

from the tax law and makes it simple. The law also provides exemption from tax on certain supplies which has been discussed in Module 6: Zero Rated and Exempted Supply.

2. Imports will also be subjected to VAT.

As per the above provisions of law, every registered supplier has to charge and collect VAT @ 5% on the value taxable supplies from the customers at the time of sale or supply of goods and services.

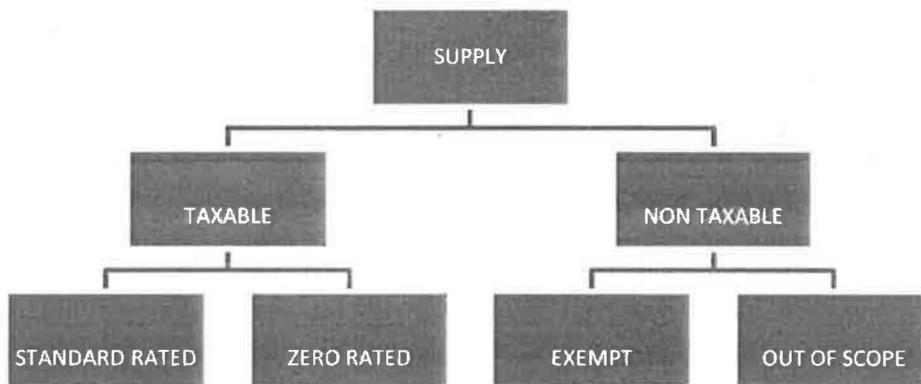
It is interesting to note that the VAT Law does not prescribe a higher rate of VAT with the power to notify the rate from time to time. As a result, any requirement to revise the rate of VAT requires an amendment to the Law itself. Further such amendment should also be agreed among the GCC member States as the GCC Framework provides for a uniform Standard Rate of 5% across the GCC.

3.3 TYPES OF SUPPLY

All Supplies can be broadly classified into two categories on the basis of taxability: taxable supply and non-taxable supply.

Taxable supply can be further classified into standard-rated supply and zero-rated supply. Non-taxable supply can be classified into exempt supply and out-of-scope supply.

It is necessary to distinguish the different types of supply as it determines if a supply is subject to VAT and the rate at which VAT is chargeable. It also determines whether any input tax incurred to make such supplies is recoverable. There are also deemed supplies which are treated as supplies even though there is no consideration involved.



1. Standard Rated Supply

If a business makes supply of standard rated goods and services, it is to charge output VAT at the standard rate i.e. 5%. All supply of goods and services with the exception of exempted and zero rated goods and services will be standard rated supplies.

2. Zero Rated Supply

In case of zero rated supplies, VAT is charged on goods and services at 0%. If a business makes zero rated goods and services, it shall charge output VAT @ 0% but can claim input VAT incurred on purchases.

The Law sets forth 14 instances where supplies may qualify for zero-rating, including exports, international transport, investment metals, first supply of residential buildings (provided it is supplied within three years of completion), crude oil and gas. Educational services as well as preventative and basic healthcare services and related goods and services may also be zero-rated if complying with the specifications in the Executive Regulations. The same have been discussed thoroughly in Module 6.

3. Exempted Supply:

In case of exempted supplies, VAT is not charged on supply of goods and services. If a business makes exempted goods and services, it cannot charge output VAT and cannot claim input VAT incurred on purchases.

As per Title Six of the Federal Decree Law, the supply of bare land, local passenger transport and the sale and lease of residential buildings will be exempt from VAT as well as financial services specified in the Executive Regulations. In module 6, all exempted supplies as provided by VAT laws have been discussed in detail.

4. Out of Scope Supply:

Out-of-scope supplies refer to supplies which are outside the scope of the VAT legislation. They also include supplies where the place of supply is outside of United Arab Emirates. No VAT needs to be charged on out-of-scope supplies and they need not be reported even in the VAT return.

3.4 RESPONSIBILITY FOR TAX

Under any tax laws, responsibility for payment of tax and discharging other liabilities are clearly defined. Without such provisions, tax laws cannot be enforced. Under UAE VAT laws also, taxable person has been fastened with responsibility to pay and discharge other liabilities. In this context, Article (4) of Federal Decree Law on VAT clearly stipulates as below;

The Tax imposed shall be the responsibility of the following:

1. *A Taxable Person who makes any supply stipulated in Clause (1) of Article (2) of this Decree-Law.*
2. *The Importer of Concerned Goods.*
3. *The Registrant who acquires Goods as stated in Clause (3) of Article (48) of this Decree-Law.*

Analysis:

In the case of Domestic transaction, the Taxable Person who ‘makes’ the Taxable Supply will be responsible to deposit the tax. In the case of Import of Concerned Goods, the Importer will be responsible. The Federal Decree Law on VAT has defined Taxable Person as “Any Person registered or obligated to register for Tax purposes under this Decree-Law”.

It is common that the burden of VAT is always passed on to customers when the Taxable Supply is made by charging VAT ‘in addition’ to the price. While this Article 4 imposes the responsibility on the Supplier or Importer to pay VAT, the VAT laws don’t give any reference to any ‘Right of the Supplier’ to recover this tax from the customer. Therefore, it is important to bear in mind that the ‘right to recover VAT from customer’ is not a statutory right but a contractual right.

Accordingly, all sales contracts must be accepted on terms ‘taxes extra’ so that it becomes legitimate for the supplier to charge VAT from customers. In other words, if the customer is not obligated to pay VAT through the terms of the contract of supply, then it is responsibility of the Supplier to bear the VAT

Forward or Reverse Charge

Under the VAT law, we can see that it is the Suppliers of goods and services who are obligated to charge and pay VAT. This type of charge can be referred to as Forward Charge. However, the law also specifies certain situations where recipient of goods are required to charge and pay VAT to the government. This is referred to as Reverse Charge.

Clause 2 of Article 4 of the Federal Law on VAT clearly stipulates that Tax shall be imposed on Importer of Concerned Goods. Thus, in case of import it is the recipient i.e. importer and not the supplier who is required to account for tax under Reverse Charge Mechanism.

MODULE 4

SUPPLY OF GOODS AND SERVICES

ARTICLES OF DECREE LAW ON VAT RELEVANT TO THIS MODULE	
Article (5)	Supply of Goods
Article (6)	Supply of Services
Article (7)	Supply in Special Cases
Article (8)	Supply of more than one component
Article (9)	Supply via Agent
Article (10)	Supply by Government Entities
Article (11)	Cases of Deemed Supply
Article (12)	Exceptions for Deemed Supply

4.1 INTRODUCTION

As we know Value Added Tax (VAT) is a type of general **destination-based tax consumption tax** that is collected incrementally, based on the value added, at each stage of production or distribution/sales. VAT is charged at each stage of the ‘supply chain’ and the Supply of goods and services is the taxable event which triggers payment of tax. In this module, the following matters have been discussed in detail.

- a) Definition of Supply of Goods and Services as per relevant legislation.
- b) Different forms of Supply and VAT applicability on them.
- c) Definition of Deemed Supply and VAT applicability on Deemed Supply.
- d) VAT impact on Mixed and Composite Supply.
- e) VAT applicability on supplies made by government entities.

4.2 SUPPLY OF GOODS & SERVICES

Supply of goods and services is the taxable event which triggers payment of tax. So, the transaction must fall under the definition of Supply before the same is subjected to VAT. VAT will not be applicable on transactions which are not covered under the definition of “Supply of Goods and Services”. The various components of Supply have been discussed in detail in the coming paragraphs.

4.2.1 SUPPLY OF GOODS

Goods are supplied in normal course of business as a sale, barter, hire purchase or any other form of supply. The above articles don't specify a list of transactions that will be regarded as Supply. It provides a 'test' or 'purpose' that must be identified in every form of supply in order to conclude if it would be a Supply or not. As per the above provisions of law, it can be said that the

Supply can take place in different forms but if it results into **transfer of ownership of goods or transfer of right to use** from supplier to the recipient, the same would be considered as "Supply" and hence, it will be taxable.

It can therefore important to examine the ultimate 'purpose' of the various forms of supply in order to determine whether it is Supply or not.

Let's examine the various forms of transactions tabulated below and check if they are covered under the definition of Supply.

S.No.	Form of Supply	Ultimate Purpose	Supply or Not as per UAE VAT Law	Relevant Article of Executive Regulation on VAT
1	Sale	Transfer of Ownership	Supply	Article 2 (1)(a)
2	Barter	Transfer of Ownership	Supply	Article 2 (1)(a)
3	Hire-Purchase	Transfer of Right to Use along with Transfer of Ownership	Supply	Article 2 (1)(a)
4	Lease/Rental	Transfer of Right to Use	Supply	Article 2 (1)(a)
5	Gift	Transfer of Ownership	Supply	Article 2 (1)(a)
6	Sample	Transfer of Ownership	Supply	Article 2 (1)(a)
7	Compulsory Acquisition by Government	Transfer of Ownership	Supply	Article 2 (1)(b)
8	Agreement to Sell	Transfer of Ownership at future date	Supply	Article 2 (3)
9	Disposal as Scrap	No Transfer of Ownership. Discard goods only.	Not a Supply	
10	Demo Stock	No Transfer of Ownership. Just to test usage.	Not a Supply	
11	Pilferage & Stock Loss	No Transfer of Ownership	Not a Supply	
12	Stock Transfer to Branch	No Transfer of Ownership	Not a Supply	

As evident from above table, where any transaction does not satisfy the ultimate 'purpose' specified in Article 2 of Executive Regulation, then such arrangement will not be Supply.

Now, let's analyse the definition of Transfer of Ownership and Transfer of Right to Use.

Transfer of Ownership:

Transfer of ownership in general parlance means transfer of risk and reward associated with the goods. Therefore, ownership gives right to the person to hold, use and enjoy the goods. The owner even has the right to destroy the goods as risk and reward associated with the goods remains with the owner. Since, ownership is transferred by way of a contract whether verbal or written, all the following essential elements of legally valid contract must be present.

- The contract for transfer of ownership of goods can either be written or verbal
- There must be 2 legally capable parties to the contract
- Legally valid ownership should be in existence
- There must be legally accepted consideration agreed between parties
- There must be intention of parties to enter into legally binding contract

Transfer of Right to Use:

Clause 1 of Article 2 of Executive Regulation provides that Transfer of Right to Use goods is considered as Supply. However, Clause 2 of the same article clearly states that a **transfer of the right to use any assets shall not be treated as a supply of Goods unless the other Person is able to dispose of them as owner**. It means the transferee must have the **absolute rights to use the**

goods in order to constitute a Supply. If there is any limitation on the transfer, then it is not a transfer of right to use but “mere use” such as when we enter a Bus or Taxi, we do not receive the right to use the Vehicle. In order to constitute a Supply, not only physical custody but lawful possession must be handed-over to the receiver or his representative.

Deferred Transfer of Ownership

Clause 3 of Article 2 of Executive Regulation refers to the deferred or delayed transfer of ownership. It provides that “*Entry into a contract between two parties causing the transfer of Goods at a later time shall be considered a supply of Goods where the agreement mentions a transfer or intention to transfer the ownership of Goods or a future transfer of ownership of Goods*”.

This particular clause covers all types of agreement to sell transactions including Hire-Purchase transaction. Within the meaning of this clause, Hire-Purchase transaction is considered as supply as lawful possession of the goods is passed to the receiver immediately and absolute ownership is transferred at future date after all payments are made by the hire-purchaser to the supplier.

Example 1: ABC LLC a registered entity under UAE VAT laws buys a dump truck for AED125, 000 under a hire purchase agreement with a bank. The ownership of the truck is caveat by the bank until the company makes full payment of the hire purchase loan amount. This hire purchase transaction is a supply of goods and subject to UAE VAT.

Goods

Goods has been defined by Executive Regulation as “Physical property that can be supplied including but not limited to real estate, water, and all forms of energy as specified in this Decision”. The definition has got the following components.

Physical Property: First of all, the goods must be in physical form. This itself excludes those that are non-physical i.e. intangible such as brand name, goodwill, software (not on any media) and even electricity and light. It also excludes those which are not legally permitted to be owned or have proprietary rights over living beings/objects such as wild animals, human beings, human organs. Thus, Non-physical and non-proprietary objects are not included in ‘Goods’.

Real Estate: Goods in common parlance, includes only movable property and therefore excludes immovable property. However, the definition of goods as per executive regulation appears to deviate from the natural meaning of goods. The intention of the law is to tax supply of both movable and immovable property by covering the same into definition of goods. Real estate has further been defined under Article 21 of Executive Regulation as “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.

Water: Water is a natural resource that is free. Water that no one can exercise proprietary rights over is therefore excluded from the general understanding of physical property and hence, cannot be covered under first limb of the definition of goods. The inclusive part of the definition thus specifically includes Water and considers supply of water as supply of goods. It is to be noted that the definition doesn’t give any reference to the form of supply of water. In absence thereof, water in all forms shall be considered as goods. Hence, supply of bottled water, distilled water or even water supplied by government agencies i.e. Dubai Electricity and Water Authority to individual households will be considered as supply of goods and hence, taxable.

Specified Forms of Energy: Article 2 (4) (c) of the Executive Regulations specifies Energy includes electricity and gas, including biogas, coal gas, liquefied petroleum gas, natural gas, oil gas, producer gas, refinery gas, reformed natural gas, and tempered liquefied petroleum gas, and any mixture of gases, whether used for lighting, or heating, or cooling, or air conditioning or any other purpose.

Article 5 of Federal Decree Law on VAT: The following shall be considered a supply of Goods:

1. Transfer of ownership of the Goods or the right to use them to another Person according to what is specified in the Executive Regulation of this Decree-Law.
2. Entry into a contract between two parties entailing the transfer of Goods at a later time, pursuant to the conditions specified in the Executive Regulation of this Decree-Law.

Article 2 of Executive Regulation: The following shall be considered as supply of Goods:

1. A transfer of ownership of Goods or of the right to use them from one Person to another Person shall include for instance the following:
 - a. A transfer of ownership of Goods under a written or verbal agreement for any sale;
 - b. A transfer of ownership for a Consideration in a compulsory manner pursuant to the applicable legislations.
2. For the purposes of Clause (1) of this Article, a transfer of the right to use any assets shall not be treated as a supply of Goods unless the other Person is able to dispose of them as owner.
3. Entry into a contract between two parties causing the transfer of Goods at a later time shall be considered a supply of Goods where the agreement mentions a transfer or intention to transfer the ownership of Goods or a future transfer of ownership of Goods.
4. The following shall be considered a supply of Goods:
 - a. A supply of water.
 - b. A supply of real estate including sale and tenancy contracts.
 - c. A supply of all forms of energy, which includes electricity and gas, including biogas, coal gas, liquefied petroleum gas, natural gas, oil gas, producer gas, refinery gas, reformed natural gas, and tempered liquefied petroleum gas, and any mixture of gases, whether used for lighting, or heating, or cooling, or air conditioning or any other purpose.

