UAE which would be taxable supplies if made in UAE.

Article 54 (1) (b) of the Federal Decree Law on VAT allows the credit of Inputs if the **inputs are used for making supplies outside UAE**, which could be classified as taxable in UAE, even though tax was not paid on such outward supplies.

Here, reference should be taken from Article (27) of Federal Law No (8) of 2017 on VAT which specifies situations where place of supply is considered Outside State i.e. UAE.

The place of supply of Goods that includes Export or Import shall be Outside State in following instances.

1. *The supply includes an Export to a customer registered for Tax purposes in one of the Implementing States.*
2. *The Recipient of Goods is not registered for Tax in the Implementing State to which export is made, and the total exports from the same supplier to this Implementing State exceeds the mandatory registration threshold for said state.*

Thus, where goods are exported either to **registered recipient in any of the implementing state or to a unregistered recipient in the implementing state subject to the condition that** total exports from the same supplier to this Implementing State exceeds the mandatory registration threshold for said state, no UAE VAT shall be applicable on such supply as the same is treated as supply outside UAE. In all these cases, credit of Input Tax can be availed by the supplier in UAE for the supplies made in any of the Implementing States.

In respect of services, Article 30 of Federal Decree Law on VAT can be referred to which inter alia provides that **Where the Recipient of Services has a Place of Residence in another Implementing State and is registered for Tax therein, the place of supply shall be the Place of Residence of the Recipient of Services.** So, if any taxable service has been provided by a UAE VAT registered entity to VAT registered in any Implementing State, such entity shall be entitled to claim or recover Input VAT paid in UAE although the services are provided outside UAE.

- c. **Inputs are used for making supplies outside UAE even if such supplies are treated as exempt in UAE when they are made inside UAE**

Article 51 (1) (c) of Federal Decree Law on VAT allows the credit of Inputs if the inputs are used for making supplies outside UAE, even if such supplies are treated as exempt in UAE when they are made inside UAE.

As per Article 52 of the Executive Regulations, supplies referred to under the aforesaid Article 51 (1) (c) are **the supplies of financial services, where the place of supply of these services is treated as outside the State and the Recipient of Services is outside the State** at the time when the Services are performed. A typical example of this can be the supply of exempted financial services i.e. a margin based loan product by a VAT registered person in UAE to any of the registered person in Implementing State. Accordingly, the supplier of exempted financial services in UAE will be eligible to avail credit of Input VAT paid in respect of such services despite the fact that these are provided outside UAE.

For the purpose of this clause a Person is “outside the state” even if they are present in the state, provided that it is only a short-term presence in the state of less than a month or that his presence is not effectively connected with the supply.

1. In case Goods are imported through another Implementing State

Where Goods are imported by a Taxable Person through another Implementing State and the intended final destination of those Goods was the State, **the Taxable Person shall be entitled to treat the Tax paid in respect of Import of Goods into the Implementing State as Recoverable Tax** subject to the following conditions specified under Clause 3 of Article 52 of Executive Regulation on VAT.

- a. The Taxable Person keeps evidence that he has paid Tax in another Implementing State in respect of the relevant Goods.
- b. The Taxable Person has not recovered the Tax paid in any other Implementing State.
- c. The Taxable Person has complied with any additional reporting requirement that the Authority may specify.

2. In case Goods are acquired in another Implementing State and then moved into the State (UAE)

Where Goods were acquired by a Taxable Person in another Implementing State and then moved into the State, the **Taxable Person shall be entitled to treat the Tax paid in respect of the Goods in the Implementing State as Recoverable Tax** subject to the following conditions specified under Clause 3 of Article 52 of Executive Regulation on VAT.

- a. The Taxable Person keeps evidence that he has paid Tax in another Implementing State in respect of the relevant Goods.
- b. The Taxable Person has not recovered the Tax paid in any other Implementing State.
- c. The Taxable Person has complied with any additional reporting requirement that the Authority may specify.

Article 54 of Federal Decree Law on VAT

1. The Input Tax that is recoverable by a Taxable Person for any Tax Period is the total of Input Tax paid for Goods and Services which are used or intended to be used for making any of the following:
 - a. Taxable Supplies.
 - b. Supplies that are made outside the State which would have been Taxable Supplies had they been made in the State.
 - c. Supplies specified in the Executive Regulation of this Decree-Law that are made outside the State, which would have been treated as exempt had they been made inside the State.
2. Where Goods are imported by a Taxable Person through another Implementing State and the intended final destination of those Goods was the State at the time of Import, then the Taxable Person shall be entitled to treat the Tax paid in respect of Import of Goods into the Implementing State as Recoverable Tax subject to conditions specified the Executive Regulation of this Decree-Law.
3. Where Goods were acquired by a Taxable Person in another Implementing State and then moved into the State, the Taxable Person shall be entitled to treat the Tax paid in respect of the Goods in the Implementing State as Recoverable Tax subject to the conditions specified in the Executive Regulation of this Decree-Law.
4. A Taxable Person shall not be entitled to recover any Input Tax in respect of Tax paid in accordance with Clause (2) of Article (48) of this Decree-Law.
5. The Executive Regulation of this Decree-Law shall specify the instances where Input Tax is excepted from being recovered.

9.3 CONDITIONS FOR RECOVERY OF INPUT TAX

As we have discussed in the previous section that Input tax paid by any taxable person will be 100% recoverable in respect of taxable supply but there are certain expense items, such as business entertainment, Motor vehicles used for personal use, Goods and Services purchased for use by employees are not recoverable at all. Business entertainment is 0% recoverable for VAT because service is enjoyed by the employees and hence qualifies as end users. The recovery of Input Tax shall be subject to following conditions as stipulated under Article 55 of Federal Decree Law on VAT.

i) Documents Needed for Claiming Input Tax

- Input tax incurred can be claimed if the recipient is a registered person. The recipient must hold a **valid tax invoice** in respect of a taxable supply of goods or services used for business purposes. There are certain instances specified under the law where Tax Invoice is not required to be issued. In all such instances, **credit of Input Tax paid can be availed on the basis of any other document specified by law** in relation to the supply. The VAT amount must be shown on the tax invoice; otherwise the registered recipient is not allowed to claim input tax using the tax invoice.
- There are two types of tax invoices specified under the VAT laws i.e. simplified tax invoice and full tax invoice. Generally, a Tax Invoice needs to be issued in all cases by the registered supplier. However, there are certain

exceptions where a tax invoice is not required to be issued. A simplified tax invoice may be issued by the supplier where the Recipient of Goods or Recipient of Services is not a Registrant or where the Recipient of Goods or Recipient of Services is a Registrant and the Consideration for the supply does not exceed AED 10,000. **Credit of input tax can be claimed on the basis of tax amount stated in the simplified tax invoice.**

- In respect of importation of goods, the importer must hold a valid Customs importation document to account for tax under reverse charge mechanism and accordingly claim credit of Input VAT. For importation of services, the recipient is required to hold a document such as the foreign supplier's invoice to show that he is entitled to claim input tax.
- The **Tax invoice must be issued under the name of the registered person** to be eligible for input tax credit. A tax invoice issued under the name of any person other than the registered person will not be eligible for input tax credit.
- The Recoverable Input Tax may be deducted through the Tax Return relating to the **first Tax Period in which the taxable person holds the tax invoice or simplified tax invoice or any other document required** under law in relation to the Supply or Import on which Input Tax was paid.

ii) Payment of Consideration for the Supply

For deducting recoverable input tax, another condition which needs to be satisfied is that **the payment of the consideration against the supply or part thereof must be made**. In case payment is not made against a supply then the credit of input tax on such supply received could not be taken. According to Clause 2 of Article 54 of the Executive Regulations read with paragraph (b) of Clause (1) of Article 55 of the Decree Law, **a Taxable Person shall be treated as having made a payment of consideration for a supply to the extent that the Taxable Person intends to make the payment before expiration of six months after the agreed date for the payment of the supply.**

Hence consideration paid includes both physical payment as well as intention to pay. Even if the consideration is not paid in the relevant tax period, input tax credit can still be taken against the tax invoice provided there must be intention of the recipient to pay the supplier.

According to Clause 2 of Article 64 of the Federal Decree Law on VAT, **where the Consideration has not been paid and all of the following conditions are met, the registered Recipient of Goods or Recipient of Services shall reduce the Recoverable Input Tax for the current Tax Period** related to a supply received during any previous Tax Period.

- a. The registered supplier reduced the Output Tax as an adjustment for bad debt and the Recipient of Goods and Services has received a notification from the supplier of the Consideration being written off.
- b. The Recipient of Goods and Recipient of Services received the Goods and Services and the relevant Input Tax was deducted.
- c. The Consideration was not paid in full or in part for the supply for over (6) six months.

Recovery of Input Tax in Subsequent Tax period

According to Clause 2 of Article 55 of Federal Decree Law on VAT, if any of the following 2 conditions are not satisfied and credit of Input Tax is not taken by the recipient during a tax period then the same may be taken in the subsequent tax period when both the conditions are met.

- a. The tax invoice or other specified document (custom importation documents in case of imports, simplified tax invoice etc.) has been received and kept in the records by the recipient;
- b. Consideration for the supply has been paid.

Thus, if any supply of goods and/or services has been made but tax invoice couldn't be issued during the tax period, input tax credit can still be taken in the subsequent tax period when invoice is actually received by the recipient.

However, if such input tax could not be deducted in the subsequent tax periods then it cannot be deducted at all subsequently in a later tax periods. The law clearly specifies that credit is available in the subsequent tax "period" and not "periods". Thus it is available only in the next period but not later than that.

We can draw the conclusion from above provisions is that **failure to file tax return rescind the right of the recipient to claim Input Tax** though the liability to pay Output Tax on the taxable supply continues until it is discharged. Thus if the recipient fails to file any tax return for any tax period or subsequent tax period, he cannot claim input tax pertaining the relevant tax period.

9.4 RECOVERABLE INPUT TAX IN RELATION TO REGISTRATION

I. Pre-Registration

Input VAT paid on goods and services acquired before registration (both voluntary and mandatory registration including late registration) by the taxable person is eligible for input tax credit.

Such Input Tax can be claimed in the first return submitted after registration. The claim can be made on:

- a. Taxable Supply of goods and services made to him prior to the date of Tax Registration
- b. Import of goods by him prior to the date of Tax Registration

It is thus imperative here that for recovery of such input tax paid earlier than registration of the taxable person, one must ensure to file return for the first tax period after registration carefully. After, filing of return of first tax period after registration, recovery or claim of Input Tax is not possible.

As an exception to above, **input credit cannot be claimed in relation to goods/services acquired prior to the date of Tax Registration in following cases:**

- a. Receipt of goods and services **used for making non-taxable supplies**. It should be noted here that zero-rated supplies are taxable supplies. Non taxable supplies here refers to exempt supplies and out of scope supplies of goods and services.
- b. **Input Tax credit related to part of capital assets that depreciated before date of tax registration.** If part of the asset is depreciated then Input tax cannot be recovered on such assets to the extent such assets are depreciated. If the same is fully depreciated, no input tax credit can be claimed.
- c. **Service received more than 5 years prior to the date of tax registration.**
- d. **Goods which were moved to another GCC Implementing Country before the date of Tax Registration.**

Article 54 of Federal Decree Law No. 8 of 2017 on VAT may be referred below in this regard for reference.