4.2.2 SUPPLY OF SERVICES

Article 6 of Federal Decree Law on VAT: A supply of Services shall be every supply that is not considered a supply of Goods, including any provision of Services specified in the Executive Regulation of this Decree-Law.

Article 3 of Executive Regulation: The following shall be considered as supply of Goods:

The supply of anything other than the supply of Goods shall be regarded as a supply of Services including any of the following:

- a. The granting, assignment, cessation, or surrender of a right.
- b. Making available a facility or advantage.
- c. Not to participate in any activity, or not to allow its occurrence, or agree to perform any activity.
- d. The transfer of an indivisible share in a good.
- e. The transfer or licensing of intangible rights, for example rights of authors, inventors, artists, and rights in trademarks, and rights which the legislation of the State deems to be within such category.

The careful perusal of above articles reveals the following:

Firstly, a transaction that is 'not' considered a Supply of Goods is a Supply of Services. A transaction not to be considered a Supply of Goods requires that it should first contain all the essential components of Supply. If it was not at all a Supply, then it cannot become a Supply but of Services. Once the transaction is established to be a Supply, though not of Goods, it then becomes a Supply of Services.

In order to understand the definition of Services, it is important to understand definition of Goods. Goods are defined by law as physical property that can be supplied. Accordingly, Services will include all non-physical property and non-proprietary objects. For instance, any software available for download on internet is a non-physical property and does not fit into the definition of Goods and hence would be considered as Services.

It is pertinent to discuss here that items that have been expressly included in the definition of goods such as real estate, water and specified forms of energy do not also come within the scope of Services because these are specifically included in the definition of Goods. Once something is included into the definition of Goods, it gets excluded from the definition of Services. Further, it is important to note that Goods which are exempted or zero-rated will not fall into Supply of Services because they are still considered Supply of Goods.

Secondly, all below stated transactions which are declared by Executive Regulation will be Services.

- a. The granting, assignment, cessation, or surrender of a right.
- b. Making available a facility or advantage.
- c. Not to participate in any activity, or not to allow its occurrence, or agree to perform any activity.
- d. The transfer of an indivisible share in a good.
- e. The transfer or licensing of intangible rights, for example rights of authors, inventors, artists, and rights in trademarks, and rights which the legislation of the State deems to be within such category.

4.2.3 SUPPLY IN SPECIAL CASES

VAT laws provides for separate set of rules to determine taxability of certain scenarios like issuance of vouchers, transfer of business etc. The same has been discussed in detail here below.

A. SALE / ISSUANCE OF VOUCHER

In modern trade these days, gift vouchers, redeemable vouchers, discount coupons, reward points, cash back schemes and similar other sales promotion schemes are commonly employed particularly by the retail industry. Let's discuss all the schemes and their taxability one by one.

Cash Back Schemes

These are schemes under which a manufacturer or a distributor or wholesaler undertakes to refund cash to a retail customer on the making of specific purchases. Under this scheme, the manufacturer sends money to the value of the voucher directly back to the customer after qualifying purchase is made.

The manufacturer's taxable amount will be amount calculated after reducing amount reimbursed to the retail customer.

Reward Points

When a customer purchases goods from a shop and receives a coupon that entitles him to a 'benefit or points' which can be adjusted against his next purchase. In this case, the liability of the customer is reduced on next purchase to the extent of 'benefit or points' awarded from previous purchase. Reduction in the 'amount payable' in the next purchase through the issue of this coupon is nothing but the '**discount**'.

Gift Card/Voucher

When a customer pays money to purchase a 'gift-card' bearing the value of money paid which can be redeemed at the time of making purchase. This is a case where the gift-card is a bearer instrument that represents 'stored value of money' that is accepted as payment of consideration.

Discount Vouchers

The supplier of goods may sell vouchers at a discount to companies who purchase them to distribute them free to their staff, or to resell to the public. The supplier undertakes to accept a voucher in full or part payment of goods purchased by a retail customer who was not the buyer of the voucher. Here the customer does not pay any money to acquire these cards and the supplier who accepts these cards at the time of its surrender is entitled to collect payment from the company.

As per the definition of Voucher provided by the law, only the gift voucher and discount vouchers are within the meaning of Vouchers which has been defined in the decree law as "*Any instrument that gives the right to receive Goods or Services against the value stated thereon or the right to receive a discount on the price of the Goods or Services. Vouchers do not include postage stamps issued by the Emirates Post Group.*"

It must be noted that **Vouchers by themselves are neither Good nor Services. So, sale of vouchers cannot be considered as taxable supply. Tax liability is created only at the time of redemption of voucher when actual sale of goods and services take place and consideration for such sale is surrender value of voucher.**

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. Its value shall be the difference between the consideration received by the supplier of the Voucher and the advertised monetary value of the Voucher.

Generally speaking, it is rare that vouchers are issued for a price more than its advertised monetary value so that it becomes taxable. So, as per the general practice, issue of sale of vouchers shall be exempted from VAT.

B. TRANSFER OF BUSINESS

Article No. 7 of Federal Decree Law on VAT provides that "Transfer of Business" will NOT be considered a Supply if the following conditions are satisfied.

(a) There must be transfer of whole or independent part of the business

While analysing this provision, it must be understood that Business is not a legal entity but an operational aspect representing the Business. A single legal entity is free to undertake more than one business. For example, a LLC may have a trading license to sell IT products and at the same time it may also have a service license to provide technology consultancy services. The LLC can be said to have two businesses i.e. trading and services. Transfer of the trading business would be regarded as transfer of business even though the LLC continues with the service business. Further, both the businesses trading and services can be independently transferred leaving behind the LLC without any business. Owners of the transferred businesses are free to commence yet another business under the same legal entity.

Transfer of Business refers to the complete transfer of this Business in its entirety including all assets and liabilities pertaining to the business. A mere transfer of the assets will not qualify as a transfer of business. The transfer must have the effect of putting the transferee in possession of a business. The transferee is generally in possession of a business when he takes over the business assets and liabilities such as goodwill, premises, fixture & fittings, staff, on-going contracts and outstanding debts and taxes. In the case where only part of the business is transferred, that part must be capable of being operated independently. It is irrelevant whether the transferee operates the part business together with or separately from his other businesses.

Where the shares of a limited company are transferred from one person to another, there is no Transfer of Business as the assets still belong to the limited company (i.e. no change in the ownership of assets).

(b) The buyer is a Taxable Person

The transferor of the business must ensure that the transferee is registered under VAT and must have TRN number at the time of transfer in absence thereof the supply will be taxable and accordingly transferor will have to account and pay for tax.

(c) There must be intention to continue the same business.

The business or part of that business must be a going concern at the time of the transfer. There must not be any closure of the business immediately after the transfer, except for temporary closure necessary to prepare the business for operation under the new ownership.

Apart from complying with above conditions stipulated by law, there are some other points as well which needs to be considered both by the transferor and transferee at the time of transfer of business.

1. Record Keeping: Both the transferor and transferee must maintain proper records on the transferred assets. Records to be kept should include information on the assets' description and value. Both parties must also be able to reconcile the difference if any, in the value of the transferred assets immediately before and after the transfer.

2. Claiming Input Tax Credit on “Transfer of Business” related expenses: The transferor or the transferee can claim input tax for the Input VAT paid on expenses relating to the “Transfer of Business” provided the business assets are to be used exclusively to make taxable supplies. Conversely, if the assets of the acquired business are to be used exclusively to make exempt supplies, input VAT paid on the expenses attributable to the Transferred Business can be claimed.

Now, let's understand “Transfer of Business” (TOB) cases with the help of some examples cited below.

Example 2: Transfer of a property rental business

Company A is a VAT-registered business that owns several non-residential properties. A derives rental income from leasing out these properties. Company B is also a VAT registered business in UAE. A enters into an agreement with B to sell one of its non-residential properties, a commercial building. The terms of the sale and purchase agreement include the following:

- (a) The sale of the building includes existing plant, equipment, fixtures and fittings owned by A;
- (b) B undertakes to continue the property leasing business after the transfer;
- (c) All the units in the property will be transferred to B;
- (d) the existing occupation agreement (tenancy and license) including rental, fee and security deposits collected will be transferred to B. B will discharge and fulfil all obligations of A under the original tenancy and license agreements;
- (e) The building maintenance contracts will be assigned to B. B will take over the deposits (cash and guarantee) and refund the deposits to service providers in accordance to contractual terms;
- (f) The sale includes works-in-progress such as upgrading of lifts. B will take over the contractual obligations and be responsible for making payment or refunding deposits to the relevant service providers; and

By taking over the entire building together with the existing tenancy and licensing agreements, security deposits, building maintenance and works contracts, B is in possession of the property leasing business. As B derives rental income from existing tenancy and licensing agreements after the transfer, B is carrying on the same kind of business as A. Since B is also able to satisfy all other qualifying conditions (e.g. B is VAT registered on the date of transfer), the transfer of property rental business from A to B will not be considered as Supply. Hence, the same cannot be subjected to tax.

Example 3: Transfer of business operations without transfer of premises

Company C's principal activities are those relating to manufacturing. As part of business restructuring, C intends to transfer its manufacturing operations to related Company D. C retains the ownership of the manufacturing plant and will only derive rental income from the lease of the plant. D will take over all licenses, intellectual properties, customer contracts, supplier contracts, employees and plant and equipment related to the manufacturing operations.

The fact that the business premises are not transferred does not affect D from taking over the business in its entirety. It is not necessary for D to own the manufacturing plant to operate a manufacturing business. As such, the transfer of the manufacturing operations will be covered under Article 7. Hence, the same is not a supply.

Example 4: Transfer of assets to a new legal entity

Law firm E is a VAT registered partnership business. E's existing partners decided to convert the partnership business into a limited liability partnership (LLP). On the transfer date, the LLP becomes VAT registered, takes over E's assets and liabilities and continues to operate the same business.

The above transfer is not a Supply as **all** the business' assets, operations and processes are passed over and continued in the same manner by a new VAT-registered entity.

Example 5: Amalgamation

Company F and its related Company G intend to enter into a voluntary amalgamation. Under the amalgamation, F and G would be combined into a single legal entity where F would be the surviving entity and the business of G would be subsumed under F.

Notwithstanding that there is no actual sale of business from G to F, the effect of the amalgamation is that the entire business of G would be transferred as a going concern to F. All assets and liabilities are transferred to F and F would carry on G's business in addition to its existing business. The same cannot be considered as a Supply as per the provisions of Clause 2 Article 7 of Federal Decree Law on VAT.

Article 7 of Federal Decree Law on VAT

As an exception to what is stated in Articles (5) and (6) of this Decree-Law, the following shall not be considered a supply:

1. The sale or issuance of any Voucher unless the received Consideration exceeds its advertised monetary value, as specified in the Executive Regulation of this Decree-Law.
2. The transfer of whole or an independent part of a Business from a Person to a Taxable Person for the purposes of continuing the Business that was transferred.

4.2.4 SINGLE COMPOSITE SUPPLY

Business transactions do not always represent supply in simple "Plain Vanilla" manner. In a consumer centric market, supply of goods and services are most often bundled together and supplied at a single price. This is where law interferes in order to avoid any loopholes.

Article 4 of the Executive Regulation on VAT specifies the conditions for treating a supply made of more than one component for one price. Single Composite Supply refers to a single supply with more than one component. This article refers to the Goods or Services as a 'component' of the supply.

As per the article, a supply shall be treated as Single Composite supply only if all of the following conditions are satisfied.

1. The supply must consist of a **principal component**. This is the main component of the supply against which consideration is received by the supplier.

Example 6: An Airline Company supplies standard rated domestic flights for a single price. This includes the provision of in-flight catering. The catering is provided for the comfort and convenience of passengers. In this case, transportation service is the principal component against which airline charges the passenger.

2. The other components of supply can either consist of integral component or incidental component or tie-in components.
 - a) **Integral Components:** These are the components of a supply that are essential or necessary to the supply as a whole. These form integral part of the supply.

In the above example, the supply of catering services is integral to the main supply. However, it should be noted that if the flight ticket sold to the passenger by the airline company is exclusive of the meals provided to him during the flight, the supply of flight services and the supply of meals by the company to the passenger are treated as two separate supplies.

In another example, An agent supplies a tourism package consisting of air-ticket, hotel room, transport, tourist guide and tour to various sites and he charges a single price. The supply is a composite supply where the main supply is the tour and the other components are seen as integral or incidental to the main supply.

- b) **Incidental components:** These components naturally accompany the supply but generally are not significant part of the supply. Examples of such components are provision of manual booklet provided with new electronic goods or the service of packaging or delivery of goods at the time of sale.

Example 7: ABC LLC buys a car from a car dealer. The contract for the purchase of the car is inclusive of its delivery. In this case, the principal supply is the goods (the car) and the incidental supply is the delivery services. The dealer is making a composite supply in this case.

- c) **Tie-in components:** These are the low value components supplied along with the main or principal component. This type of component is always given as a free item. Examples of tie-in goods are a toothbrush (free item) sold with toothpaste (main supply), a plate given as free item on sale of a consumer durable item.
3. The price of the different components of the supply is not separately identified or charged by the supplier. In other words, the components are sold as a package for a single price.
 4. All components of the supply are supplied by a single supplier.

Conclusion: The test to determine whether the supply is a single composite supply or mixed supply is whether all below conditions tabulated are satisfied or not.

Conditions	Composite Supply
One Price One Invoice	Yes
Principal Component	Yes
Integral, Incidental or Tie-in Component	Yes
Same supplier for all components	Yes
VAT Treatment of Supply	VAT shall be charged on the value of the composite supply stated in the invoice. Tax rate is based on the tax rate applicable to the principal or main component.

Article 8 of Federal Decree Law on VAT

The Executive Regulation of this Decree-Law shall specify the conditions for treating a supply made of more than one component for one price, whether such components are Goods or Services or both.

Article 4 of Executive Regulation on VAT

1. Where a Person made a supply consisting of more than one component for one price, the Person shall determine whether the supply constitutes a single composite supply or multiple supplies.
2. The phrase “single composite supply” means a supply of Goods or Services, where there is more than one component to the supply, and taking into account the contract and the wider circumstance of the supply.
3. A single composite supply shall exist in the following cases:
 - a. Where there is supply of all of the following:
 - 1) A principal component.
 - 2) A component or components which either are necessary or essential to the making of the supply, including incidental elements which normally accompany the supply but are not a significant part of it; or do not constitute an aim in itself, but are instead a means of better enjoying the principal supply.
 - b. Where there is a supply which has two or more elements so closely linked as to form a single supply which it would be impossible or unnatural to split.
4. A single composite supply may exist under Clause (2) of this Article if all of the following conditions are met:
 - a. The price of the different components of the supply is not separately identified or charged by the supplier.
 - b. All components of the supply are supplied by a single supplier;
5. Where a Taxable Person supplies more than one component for one price and the supply is not a single composite supply, then the supply of the components shall be treated as multiple supplies.