Article 56 of Federal Decree Law on VAT: Input Tax Paid before Tax Registration

1. A Registrant may recover Recoverable Tax incurred before Tax Registration on the Tax Return submitted for the first Tax Period following Tax Registration, which has been paid for any of the following:
 - a. Supply of Goods and Services made to him prior to the date of Tax Registration.
 - b. Import of Goods by him prior to the date of Tax Registration.
 Provided that these Goods and Services were used to make supplies that give the right to Input Tax recovery upon Tax Registration.
2. As an exception to the provisions of Clause (1) of this Article, Input Tax may not be recovered in any of the following instances:
 - a. The receipt of Goods and Services for purposes other than making Taxable Supplies.
 - b. Input Tax related to the part of the Capital Assets that depreciated before the date of Tax Registration.
 - c. If the Services were received more than five years prior to the date of Tax Registration.
 - d. Where a Person has moved the Goods to another Implementing State prior to the Tax Registration in the State.

9.5 RECOVERY OF RECOVERABLE INPUT TAX PAID BY GOVERNMENT ENTITIES

Article 57 of Federal Decree Law on VAT reads as follows in this regard.

A Cabinet Decision shall be issued at the suggestion of the Minister determining the Government Entities and Charities entitled to recover the full amount of Input Tax paid by them, except for:

1. Tax excluded from recovery as specified in the Executive Regulation of this Decree-Law.
2. Tax paid for Goods and Services used to perform exempt supplies.

As on date, no Cabinet Decision has been issued determining the Government Entities and Charities entitled to recover the full amount of Input Tax paid by them. In absence of this specific rule, normal rules for recovery of Input Tax shall apply to government entities and charitable institution as well.

9.6 NON-RECOVERABLE INPUT TAX

Under UAE VAT, taxable persons are eligible to recover the VAT paid on purchase of goods and services used for business purposes. However, there are certain supplies on which credit of input tax is not allowed to be taken. Let's discuss all these cases here as under.

1. Entertainment Services

As per Article 53 of Federal Decree Law No. 8 of 2017 on VAT, any taxable person cannot claim input tax recovery on entertainment services provided to any person other than its employees. Thus, Input VAT paid in respect of entertainment services provided to customers, potential customers, officials, shareholders, owners or investors will not be eligible for recovery. This should be noted that this provision is not applicable to government entities.

The entertainment services has been defined under the same article to include hospitality of any kind, including providing accommodation, food and drinks which are not provided in the normal course of a meeting and access to shows or events or trips provided for the purpose of pleasure or entertainment. This definition makes it clear that any if food and drinks are offered to customers, potential customers, government officials, shareholders or owners during the normal course of meeting, credit of Input VAT paid in respect of such purchase can be taken.

Hence, Input VAT paid in respect of water bottles, soft drinks provided to its clients, shareholders, investors or owners during the normal course of meeting shall be eligible for its recovery.

Example 4: ABC Construction LLC provides 3 days hotel accommodation to its client including prospective clients during their visit to its business premises. The hotel tariff for 3 days accommodation was AED 2000, on which VAT @ 5%, amounting to AED 100 was paid by the company. ABC Construction LLC shall not be eligible to claim recovery of Input VAT, as it amounts to entertainment services provided to non-employees.

Further, Clause 3 of Article 53 of Federal Decree Law on VAT clarifies that provision of catering and accommodation services shall not be treated as entertainment services where it is provided by a transportation service operator, such as an airline, to passengers who have been delayed. In other words, Input VAT paid by a transportation service operator in respect of provision of catering and accommodation services provided to its customers will be eligible for recovery of tax. i.e. input tax credit can be taken by the operator against such expense.

2. Motor vehicles used for personal use

If a taxable person has purchased, rented or leased motor vehicles for use in the business but the same was used for personal use by a person in the business, then the Input VAT paid on purchase, rent or lease of the motor vehicle cannot be recovered by such taxable person.

Motor vehicle has been defined under the same article and it means a **road vehicle designed or adapted for the conveyance of not more than 10 people, including the driver.** Trucks, forklifts, hoists or similar vehicles are not included.

A motor vehicle used in the business will not be treated as being available for personal use in the following cases:

- a. It is a taxi licensed by a competent authority within UAE
- b. It is registered and used for the purpose of an emergency vehicle, including by police, fire, ambulance or similar emergency service.
- c. It is used in a vehicle renting business, where it is rented to a customer

Example 5: ABC Transport LLC a registered company under UAE VAT purchases 10 cars from the manufacturer for AED 1,000,000 in Dubai for its transport business. Total Input VAT paid on purchase of these 10 cars will be AED 50,000. Out of the 10 cars purchased, 1 car was used by the owner for his personal use. In this case, ABC Transport LLC cannot take Input tax credit amounting to AED 5,000 on paid on purchase of the 1 car used for personal use. In other words, it can adjust only 45,000 against its output tax liability during the tax period.

3. Goods or services purchased for use by employees

Registered businesses cannot claim input tax recovery paid on goods and services purchased for use by employees, for which no charge is paid by the employees and the same is for personal benefit of employees.

However, credit of Input VAT can be claimed and taken on such goods and services in the following cases:

- a. Where it is a legal obligation to provide the goods or services under an applicable labour law in UAE or the Designated Zone.
- b. Where it is a contractual obligation or documented policy to provide the goods or services for the employees to perform their role and it can be proven to be a normal business practice in the course of employment.
- c. Where the provision of goods or services is a deemed supply

Example 6: ABC Consultants LLC a VAT registered entity in Dubai purchases gym equipments amounting to AED 100,000 (excluding VAT) for use by its employees. The equipment is made available to employees as part of their employee benefits and is free of charge. VAT paid on purchase of the gym equipment will be AED 5,000 (5% of AED 100,000). In such a case, ABC Consultants LLC will not be eligible to claim input tax recovery on this purchase of the gym equipments.

Article (53) of Executive Regulation on VAT: Non-recoverable Input Tax

1. Input Tax shall be non-recoverable if it is incurred by a Person in respect of the following Taxable Supplies:
 - a. Where the Person is not a Government Entity as specified in a Cabinet Decision in accordance with Article (10) and (57) of the Decree-Law, and there is provision of entertainment services to anyone not employed by the Person, including customers, potential customers, officials, or shareholder or other owners or investors.
 - b. Where a motor vehicle was purchased, rented or leased for use in the Business and is available for personal use by any Person.
 - c. Where Goods or Services were purchased to be used by employees for no charge to them and for their personal benefit including the provision of entertainment services, except in the following cases:
 - 1) Where it is a legal obligation to provide those Services or Goods to those employees under any applicable labour law in the State or Designated Zone.

- 2) It is a contractual obligation or documented policy to provide those services or goods to those employees in order that they may perform their role and it can be proven to be normal business practice in the course of employing those people;
 - 3) Where the provision of goods or services is a deemed supply under the provisions of the Decree-Law.
2. For the purposes of this Article:
- a. The phrase “entertainment services” shall mean hospitality of any kind, including the provision of accommodation, food and drinks which are not provided in a normal course of a meeting, access to shows or events, or trips provided for the purposes of pleasure or entertainment.
 - b. The phrase “motor vehicle” shall mean a road vehicle which is designed or adapted for the conveyance of no more than 10 people including the driver. A motor vehicle shall exclude a truck, forklift, hoist or other similar vehicle.
 3. Provision of catering and accommodation services shall not be treated as entertainment services where it is provided by a transportation service operator, such as an airline, to passengers who have been delayed.
 4. A motor vehicle shall not be treated as being available for private use if it is within any of the following categories:
 - a. a taxi licensed by the competent authority within the State;
 - b. a motor vehicle registered as, and used for purposes of an emergency vehicle, including by police, fire, ambulance, or similar emergency service;
 - c. a vehicle which is used in a vehicle rental business where it is rented to a customer.

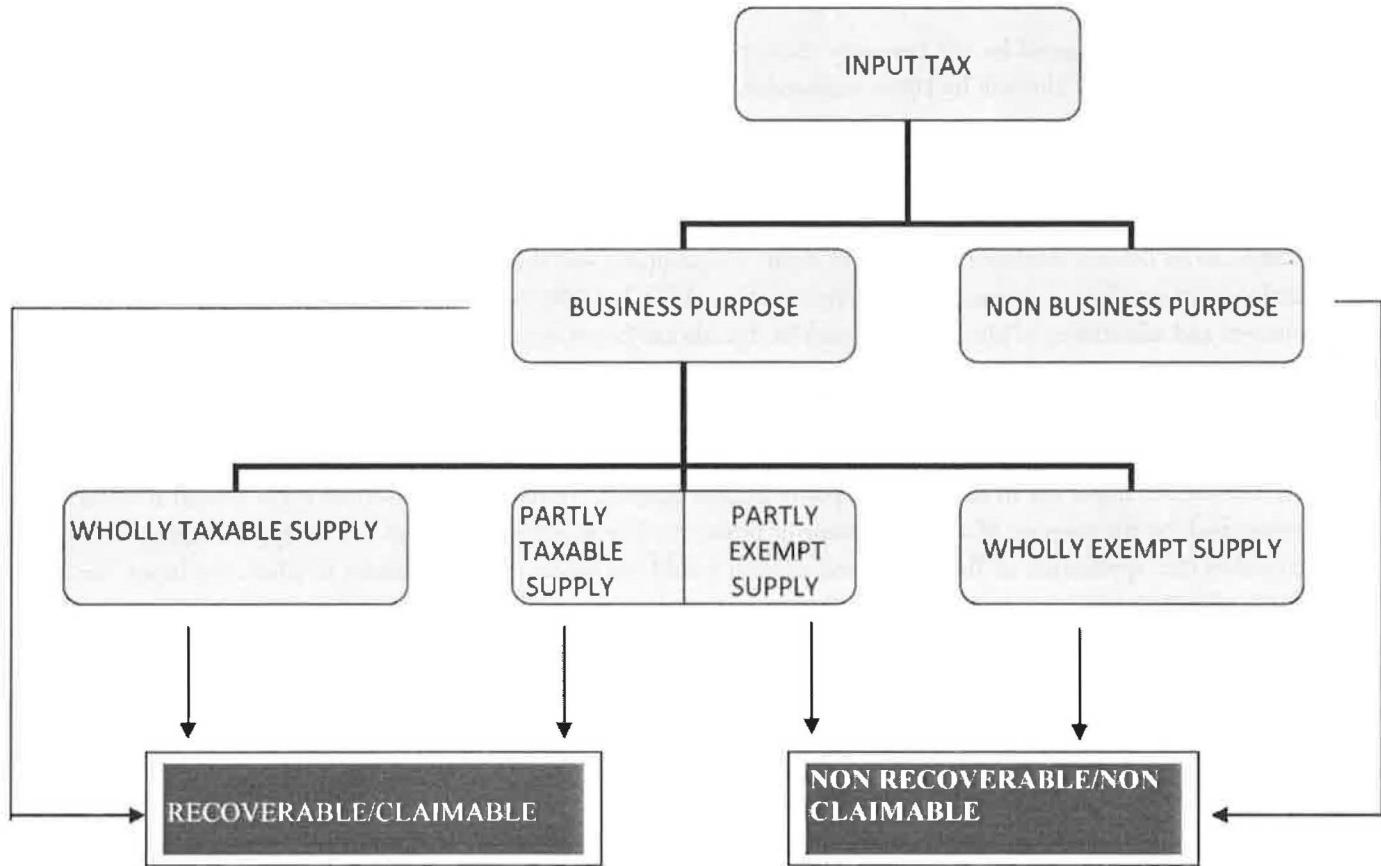
9.7 APPORTIONMENT AND ADJUSTMENT OF INPUT TAX

Input tax used exclusively to make taxable supplies is 100% recoverable. Where a VAT registered person incurs input tax on its business expenses, this input tax can be recovered in full if it relates to a taxable supply made by the registered person and the same is for business purpose. In contrast, where the expense relates to a non-taxable supply (e.g. exempt supplies), the registered person shall not be able to recover the input tax paid.