4.2.5 MIXED or MULTIPLE SUPPLY

If the Supply consists of more than one component, then it could either be Single Composite Supply or Mixed Supply. Clause 5 of Article 4 of Executive Regulation on VAT clearly provides that if supply consists of more than one component, then the supply shall be treated as mixed or multiple supplies if the same is not a single composite supply.

The following indicators suggest a transaction is a mixed supply.

- (a) Separate pricing where separate prices on different components of the supply are listed out.
- (b) The individual components are not integral to each other. They are not interdependent or connected to each other as well.
- (c) A single price is charged for separate principal supplies.
- (d) The components are supplied by different suppliers separately.
- (e) There is time differential between parts of the supply.

The above indicators are not exhaustive or conclusive proof of a mixed supply but if the transaction has more of these indicators, it is likely that it is a mixed supply. However, the ultimate test is that the Supply must have more than one component and the Supply is not a Single Composite Supply. If both the conditions are satisfied, the same is the case of a mixed or multiple supplies. It should be noted that in such a case, all the supplies should be separately valued and charged to tax accordingly.

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

Example 8 : A hamper (different goods packaged together) consisting of wheat flour, canned foods, sweets, branded chocolates, crackers, cakes, non-alcoholic drink and fruit juices is on sale at a single price of AED500. This is a case of mixed supply. The components can be made available separately and are not interdependent on each other. The components are capable of being separate supplies in themselves.

The following table summarizes the indicators of the multiple supplies.

Conditions	Composite Supply
One Price One Invoice	Yes
Principal Component	No
Integral, Incidental or Tie-in Component	No
Same supplier for all components	Yes
VAT Treatment of Supply	VAT shall be charged based on the tax rate applicable to separate components.

4.2.6 SUPPLY via AGENT

Article 9 of Federal Decree Law on VAT:

1. The Supply of Goods and Services through an agent acting in the name of and on behalf of a principal is considered to be a supply by the principal and for his benefit.
2. The Supply of Goods and Services through an agent acting in his name is considered to be a direct supply by the agent and for his benefit.

In order to understand this provision, we need to understand the meaning of agency and principal-agent relationship first. The principal-agent relationship is an arrangement in which one entity legally appoints another to act on its behalf. In a principal-agent relationship, the agent acts on behalf of the principal. The formal terms of a specific principal-agent relationship are generally but not necessarily described in the contract. The agent is most often an individual responsible for carrying out the task assigned by the principal. Common examples of the principal-agent relationship include retaining a lawyer to perform legal work, or asking an investment advisor to diversify a portfolio of stocks.

The objective test is generally employed by courts to determine existence of principal-agent relationship. If the objective of the contract between parties is the bind one of them for acts of another then the relationship is that of principal and agent. In simple words, if the parties have agreed that one of them will act on behalf of the other then a principal-agent relationship is found by the courts. Let's understand this by practical business situations cited below.

Example 9: ABC LLC appoints XYZ LLC as sales agent for selling mobile phones in MEA region. The sales order is raised by agent XYZ LLC whenever an order is received from third party in the region. On the basis of sales order received from agent, company ABC LLC raise invoice to third party directly whereas the agent is responsible for delivering the stock and collection of dues from the third party. XYZ LLC is entitled to receive commission against such sales from ABC LLC.

In this arrangement, the relationship between ABC LLC and XYZ LLC is that of principal and agent as the delivery of goods are made by XYZ on behalf of ABC. Thus, the value of supply will be taxable in the hands of principal only as per clause 1 of Article 9 of Law. Accordingly, ABC shall be responsible to pay tax on goods supplied to through agent to third parties.

Example 10: ABC LLC appoints XYZ LLC for distribution of "B" brand mobile phones in MEA region. ABC LLC sells goods to XYZ LLC which in turn sells the product on to his customers, adding a margin to cover his own costs.

In this case, principal to principal relationship exists between ABC and XYZ as XYZ is not selling goods to customers on the behalf of ABC. Therefore, against all sales made by XYZ LLC in independent capacity, it has to account and pay for tax.

4.2.7 SUPPLY BY GOVERNMENT ENTITIES

Article 10 of Federal Decree Law on VAT:

1. A Government Entity is regarded as making a supply in the course of business in the following cases:
 - a. If its activities are conducted in a non-sovereign Capacity.
 - b. If its activities are in competition with the private sector.
2. A Cabinet Decision shall be issued at the suggestion of the Minister determining the Government Entities and their activities that are considered as conducted in a Sovereign Capacity and instances where its activities are considered not in competition with the private sector.

Article 10 of Decree Law states that if the government carries out any activity, the same shall be treated as making a supply if below mentioned conditions are satisfied.

- a. Activities are carried out while performing sovereign functions.
- b. Activities are in competition with the private sector.

Let's understand what sovereign functions actually include. Sovereign functions are primarily inalienable functions, which the State only could exercise. Taxation, defence and police functions including maintenance of law and order, legislative functions, administration of law are the sovereign functions of the State.

So, any supply of goods or provision of services by the government will be considered as supply if the same is in competition with the private sector and are carried out in a non sovereign capacity.

4.3 DEEMED SUPPLY

In the previous section, we have seen that a transaction will be considered as Supply and hence taxable only if it is covered under the definition of Supply. However, when a supply does not come within the definition of Supply, it can still be brought under the purview of tax by treating the same as a "Deemed Supply".

Thus, the deeming fiction of the law provides the meaning contrary to the general definition provided under the law.

Article No. 11 of Federal Law on VAT lays down four specific classes of transactions which are deemed as "Supply".

A supply is considered "Deemed" if the supply of goods or services was all or part of a taxable person's assets, but no longer considered to be as such (provided the supply was made without consideration).

Similarly, the supply is “Deemed” if implemented through a transfer by a Taxable Person of Goods forming part of his business assets from the UAE to another VAT-implementing GCC state, or from the Taxable Person’s business in a VAT implementing GCC state to his business in UAE.

The same applies to the supply of goods or services for which Input Tax may be recovered but was used, in part or whole, for purposes other than Business, but only to the extent of non-Business use, as well as for Goods in the ownership of the Taxable Person as at the date of Tax Deregistration.

4.3.1 The Cases of Deemed Supply (Article 11)

As per Article 11 of Federal Decree Law on VAT, the following cases are considered as Deemed Supply:

i) Change of Use of Asset

Goods once received from the supplier during the course of any supply become ‘Business Asset’ in the hands of recipient. Business assets may be capitalized as fixed assets or retained in inventory as current assets. Input tax reduction is availed by the recipient on these goods unless it is disallowed specifically by law. **Then if these business assets, for any reason, are not to be considered as business assets, it would be deemed to be a Supply under clause of Article 11.** Since this change occurs ‘after’ the business assets have been supplied, the same would be deemed to be a supply on the date of such change provided such supply is **without consideration**: for example, donations, gifts, samples, promotions, demo stock, destructive tests, etc.

The rationale behind this is that if supplies were not deemed, the goods are being enjoyed by the recipient tax free, while input tax incurred on the purchase of the goods would have been claimed by the business.

Let's try to understand this provision with the help of examples given below.

Example 10: ABC LLC is a company whose business is selling cars. The company purchases 10 cars for sale and claimed input tax on the acquisition. The company decided to gift one of the cars as a sales promotion to the winner of lucky draw. In this case, the company has to account for VAT on the car being used for promotion since it will be considered as a “Deemed Supply” of goods.

Example 11: ABC Rent-a-Car LLC bought a motor car to be used as a hire and drive vehicle for his clients. When the permit issued by the Transport Authority expires, the company decides to give it to one of its senior managers in appreciation of a good service. The company has to account VAT on the car since it is a “Deemed Supply” of goods.

ii) Stock Transfer

Taxable Person in one Implementing State (any GCC member country from 2019 onwards) may make ‘stock transfers’ to/from another Implementing State. These transfers may ‘go out’ or ‘come in’ but within GCC countries and not outside GCC region. This provision deems such stock transfers to be Supply.

In case, such stock transfer is considered, by the Unified Customs Law, to be a ‘temporary transfer’ or in case when such stock transfer is via an Agent and the supply is included as a Taxable Supply by the Agent, then this provision will not apply.

Example 12: ABC LLC is a company which is into the business of selling perfumery products in UAE. During the normal course of business, the company transfers stock from Dubai to one of its branches in KSA. In this case, the company has to account for VAT on the stock being transferred to KSA since it will be considered as a “Deemed Supply” of goods within the meaning of this clause.

iii) Non-Business Purpose

Once input tax is recovered, there is a duty imposed on the Taxable Person to apply the supplies in making outward supplies and pay tax accordingly so as to maintain the tax chain. Having recovered input tax, if the supplies are used for any non-business use, it means that to that extent, there will be no payment of tax which is contrary to the objective of law.

Cases where there is a non-business use of supplies includes destruction of inputs, theft, deterioration, personal consumption, pre-production material used, etc. In all such cases, the liability has been cast on the business to pay tax on such supplies. It is to be noted that the tax recovered is not to be reversed but the use itself is taxable.

Goods may expire or may be damaged and subsequently written-off and destroyed in the course of business. If the written-off goods are sold as scrap, it is subject to VAT 5% and the company has to issue a tax invoice. For written-off goods which are disposed off other than by sale, VAT registered person is required to keep the related documents as proof that the goods has been written-off and disposed. For example, if such goods have been destroyed, then a certificate of destruction has to be signed by the company's shareholders or director which is to be kept for audit purpose. Documents that should to be kept by VAT registered person for the written-off goods are as follow:

- (a) Audited report / financial statement and management report;
- (b) Audited accounts reporting the written-off goods;
- (c) Evidence that the asset has no commercial value;
- (d) Evidence that the asset is spoiled / unusable / expired;
- (e) approved letter by relevant body of the government for disposal / destruction (if any)
- (f) Destruction certificate signed by company's chairman / director;
- (g) Other documents as proof the asset has been disposed / destroyed.

It should be noted that although there is no specific provision under UAE VAT laws which requires maintenance of records in case of stock damage, pilferage, loss or destruction, above set of records should be maintained as evidence.

iv) Stock Deregistration

When a person ceases to be registered under VAT, the person may be holding goods such as raw materials, semi-finished stocks, trading stocks, land, plant and machinery at the time of deregistration where input tax on these goods has been claimed. In line with the VAT principles, the person is deemed to be making a supply of goods which formed part of his business asset at the time of deregistration. The person is required to account and pay for the VAT on the supply if the supply of goods is a standard rated supply.

Let's consider an example to clear our understanding about this provision of law.

Example 13: Mr X is a VAT registered supermarket (general store) owner. As his business has substantially reduced over the last year, he has decided to close the business and retire. At the time of deregistration he has goods on hand valued at AED50,000. Mr. X's final VAT return will therefore show his supplies made during the last taxable period plus the AED50,000 value of the goods on hand during the deregistration

Article 11 of Federal Decree Law on VAT:

The following cases shall be considered as Deemed Supply:

1. 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.
2. 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, except in the case where such transfer:
 - a. Is considered as temporary under the Customs Legislation.
 - b. Is made as part of another Taxable Supply of these Goods.
3. 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.
4. Goods and Services that a Taxable Person owns at the date of Tax Deregistration.

4.3.2 EXCEPTIONS FOR DEEMED SUPPLY

While cases of Deemed Supply have been very specifically provided in article 11, Article 12 of Decree Law read with Article 5 of the Executive regulation on VAT provides certain exceptions. There are five specific classes of exception in this article where the transactions are **NOT considered Supply**. The same has been discussed below in details.

i) Input Tax not recovered

Deemed supply is restricted to goods on which the person has already claimed the input tax. However, there is no deemed supply where the business can prove that no credit for input tax has been claimed on such supply of goods and services. So, even if the use of the asset has been changed or the same is used for non business purpose, the same will not be taxable if no input tax has been claimed at the time of acquisition of the goods and services.

ii) Exempted Supply

In case of exempted supply, deeming provision will not be applicable. It means such supplies can't be treated as deemed supply even if the same is not used for business. The rationale behind this provision exempted supplies are not subjected to tax at any stage of the supply chain, so there is no point considering it as Deemed Supply.

iii) Capital Asset Scheme

Capital Asset has been defined under Article 57 of the Executive Regulation on VAT as **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.

If any capital asset has ceased to be used for the business or is destroyed, sold or otherwise disposed of before the end of the period referred as above, adjustment of the input tax recovered at the time of acquisition needs to be done in accordance with the provisions of Capital Asset Scheme given under Article 58 of the Executive Regulation on VAT.

Where any Input Tax Credit adjustment has been done as per Article 58, the Capital Asset in question cannot be considered as a Deemed Supply as per clause 1 (c) of Article 7 of Executive Regulation on VAT. Thus, this provision effectively operates to save supplies that have complied with CAS.

iv) Samples & Gifts

Deemed Supply includes both Samples and commercial gifts. However, this provision excludes such transactions 'up to a value' to be specified by Executive Regulation from the operation of the provisions of article 11. The Regulations provides a value limit of AED 500 within a 12-month period in respect of gifts to each recipient and an overall cap of AED 2,000 (Output VAT) on all deemed supplies by the taxable person in the same period.

In simple words, the overall limit for such supply of gifts and samples during the last 12 month is AED 40,000 considering the standard tax rate of 5%. Any supply of gifts and samples within the limit will not be taxable if both the below conditions are satisfied.

- a) The value of supply to **each recipient** within a 12-month period shall not exceed AED 500 and;
- b) The total value of supply within a 12-month period shall not exceed AED 40 000.

Article 12 of Federal Decree Law on VAT

A supply is not considered as deemed in the following cases:

1. If no Input Tax was recovered for the related Goods and Services.
2. If the supply is an Exempt Supply.
3. If the recovered Input Tax has been adjusted for the Goods and Services pursuant to the Capital Assets Scheme.
4. If the value of the supply of the Goods, for each Recipient of Goods within a 12-month period, does not exceed the amount specified in the Executive Regulation of this Decree-Law, and the Goods were supplied as samples or commercial gifts.
5. If the total Output Tax due for all the Deemed Supplies per Person for a 12-month period is less than the amount specified in the Executive Regulation of this Decree-Law.

Article 5 of Executive Regulation on VAT:

The following are the exceptions related to Deemed Supply:

1. The supply shall not be regarded as a Deemed Supply in any of the following instances:
 - a. Where the Input Tax on the relevant Goods or Services is not recovered.
 - b. Where the supply is exempted.
 - c. Where the refunded Input Tax on Goods and Services is amended according to the Capital Assets Scheme.
 - d. Where the value of the supply of Goods for each recipient, within a 12-month period, does not exceed AED 500, and the supply made is to be used as samples or commercial gifts.
 - e. Where the total of Output Tax payable on all Deemed Supplies for each Person for a 12-month period is less than AED 2,000.
2. For the purposes of Paragraphs (d) and (e) of Clause (1) of this Article, the 12-month period is a period preceding the end of the month in which the Person makes a supply referred to in either of those Clauses.