In certain situations, an expense may relate to both taxable and non-taxable supplies made by the registered person (such as financial services). In these circumstances, the registered person would need to identify input tax which is used **exclusively** to make taxable supplies and input tax which is used **exclusively** to make exempt supplies. This is known as **direct attribution**. However, in most of the cases it is practically not possible to calculate input tax directly attributable to taxable supplies. In all such cases, apportionment of input tax is carried out in accordance with the provisions of UAE VAT laws. This is to reiterate that the question of apportionment will arise only in case of partially exempt businesses which make both taxable and exempt supplies.

Article 58 of Federal Decree Law on VAT may be referred to in this regard which provides that *The Executive Regulation of this Decree-Law shall specify the method in which the Input Tax that may be recovered is calculated, if Input Tax is paid for Goods or Services during a specific Tax Period to make supplies that allow recovery under Article (54) and others that do not allow recovery, or for activities conducted that are not in the course of doing the Business.*

General overhead costs (e.g. office rental, utilities or stationery) are directly attributable to all of a business's supplies as they are cost components of the business as a whole. VAT incurred on such costs is known as **Residual Input Tax**. In case a business makes both exempt and taxable supplies, general overhead costs incurred will form cost components of both exempt and taxable supplies as they are not directly attributable to taxable or exempt supply.



In real case scenario, there could be a VAT registered entity which is engaged in the business of providing both exempted services (i.e. financial services, bare land, local passenger transport services, supply or lease of residential buildings to ID holder residents and citizens of UAE) and taxable goods and services. In all such cases, for the purpose of calculating the amount of recoverable input tax, the registered person shall need either to identify input tax which is used **exclusively** to make taxable supplies and input tax which is used **exclusively** to make exempt supplies. Input tax used exclusively to make taxable supplies is recoverable. Where it is not possible to do so, apportionment of the total input tax incurred by the person shall be carried out in accordance with the rules provided in the Executive Regulation on VAT.

Clause 5 of Article 55 of Executive Regulation on VAT in this regard provides as follows

To determine the Input Tax that could be recoverable, the Taxable Person shall apportion Input Tax as follows:

- a. Input Tax on supplies that wholly relate to supplies as specified in Clause (1) of Article (54) of the Decree-Law made by the Taxable Person shall be recoverable in full.
- b. Input Tax that does not relate to supplies as specified in Clause (1) of Article (54) of the Decree-Law made by the Taxable Person shall not be recoverable unless provisions allow otherwise.
- c. Input Tax that partly relates to supplies as specified in Clause (1) of Article (54) of the Decree-Law and partly not, shall be apportioned in accordance with Clause (6) of this Article and only that part that relates to supplies as specified in Clause (1) of Article (54) of the Decree-Law shall be recoverable.

Now, let's understand this with the help of example given below.

Example 7: ABC LLC is a builder registered under UAE VAT. The builder is engaged in the business of developing, buying, selling and leasing both commercial and residential buildings. The builder is under obligation to file monthly VAT. During the March 2018 tax period, some of the company's turnover is standard-rated and some is exempt. The details are given below.

Taxable Turnover (including zero-rated) = AED 10,000,000

Exempt Turnover = AED 2,500,000

The total input tax incurred by the company exclusively in relation to taxable supply during the tax period of March amounted to AED 300,000. This will be 100% recoverable.

The total input tax incurred by the company exclusively in relation to exempt supply during the tax period of March amounted to AED 100,000. This input tax amount of AED 100,000 can't be recovered i.e. set off against the output tax.

The company also incurs an input tax amounting to AED 250,000 which relates to both the taxable and exempt business and the same can be directly attributed to either of them. The company will thus need to apportion this input tax between the taxable and exempt supplies to determine recoverability of the AED 250,000. In the later section, we will study the method of apportionment and adjustment of input tax that can't be directly attributed to taxable or exempt supplies.

9.7.1 Method of Apportionment of Input Tax Credit

As per the provisions of the VAT laws, a taxable person can either adopt **Turnover based** method or **Use Based** method to apportion Recoverable Input Tax in respect of its partly exempt supplies. Turnover based Method is the default method which should be applied for the purpose of apportionment of input tax. Use based method shall not be applied unless the Taxable Person considers that application of Turnover based method would not reflect the actual extent to which the Input Tax relates to making Taxable Supplies.

It is however, important to note here that the Federal Tax Authority can authorise any taxable person to use any alternative basis of calculation based on the list of accepted mechanisms issued by the Authority.

Let's now discuss in detail these methods of apportionment of Input Tax.

A. Turnover Based Method of Apportionment of Input Tax

Clause 6 of Article 55 of the Executive Regulation on VAT provides the formula to compute the amount of Recoverable Input Tax in cases where the goods and services are partially used for both taxable supplies, exempt supplies and for non-business purpose. The following steps should be taken while computing the amount of recoverable input tax.

1. First of all, **Input VAT recoverable percentage** needs to be determined. The said percentage can be obtained by **dividing the value of Taxable Supplies by the total Value of Supplies** during the tax period (Both Exempt supplies + Taxable supplies).
2. The percentage thus calculated as above shall be **rounded to the nearest whole number**. For example, if it comes to 65.1%, it would round up to 66%.
3. The percentage as arrived under step 2 is then **multiplied by the amount of Input Tax** which related partly to taxable supplies, exempt supplies and for non business purpose (not separately identifiable). The amount thus arrived under step 3 shall be the recoverable portion of Input Tax

In simple words, one can arrive at the amount recoverable input VAT by applying the below formula:

Amount of Recoverable Input Tax = Input Tax Incurred X Taxable Supplies (excluding VAT) /Total Supplies (excluding VAT)

Now, let's understand the method of apportionment of Input Tax with the help of example. Continuing with the same above example 1, the amount of recoverable Input Tax can be calculated by following above steps.

$$\begin{aligned}
 \text{Recoverable Input VAT (\%)} &= \text{Value of Taxable Supplies} / \text{Total Value of Supplies} \times 100 \\
 &= 10,000,000 / (10,000,000 + 2,500,000) \times 100 \\
 &= 80 \%
 \end{aligned}$$

$$\begin{aligned}
 \text{Recoverable Input VAT} &= 80 \% \text{ of Input VAT (not separately identifiable)} \\
 &= 80 \% \text{ of } 250,000 \\
 &= 200,000
 \end{aligned}$$

Out of the total Input VAT of AED 650,000 incurred by the company during the tax period, Input VAT which can be recovered shall be AED 500,000 (300,000 + 200,000). Rest 150,000 cannot be recovered/set off against Output VAT during the taxable period.

Let's consider few more examples.

Example 8: The following are the sales transactions of M/S ABC LLC for the tax period February – April 2018:

Type of Supplies	Value (AED)	Output VAT (AED)
Standard Rated supplies	450,000	22,500
Zero-Rated Supplies	257,500	-
Exempt Supplies	192,500	-
Total	1,000,000	22,500

During the period, the expenses incurred amounted to AED 400,000 plus VAT @ 5% amounting to AED 20,000. M/s ABC LLC has used the goods for making taxable as well exempt supplies and unable to identify separately the input VAT related to taxable supplies and exempt supplies.

Now, in order to determine the amount of recoverable Input VAT, Turnover based method shall be applied as follows

- Total Value of Taxable Supplies = AED 707,500 (Standard Rated supplies 450,000 AED + Zero-rated supplies 257,500 AED)
- Total Supplies : AED 1,000,000
- Input VAT : AED 20,000

$$\begin{aligned} \text{Recoverable Input VAT (\%)} &= \text{Value of Taxable Supplies}/\text{Total Value of Supplies} \times 100 \\ &= 705,000/1,000,000 \times 100 = 70.75 \end{aligned}$$

The same will be rounded off nearest whole number i.e. to 71%

$$\begin{aligned} \text{Input VAT Recoverable Amount} &= 71\% \text{ of Input Tax} \\ &= \text{AED } 14,200 \end{aligned}$$

Balance 6,000 shall not be recoverable.

$$\begin{aligned} \text{Net VAT payable for the tax period} &= \text{Output VAT minus Recoverable Input VAT} \\ &= \text{AED } 22,500 - \text{AED } 14,200 \\ &= \text{AED } 8,300 \end{aligned}$$

Example 9: On the basis of below information provided by XYZ LLC, a VAT registered business in Dubai; calculate the amount of recoverable Input VAT and Net VAT during the tax period of April 2018.

Standard-rated supplies (excluding VAT)	AED 3,000,000
Exempt supplies	AED 500,000
Total Input tax:	AED 140,000
Directly attributable to taxable supplies	AED 90,000
Directly attributable to exempt supplies	AED 10,000
Balance AED 40,000	

Solution:

$$\begin{aligned}\text{Total Output VAT} &= 5\% \text{ of AED } 3,000,000 \\ &= \text{AED } 150,000\end{aligned}$$

$$\begin{aligned}\text{Recoverable Input VAT (\%)} &= \text{Value of Taxable Supplies/Total Value of Supplies X 100} \\ &= \text{AED } 3,000,000/\text{AED } 3,500,000 \times 100 \\ &= 85.71\% \text{ (rounded off to nearest whole number i.e. 86\%)}\end{aligned}$$

$$\begin{aligned}\text{Input VAT Recoverable Amount} &= \text{Input VAT directly attributable to taxable supplies + Recoverable portion of Input VAT not separately identifiable} \\ &= \text{AED } 90,000 + 86\% \text{ of AED } 40,000 \\ &= \text{AED } 124,400\end{aligned}$$

$$\begin{aligned}\text{Net VAT payable for the tax period} &= \text{Output VAT minus Recoverable Input VAT} \\ &= \text{AED } 150,000 - \text{AED } 124,400 \\ &= \text{AED } 25,600\end{aligned}$$

B. Use Based Method of Apportionment of Input Tax

Any taxable person having partly exempt supplies has the option of recovering input tax apportioned on the basis of actual use of goods and services subject to conditions method below. Clause 11 to Clause 15 of Article 55 of the Executive Regulation on VAT makes a reference in this regard. It provides as follows.

- Where the Taxable Person considers that the application of the calculations mentioned in this Article (i.e. Turnover based method of apportionment of Input Tax) would give a result which would not reflect the actual extent to which the Input Tax relates to making Taxable Supplies, he may apply to the Authority to authorise the use of an alternative basis of calculation based on the list of accepted mechanisms issued by the Authority. (Clause 11 of Article 55 of ER)
- The Authority may accept that the Taxable Person may use an alternative mechanism of apportionment of input tax than that referred to in this Article from such future date and as per any further conditions as determined by the Authority. (Clause 12 of Article 55 of ER)
- The Taxable Person may only apply to change the alternative mechanism with effect from at least two Tax years after he was first approved to use it. (Clause 13 of Article 55 of ER)
- The Authority may request such information from the Taxable Person as it believes is necessary to make a decision regarding application made under Clause (11) of this Article. (Clause 14 of Article 55 of ER)
- If the Authority accepts the application made under Clause (11) of this Article, it shall issue a Notification to the Taxable Person setting out the alternative calculation method and conditions for using of such method. (Clause 15 of Article 55 of ER)

9.7.2 Annual Adjustments

The calculations referred to above in paragraph 9.7.1 regarding recovery of Input Tax shall be **undertaken in respect of each Tax Period** where Input Tax incurred relates to making Exempt Supplies or to activities that are not in the course of Business. On the basis of this calculation, Input Tax is recovered in every tax period. These calculations are however not final.