MODULE 5

VALUE OF SUPPLY

ARTICLES OF DECREE LAW ON VAT RELEVANT TO THIS MODULE	
Article (2)	Scope of Tax
Article (3)	Rate of Tax
Article (34)	Value of Supply
Article (35)	Value of Import
Article (36)	Value of Supply for Related Parties
Article (37)	Value of Deemed Supply
Article (38)	Tax-Inclusive Prices
Article (39)	Value of Supply in case of Discount or Subsidies
Article (40)	Value of Supply of Vouchers
Article (41)	Value of Supply of Postage Stamps
Article (42)	Temporary Transfer of Goods
Article (43)	Charging Tax based on Profit Margin

ARTICLES OF EXECUTIVE REGULATION ON VAT RELEVANT TO THIS MODULE	
Article (25)	Market Value of Supply
Article (26)	Apportionment of Single Consideration
Article (27)	Price Excluding Tax
Article (28)	Discount, Subsidies and Vouchers
Article (29)	Profit Margin Scheme

5.1 INTRODUCTION

Determination of “Value of Supply” is important under VAT as without it amount of tax can’t be calculated. Generally, VAT, Import Duties or Consumption Taxes are “Ad Valorem” taxes. In simple words, such taxes levied as a percentage of value of the item it is imposed on, and not on the item’s quantity, size, weight, or other such factors.

However, there is an exception to this rule provided by the statute. Article (43) read with Executive Regulation to this decree provides for the circumstances where Tax is charged on profit margin basis. Article (43) reads as follows:

“The Registrant may, in any Tax Period, calculate and charge Tax based on the profit margin earned on the Taxable Supplies as specified in the Executive Regulation of this Decree-Law and not based on the value of these supplies, and shall notify the Authority of the same”

Further, Article (3) read with Article (2) of Federal Law No. (8) of 2017 on VAT provides that a standard rate of VAT @ 5% shall be imposed on **value of every taxable supply including deemed supply and imports made by taxable person**.

Mathematically, it can be presented as

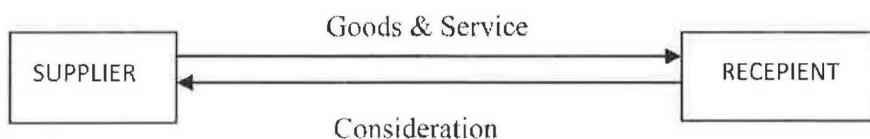
Tax Amount = Tax Rate (%) multiplied by Value of (Taxable Supply + Deemed Supply + Imports)

It can be concluded that for calculation of tax in case it is ad-valorem, value of taxable supply has been determined first.

5.2 VALUE OF SUPPLY - CONSIDERATION

The value of a supply is the value on which VAT is chargeable. Value of supply in turn depends on whether there is a consideration or not. The importance of consideration can be understood from the definition of Taxable Supply given under Article 1 of Decree Law which defines it as a supply of Goods or Services for a Consideration by a Person conducting Business in the State, and does not include Exempt Supply. The definition itself implies that if there is no consideration there will be no taxable supply unless the same is treated as Deemed Supply. Therefore, the term Consideration needs to be analyzed in details.

Consideration has been defined by law as "*All that is received or expected to be received for the supply of Goods or Services, whether in money or other acceptable forms of payment.*"



From the above definition, following conclusions can be drawn.

1. It refers to the payment received by the supplier or any other person on the behalf of supplier in relation to the supply. There is no reference as to the person who is required to pay consideration and who is required to collect the money. Therefore, a third party to a contract can also contribute towards consideration.
2. Consideration includes not only what has been paid but also which supplier may expect to receive in future.
3. Consideration can be in the form of money or other acceptable forms of payment. With the emergence of new technologies, there are many other forms of settlement of consideration.
4. The Phrase "*All that is received or expected to be received for the supply of Goods or Services*" means there must be direct link between supply of goods / services and consideration. As long as there is a direct link between the supply made and consideration given, there is a Supply under VAT.

Example 1: ABC LLC enters into contracts with a XYZ LLC to provide gift hampers worth AED 10,000 to its business clients during Ramadan. The consideration for the supply of the hampers is paid by XYZ as stipulated in the contract. The supply of hampers to the clients by XYZ is a taxable supply made by Flora to Angel since there is a direct link between the supply made and the consideration given.

Payments which may not be Consideration

Payment received is not a consideration when there is no direct link between the payment and the supply or there is no supply of goods or services in return for the payment. The following are the instances where there is no consideration.

i) Fine and Penalty Charges

If a payment is a fine or a penalty, then it is not a consideration. However, if the fine or penalty is actually an additional consideration for a supply in fulfilment of the terms and conditions of the agreement or arrangement, it is a consideration for the supply and is subject to VAT.

For example, a fine that is imposed on illegal parking is not a consideration.

However, a fine or a penalty charge for late payment of receivables against sale of goods to customers is a consideration for a supply.

ii) Grants and Donation

Monetary donation which is freely given with no expectation of anything in return is not a consideration for any supply.

iii) Sponsorship Payment

Sponsorship payment which involves the sponsor receiving clearly identifiable benefits in return, either in terms of advertising and publicity is a consideration for any supply. On the other hand, if the sponsorship does not involve any identifiable benefits in return, then the sponsorship payment is not a consideration for the supply.

iv) Project Funding

Businesses and government bodies may sponsor a research and development project by contributing funds to the project. The funding of the project is not a consideration for a supply since there is no direct benefit flowing to the business.

iv) Deposits

Deposit whether refundable or not refundable or in the form of security given in respect of any supply of goods or services, is not part of the consideration for the supply if it does not form part of the payment for the supply.

Generally most deposit payments represent consideration, as the amount paid over is intended by the parties to the contract to be offset against the purchase price once the supply has been made. Such payments fall within the scope of taxable supply and hence, tax must be accounted for on receipt of the deposit.

Example 2: ABC LLC awards a building contract to XYZ Construction LLC. As per the contract XYZ is required to submit a security deposit in the form of a banker's guarantee of 5% of the contract sum for non-performance. Since this deposit will be refunded upon completion of the contract, it is not subject to VAT as there is no supply made.

5.2.1 Value of Supply Where Consideration is Wholly in Money

Clause 1 of the Article 34 of the Decree Law on VAT deals with cases where consideration received is wholly in money. It would be easy in such a case to determine the value of goods if the consideration is wholly in money.

The value of supply can be equated as follows in case where consideration is fully received in monetary form.

$$\text{Value of Supply} + \text{VAT} = \text{Money Consideration}$$

Example 3: A local VAT-registered supermarket sells a packet of dry fruits for AED40 before the addition of VAT. The value of supply in such a case will be AED 40. The VAT amount will be 5% of the value of supply, which is AED2.00. The consideration in money will be the addition of the value of supply and the VAT which is AED 40.

Consideration in money refers to payment made in cash, cheque, credit card, monetary voucher, token or other means whether in physical or electronic form.

Example 4: Mr. A downloaded an application from a web site to his android phone. The application cost him AED 525 which is paid via credit card. The monetary consideration in this case is AED 525 which will be inclusive of VAT (5%). Thus, the value of supply is AED 500 and VAT levied thereon is AED 25.

Note that for consideration inclusive of VAT the VAT amount to be calculated using the following formula.

$$\text{VAT Amount} = (\text{Total Consideration} \times \text{Rate of VAT}) \div (100 + \text{Rate of VAT})$$

5.2.2 Value of Supply Where the Consideration is not Wholly in Money

A. CONSIDERATION NOT IN MONEY

It refers to a consideration made in the form other than money. It covers anything done or given or made in exchange for the supply.

For example:

- (a) Barter transaction;
- (b) Exchange of service; or
- (c) Condition imposed on making the supply.

Non-monetary consideration exists when a supply is made in return for payment in the form of goods or services. In this situation it is necessary to determine the amount that would have been given in money for the supply if something had been done instead of monetary consideration.

A typical example of such a case is illustrated below.

Example 5: A marketing company offers a Supermarket with a supply of 100 cartons of mineral water at a price which is 50% lower from the market price, on the conditions that the supermarket provides a special shelf at the cashier's counter for the company to display its product for 2 weeks.

By agreeing to provide a special shelf, the supermarket is providing nonmonetary consideration, with the value equals to the 50% reduction in the price of the mineral water.

B. CONSIDERATION NOT WHOLLY IN MONEY (PARTLY NON-MONETARY)

In case the consideration is not in monetary form, the value of taxable supply shall be the market value of the consideration received or receivable by the supplier against goods and services.

In case a part of consideration is wholly in money, value of supply can be mathematically presented as

$$\text{Value of Supply} = \text{Monetary Consideration} + \text{Market Value of Non Monetary part of the Consideration}$$

Example 6: A new model of I phone is supplied for AED 3000 along with the exchange of old model of I phone and the price of new model without such exchange is AED 4000.

In the above example, the recipient of goods pays the consideration to the supplier in both monetary and non monetary form. Total consideration paid consists of money which is AED 3000 and old model of I phone which is the non monetary consideration. Thus, value of non monetary component of consideration in this case shall be AED 1000 and total Value of Supply shall be equal to AED 4000.

In situations where consideration is partly in monetary form and partly in non-monetary form, the value of the supply depends on the market value of the non-monetary part of the consideration. Thus, market value plays an important part in determination of value of supply in those cases.

MARKET VALUE RULE

Ascertaining market value may pose challenge in absence of specific rules provided by the law. In order to mitigate litigation risk with respect to determination of "Market Value", specific provision has been given by the Article 25 of the Executive Regulation on VAT.

As per Article 25, there are 3 rules for determining market value of supply. These rules shall be applied on the hierachal order. Let's discuss these rules below one by one.

Rule 1: The Market Value of any supply of goods or services at a given date is the consideration in money in which the supply of those goods or services would generally fetch, if supplied under the similar circumstances at that date and made between persons who are not connected in any manner.

In other words, if the same supply exists at or about the same time and under same circumstances, the arm's length transaction price of this supply is considered as the Market Value.

Market value of goods and services at a given date = Consideration in money that will be received if the same goods and services are supplied to an **independent party** at the **same date** under **similar circumstances**.

So, there are three conditions that need to be considered at the time of application of this rule.

- i) The transaction is made between independent persons so that supply is at arm's length price. If the two parties are related, market value will not be determined on the basis of this rule.
- ii) The supply of goods or services in question has been made at the same or about the same time.
- iii) The supply is under similar circumstances. If the below conditions are satisfied during the course of the trade, it can be inferred that supply has been made under similar circumstances.
 - a) The recipient of the supply is at the same or substantially the same trade level; for e.g. all recipients are wholesalers.
 - b) The quality, reputation and nature of the supply are same or identical and
 - c) The size, quantity or duration of the supply is the same.

Rule 2: Where the market value of a supply of Goods or Services at a given date cannot be determined as mentioned under Clause (2) of this Article, the market value is the Consideration in money which a similar supply would achieve if supplied in similar circumstances at that date in the State, being a supply freely offered and made between Persons who are not connected in any manner.

In simple words, **Market Value** of the goods and services in question shall be the value of **Similar Supply** being freely offered and made between persons who are not connected or related.

The phrase "similar supply", in relation to a supply of Goods or Services, means any other supply of Goods or Services that, in respect of the characteristics, quality, quantity, functional components, materials, and reputation, is the same as, or closely or substantially resembles that supply of Goods or Services.

Thus, there are three conditions that need to be considered at the time of application of this rule.

- i) **The value of similar goods or services** supplied at or about the same time needs to be considered for the purpose of determining market value of goods and services in question.
- ii) The value of similar goods and services will be considered as market value only if **the transaction is made freely between independent persons**. If the two parties are related, market value will not be determined on the basis of this rule.
- iii) The supply of similar goods and services is under **similar circumstances**. If the below conditions are satisfied during the course of the trade, it can be inferred that supply has been made under similar circumstances.
 - a) The recipient of the supply is at the same or substantially the same trade level; for e.g. all recipients are wholesalers.
 - b) The quality, reputation and nature of the supply are same or identical and
 - c) The size, quantity or duration of the supply is the same.

Example 7: An accountancy firm agrees to prepare the books for an IT company for the financial year 2018. In return, the company designs a specific computer program for the accountancy firm. The taxable supply of the accountancy services is for the consideration of the specific computer program. As there is no identical computer program available for valuation purposes, reference may be made to the price of a similar computer program performing similar functions.

Rule 3: Where the market value of any supply of Goods or Services cannot be determined as mentioned under Clauses (2) and (3) of this Article, the market value shall be determined by reference to the replacement cost of identical Goods or Services, with such supply being offered by a supplier who is not connected to the Recipient of Goods or Recipient of Services in any manner.

In simple words, **Market Value** of the goods and services in question shall be the **Replacement cost of Identical Supply** being freely offered and made between persons who are not connected or related. It needs to be noted that the term "Replacement Cost" has not been defined under VAT laws.

Thus, below stipulated conditions that needs to be considered at the time of application of this rule. This rule will be applicable only if market value cannot be determined on the basis of Rule 2 and Rule 3.

- i) **The Replacement cost of identical goods or services** needs to be as market value of goods and services in question.
- ii) **The transaction is made freely between independent persons.** If the two parties are related, market value will not be determined on the basis of this rule.

Article (34) of Federal Law No. (8) of 2017 on VAT:

The value of supply of Goods or Services for Consideration shall be as follows:

1. If the entire Consideration is monetary, the value of the supply shall be the Consideration less the Tax.
2. If all or part of the Consideration is not monetary, the value of the supply is calculated as the overall monetary part plus the market value of the non-monetary part of the Consideration, and shall not include the Tax.
3. For Services received by the Taxable Person who is obligated to calculate the Tax in accordance with Clause (1) of Article (48) of this Decree-Law, the value of the supply shall be equal to the market value of the consideration without addition of the Tax on that supply.
4. If the Consideration is related to matters other than the supply of Goods or Services, the value of the supply shall be equal to the part of the Consideration that is related to such supply as stated in the Executive Regulation of this Decree-Law.
5. The Executive Regulation of this Decree-Law shall specify the rules to determine the market value.

5.3 VALUE OF SUPPLY – EXCEPTION TO MARKET VALUE RULE

Generally, in all cases other the cases specifically provided in the law, transaction value i.e. the monetary consideration received by the supplier of goods or services shall be accepted as the value of taxable supply and taxed accordingly.

The law has provided specific circumstances where value of taxable goods or services will be determined as per specific provisions given in the decree law.

5.3.1 Value of Supply for Related Parties

As an exception to Articles (34) and (35) of this Decree-Law, the value of the supply or Import of Goods or Services between Related Parties shall be considered equal to the market value if the following conditions are met:

1. The value of the supply is less than the market value.
2. If the supply is a Taxable Supply and the Recipient of Goods or Recipient of Services does not have the right to recover the full Input Tax on such supplies. .