At the end of the each Tax year, the taxable person must perform an **annual** calculation. This is the same calculation again as discussed in above paragraph, but this time recovery of input tax shall be calculated using annual supplies and annual input tax figures. Thus, the below stated formula can be used for computing annual recovery rate of Input Tax.

Input Tax Recovery Rate (%) = Value of Taxable Supplies during the Tax Year/ Total Value of Supplies during the Tax Year X 100

The determination of annual recovery rate of Input Tax shall be the first step. The percentage of annual recovery rate shall need to be rounded off to nearest whole number. The next step shall be the computation of the amount of recoverable input tax for the tax year based on the recovery rate for the tax year. The formula given below can be used to arrive at the value of recoverable Input Tax for the tax year.

Actual Recoverable Input Tax for the Tax Year = Annual Input tax Recovery Rate (%) X Input Tax not separately identifiable (Residual Input Tax)

The taxable person shall then **compare the Input Tax properly recoverable for the Tax year just ended** using the annual recovery rate formula with the Input Tax amount actually recovered in all the Tax Periods making up the Tax year. The difference arising if any shall be **adjusted in the first Tax Period of its subsequent Tax year**. This is known as the "**annual adjustment**". In simple words, the annual adjustment is accounted for on the first VAT return of the new VAT year.

Let's understand this with the help of the example given below.

Example 10:

A VAT registered business in Sharjah has results for the last 4 VAT quarters as follows. The taxable supplies are stated exclusive of VAT.

Particulars/Year	Feb – April 2018	May - July 2018	Aug - Oct 2018	Nov - Jan 2018	Total
Taxable Supplies	1,00,00,000	1,50,00,000	1,20,00,000	70,00,000	4,40,00,000
Exempt Supplies	25,00,000	50,00,000	80,00,000	30,00,000	1,85,00,000
Total	1,25,00,000	2,00,00,000	2,00,00,000	1,00,00,000	6,25,00,000

Input Tax					
Directly Attributable to Taxable Supply	50000	75000	60000	40000	225000
Directly Attributable to Exempt Supply	25000	50000	45000	55000	175000
Residual Input Tax	25000	25000	20000	30000	100000

Using the information above calculate the input VAT recovery for each quarter and the annual adjustment.

Solution:

S.No.	Particulars/Year	Jan - Mar 18	Apr - Jun 18	Jul - Sep 18	Oct - Dec 18	Total
1	Taxable Supplies	1,00,00,000	1,50,00,000	1,20,00,000	70,00,000	4,40,00,000
2	Exempt Supplies	25,00,000	50,00,000	80,00,000	30,00,000	1,85,00,000
3	Total	1,25,00,000	2,00,00,000	2,00,00,000	1,00,00,000	6,25,00,000
4	Taxable Supply (%)	80	75	60	70	70.40
	Total Input Tax	100000	150000	125000	125000	500000
5	Directly Attributable to Taxable Supply	50000	75000	60000	40000	225000
6	Directly Attributable to Exempt Supply	25000	50000	45000	55000	175000
7	Residual Input Tax	25000	25000	20000	30000	100000
8	Residual – Taxable	20000	18750	12000	21000	71750
9	Residual – Exempt	5000	6250	8000	9000	28250

10	Annual Recovery allowed – Residual Input Tax	16500	16500	13200	19800	66000
11	Annual Adjustment					5750

Step 1:

First of all input tax recovery rates for all the above quarterly tax periods are calculated and are shown in Row 4 of the above table. The following formula shall be used to calculate Input Tax Recovery Rate.

$$\text{Input Tax Recovery Rate} = \text{Value of Taxable Supplies (Row 1) / Value of Total Supplies (Row 3)} \times 100$$

Step 2:

Now using the recovery rate as calculated under step 1, the provisional amount of Recoverable Input Tax for the quarter shall be calculated. Below given formula should be used for this purpose.

$$\text{Actual Recoverable Input Tax for the Tax Year} = \text{Annual Input tax Recovery Rate (\%)} \times \text{Input Tax not separately identifiable (Residual Input Tax)}$$

The amount arrived as shown in Row 8 is the recoverable portion of residual input tax which can be claimed at the time of filing VAT returns for each of the above quarterly tax periods.

Step 3:

As a next step, annual recovery rate of input tax shall be calculated using the same formula given under step 1 but with annual figures. So, as per the calculation annual recovery rate comes to 70.4% which shall be rounded off to nearest whole number i.e. **70%**.

Step 4:

After this, the same calculations (as per the formula shown under step 2) will be done in order to determine actual recoverable input tax for all the quarters but using annual recovery rate instead of provisional recovery rate for the quarters.

The amount of Residual Input Tax which can be finally recovered using annual recovery rates for the quarters are as follows.

$$\text{Quarter 1: } 70\% \text{ of } 25000 = 17500$$

$$\text{Quarter 1: } 70\% \text{ of } 25000 = 17500$$

$$\text{Quarter 1: } 70\% \text{ of } 20000 = 14000$$

$$\text{Quarter 1: } 70\% \text{ of } 30000 = 21000$$

The total amount shall be AED 70,000. However, total of provisional recoverable input tax for all the quarters combined together comes to AED 71,250. This indicates an excess recovery of AED 1,250. This excess recovered amount of AED 1,250 needs to be shown as adjustment in VAT return for the first tax period of the subsequent year.

Adjustment on account of difference in Recoverable Input Tax calculated on Turnover based method and Recoverable Input Tax calculated on Use Based method

Clause 10 of Article 55 of the Executive Regulation on VAT clearly states that if the difference in any Tax year between the Recoverable Tax as calculated under this Article and the Recoverable Tax which would arise if a calculation was made which reflects the actual use of the Goods and Services to which the Input Tax relates, exceeds AED 250,000 (two hundred fifty thousand dirhams), the Taxable Person shall, in the first Tax Period of the subsequent year, make an adjustment to the Input Tax in respect of the difference.

9.8 INPUT TAX ADJUSTMENT POST RECOVERY

- Generally, input tax is recoverable when a taxable person intends to use inputs to make a taxable supply. A change of use occurs when a taxable person uses or intends to use the input goods or services in:

- (a) making exempt supplies or both taxable and exempt supplies instead of taxable supplies;
- (b) making exempt supplies, instead of both taxable and exempt supplies;

In cases where such change of use of input goods or services has taken place, the taxable person shall be required to repay such input tax on goods and services. In other words, input tax recovered earlier will need to be reversed. [Article 56 (1) of ER]

2. As we have discussed earlier, input tax is not claimable when a taxable person intends to use inputs to make an exempt supply. A change of use also occurs when a taxable person uses or intends to use the input goods or services in:
 - (a) making taxable supplies or both taxable and exempt supplies instead of exempt supplies;
 - (b) making taxable supplies, instead of both taxable and exempt supplies;

In all such cases where such change of use of input goods or services has taken place, the taxable person shall be able to recover Input Tax attributable to the use of the Goods or Services for making such supplies.

In other words, input tax will be allowed to be recovered upon such change of use of input goods or services. [Article 56 (2) of ER]

Clause 4 of Article 56 of Executive regulation on VAT provides limitation on the applicability of above provisions. It reads as follows.

The adjustments for change in use of Goods or Services under this Article shall be made only if all of the following conditions are met:

- a. The change in use occurred within five years of the Date of Supply of the relevant Goods and Services.
- b. The Taxable Person is not required to adjust the same Input Tax under mechanisms provided in Articles (55) and (57) of this Executive Regulation on VAT (i.e. Capital Asset Scheme) in which case those mechanisms will apply.

9.9 EXCESS RECOVERABLE INPUT TAX

When the amount of input tax exceeds the amount of output tax, the difference is called Excess Recoverable Input Tax.

As per Article 74 of Federal Decree Law on VAT, the **Taxable Person shall carry forward any excess of Recoverable Tax to the subsequent Tax Periods and offset such excess against the Payable Tax and Administrative Penalties until such excess is fully utilized.** It is pertinent to note here that there is no period of limitation for carry forward of such excess Recoverable Input Tax.

If there remains any excess Recoverable Input Tax after being carried forward for a period of time, the Taxable Person may apply to the Authority to reclaim the remaining excess. For this purpose, he has to make a request to the Authority for repayment in accordance with the provisions of law. For details, refer to module “Refund of Tax”.

9.10 CAPITAL ASSET SCHEME

A. Capital Asset: Definition & Scope

Capital assets are the assets which are employed for long-term use and are not intended for sale in the regular course of the business's operation. “**Capital Assets**” has been defined under Article 1 of Federal Decree Law on VAT as business assets designated for long term use. For example, if a company buys a car to be used for providing transportation facility to its employees, it will be a capital asset for the company, but if another company buys the same car to sell during its normal course of business, it will be considered a part of its inventory.

The definition is relevant for the purpose of determining the taxability of transactions related to capital asset. Under UAE VAT laws, the input VAT incurred in respect of taxable supplies is allowed to be recovered at the time of procurement only. However, in respect of capital goods, treatment is not the same. A special scheme known as ‘Capital Asset Scheme’ has been provided under Article 60 of Federal Decree Law on VAT to regulate the recovery of input VAT in respect of capital assets defined

under the law. The law defines Capital Asset scheme as a **scheme whereby the initially recovered Input Tax is adjusted based on the actual use during a specific period.**

In this section, let's understand what type of assets is covered under the Capital Asset Scheme.

Article 60 of Federal Decree Law No. 8 of 2017 on VAT read with Article 57 and 58 of Executive Regulations on VAT contains below provisions in respect of capital assets.

The aforesaid article 57 provides that

A Capital Asset is a single item of expenditure of the Business amounting to AED 5,000,000 or more excluding Tax, on which Tax is payable and which has estimated useful life equal or longer than:

- a. **10 years in case of a building or a part thereof.**
- b. **5 years for all Capital Assets other than buildings or parts thereof.**

Moreover clause 3 of the same article further clarifies that

Expenditure consisting of smaller sums which collectively amount to AED 5,000,000 or more shall be treated as a single item of expenditure of AED 5,000,000 or more for the purposes of this Article where the sums are staged payments for any of the following:

- a. For the purchase of a building.
- b. For the construction of a building.
- c. In relation to an extension, refurbishment, renewal, fitting out, or other work undertaken to a building, except that where there is a distinct break between any such works being undertaken they shall be taken to be separate items of expenditure.
- d. For the purchase, construction, assembly or installation of any goods or immovable property where components are supplied separately for assembly.

It is important to note here that **items of stock, which are for resale, shall not be treated as Capital Assets.**

A taxable person is eligible to claim input tax credit on all taxable supply of goods including capital goods acquired in the course of his business. Input tax can be recovered in full if the capital goods are used in making wholly taxable supplies. However, if the capital goods are used for making both taxable and exempt supplies or for non-business uses, the taxable person can only claim the input tax which is attributable to his taxable supplies.