Related Parties has been defined under Article 1 of Federal Law No. (8) of 2017 on VAT.

It reads as "*Two or more Persons who not separated on the economic, financial or regulatory level, where one can control the others either by Law, or through the acquisition of shares or voting rights.*"

As per the definition, relationship is being established based on the basis of control. This shall also include all the holding – subsidiary relationships, including subsidiary of a subsidiary companies.

The key term used in this clause is control. In addition to shareholding, control is said to exist if one person can exercise legal restraint over the other. For example: A Ltd hold 60% shares of B Ltd and B Ltd holds 55% shares of C Ltd. It can be said that A Ltd, B Ltd and C Ltd are all related parties.

Example 8: ABC LLC and DEF are related parties as per the given definition in Article 1 of this Decree law; wherein ABC is a supplier of house-keeping services and DEF is engaged in letting/leasing out of both commercial and residential properties. ABC charged AED 50,000 for supplies made in a month which has market value of AED 60,000.

Case (i): ABC is supplying house-keeping services taxable at 5% to B. In this case, DEF is not eligible to recover full Input tax on services received from ABC because the said input would also be used by DEF LLC in a provision of letting out of residential properties, being exempted supplies under Article 46(2). Thus, the value of supply in this case would be market value of such service i.e. AED 60,000 which is not the actual consideration paid.

Case (ii): In the above case, if the said services were used by DEF only in provision of letting out of commercial property which is fully taxable. DEF will be eligible to recover full input tax paid on the said input services. Thus, the provisions of Article 36 do not apply here and value of such supply will be the actual consideration charged i.e. AED 50,000.

5.3.2 Value of Deemed Supply

Article 37 of the decree law reads as

"As an exception to Articles (34) and (35) of this Decree-Law, the value of the supply in the case of a Deemed Supply when the Taxable Person purchases Goods or Services to make Taxable Supplies but does not use those Goods or Services for that purpose, will be equal to the total cost incurred by the Taxable Person to make this Deemed Supply of Goods or Services."

The Cases of Deemed Supply

The following cases shall be considered as Deemed Supply as per Article 11 of Federal Law No. (8) of 2017 on VAT:

1. A supply without consideration of Goods or Services, which ceases to be the whole or part of assets of a taxable person.
2. 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, except in the case where such transfer:
 - a. Is considered as temporary under the Customs Legislation.
 - b. Is made as part of another Taxable Supply of these Goods.
3. 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.
4. Goods and Services that a Taxable Person owns at the date of Tax Deregistration.

In simple words it can be concluded that following shall be considered as deemed supply and taxable accordingly.

- a) Transfer of goods and services without consideration. This will cover cases of gift, samples.
- b) Transfer of business assets are taxable and are considered deemed supply if transfer takes place from UAE to other VAT implementing GCC state or vice versa.
- c) Purchase of goods or services on input tax credit has been taken, but such goods or services are used for purpose other than business. This includes cases of pilferage, destruction of stock etc.
- d) Goods in the ownership of taxable person at the time of deregistration.

In all the above cases of deemed supplies, value of supply that will be subjected to VAT shall be the total cost incurred by the taxable person as there is no consideration charged explicitly by the supplier.

5.3.3 Value of Import

In general, goods destined for the U.A.E.'s Customs Zones are subject to duty under the GCC's Common Customs Law while goods destined for Free Trade Zones are exempt from duty. As a member of the GCC, the U.A.E. applies the GCC common external tariff comprising of **four ad-valorem tariff rates: zero, 5 percent, which is the general tariff rate, and 50 percent and 100 percent, applied on alcohol and tobacco, respectively.** Nearly 97 percent of all tariff lines are ad valorem; **duties are levied on the CIF value of imports.** Consequently, the import duty and taxes payable are calculated on the complete shipping value, which includes the cost of the imported goods, the cost of freight, and the cost of insurance. There are no additional taxes for products shipped to the U.A.E.

Common custom law for GCC may be referred to in this regard. Article 26 of the Common Custom Law provides that "*The value for customs purposes shall be calculated according to the rules and principles set forth in the rules of implementation.*"

Article 35 of the Federal Decree Law on VAT:

"The Import value of Goods consists of:

1. The customs value pursuant to Customs Legislation, including the value of insurance, freight and any customs fees and Excise Tax paid on the Import of the Goods. Tax shall not be included in the Value of the Supply.
2. If it is not possible to determine the value pursuant to Clause (1) of this Article, the value shall be determined based on alternate valuation rules stated in the applicable Customs Legislation".

Methods of Customs Valuation as specified in Rules of Implementation of GCC Common Custom Law:

A. Imported goods will be valued on the basis, and in the order, of the following:

- 1) The transaction value provided for in Clause IV;
- 2) The transaction value of identical goods provided for in Clause V (a), if the transaction value cannot be determined according to Clause IV;
- 3) The transaction value of similar goods provided for in Clause V (b), if the transaction value of identical goods cannot be determined;
- 4) The deductive value provided for in Clause VI, if the transaction value of similar goods cannot be determined;
- 5) The computed value provided for in Clause VII, if the deductive value cannot be determined; or
- 6) The flexible method provided for in Clause VIII, if the computed value cannot be computed.

B. The importer may request application of the computed value method before the deductive value method. Such request must be made at the time of submitting the Customs Declaration to the customs port. If the importer makes the request, but the value of the imported goods cannot be determined using the computed value method, the goods will be valued using the deductive value method if it is possible to do so. If it is found impossible, the value will be determined according to Clause VIII.

So, the above rules of implementation specify 6 methods of determination of value of imported goods. These are namely a) Transaction value b) Transaction value of identical goods c) Transaction value of similar goods d) Deductive Value e) Computed Value and f) Flexible method. For more details, refer Module "Guide for Importers" of Part C of the book.

The **Bill of Entry** issued by the custom authority will be considered as a reference document for the purpose of determination of Value of Supply of Imported Goods.

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

Example 9: ABC LLC, a company incorporated and registered in UAE imported goods from China for a customs value of AED 500,000 as per Bill of Entry. The rate of import duty is 5%. The value on which VAT is chargeable is as follows:

Case I: The imported goods are subject to excise tax

Customs Value = AED 500,000

Import duty 5% = (AED 500,000 x 5%) = AED 25,000

Total value for VAT = AED 500,000 + AED 25,000 = AED 525,000

VAT Amount = 5% of AED 525,000 = AED 26,250

Case II: The imported goods are subject to excise tax of 50% i.e. in the case of Excise dutiable items such as, Carbonated drinks, Energy drinks etc.

Total value of Import as per Bill of Entry = AED 500,000

Add: Custom Duty @ 5% = AED 25,000

Total Import value for Excise Tax = AED 525,000

Add: Excise Tax (on the above) @ 50 % = AED 262,500

Total Value after Excise Tax = AED 525,000 + AED 262,500 = AED 787,500

Total VAT = 5% of AED 787,500 = AED 39,375

- **Supply in Foreign Currency** - For supplies involving foreign currencies, any sum relevant for determining value (e.g. the amount stated in Tax Invoice) must be converted into UAE Dirham according to the exchange rate approved by the Central Bank at the date of supply.
- It should be noted that VAT is accounted for on the basis of Reverse Charge Mechanism in respect of imported goods and services. In simple words, the amount of output VAT can be claimed as Input in books as well at the time of importation of goods and services. Output VAT is not required to be paid in cash at the time of importation of goods.

5.4 VALUE OF SUPPLY – SPECIFIC CASES

Article 39, 40, 41 and 42 of the Federal Law No (8) of 2017 on VAT deals with determination of taxable supplies in specific cases.

5.4.1 Value of Supply in Case of Discount or Subsidies

When discounts are made before or after the date of Supply or subsidies provided by the State to the supplier for that supply, the value of the supply shall be reduced in proportion to such discounts or subsidies.

Any discount allowed before or after the date of supply shall not be included in the value of supply. It is because VAT amount cannot be charged on the discount amount which is neither paid nor payable in case of sale of the goods. Similar is the case with the subsidies provided by the state. Subsidies given by the state shall not form part of the value of supply. Accordingly, no tax is payable on the subsidies given by the government.

If the business offer a discount on condition that something happens later (contingent discount e.g. on condition that the customer buys more), then the value is based on the full amount paid. If the customer later earns the discount, the value is then reduced and can be adjusted by issuing a credit note.

Example 10: X LLC is a manufacturer who manufactures mobile phones and has appointed distributors for selling goods. As per the distribution agreement X LLC has to pay target bonus of 5% by way of credit note for those distributors who have achieved target of AED 1 million.

One of the distributors achieved the target and accordingly has been issued credit note amounting to 70,000 AED. In this case discount given by X LLC by issuance of trade note shall not form part of the value of supply and accordingly input tax credit received by the distributor on AED 70,000 shall be reversed.

Article 39 – Value of Supply in case of Discounts/Subsidies

1. The value of supply may be reduced in the case of a discount if the following conditions are met:
 - a. The customer has benefited from the reduction in price.
 - b. The supplier funded the discount.
2. The value of a discount shall be the amount by which the Consideration is reduced.
3. The value of a discount shall not include the value of any Voucher used, and any such reduction will be ignored unless that Voucher was provided for no Consideration.

5.4.2 Value of Supply of Vouchers

The value of supply of a Voucher is the difference between the consideration received by the supplier of the Voucher and the advertised monetary value of the Voucher.

The term “Voucher” has been defined in the decree law as “*Any instrument that gives the right to receive Goods or Services against the value stated thereon or the right to receive a discount on the price of the Goods or Services. Vouchers do not include postage stamps issued by the Emirates Post Group.*”

A **Voucher or Coupon** is a document that can be redeemed for a financial discount or rebate when purchasing a product. Customarily, coupons are issued by manufacturers or by retailers, to be used in retail stores as a part of sales promotions. If the coupon is issued by the retailer, it means the product was never offered at the original price and the coupon represents a reduction in the amount paid and the sales prices.

As per Article (7) the sale or issuance of any Voucher shall be considered as supply only when the received Consideration exceeds its advertised monetary value. In such a case, it shall be considered as supply and taxable accordingly. Its value shall be the difference between the consideration received by the supplier of the Voucher and the advertised monetary value of the Voucher.

Example 11:

The face value of the Voucher = AED 250

The sale value of the Voucher (actual consideration received) = AED300

VAT chargeable = (AED300 – AED250) X 5% = AED 2.5

Hence, VAT on value in excess of the face value of Voucher will be charged at the time of issue of Voucher whereas VAT on the face value of the Voucher shall be charged at the time of redemption of Voucher.

Generally speaking, it is rare that vouchers are issued for a price more than its advertised monetary value so that it becomes taxable. So, as per the general practice, issue of sale of vouchers shall be exempted from VAT.

Where the Voucher was issued and sold by the Supplier for Consideration that is less than the value stated on the Voucher, the value of a discount shall be the difference between the value of the Voucher and the Consideration paid for that Voucher.

5.4.3 Value of Supply of Postage Stamps

Article 41 of the Federal Decree Law provides that the value of supply for postage stamps that allow the user to use postal services in the State shall be the amount shown on the stamp.

5.4.4 Value of Supply in Case of Temporary Transfer of Goods from Designated ZONE

If Goods are transferred temporarily from the domestic market into a Designated Zone or outside the State for completing the manufacturing or repair in order to re-import them into the State, the value of the supply when re-Imported shall be the value of the Services rendered.

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.”

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 up the definition, these trade free zones are not necessarily be the “Designated or VAT Free” Zones.

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	6. Designated Zones (Umm Al Quwain)
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

If Goods are transferred temporarily from the domestic market into any of the Designated Zones mentioned above or outside the State for completing the manufacturing or repair and later on to re-imported into the State, the value of the supply when re-Imported shall be the value of the Services rendered by the Designated Zone enterprise.

In simple words, VAT shall be charged on the total value addition made on such goods in the form of manufacturing or repairing done in the Designated Zones.

For instance,

Value when transferred to Designated Zone = AED 20,000

Value of services rendered /Value addition made = AED 30,000

Total value after manufacturing/ repair or further process = AED 50,000

Value of Supply When Re-Imported from Designated Zone to Mainland = Value of services rendered/ value addition made = AED 50,000. Hence, VAT has to be charged on AED 50,000/-

5.5 VALUE OF SUPPLY – TAX INCLUSIVE

In the case of taxable supplies, displayed price / published price shall include the Tax as per Article 38 of Federal Decree Law on VAT. Instances where prices do not include tax shall be determined by the executive regulations of this Decree law. Accordingly, Article 27 of Executive Regulation on VAT contains instances and conditions where the published price is exclusive of Tax.

- The Taxable Person shall declare prices as being exclusive of Tax in the following cases:
 - a. The supply of Goods or Services for Export.
 - b. Where the customer is a Registrant.
 - c. Import of Concerned Goods and Services by Taxable Person.
 - d. Where a Registrant makes a Taxable Supply to another Registrant of any crude or refined oil, unprocessed or processed natural gas, or any hydrocarbons, and the Recipient of these Goods intends to either resell the purchased Goods as crude or refined oil, unprocessed or processed natural gas, or any hydrocarbons, or use these Goods to produce or distribute any form of energy.
- Where the declaration of prices as being exclusive of Tax applies, the price should be clearly identified as being exclusive of Tax.

5.6 PROFIT MARGIN SCHEME

VAT is normally charged on the full value of goods sold. However, the Profit Margin Scheme allows an eligible person who meets all the conditions imposed under the Margin Scheme to calculate and **charge VAT on the Margin** i.e. the difference between the price at which the goods are supplied (selling price) and the price at which the goods were acquired (purchase price). If there is no margin (because the purchase price exceeds or equals to the selling price), then no VAT is imposed for such supply. Since VAT is charged on the margin, no credit of Input Tax thus paid can be claimed or recovered.

As per Article 29 of the Executive Regulation on VAT, Profit Margin Scheme shall be applicable only if the conditions as stipulated there under are met. Let's discuss all these points stated below.

The Scheme is optional. A Taxable Person may not elect to calculate Tax by reference to the profit margin in respect of specified Goods if a Tax Invoice or other document is issued for that supply mentioning an amount of Tax chargeable on the supply.

I. Goods Qualifying under the Scheme:

The scheme is only applicable to taxable person who are dealing in following **specified goods**. There are 3 types of goods which are covered under the scheme.

- a) Second-hand Goods (These are tangible movable property that is suitable for further use as it is or after repair)
- b) Antiques (Goods which are more than 50 years old)
- c) Collector's items. (It includes coins, stamps, currencies and other items of scientific, historical and archaeological interest.)

II. Person Eligible for the Profit Margin Scheme

The Taxable Person may calculate Tax on any supply of Goods by reference to the profit margin only if all of the following conditions are satisfied:

- a) The taxable person has made supply of goods specified under the scheme (e.g. second-hand goods, antique goods, collector's items); and
- b) Those specified items are purchased from non-registered person or from taxable person who supplied specified goods under profit margin scheme and charged tax accordingly; and
- c) The taxable person has not claimed credit of input tax on goods supplied.

III. Maintenance of Records

1. The Taxable Person must keep the following records in respect of supplies made in accordance with this Article:
 - a. A stock book or a similar record showing details of each Good purchased and sold under the profit margin scheme.
 - b. Purchase invoices showing details of the Goods purchased under the profit margin scheme. Where the Goods are purchased from Persons who are not Registrants, the Taxable Person must issue an invoice showing details of the Goods himself, including at least the following information:
 - i) The name, address and Tax Registration Number of the Taxable Person.
 - ii) The name and address of the Person selling the Good.
 - iii) The date of the purchase.
 - iv) Details of the Goods purchased.
 - v) The Consideration payable in respect of the Goods.
 - vi) Signature of the Person selling the Good or authorized signatory.
2. Where a Taxable Person has charged Tax in respect of a supply with reference to the profit margin, the Taxable Person shall issue a Tax Invoice that clearly states that the Tax was charged with reference to the profit margin, and should contain all other information required to be stated in a Tax Invoice except the amount of Tax.

The records may be maintained by the registrant in the format given in **Exhibit I** below

Exhibit I: Example of a Margin Scheme Record

No	Sell			Purchase			Margin inclusive VAT 5%	VAT Amount	Taxable Period	Additional Information		
	Date	Inv No.	Amount (AED)	Date	Inv No.	Amount (AED)				Regd. No / Chassis No	Make	Others
1.	10.1.2018	XXX1	29,350	1.1.2018	I001	22,000	7,350	350	Jun 2015	xxxxxx	Car - Ford	xxxxxx
2.	05.2.2018	XXX2	10,000	10.1.2018	ABC1	5,000	5,250	250	Aug 2015	xxxxxx	Honda	Civic

Calculation of VAT under Profit Margin Scheme

Calculation of Tax under the Scheme has been explained with the help of Example given below.

Example 12: ABC LLC, a car dealer bought a used car from Mr. X who is a non-VAT registered person, at a price of AED 40,000. ABC LLC then sells the used car to an individual (non-VAT registered person), Mr. Y, for AED 50,000 using the margin scheme. The calculation of VAT is shown in the table below:

Selling Price	AED 50,000
Purchase Price	AED 40,000
Gross Margin	AED (50,000 – 40,000) =AED 10,000
VAT	5/105 x AED 10,000 =AED 476.00 (not to be shown on the invoice)

Value of the car	Selling price less VAT = AED (50,000 – 476.00) = AED 49,524.00
Output tax (to be accounted by ABC)	AED 476.00
Input tax (for ABC)	AED 0.00 (no VAT charged to ABC and thus no input tax to be claimed by ABC)

Charging Tax based on Profit Margin – Article 43 of Federal Decree Law on VAT

1. The Registrant may, in any Tax Period, calculate and charge Tax based on the profit margin earned on the Taxable Supplies as specified in the Executive Regulation of this Decree-Law and not based on the value of these supplies, and shall notify the Authority of the same.
2. The Executive Regulation of this Decree-Law shall specify the conditions to be met for the application of the provisions of this Article.

Accounting for Tax on the Margin – Article 29 of Executive Regulation on VAT

1. The Taxable Person may calculate Tax on any supply of Goods by reference to the profit margin in the following situations:
 - a. Where he made a supply of Goods mentioned in Clause (2) of this Article which were purchased from either:
 - 1) A Person who is not a Registrant.
 - 2) A Taxable Person who calculated the Tax on the supply by reference to the profit margin.
 - b. Where he made a supply of Goods for which Input Tax was not recovered in accordance with Article (53) of this Decision.
2. The Goods to which Clause (1) of this Article refers are Goods which have been subject to Tax before the supply which shall be subject to the profit margin scheme and those Goods are:
 - a. Second-hand Goods, meaning tangible moveable property that is suitable for further use as it is or after repair.
 - b. Antiques, meaning goods that are over 50 years old.
 - c. Collectors' items, meaning stamps, coins and currency and other pieces of scientific, historical or archaeological interest.
3. A Taxable Person may not elect to calculate Tax by reference to the profit margin in respect of Goods referred to in paragraph (a) of Clause (1) of this Article if a Tax Invoice or other document is issued for that supply mentioning an amount of Tax chargeable on the supply.
4. The profit margin is the difference between the purchase price of the Goods and the selling price of the Goods, and the profit margin shall be deemed to be inclusive of Tax.
5. The Taxable Person must keep the following records in respect of supplies made in accordance with this Article:
 - a. A stock book or a similar record showing details of each Good purchased and sold under the profit margin scheme.
 - b. Purchase invoices showing details of the Goods purchased under the profit margin scheme. Where the Goods are purchased from Persons who are not Registrants, the Taxable Person must issue an invoice showing details of the Goods himself, including at least the following information:

- 1) The name, address and Tax Registration Number of the Taxable Person.
 - 2) The name and address of the Person selling the Good.
 - 3) The date of the purchase.
 - 4) Details of the Goods purchased.
 - 5) The Consideration payable in respect of the Goods.
 - 6) Signature of the Person selling the Good or authorized signatory.
6. Where a Taxable Person has charged Tax in respect of a supply with reference to the profit margin, the Taxable Person shall issue a Tax Invoice that clearly states that the Tax was charged with reference to the profit margin, in addition to all other information required to be stated in a Tax Invoice except the amount of Tax.

5.7 CONCLUDING SUMMARY

Our entire discussion on “Value of supply” has been summarised and tabulated below for quick recap.

Type of Transaction	Valuation Method
Where the consideration is monetary	Actual consideration paid or payable
Where consideration is non monetary	Market value of non monetary part of consideration
Import of Goods	Value including insurance, freight, customs fees and excise tax paid on imported goods as per the provisions of common custom law of GCC
Supply involving related party	Market value of supply if value charged is less than the market value of supply
Deemed Supply	Cost incurred to make deemed supply
Goods eligible under Profit Margin Scheme	VAT is charged on the Profit Margin. The profit margin is the difference between the purchase price of the Goods and the selling price of the Goods, and the profit margin shall be deemed to be inclusive of Tax.

As evident from the above table, determination of the value of taxable supply can't be a difficult proposition as in most of the cases; the taxable person has to pay tax on transaction value. Thus, monetary consideration paid or payable by the recipient of goods or services shall generally be the value of taxable services. There can be few cases where transaction value is not applicable. Those circumstances have been clearly identified by the law.

However, valuation has always been prone to litigation risk and can be subject matter of litigation between the assessee and the revenue. It is more likely that the assessee will try to find out ways and methods to minimise the value of the taxable goods and services so that their tax liability gets reduced.

The government needs to be complimented for its effort to bring out the simplified tax laws.

MODULE 6

ZERO-RATED AND EXEMPTED SUPPLY

ARTICLES OF DECREE LAW ON VAT RELEVANT TO THIS MODULE

Article (44)	Supply and Import Taxable at Zero Rate
Article (45)	Zero Rated Supply
Article (46)	Supply Exempt from Tax
Article (47)	Supply of More Than One Component

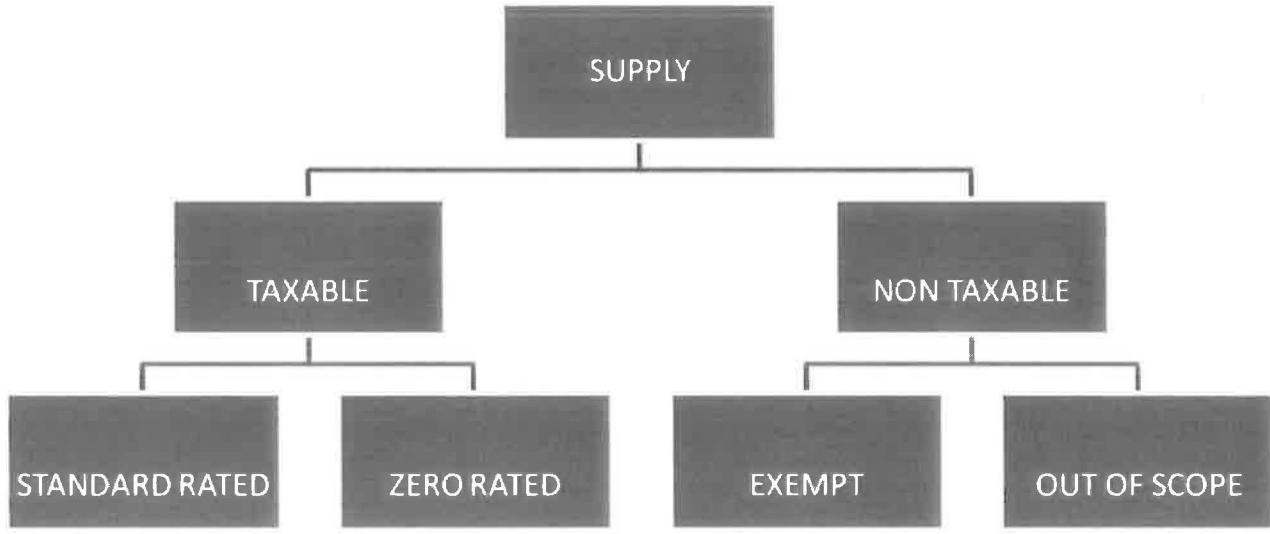
ARTICLES OF EXECUTIVE REGULATION ON VAT RELEVANT TO THIS MODULE

Article (30)	Zero-rating the export of goods
Article (31)	Zero-rating the Export of Services
Article (32)	Zero-Rating Exported Telecommunications Services
Article (33)	Zero-rating international transportation services for Passengers and Goods
Article (34)	Zero-rating certain means of transport
Article (35)	Zero-rating Goods and Services Supplied in Connection with Means of Transport
Article (36)	Zero-rating of precious metals
Article (37)	Residential buildings
Article (38)	Zero-rating of Buildings Specifically Designed to be Used by Charities
Article (39)	Zero-rating Converted Residential Building
Article (40)	Zero-rating Education Services
Article (41)	Zero-rating Healthcare Services
Article (42)	Tax Treatment of Financial Services
Article (43)	Exemption of Residential Buildings
Article (44)	Exemption of Bare Land
Article (45)	Exemption of Local Passenger Transport Services
Article (46)	Tax on Supplies of More Than One Component

6.1 INTRODUCTION

Supplies can be broadly classified into two categories on the basis of taxability: Taxable Supply and Non-Taxable Supply.

Taxable supply can be further classified into standard-rated supply and zero-rated supply. Non-taxable supply can be classified into exempt supply and out-of-scope supply.



It is necessary to distinguish the different types of supply because the very nomenclature of the category of supply itself indicates whether a supply is subject to VAT or not and the rate at which VAT will be chargeable. It also determines whether any input tax incurred to make such supplies is claimable.

As per the GCC VAT Agreement, each member state is free to set their own rules regarding what shall be the exempted supplies and what shall be zero-rated supplies.

Article 29 of Common VAT Agreement of the States of GCC provides that

1. Each Member State may exempt or tax at zero-rate the following sectors in accordance with the conditions and provisions set by that Member State:
 - a) Education sector;
 - b) Health sector;
 - c) Real estate sector; and
 - d) Local transport sector.
2. Each of the Member States may subject its oil, oil derivatives and gas sector to Tax at zero-rate in accordance with the conditions and provisions set by each Member State.

Nevertheless, each state has the right to zero-rate other items as they see fit, rather than having to follow any guidelines.

Now, let us analyze the relevant provision of UAE VAT laws regarding Zero-rated and Exempted supplies in the below paragraphs.

6.2 ZERO RATED SUPPLIES

The term “Zero-rated Supplies” itself indicates at what tax rate such supplies are subject to Tax. As the name suggest, Zero-rated supplies are charged to tax at the rate of 0 % on the value of taxable supply. In simple words, it can be said that no taxes are

collected by the government on zero-rated supplies. Also, there are also exempted supplies on which no tax liability is imposed by the government.

Now, the obvious question that rises in our mind is how both Zero-rated and Exempted Supplies are different in terms of their tax impact.

Standard-rated and zero-rated supplies are considered to be ‘taxable supplies’ under the VAT Law. The rates of tax in respect of such supplies are 5% and 0% respectively. Thus, a zero-rated supply is a taxable supply on which VAT is levied at the rate of 0%. However, an **Exempt Supply** is defined as a supply of goods or services for consideration while conducting business in the State, where no tax is due and no Input Tax may be recovered, except according to the provisions of this Decree-Law.

Registered VAT entities making zero-rated supplies are entitled to claim their input tax deductions in respect of tax paid on goods or services at the time of purchase. Contrary to this, any Registered VAT entity cannot claim an input tax deduction in respect of tax paid on goods or services acquired in the course of making exempt supplies.

The overall impact of zero-rated supplies is that there is no tax impact ultimately on such industry since tax paid on input can be recovered and there is no tax burden on the final consumers as well.

Also, it is to be understood that a person that makes only exempt supplies cannot register for VAT as they are not providing taxable supplies under the VAT laws.

As per Article 45 of Federal Decree-Law No. 8 of 2017, there are 14 goods and services that are subject to zero-rated VAT.

Article 44 of the Federal Decree Law provides “*The supply and Import of Goods and Services specified in this Chapter made by a Taxable Person shall be a Taxable Supply subject to the zero rate.*”

i) Direct or Indirect Exports outside Implementing States

Export of Goods:

The first on the list is the **direct or indirect export** outside the Implementing states in the GCC, as clearly stated in the executive regulation of this decree-law.

A. Direct Export: An Export of Goods to a destination outside of the Implementing States (GCC member countries implementing VAT), where the supplier is responsible for arranging transport or appointing an agent to do so on his behalf.

This clause even states that zero rate of VAT shall apply in case goods are put under custom suspension regime. Customs duties can be temporarily suspended either fully or partially for certain goods under certain conditions. “Duty suspension schemes” are generally referred to as “Inward Processing Relief”. Under this scheme, goods that are imported temporarily for certain purpose and for further export are subjected to certain relief provided by the custom authority. Relief can be given in 2 forms namely the 1) Drawback and 2) Suspension Relief

Drawback system allows the repayment of import duties paid in respect of imported raw materials used in the manufacture of goods to be exported outside the country.

Under the Duty Suspension Scheme, goods that are temporarily admitted into UAE for certain purpose (e.g. processing, repair) and are used for re-export are suspended for payment of duties and taxes. In simple words, no import duty is levied on such goods at the time of import subject to fulfilment of certain conditions. Suspensions from payment of custom duties are generally granted for imported raw materials used in the country for processing, heavy machinery for completion of projects, machinery and equipment imported into the country for repair.