In simple words, a taxable person will be allowed to recover the full input VAT on capital assets in the first year itself, if it is intended to be used for making taxable supplies throughout the period as specified (i.e. 10 years in case of buildings and 5 years in case of capital assets other than building).

B. Adjustments under the Capital Assets Scheme

As we have understood in previous paragraph, a taxable person will be allowed to recover the 100% input VAT on capital assets in the first year itself, if it is intended to be used for making taxable supplies throughout the specified period.

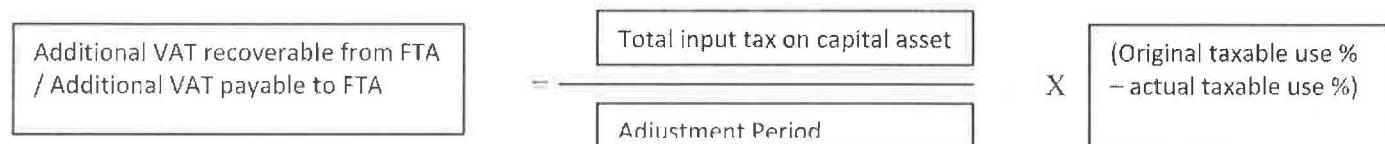
However, Adjustment under the Capital Assets Scheme becomes necessary when there is a change in the proportion of taxable use of the qualified capital assets during the remaining life. The adjustment must be made over such remaining life of the capital assets. The taxable person needs to reverse the proportionate input VAT to the extent of non-taxable usage. The reversed input VAT should be reported as an adjustment towards capital assets while filing VAT returns for that year.

The adjustments on a capital asset would only be made in the subsequent years, starting with the second year, whenever there is a proportional change in its taxable use in relation to the first interval. The formula for calculating the amount of adjustment on a capital asset in subsequent intervals is as follows:

Year 1: Recover input tax incurred on the purchase of the asset based on the expected taxable use of the asset e.g. 100% taxable use, therefore recover all input tax incurred in full

Year 2 – 10: Adjust input tax recovery for that year based on that year's taxable use

e.g. Adjustment = Input tax for year 2 / (10 or 5 years, as the case may be) x difference between initial recovery percentage and actual taxable use



Following steps should be followed for the purpose of computation of adjustment under capital asset scheme.

1. Firstly, identify the total input VAT on said capital good.
2. Secondly, divide the total input tax with useful life of the assets. In case of a building, it is 10 years and in other cases, it is 5 years.
3. After that, multiple the resultant with the % change in usage, which is basically the difference between intended usage while recovering the Input Tax in the first year and actual usage in that year.
 - The Input VAT adjustment arrived at from point no 3. will either result in additional repayment or additional recovery from FTA .

Now, let's understand the applicability of above formula with the help of few examples.

Example 11: ABC LLC has acquired a Building for AED 7,000,000 (excluding VAT) on January 1, 2018 and the use of the building is 100% for Taxable Supplies. In the third year i.e. 2020 the use of the building has changed to 100% for Exempt supplies.

In 2018

Total Input VAT recoverable by ABC in 2018 = 5 % of AED 7,000,000

$$= \text{AED } 350,000$$

Adjustment Period = 10 years

During Year 2018 to Year 2027

$$\text{Adjustment (Additional VAT Payable to FTA)} = \text{AED } 350,000 / 10 \times (100 \% - 0\%)$$

$$= \text{AED } 35,000$$

Thus, the company must repay AED 35,000 of Input VAT each year starting from the year 2020 till 2027 on the basis that the building is used for 0% taxable supplies.

Example 12: XYZ LLC has acquired a Building for AED 8,000,000 (excluding VAT) on January 1, 2018 and the use of the building is 100% for Taxable Supplies. During the 5th year i.e. 2022 the use of the building has changed to 60% for Taxable supplies and 40% for Exempt Supplies. During the year 2018, the company also bought machinery for AED 5,000,000 to be used 70% for Taxable Supplies and 30% for Exempt Supplies. However, in 2024 the company changed the usage of machinery to 40% Taxable Supplies. Determine the amount of adjustment of Input VAT during the period under Capital Assets Scheme.

In 2018

Total Input VAT recoverable in respect of Building = 5 % of AED 8,000,000
 = AED 400,000

Total Input VAT recoverable in respect of Machinery = 5 % X AED 5,000,000 X 70 %
 = AED 175,000

Adjustment Period = 10 years

Year 2022 to Year 2027 (Building)

Adjustment (Additional VAT Payable to FTA) = AED 400,000/10 X (100 % - 60%)
 = AED 16,000

Thus, the company must repay AED 16,000 of Input VAT each year starting from the year 2023 till 2027 on the basis that the usage of the building has changed to 60% taxable supplies.

Year 2024 to Year 2027 (Machinery)

Adjustment (Additional VAT Payable to FTA) = AED 250,000/10 X (70 % - 40%)
 = AED 7,500

Thus, the company must repay AED 7,500 of Input VAT each year starting from the year 2024 till 2027 on the basis that the usage of the building has changed from 70% to 40% taxable supplies.

Fig in AED										
Particulars / Year	2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Recoverable Input Tax										
Building	400000									
Machinery	175000									
Total Recovery	575000									
Adjustment to Input Tax										
Building					16000	16000	16000	16000	16000	16000
Machinery							7500	7500	7500	7500
Total Adjustment					16000	16000	23500	23500	23500	23500

Important Note:

If the Capital Asset is disposed of by the Taxable Person in any year other than the final year or the Taxable Person deregisters from Tax and is required to account for tax on the asset as a Deemed Supply. Any such adjustments that may be required in respect of any such remaining years shall be included in the Tax Return relating to the Tax Period in which the Capital Asset is disposed of.

C. Capital Assets Scheme: exclusion for new residential buildings

- Where the first supply of a residential property is a zero-rated lease, the costs incurred in relation to that property can be deducted in full – directly attributable to the first zero rated supply
- This rule applies regardless of an intention to make future exempt supplies of the property e.g. second supply of a residential property by way of lease or sale.
- As a result, there is no need to apply the capital assets scheme in such circumstances

MODULE 10

OUTPUT TAX ADJUSTMENTS

ARTICLES OF DECREE LAW ON VAT RELEVANT TO THIS MODULE

Article (61)	Instances and Conditions for Output Tax Adjustments
Article (62)	Mechanism for Output Tax Adjustment
Article (63)	Adjustment due to the Issuance of Tax Credit Notes
Article (64)	Adjustment for Bad Debts

10.1 OUTPUT TAX

VAT registered businesses needs to charge VAT on their taxable supply of goods and services in accordance with the Federal Decree law on VAT. This is known as Output VAT or Output Tax. The term “Output Tax” has been defined by Article 1 of Federal Law No. (8) of 2017 on VAT as “*Tax charged on a Taxable Supply and any supply considered as a Taxable Supply*”.

Similarly, VAT is charged on most goods and services purchased by the business. This is known as input VAT.

The output VAT is being collected from the customer by the business on behalf of the government and must be regularly paid over to them. However, the input VAT charged on the goods and services purchased can be deducted from the amount of output tax owed.

10.2 OUTPUT TAX ADJUSTMENTS

The output VAT is to be collected from the customer by the business on behalf of the government and must be regularly paid to the government. However, sometimes before actual payment of tax to government and after effecting supply, there may be change in the terms of supply i.e. consideration. When goods supplied are returned or when there is a revision in the invoice value due to any commercial reason a Debit Note or Credit Note is issued by the supplier and receiver of goods and services.

A debit note or a Credit Note can be issued in following 2 situations.

1. **When the amount payable by buyer to seller decreases:** There can be a change in the value of goods after the goods are delivered and invoice is issued by the seller. This can be due to a return of goods or due to the bad quality of the goods delivered, etc. In such cases, the value of goods decreases due to which a Debit Note is issued by the buyer to the seller thereby decreasing the liability of the buyer. The seller may even issue a Credit Note as a response or acknowledgment to the Debit Note. The Debit Note or the Credit Note thus issued provides details of the amount of money debited from the sellers' account and also states the reason for the same.
2. **When the amount payable by buyer to seller increases:** When the value of invoice increases due to extra goods being delivered or the goods already delivered have been charged at an incorrect value or due to any other reason, a Debit Note in such cases are generally issued by the seller. The buyer provides an acknowledgment to the receipt of Debit Note or may even issue a Credit Note resulting into increase of buyer's liability.

All these circumstances cited above leads to either reduction of or increase in Output Tax liability. The decrease can be given effect to only by way of issuing Tax Credit Note issued by the registered supplier. However, the increase of Output Tax Liability should be given effect to by issuance of an additional/new Tax Invoice.

It is pertinent to note in this regard that the law has cast the responsibility to issue Tax Credit Note or additional Tax Invoice only on the registered supplier of goods and services. Any document issued by the buyer or the recipient in order to adjust Output VAT is not recognised under the VAT Laws.

When a credit note is issued after output tax has been paid by the recipient, the registered supplier must reduce his output tax for the corresponding amount stated in the credit note in the VAT return for the taxable period in which the credit note was issued. The customer who is a registered person on the other hand, must reduce his input tax in the return for the taxable period in which he received the credit note if he has claimed the input tax.

10.2.1 INSTANCES AND CONDITIONS OF OUTPUT TAX ADJUSTMENTS

Article 61 of Federal Decree Law No. 8 of 2017 on VAT, stipulates the circumstances when Output Tax charged originally, can be adjusted by the registered supplier. These circumstances are stated as following.

1. A Registrant shall adjust Output Tax after the date of supply in any of the following instances:
 - a. **If the supply was cancelled.**
The supply will be considered as cancelled only the underlying goods supplied must be returned to the supplier. Transit loss, measurement loss, etc., cannot be regarded as cancellation of supply
 - b. If the **Tax treatment of the supply has changed** due to a change in the nature of the supply.
 - c. If the **previously agreed Consideration for the supply was altered** for any reason.
 - d. If the **Recipient of Goods or Recipient of Services returned them to the Registrant** in full or in part and the **Consideration was returned** in full or in part.
 - e. If the **Tax was charged in error.**
2. It is clarified under Clause 2 of Article 61 of Federal Decree Law on VAT that this paragraph (e) shall not be applicable in cases where at the time of sale, place of supply identified as inside State as per Article 27(1) and later during movement of material it was found that the supply would finally treated as being export to a registered recipient in Implementing State.

Example: ABC LLC a VAT registered entity in UAE supplies goods to XYZ a registered entity in KSA (Implementing State). ABC charged VAT @ 5% on such goods to XYZ and issued Invoice accordingly. Such type of cases will fall under above paragraph (e) and accordingly ABC cannot issue Tax Credit Note for the purpose of adjusting the Output Tax as charged initially.

In simple words it can be said that the registrant supplier cannot adjust Output Tax after the date of supply if tax is charged in error by considering the place of supply of underlying goods as Inside State (UAE), however later it turns out that the supply should have been treated as export to Implementing State. This provision given under the paragraph (3) above provides an exception to the general rule of adjustment of Output Tax due to error in charging Tax. This has been done with the objective of avoiding any administrative inconvenience and mitigating the risk of tax evasion.

3. In order to adjust the Output Tax any of the following conditions shall be met:
 1. If the Output Tax amount charged on the supply stated in the Tax Invoice does not match the Tax that should actually be charged on the supply as a result of any of the events mentioned in paragraph (1) above.
 2. If the Registrant submits a Tax Return for the Tax Period during which the supply occurred and an amount of Output Tax due was incorrectly calculated as the result of any of the events mentioned under Paragraph (1) above.

10.2.2 MECHANISM FOR OUTPUT TAX ADJUSTMENTS

Article 62 of Federal Decree Law No. 8 of 2017 provides the manner in which Output Tax Adjustment can be done. The same is stated here below.

1. If the **Output Tax due for the supply exceeds the Output Tax calculated by the Registrant, the Registrant shall issue a new Tax Invoice for the additional amount of Tax** and calculate the additional Tax due for the Tax Period during which such an increase was identified.
2. If the **Output Tax calculated by the Registrant exceeds the Output Tax which should have been charged on the supply, the Registrant shall issue a Tax Credit Note.** This will lead to reduction in the output tax initially charged by the supplier.

Article 63 of the Law further provides that if the Registrant issues a Tax Credit Note to correct Output Tax charged to the Recipient of Goods or Recipient of Services, the Tax stated in the Tax Credit Note shall be considered as:

1. A reduction of the Output Tax for the Registrant of this Tax Credit Note.
2. A reduction of the Input Tax by the Recipient of Goods or Recipient of Services for the Tax Period during which the Tax Credit Note was received.

10.2.3 ADJUSTMENT FOR BAD DEBTS

Article 64 of the Federal Decree Law on VAT provides the requirement and conditions for a registrant supplier to be eligible to claim a bad debt relief by allowing reduction in Output Tax liability. The same article also lays down the responsibility of the registrant recipient to reduce the amount of Recoverable Input Tax.

Adjustment by Supplier

1. A Registrant supplier may reduce the Output Tax in a current Tax Period to adjust the Output Tax paid for any previous Tax Period if all of the following conditions are met:
 - a. Goods and Services have been supplied and the **Due Tax has been charged and paid** to the government.
 - b. Consideration for the supply has been **written off in full or part as a bad debt** in the accounts of the supplier.
 - c. **More than six (6) months has passed** from the date of the supply.
 - d. The Registrant supplier has **notified the Recipient of Goods and the Recipient of Services** of the amount of Consideration for the supply that has been written off.

In other words, if the person has not received any payment in respect of the taxable supply and all of the above conditions are satisfied, he can make a deduction or claim for the whole of the tax paid. However, if he has received part of the payment he can deduct or claim an amount calculated according to the formula:

$$\text{Output Tax to be adjusted} = A/B \times C$$

where:-

A is the payment not received in respect of the taxable supply;

B is the consideration for the taxable supply; and

C is the tax due and payable on the taxable supply.

Adjustment by Recipient

2. The registered Recipient of Goods or Recipient of Services shall reduce the Recoverable Input Tax for the current Tax Period related to a supply received during any previous Tax Period where the Consideration has not been paid and all of the following conditions are met:

- a. The registered supplier reduced the Output Tax as stated in Clause (1) of this Article and the Recipient of Goods and the Recipient of Services has **received a notification from the supplier** of the Consideration being written off.
 - b. The Recipient of Goods and Recipient of Services received the Goods and Services and the **relevant Input Tax was deducted**.
 - c. **The Consideration was not paid in full or in part for the supply for over (6) six months.**
3. The reduction stated in Clause (1) and (2) shall be equal to the Tax related to the Consideration which has been written off.

It should be noted that all these **adjustments shall be made in the tax return of the period during which such write-offs are made**. The amount of adjustment shall be equal to tax related to the consideration written off (Pro-rata).

MODULE 11

REGISTRATION AND DE-REGISTRATION

ARTICLES OF DECREE LAW ON VAT RELEVANT TO THIS MODULE

Article (13)	Mandatory Tax Registration
Article (14)	Tax Group
Article (15)	Registration Exceptions
Article (16)	Tax Registration of Governmental Bodies
Article (17)	Voluntary Registration
Article (18)	Tax Registration for Non Resident
Article (19)	Calculating the Tax Registration Threshold
Article (20)	Capital Assets
Article (21)	Tax Deregistration Cases
Article (22)	Application for Tax De-Registration
Article (23)	Voluntary Tax De-registration
Article (24)	Procedures, Controls and Conditions of Tax Registration & De-registration

ARTICLES OF EXECUTIVE REGULATION ON VAT APPLICABLE TO THIS MODULE

Article (6)	Application for Registration
Article (7)	Mandatory Registration
Article (8)	Voluntary Registration
Article (9)	Related Parties
Article (10)	Registration as a Tax Group
Article (11)	Amendments to a Tax Group
Article (12)	Effect of registration as a Tax Group
Article (13)	Aggregation of Related Parties
Article (14)	Tax Deregistration
Article (15)	Deregistration of a Tax Group Registration or Amendment Thereof
Article (16)	Exception from registration
Article (17)	Registration when the Decree-Law Comes into Force
Article (18)	Liabilities due before Deregistration

11.1 INTRODUCTION

In any tax system, registration is the most basic requirement for identification of taxpayers. Registration of any business entity under the tax laws implies obtaining a unique number from the concerned tax authorities for the purpose of collecting tax on the behalf of the government and to avail input tax credit for the taxes on his inward supplies.

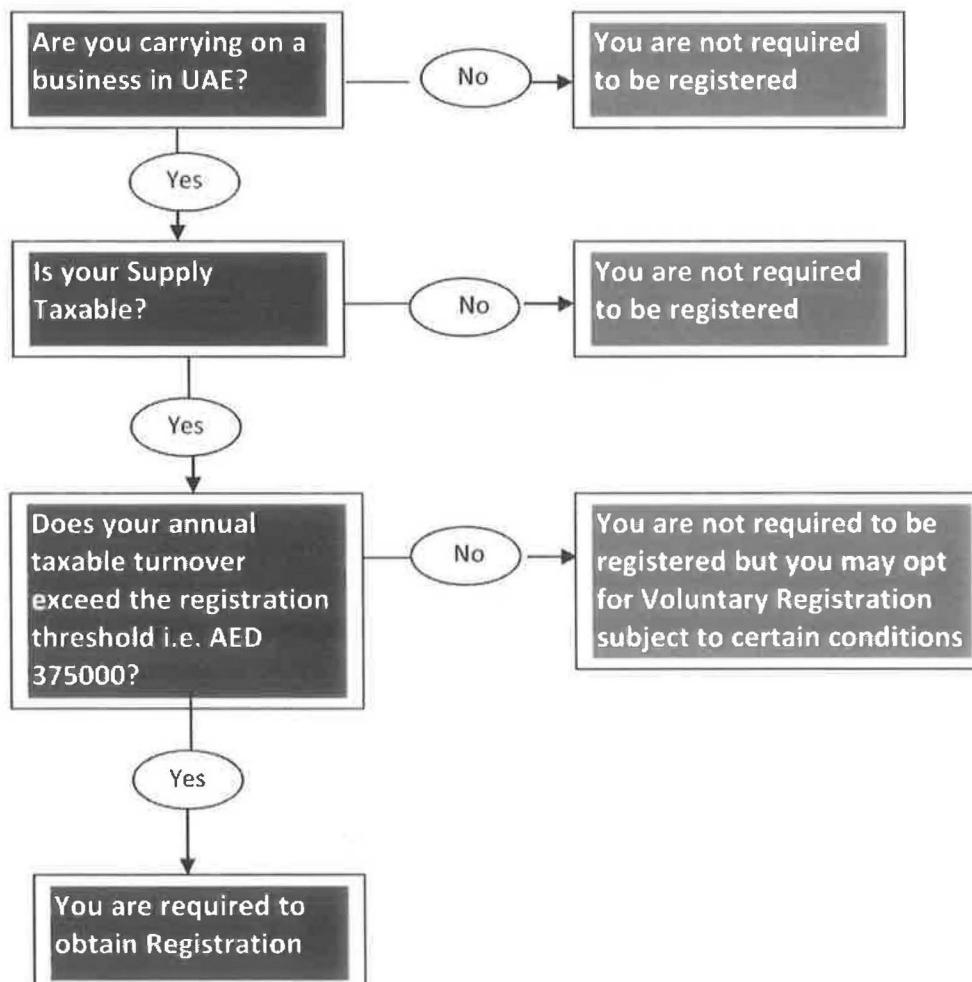
A person who is registered with FTA under VAT Laws is known as a “registered person”. A registered person is required to charge VAT (output tax) on his taxable supply of goods and services made to his customers. He is also allowed to claim input tax credit on any VAT incurred (input tax) on his purchases which are inputs to his business. Thus, this mechanism leads to avoidance of double taxation and only the value added at each stage is taxed. Thus, without registration a person can neither collect tax from his customers nor can avail any input tax credit paid by him.

Registration provides following advantages to any supplier of goods and services.

1. The person becomes legally recognised as supplier of goods and services.
2. He is legally authorised to collect tax from his customers.
3. He can legally claim input tax credit paid by him on purchase of goods and services and can utilise the same against tax on outward supplies.

11.2 MANDATORY REGISTRATION

Flowchart to determine requirement under Mandatory VAT registration



1. Who is required to get itself registered under VAT?

Every natural person or a legal person shall be liable to get registered on satisfaction of conditions as mentioned below.

1. The person must have **place of establishment or fixed establishment in UAE**.

Place of establishment is the place where business is registered or significant management decisions are taken and management functions are executed.

Similarly, fixed establishment has been defined to mean a place sufficient human and Technology resources so as to facilitate supply of goods or services during normal course of business.

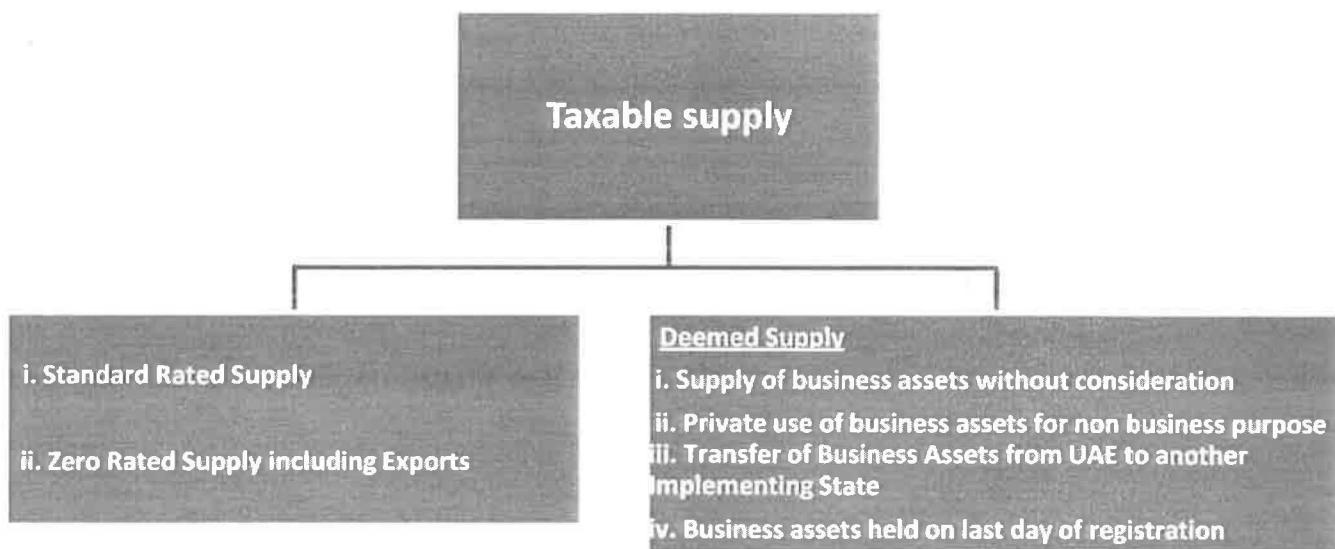
The person who does not have a place of residence in the State or in any implementing State will be required to take tax registration if such person makes taxable 'outward' supplies in the State where no other person is obligated to pay such tax. Also, the mandatory threshold limit for registration shall not apply in such cases. This could cover cases where a non-resident makes supply of goods or services to another unregistered person in the State in the course of his business. Clause 2 of Article 13 of the Decree Law explicitly states that **Every Person, who does not have a Place of Residence in the State or an Implementing State and is not already registered for Tax, 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.**

2. The person is **not already registered** with the Tax Authority.
3. The **value of Taxable Goods and Services exceeds the Mandatory Registration Threshold**.