B. Indirect Export: An Export of Goods to a destination outside of the Implementing States, where the overseas customer is responsible for arranging the collection of the Goods from the supplier in the State and who exports the Goods himself, or has appointed an agent to do so on his behalf. A typical example of indirect export as stipulated under clause 8 above will be sale goods from duty-free shops. In other words, sale from duty-free shops to outbound passengers are subject to zero rate of tax provided below conditions are fulfilled.

- a. Passenger in possession of the goods intends to leave the State. The final destination must be outside Implementing State.
- b. The Supplier i.e. Duty-free shop has obtained and retained evidence, such as the details of the boarding pass of the passenger

The basic difference between a direct and indirect export is that in case of direct export the domestic supplier in the State is responsible for export of goods whereas in the case of indirect export, the overseas customer is himself responsible for arranging the collection of the Goods from the supplier in the State and for export of such goods. Retaining official and commercial evidence as defined above is an important pre-condition for effecting such export supply whether direct or indirect as a zero-rated. So, in case of indirect exports, the domestic supplier in the state must obtain documentary evidence from the overseas customers so that the same is chargeable at zero rate of VAT.

Export of Services:

A. Export of Services shall be zero rated in the following cases.

- **Services performed outside Implementing States**

The services are actually performed outside the Implementing States or are the arranging of services that are actually performed outside the Implementing States. It will also cover cases where the Services are supplied directly in connection with real estate situated outside the State or any improvement to the real estate situated outside the State even if the recipient of such service in the State.

Example 1: A Dubai based Construction Company providing services to a property builder based in Abu Dhabi in respect of building situated in Egypt. Such services will be zero rated as it is performed outside State.

- **Place of Recipient of Services outside Implementing State**

The Services are supplied to a Recipient of Services who does not have a Place of Residence in an Implementing State and who is outside the State at the time the Services are performed. A Person shall be considered as being “outside the State” if they only have a short-term presence in the State of less than a month, or the only presence they have in the State is not effectively connected with the supply.

Example 2: An IT consulting firm in Dubai enters into contract with UK based company to develop accounting software for its subsidiary in Ireland. Supply of services in this case will be zero-rated.

- **Outbound Tour Packages**

Supply consisting of the facilitation of outbound tour packages shall be zero rated. Services that consist of the “facilitation of outbound tour packages” means the services that a Taxable Person provides in packaging one or more tourism products and also services outside the Implementing States, including but not limited to such goods and services as accommodation, meals, transport, and other activities.

B. Exceptions where supply of services are not zero-rated.

- **Supply of Services to Non Resident but Services are received in the State by another person.**

Supply of services shall not be zero-rated if the supply is made under the agreement with Non Resident and performance of the services are received or likely to be received in the State by another person including the employee or director of Non Resident recipient of services.

Example 3: “B” a UAE company, under the direction of its overseas customer A, provides accounting services to A’s subsidiary in Dubai and invoice A against such services. Such services cannot be zero rated as per Clause 3 of Article 31 of Executive Regulation.

ii) International Transportation Services for Passengers and Goods

A. The following international transport services will be zero-rated.

- a) Transporting passengers or Goods from a place in the UAE to a place outside the UAE
- b) Transporting passengers or Goods from a place outside the UAE to a place in the UAE
- c) Transporting passengers from a place in the UAE to another place in the UAE by sea or air or land as part of an international transport of those passengers if either the first place of departure, or the final place of destination, is outside the UAE.
- d) The transport of Goods from a place in the UAE to another place in the UAE if the Services are supplied as part of the supply of Services of transporting Goods either from a place in the UAE to a place outside the UAE or from a place outside the UAE to a place in the UAE

It can be concluded that any transportation service that originates and ends outside UAE is considered as international transport services and thus zero-rated, even if the carrying of passengers or goods passes through more than one place in the state .

Example 4: Mr. A books a flight to London from Dubai which transits at Abu Dhabi before proceeding to London. The air fare from Dubai to Abu Dhabi is zero-rated as the final destination for the journey is outside UAE. Similarly, the airfare from Abu Dhabi to London is zero-rated.

B. The following goods or services will also be zero-rated if supplied in respect of international transport services in accordance with clause 2 of Article 33 of Executive Regulation on VAT

- a) Goods which are supplied for use or sale on an aircraft or a ship. This will include supply of food and beverages onboard, sale of duty free goods on board.
- b) Services supplied during the supply of international transportation services.
- c) Service of insuring, or the arranging of the insurance, or the arranging of the transport of passengers or Goods.

Services in relation to International Transportation of Goods and Services	VAT Rate applicable
Lounge Services – included in airfare	0%
Lounge Services – extra charged	Standard Rate – 5%
Excess Baggage	0%
Food and Beverage supplied on board	0%
Goods sold on board	0%
Cargo Handling Services (e.g. loading, unloading, reloading, stowing, securing of cargo, preparing or amending customs declaration, preparing or amending bills of lading, airway bills, and certificates of shipment)	0%
Cabin handling services (transfer, loading and unloading of meals, cleaning services)	0%
Insurance Services	0%
Postage stamp issued by Emirates Post Group	0%

iii) Air Passenger Transport in the State considered as International Carriage under Warsaw Convention

As mentioned under Clause 3 of Article 45, the transport of air passenger in the country is also included “if it is considered an “international carriage” pursuant to Article (1) of the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air 1929.”

Warsaw convention is an international convention which regulates liability for international carriage of persons, luggage, or goods performed by aircraft. It was originally signed in 1929 in Warsaw, Poland.

iv) Supply of Air, Sea and Land Means of Transport

In accordance with the Executive Regulations of Decree-Law on VAT, the supply of air, sea, and land means of transport for the transportation of passengers and goods which are to be used for commercial transportation purpose only and the same should not be used for recreation, pleasure or sport

As per the above provisions, the supply of following means of transportation is zero-rated.

- i) Aircraft designed for commercial purpose and not for recreation, pleasure or sport.
- ii) Ship, boat or floating structure designed for commercial purpose and not for recreation, pleasure or sport.
- iii) Bus or Train designed for public transportation of 10 or more passengers.

Article 34 of Executive Regulation on VAT: Zero-rating certain means of transport

The supply of the means of transport shall be subject to the zero rate in the following cases:

- 1. A supply of an aircraft that is designed or adapted to be used for commercial transportation of passengers or Goods and which is not designed or adapted for recreation, pleasure or sports.
- 2. A supply of a ship, boat or floating structure that is designed or adapted for use for commercial purposes and which is not designed or adapted for recreation, pleasure or sports.
- 3. A supply of bus or train that is designed or adapted to be used for public transportation of (10) or more passengers.

v) Goods & Services related to the Supply of the Means of Transport

Article 35 of Executive Regulation on VAT: Certain goods and services supplied in connection with a zero-rated means of transport are zero-rated

Goods

- Goods supplied in the course of operating, repairing, maintaining or converting the means of transport. So, supply of spare parts, components during repair of any such means of transport will fall under this category and thus zero-rated.
- The goods supplied must be incorporated into, affixed to, attached to, or form part of the means of transport.
- Consumable goods that becomes unusable or worthless as a direct result of being used in operation, repair, maintenance or conversion process.

Fuel and other oil and gas products are not zero-rated as per clarification by the FTA.

Services

- Services supplied directly in connection with the means of transport for operating, repairing, maintaining or converting the means of transport.
- Services supplied directly in connection with parts and equipment if the services are carried out onboard the means of transport for the purpose of repairing or maintaining it, provided:
 - The services are carried out on board
 - The equipment or part is removed for repair or maintenance and is subsequently held in stock for the future use as spares, or
 - The part or equipment cannot be repaired & is exchanged for a like-for-like replacement.

vi) Supply of Aircraft & Vessels for Rescue

Supply of Aircrafts and vessels that are meant for rescue and assistance by air or sea will be zero rated. .

vii) Investment in Precious Metal

The eight on the list is the supply or import of investment precious metals.

As per Article 36 of Executive Regulation on VAT, supply or import of precious metals shall be zero-rated. Precious metal means gold, silver and platinum having purity of 99 % or more and are in tradable form in global bullion market.

Hence considering the above rule, jewellery made up of any metal irrespective of percentage of purity will not be zero-rated.

Investment in Precious Metals (Gold, Silver and Platinum)	VAT Rate
> 99 % pure and tradable	0%
> 99 % pure	5 %
Jewellery	5 %

ix) Sale of the Residential Building

The first supply of residential buildings within (3) years of its completion, either through sale or lease in whole or in part, according to Article 45 of Decree Law on VAT read with Article 37 of the Executive Regulation of this Decree-Law, shall be zero rated.

Article (37) of Executive Regulation on VAT: Residential buildings

1. The phrase “residential building” means a building intended and designed for human occupation, including:
 - a. Any building or part of a building that the person occupies, or that it can be foreseen that a person will occupy, as their principal place of residence.
 - b. Residential accommodation for students or school pupils.
 - c. Residential accommodation for armed forces and police.
 - d. Orphanages, nursing homes, and rest homes.
2. A “Residential building” does not include any of the following:
 - a. Any place that is not a building fixed to the ground and can be moved without being damaged.
 - b. Any building that is used as a hotel, motel, bed and breakfast establishment, or hospital or the like.
 - c. A serviced apartment for which services in addition to the supply of accommodation are provided.
 - d. Any building constructed or converted without lawful authority.
3. A building shall be considered as a residential building if a small proportion of it is used as an office or workspace by the occupants, if it includes garages and gardens used in conjunction with it, or it includes any other features that may be said to comprise part of the residential building.

It is to be noted that **other services related to buildings (including but not limited to) are subject to VAT at standard rate of 5 %**

- Maintenance of buildings
- Owners associations and other related services
- Electricity, water, gas, cooling
- Real-estate agent fees

x) Charitable Buildings Supplies

If the buildings are for the purpose of being used by charities, the first supply shall be zero-rated (sale or lease) in accordance with Article 38 of Executive Regulation of this Decree Law.

Article (38) of Executive Regulation on VAT: Buildings Specifically Designed to be Used by Charities

1. The first sale or a lease of a building, or any part of a building, shall be zero-rated if the building was specifically designed to be used by a Charity and solely for a relevant charitable activity.
2. In Clause (1) of this Article, “relevant charitable activity” means an activity for the purpose other than for the purpose of profit or benefit to any proprietor, member, or shareholder of the Charity, and one which is undertaken by the Charity in the course or furtherance of its charitable purpose or objectives to carry out a charitable activity in the State as approved by the Ministry of Community Development, or under the conditions of its establishment as a charity under Federal or Emirate Decree, or as otherwise licensed to operate as a Charity by an agency of the Federal or Emirate Governments authorised to grant such licences.

xi) First Supply of Converted Residential Building

Buildings that are converted from non-residential to residential through sale or lease will be zero rated in accordance with Article 39 of Executive Regulation of this Decree Law.

Article (39) of Executive Regulation on VAT: Zero-rating Converted Residential Building

1. The first supply of a building, or any part of a building, which is converted to a residential building shall be subject to the zero rate provided that the supply takes place within 3 years of the completion of the conversion and the original building, or any part of it, was not used as a residential building and did not comprise part of a residential building within (5) five years prior to the conversion work commencing.
2. The presence of shared or common facilities, or dividing walls or similar features in a residential building should not cause the residential building to be considered or any part thereon as part of a pre-existing residential building.

xii) Oil & Gas

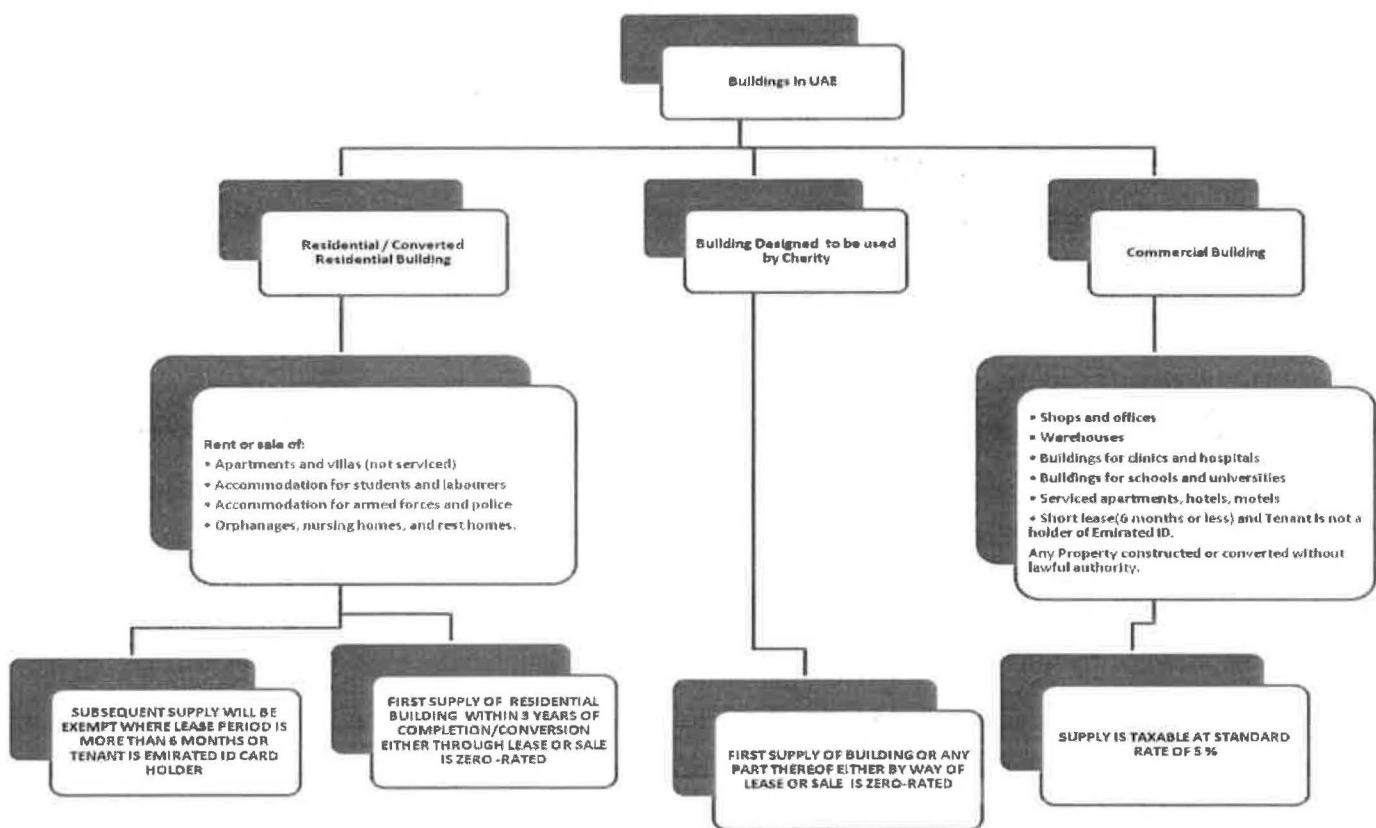
Supply of crude oil and natural gas are zero rated. Tax rates applicable to the oil and gas industry are as follows. For more details, refer guide on Oil and Gas Industry.