2. What is a taxable supply? How to determine value of taxable supplies for purpose of VAT Registration?

A taxable supply is a supply with consideration and it includes standard-rated and zero-rated supply. Supply without consideration can also be deemed to be a supply. However, certain taxable supplies are not regarded as supplies for VAT purposes.

Please refer to previous Module "Supply" for further clarification on the various types of supply.



The value of taxable supplies shall **include all zero rated supplies** as there are taxable supplies on which zero rate of tax applies. Thus, it includes:

- Standard rated supplies
- Zero-rated supplies

- Reverse charged services received (provided the taxable person is responsible for accounting for the tax); and
- Imported goods (provided the taxable person is responsible for accounting for the tax).

However, it **doesn't include exempted supplies**.

It is further to be noted that **Capital goods supplied by a person shall not be considered for the purpose of calculating mandatory registration threshold** as per article 20 of this decree law.

The term "Capital Asset" has been defined under Article 1 of the Decree Law as Business Assets designated for long term use.

As per Clause 1 of Article 7 of Executive Regulation, The Mandatory Registration Threshold is AED 375,000 (three hundred and seventy-five thousand Dirhams).

Article 19 of the Decree Law further provides insight into the method of computation of value of supplies. It states as follows.

"To determine whether a Person has exceeded the Mandatory Registration Threshold and the Voluntary Registration Threshold, the following shall be calculated:

1. **The value of Taxable Goods and Services.**
2. **The value of Concerned Goods and Concerned Services received by the Person unless covered by Clause (1) of this Article.**
3. **The value of the whole or relevant part of Taxable Supplies that belong to said Person if he has, wholly or partly, acquired a Business from another Person who made the supplies.**
4. **The value of Taxable Supplies made by Related Parties** pursuant to the cases stated in the Executive Regulation of this Decree-Law."

Let's understand the calculation with the help of examples given below.

Example 1:

ABC LLC makes the following supplies during the past 12 months period:

- a) Standard rated supply: AED 100,000;
- b) Zero rated supply (exports): AED 200,000;
- c) Sale of capital goods: AED 75,000;
- d) Supply of exempted goods: AED 150,000

ABC LLC is not required to apply for VAT registration because its total value of taxable supply doesn't exceed AED 375,000 i.e. supplies covering (a) & (b).

Example 2:

A car workshop in Dubai has to include labour charges as well as sale value of parts replaced to determine its total taxable supply:

Total labour charges: AED 150,000

Total parts sold: AED 250,000

This workshop is required to apply for registration because the total taxable turnover of AED 400,000 has exceeded the Mandatory Registration Threshold.

3. How to determine the twelve-month period?

Clause 1 of Article 13 of the Federal Decree Law on VAT provides for calculation of taxable turnover using any of the 2 methods mentioned below.

1. Historical Method
2. Future Method

Historical Method:

The historical method is based on the value of the taxable supplies of **12 months immediately preceding** the date it crosses the Mandatory Registration Threshold.

Registration is compulsory once the mandatory threshold limit is crossed. It is relevant to note that the limit fixed is not with respect to financial year but to immediately preceding 12 months from the date it crosses the limit.

Therefore, those businesses whose past 12 months turnover was below the mandatory threshold limit need to regularly monitor the moving-12 month turnover to ascertain if it has reached the mandatory threshold limit of AED 375,000 so that they can immediately apply for registration, if required.

Future Method:

But, if the value of supply is 'likely' to cross the mandatory threshold limit in the next 30 days, the person is required to obtain compulsory registration.

Clause 1 of Article 13 of the Federal Decree Law on VAT:

Every Person, who has a Place of Residence in the State or an Implementing State and is not already registered for Tax, shall register in the following situations:

- a. Where the total value of all supplies referred to in Article (19) exceeded the Mandatory Registration Threshold over the previous 12-month period.
- b. Where it is anticipated that the total value of all supplies referred to in Article (19) will exceed the Mandatory Registration Threshold in the next thirty (30) days.

4. What shall be the effective Date of Registration?

- Where a Person does not file his Tax Registration application despite being required to, **the Authority shall register that Person with effect from the date on which the Person first became liable to be registered for Tax** and impose the necessary penalties in accordance with the Federal Law No. (7) of 2017 on Tax Procedures.
- Where supplies made by a Person exceed, the Mandatory Registration Threshold during the previous 12-months period, the Authority shall **register the Person with effect from the first day of the month following the month in which the Person is required to register**, whether or not he applies for Tax registration, or from such earlier date as agreed between the Authority and the Person.
- Where a Person expects that his supplies, will exceed the Mandatory Registration Threshold during the next (30) days, the Authority shall **register him with effect from the date on which there are reasonable grounds for believing the Person will be required to register** as specified in that Clause or from such earlier date as agreed between the Authority and the Person.
- Where a **Person is not a resident of the State** and is required to register in accordance with the provisions of the Decree-Law, the **Authority shall register him with effect from the date on which he started making supplies in the State**, whether or not he so notifies them of the liability to register for Tax, or from such earlier date as agreed between the Authority and the Person.

5. Registration at the time when Decree Law comes into force

- Executive Regulation requires that a person who will be a Taxable Person on the date the Decree-Law comes into force, must apply for Tax Registration prior to the Decree-Law coming into effect as per the timelines as announced by the Authority. Different dates have been notified by Authorities for different classes of persons depending upon their turnover in preceding 12 months.

- Where an application is made for registration as per above timeline, **effective date of registration would be 1st January, 2018 i.e. the date on which Decree Law comes into force.**
- Executive Regulation further provides that when a person has applied for tax registration as per above, he shall have same rights and obligations as if the Tax Registration was processed after Decree Law coming into force.

6. Other Relevant Provisions relating to Mandatory Registration

- The Person required to register for Tax must file a Tax Registration application with the Authority within (30) days of being required to register.
- A Taxable Person who has **been late in registering for Tax** is liable to account for and pay to the Authority the Due Tax on all Taxable Supplies and Imports made by him before registering.

7. Mandatory Registration - Exceptions

As per the Mandatory Registration requirement under Article 13, a person making taxable supplies shall be required to be registered under VAT. It is important to note here that zero rated supplies are included within definition of taxable supplies.

As an exception to Article 13, a person making only zero rated supplies can apply for an exception from mandatory tax registration requirement even in cases where the value of taxable supplies made by him exceed the limit of AED 375,000/-. Persons exclusively making zero rated supplies do not have any obligation to charge tax and as such they have been exempted from mandatory registration.

The effect of the exemption from registration to a person making wholly zero-rated supplies is that, the exempted person cannot claim input tax credit on any input tax incurred for the purpose of his business. If such person wants to claim refund of recoverable input tax, he may choose to apply for registration.

The rationale of giving such an exemption is to provide an option to such a person whether to register or not for VAT as his compliance costs may be more than the amount of input tax credit.

As per Article 15 of Federal law No. 8 of 2017 on VAT, any taxable person may be exempted from registration only if he supplies zero rated goods or services. For getting this exemption, the person is required to make an application to the tax authority.

Article 15 of this decree law reads as below.

1. The Authority may exempt a Taxable Person from mandatory Tax Registration upon his request if his supplies are only subject to the zero rated.
2. Anyone exempted from Tax Registration according to Clause (1) of this Article shall inform the Authority of any changes to his Business that would make him subject to Tax under this Decree-Law pursuant to the time limits and procedures determined in the Executive Regulation of this Decree-Law.
3. The Authority shall have the right to collect any Due Tax and Administrative Penalties for the period of exception where that Taxable Person was not entitled to the exception.

Moreover, Article 16 of the Executive Regulation on VAT provides as follows.

1. A Taxable Person that wants to apply for an exception from Tax Registration on the basis that all of his supplies are zero rated, shall apply to the Authority in a manner and by means specified by the Authority.
2. The Authority shall review the exception from registration application and either accept the exception from Tax Registration or notify the Taxable Person that his application is rejected.
3. A Person excepted from Tax Registration must notify the Authority if he makes any supplies or Imports of Goods or Services that are subject to Tax at the standard rate.

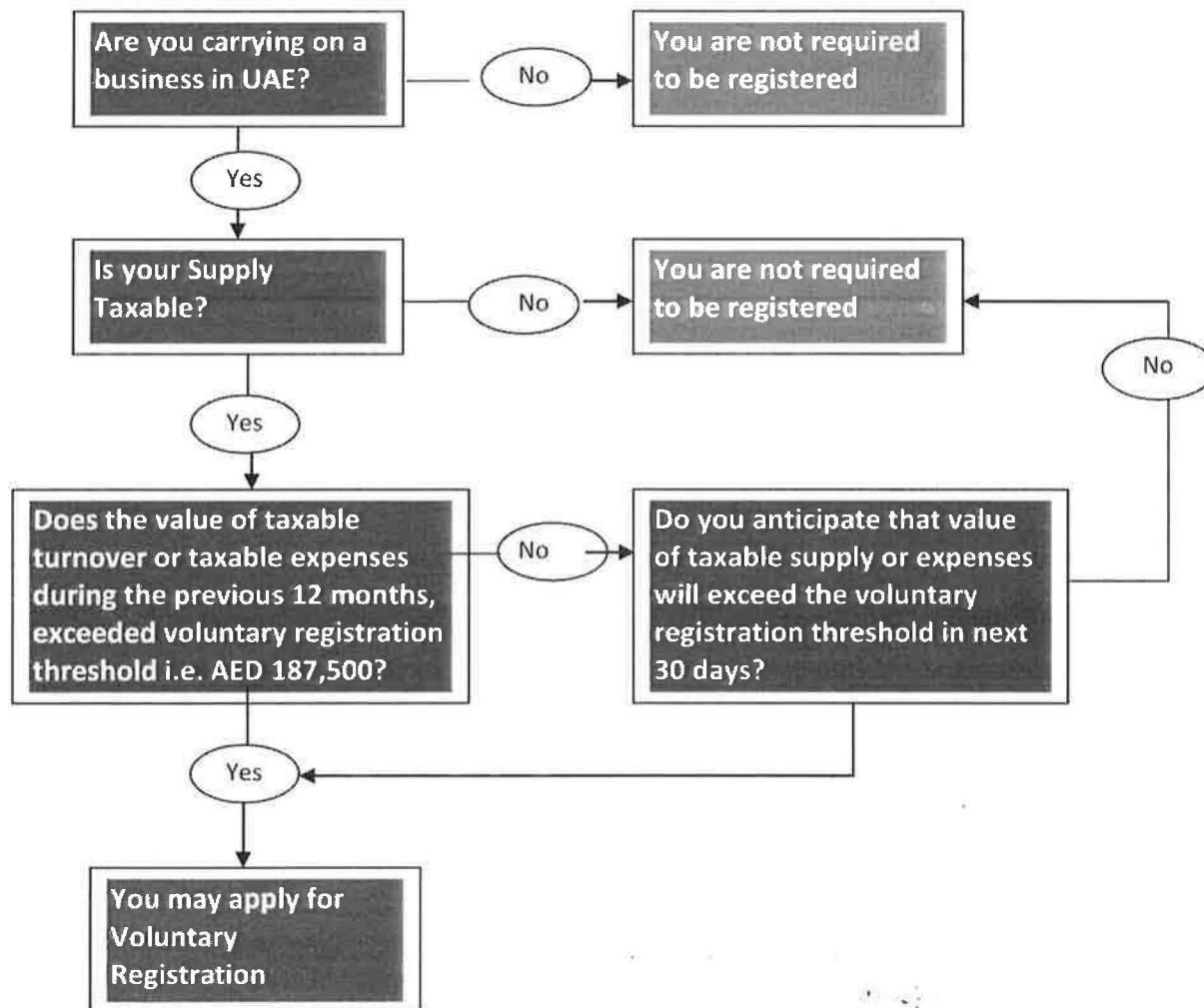
4. A Person shall give the notice referred to in Clause (3) of this Article within not more than 10 business days of making the supply or import which is taxable at the standard rate.
5. Where the Person ceases to satisfy the requirement of being excepted from Tax Registration, he shall be required to register for Tax.

11.3 VOLUNTARY REGISTRATION

There could be situations where a person, though not mandatorily required to register, may be willing to register. The purpose of voluntary registration could be to recover input tax credits so as to reduce the purchase cost particularly in cases where sales turnover is below mandatory registration threshold limit but his vendors as well as customers are registered. To ensure that the credit chain does not break, such person may also voluntarily opt for registration subject to the conditions stipulated under Article 17 of Decree Law read with Article 8 of Executive Regulation on VAT.

The below flowchart can be used by any person to determine if he can apply for voluntary registration under the provision of UAE VAT laws.

Flowchart to determine requirement under Voluntary VAT registration



As per the aforesaid provisions of law, **Voluntary registration** may be sought under any of the following cases:

- Where the **value of total supplies** made by any person **in the preceding 12 months has exceeded the voluntary registration threshold limit i.e. AED 187,500**. The Voluntary Registration Threshold limit has been set at AED 187,500 under Article 8 of Executive Regulation.

- If the value of supplies has not exceeded but the **expenses incurred** by such person **in the preceding 12 months has exceeded the voluntary registration threshold limit i.e. AED 187,500.**
- If a person anticipates that the **value of taxable supplies will exceed the voluntary limit in the next 30 days.**
- Voluntary registration is permissible even though value of supply is not expected to exceed the voluntary threshold limit but **expenses to be incurred within the next 30 days are expected exceed the voluntary registration limit.**
- Where a Person applied for voluntary registration due to his expectation that his supplies under the provisions of the Decree-Law will exceed the Voluntary Registration Threshold during the next 30 days, he should be able to provide evidence of an intention to make Taxable Supplies or incur expenses which are subject to Tax in excess of the Voluntary Registration Threshold. It should be noted that merely because expected expenditure exceeds the voluntary registration threshold does not entitle the taxable person to get registration unless he satisfies the Authority that he is carrying on a Business in the State.
- The Authority shall determine the evidence it may deem necessary to demonstrate eligibility for voluntary Tax Registration.
- For the purpose of voluntary registration, the phrase “Taxable Expenses” means expenses which are subject to the standard rate and which are incurred in the State by a Person who has a Place of Residence in the State.

Effective Date of Registration

- Where a Person has applied for voluntary registration in accordance with the provisions of the Decree-Law, the Authority shall register a Person with effect from the first day of the month following the month in which the application is made, or from such earlier date as may be requested by the Person and agreed by the Authority.

Other Relevant Provisions relating to Voluntary Registration

- Once a person has applied for voluntary registration and a certificate of registration is granted as such, the person shall be treated as a taxable person and all the provisions of this VAT Law which are applicable to a taxable person shall be applicable to such a person. This would continue even if the turnover falls below the said threshold limit.

11.4 TAX GROUP

Tax consolidation, or combined reporting, is a regime adopted in the tax or revenue legislation of a number of countries which treats a group of wholly owned or majority-owned companies and other entities as a single entity for tax purposes. This generally means that the head entity of the group is responsible for all or most of the group's tax obligations (such as paying tax and filing tax returns).

The aim of a tax consolidation regime is **to reduce administrative costs for government revenue departments and reduce compliance costs for corporate taxpayers.** For companies, consolidating can help plan tax by having losses in one Group Company reduce profits for another. Assets can be transferred between group companies without effecting VAT liability on transfer of assets.

Some of the countries which have adopted a tax consolidation regime include France, Australia and New Zealand.

The UAE VAT Law has too provided an **option** for persons conducting business to apply for registration as a tax group.

1. Who can become members of a Tax Group?

As per Article 14 of the Federal Decree Law on VAT, persons can apply for Tax registration as a Tax group if all of the following conditions are fulfilled:

- Each person should have a **place of establishment or a fixed establishment in the State of UAE.**
- Such persons should be **related parties** as per the definition mentioned in this VAT Law
- One or more persons conducting business in partnership shall **control the other.**

The definition of related person for Tax Group Registration has been given in Article 9 of Executive Regulations. It is relevant to note that only legal persons are entitled to take registration as tax group. **Natural person cannot become member of a Tax group.**

The definition of Related Parties shall relate to **any two legal persons** in below instances:

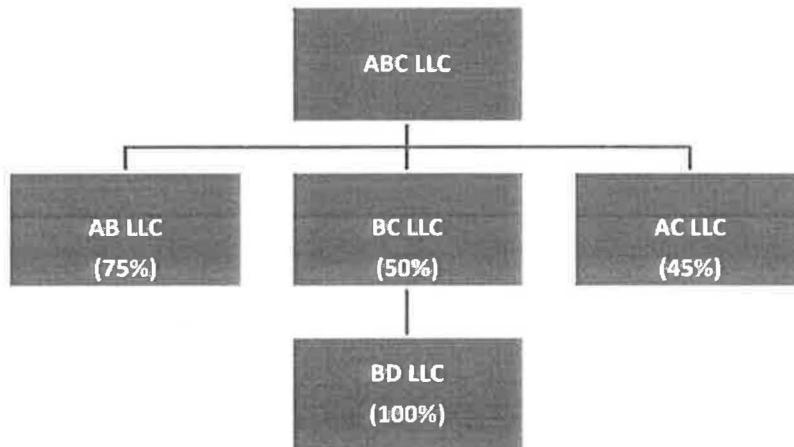
- a) One Person or more acting in a partnership and having any of the following:
 - i. **Voting interests** in each of those legal Persons of 50% or more;
 - ii. **Market value interest** in each of those legal Persons of 50% or more;
 - iii. **Control** of each of those legal Persons by any other means.
- b) Each of Persons is a **Related Party** with a third Person.

Example 3:

ABC LLC has a place of establishment in Dubai and has three more companies in the group having presence across different places in UAE although in association with different Arab shareholders/owners. Instead of having to obtain separate registrations for all such entities, they could opt for single registration for all companies in the group as “Tax Group”.

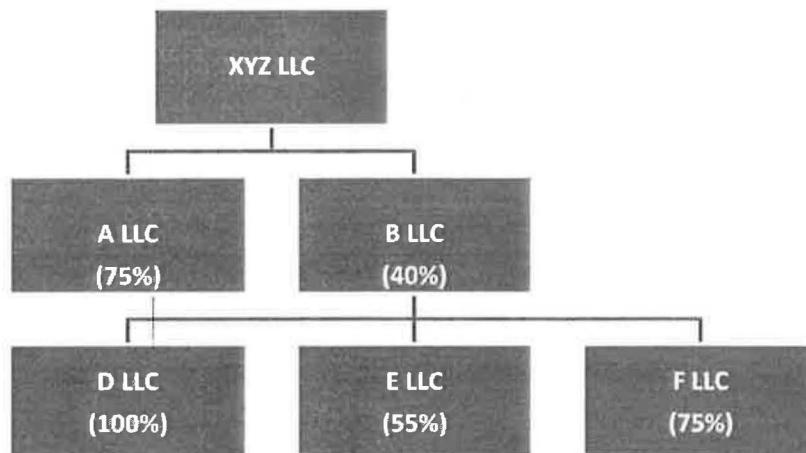
Let's understand this with the help of more examples below.

Example 4:



In the above case, ABC has direct control over AB and BC, and also controls BD indirectly through BC. Companies ABC LLC, AB LLC, BC LLC and BD LLC can register for VAT as a group. Since AC is not controlled by XYZ, therefore it is not eligible as a group member.

Example 5:



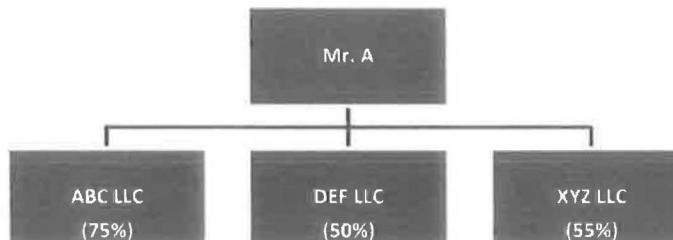
In this example, company XYZ LLC is not eligible to be a group member with B LLC because XYZ has no control over B. XYZ can form tax group with A only as they will be considered as related parties. Similarly, since B has control over D, E and F, they are eligible to form a group for VAT registration purposes.

Example 6:



In the above example, Mr. A owns three companies namely ABC, DEF and XYZ LLC. Companies ABC, DEF and XYZ are allowed to be registered as a group since they are all controlled by Mr. A. However, being an individual Mr. A is not eligible to be a member of the tax group.

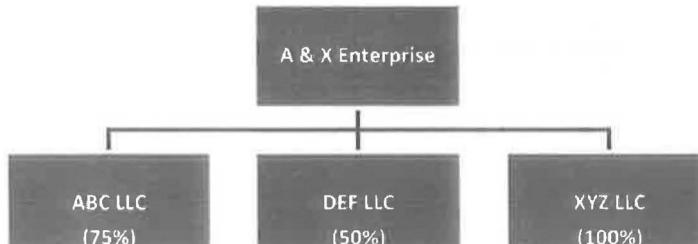
Example 7:



In the above example, A & X Enterprise is a partnership firm which holds more than 50% shares in three companies namely ABC, DEF and XYZ LLC. Companies ABC, DEF and XYZ are allowed to be registered as a group since they are under common control of a third person. Since, a partnership firm is not recognised as a legal person; A & X Enterprise is not eligible to be a member of the tax group.

Foreign companies which are not established in UAE cannot become members of a group. However, for the purpose of eligibility for group registration, their subsidiaries or registered branches in UAE can be considered as members of a group.

Example 8:



In the above example, Companies BC LLC and AC LLC can form a tax group in UAE. However, AB Pvt. Ltd. and BD LLC cannot become members of the tax group because these companies don't have any **place of establishment or a fixed establishment in the State of UAE**.