Oil and Gas	VAT rate
Crude oil and natural gas	0%
Other oil and gas products including petrol at the pump	5%

xiii) Educational Services

As per the Executive Regulation of this Decree-Law, zero rated shall apply on educational services and related goods and services for nurseries, preschool, elementary education, and higher education institutions that are owned or funded by the federal or local government.

The tax impact on educational services is being clarified in this section of the module. Refer to FAQs given here below.



• What is the VAT treatment of education?

The main educational services and related goods and services supplied shall be zero rated, if supplied by any of the following ‘qualifying educational institutions’:

- Nurseries, preschools and schools
- Higher educational institutions owned or funded by Federal or local Government.

This means that a ‘qualifying educational institution’ shall not charge VAT on the zero rated educational services they provide, and will be able to recover the VAT they pay on related costs when they file their tax returns.

Any educational services provided by other entities not listed above shall be subject to the standard rate (i.e. 5%).

• Does a ‘qualifying educational institutions’ have to register for VAT?

Provision of educational services by a ‘qualifying educational institutions’ is a zero-rated taxable supply. Hence, if the supplies exceed the Mandatory Registration Threshold of AED375,000, then the institution needs to register. It may apply for exceptions from registration via the registration application if the institution does not provide any services or goods taxed at the standard rate of 5%. Applying for an exception will relieve the school from filing regular returns, but would also mean the school cannot recover the input tax incurred on its expenses.

- **Can anybody supply zero-rated education?**

Only ‘**qualifying educational institutions**’ can provide zero rated supplies. ‘Qualifying educational institutions’ are those educational entities recognised by the federal or local competent government entity regulating the education sector where the course is delivered, and in the case of higher education institutions the institutions that are either owned by the federal or local government or receive more than 50% of their annual funding directly from the federal or local government. That means that education provided by all other educational entities does not qualify for zero-rating and such institutions must charge standard-rate VAT on their supplies of education.

- **Is all education supplied by education institutions zero-rated?**

Only educational services which are provided in accordance with the curriculum recognised by the federal or local competent government entity regulating the education sector where the course is delivered can be zero-rated. If an educational entity supplies education that is not in accordance with a recognised curriculum, it must charge VAT at the standard rate (i.e. 5%) on those supplies.

In a limited number of cases, an educational institution may provide educational services to students free of charge and the education is wholly funded by Government grants. Provided the conditions for zero-rating are still met i.e. it is a recognised curriculum supplied by an educational institution, then the grant income can be treated as a zero-rated.

- **What about related goods and services?**

If a ‘qualifying educational institution’ supplies other goods and services that are directly related to a zero-rated supply of education, they qualify for zero-rating as well. For example, books and digital reading material supplied by educational institutions that are related to the curriculum being taught also qualify for zero-rating.

- **Are there any exceptions to zero-rating?**

Yes. There are supplies related to the provision of the education services which are subject to the standard rate (i.e. 5%), such as:

- a. Goods and Services supplied by a ‘qualifying educational institution’ to persons who are not enrolled in it;
- b. Any Goods, other than educational materials provided by a ‘qualifying educational institution’, that are consumed or transformed by the students being taught by it;
- c. Uniforms or any other clothing which are required to be worn by a ‘qualifying educational institution’, irrespective of whether or not they are supplied by such institution as part of the supply of educational services.
- d. Electronic devices used in educational services, irrespective of whether or not supplied by a ‘qualifying educational institution’ as part of the supply of educational services.

- **What is the VAT treatment of student accommodation?**

Student accommodation is included within the definition of residential accommodation; therefore the supply of student accommodation (other than the first supply of a new residential building) will be exempt from VAT. Educational institutions which also supply accommodation to students will be unable to recover VAT incurred on costs which directly relate to the provision of the accommodation.

- **What about grant income or sponsorship received?**

In some cases, educational institutions may receive grant income or sponsorships from the Government or third parties. The VAT treatment of grant/sponsorship income depends on whether you are providing the donor with a benefit in return for the funding received. Where a benefit is provided, you are likely to be making a taxable supply of services for VAT purposes and should account for the VAT on the income received. A benefit could include e.g. naming an event after a sponsor, giving free of charge or reduced price tickets in return for the sponsorship, displaying the sponsors logo in a predominant place on flyers etc. However, where there is no significant benefit received, the income will be treated as outside the scope of VAT.

- Is grant funded research subject to VAT?**

Again, the VAT treatment of grant income received to fund research depends on the extent of the benefit provided to the founder of the research. Where the educational institution is required to provide certain deliverables in return for the funding and is required to provide the intellectual property and other products of the research to the funder then this will be a supply of research services and subject to VAT at 5%. However, where the funder does not receive anything in return for the funding other than incidental information e.g. progress updates, records of expenses, evidence that the research has been conducted as requested, then this is will not be considered to be a supply of services by the educational institution and the grant income received will be outside the scope of VAT. VAT incurred on costs which are linked to an outside the scope supply and not linked to a taxable supply made by the business should not be recoverable as an overhead cost of the business in line with the business' input tax apportionment percentage.

Further, VAT rate applicable to different services relating to education sector is tabulated below.

EDUCATION	VAT Rate
Private and public school education (excluding higher education) and related goods and services provided by education institution	0%
Higher education provided by institution owned by government or 50% funded by government, and related goods and services	0%
Education provided by private higher educational institutions, and related goods and services	5%
Nursery education and pre-school education	0%
School uniforms	5%
Stationery	5%
Electronic equipment (tablets, laptops, etc.)	5%
Renting of school grounds for events	5%
After school activities for extra fee	5%
After school activities supplied by teachers and not for extra charge	0%
School trips where purpose is educational and within curriculum	0%
School trips for recreation or not within curriculum	5%

Article 40 of Executive Regulation on VAT: Zero-rating Education Services

1. The supply of educational services shall be subject to the zero rate if the following conditions are met:
 - a. The supply of educational services is provided in accordance with the curriculum recognised by the federal or local competent government entity regulating the education sector where the course is delivered.
 - b. The supplier of the educational services is an educational institution which is recognised by the federal or local competent government entity regulating the education sector where the course is delivered.
 - c. Where the Supplier of educational services is a higher education institution, the institution is either owned by the federal or local government or receives more than 50% of its annual funding directly from the federal or local government.
2. A supply of Goods or Services made by educational institutions identified in Clause (1) of this Article shall be zero-rated where the supply is directly related to the provision of a zero-rated educational service.
3. Printed and digital reading material provided by educational institutions identified in Clause (1) of this Article and which are related to the curriculum of an education shall be zero-rated.
4. As an exception to Clause (2) of this Article, the following supplies shall not be zero-rated:

- a. Goods and Services supplied by the educational institution referred to in Clause (1) that are made available to Persons who are not enrolled in the educational institution.
- b. Any Goods other than educational materials provided by the educational institution referred to in Clause (1) that are consumed or transformed by the students undertaking the educational service for the purposes of education.
- c. Uniforms or any other clothing which are required to be worn by the educational institution referred to in Clause (1), irrespective of whether or not supplied by the educational institutions as part of the supply of educational services.
- d. Electronic devices in relation to educational services, irrespective of whether or not supplied by the educational institution referred to in Clause (1) as part of the supply of educational services.
- e. Food and beverages supplied at the educational institution referred to in Clause (1), including supplies from vending machines or vouchers in respect of food and beverages.
- f. Field trips, unless these are directly related to the curriculum of an education service and are not predominantly recreational.
- g. Extracurricular activities provided by or through the educational institution referred to in Clause (1) for a fee additional to the fee for the education service.
- h. A supply of membership in a student organisation.

xiv) Healthcare services

The last one on this list is, in accordance with the Executive Regulation of this Decree-Law, the supply of preventive and basic health care services and related goods and services. Under this clause, both supply of healthcare services and supply of pharmaceutical products or medical equipments are zero-rated.

a) Healthcare Services

“Healthcare services” means any Service supplied that is necessary for **the treatment of the Recipient of the supply** including preventive treatment. Healthcare services must be provided by healthcare body or institution, doctor, nurse, technician, dentist, or pharmacy, licensed by the Ministry of Health or by any other competent authority.

Let's analyze what services are included and what are not in the definition of healthcare services provided by any healthcare body or institution and VAT impact on such services.

Nature of Services	VAT Rate applicable
Consultation Fees of Doctors	Zero-rated
Diagnostic Test Services for Patients	Zero-rated
Room rent charged to Indoor Patients	Zero-rated
Supplying food to the Indoor Patients .	Zero-rated
Supplying Mortuary Services	Standard-rated
Providing medical reports for the purpose of providing certificate of fitness or occupational health services	Standard-rated
Leasing of Operation theatre, medical equipment, floor space for office, clinics, retail shop or florist	Standard-rated
Cosmetic surgery other than prescribed by a doctor or medical professional for treating or prevention of a medical condition	Standard-rated
Canteen, parking, laundry services provided to patients	Standard-rated
Providing physiotherapy services to patients	Zero-rated
Providing Gymnasium, spa, sauna, slimming or massage services	Standard-rated

b) Pharmaceutical products and

Any **pharmaceutical products or medical equipments** identified in a decision issued by the Cabinet shall be zero rated. As per **Cabinet Decision No. (56) of 2017 on Medications and Medical Equipment Subject to Tax at Zero Rate**, the supply of Medications and Medical Equipment registered with the Ministry of Health and Prevention, or imported with its permission or approval, shall be subject to tax at zero-rate.

The terms Medications and Medical Equipment has been defined by the Cabinet Decision as:

Medications:	Every product containing a substance(s) which achieves the intended objective in or on the human body via biological effect, which is produced, sold or offered for use in cases relating to diagnosing, treating, healing, relieving or preventing diseases, or renewing, correcting or rehabilitating the function of body organs.
Medical equipment:	A medical product containing a substance, device, instrument, motor, implant, detector or system, including its accessories and operating software, which achieves the intended objective in or on the human body without medicinal, immunological or metabolic effect, which is produced, sold or offered for use in cases relating to diagnosing, treating, relieving, controlling or preventing diseases, injury or disability.

4. A supply of Goods is zero-rated if it is a supply of:
 - a. Any pharmaceutical products identified in a decision issued by the Cabinet.
 - b. Any medical equipment identified in a decision issued by the Cabinet.
 - c. Any other Goods not covered by paragraphs (a) and (b) of this Clause which are supplied in the course of supplying a Person with zero-rated healthcare services that are necessary for the supply of such healthcare services.

6.3 SUPPLY EXEMPT FROM TAX

Goods and Services Exempted from VAT

There are only four items that are listed as exempted from VAT as per Article 46 of the Federal Decree-Law Number 8 of 2017:

i). Financial services that are specified in the Executive Regulation of this Decree-Law

As per the definition of financial services provided in Article 42 of Executive Regulation, financial services are services connected to dealings in **money or its equivalent and the provision of credit**.

Article 41 of Executive Regulation on VAT: Zero-rating Healthcare Services

1. The phrase "healthcare services" means any Service supplied that is generally accepted in the medical profession as being necessary for the treatment of the Recipient of the supply including preventive treatment.
2. A supply of healthcare services shall be zero rated on the condition that the supply shall:
 - a. Be made by a healthcare body or institution, doctor, nurse, technician, dentist, or pharmacy, licensed by the Ministry of Health or by any other competent authority.
 - b. Relate to the wellbeing of a human being.
3. "Healthcare services" do not include any of the following:
 - a. Any part of a supply that relates to staying in or attending an establishment the principal purpose of which is to provide holiday accommodation or entertainment such that any healthcare service is incidental to the provision of the accommodation or entertainment.
 - b. Elective treatment for cosmetic reasons other than prescribed by a doctor or medical professional for treating or prevention of a medical condition.

For the purpose of VAT, banking and financial services can be categorized into 3 types of supplies namely

1. Exempt Supply: In accordance with Clause 3 of Article 42 of Executive Regulation, a supply is an exempt supply if **the consideration is not in the form of explicit fee, discount, commission, and rebate or similar nature.** In other words, if financial services are provided against margin-based fee and are not explicit are exempted from VAT.

This is based on the logic that inclusion of a bank's gross interest income within in purview of VAT or VAT base, would tax more than value added and would therefore discourage consumption of such financial services.

An example of this could be the loan product where consideration is in the form of interest as a percentage of loan amount. Other services as exempted by the law include the following:

- a. The issue, allotment, or transfer of ownership of an equity security or a debt security;
- b. The provision or transfer of ownership of a life insurance contract or the provision of re-insurance in respect of any such contract.

Islamic Finance:

Islamic finance products are the financial products under contract which are certified as Islamic Sharia compliant is treated in a similar manner as the equivalent non-Sharia financial product for the purpose of applying exemption from Tax. In simple words, Islamic Finance is a written contract which relates to a supply of finance in accordance with the principles of Shari'ah.

Generally, VAT will be applied in the same way to an Islamic financial arrangement as a non-Islamic financial product. Fees made in accordance with Shariah law are considered to be the equivalent of non-Islamic products and thus, are exempted from VAT.

A typical example of this is **Murabahah Contract.** It is the most widely used Islamic trade finance product. Under this product, the bank imports goods at the request of the client and sells the same to the client on a Murabahah basis. The selling price includes a mark-up or profit and the repayment terms are agreed upon on the date of the Murabahah transaction. The bank utilizes its own funds to open the letter of credit.

Murabahah contract entered into for lending purposes will be treated as a **loan** for VAT purposes. The Regulations ignore the underlying commodity trade and treat it as a direct sale to the borrower from the vendor.

2. Standard-rated Supply: A supply is a standard rated supply if there is a basic charge or a fixed fee being imposed on the supply. Fee based services are standard rated supplies. It can be said that exemption will not apply to any financial services for which an explicit fee is charged.

Hence, financial services will be subject to **5% VAT** where they are supplied for:

- An explicit fee;
- discount;
- commission;
- rebate; or a
- similar type of charge.

Examples of standard rated services / Types of financial service	Examples of fees liable to standard rate VAT
Operation of a bank account	Subscription fee Transaction services fee Account opening or closing fee Withdrawal fee Deposit fee Replacement card fee Cheque book fee Bank statement fee Maintenance fee

Examples of standard rated services / Types of financial service	Examples of fees liable to standard rate VAT
Money transfers	Transfer fee Swift transfer fee
Cash	Cash handling fee Cheque cashing fee Fee for provision of change
Mortgages	Application fee Valuation fee Early repayment fee Administration fee Refinancing fee Mortgage statement fee Processing fee
Investment banking	Sales commission Participation fee Advisory fee Agency fee Administration fee
Card-related services	Card fee Cash withdrawal fee ATM transaction fee Statement fee Lost card fee Overdraft fee Balance transfer fee
Currency exchange	Exchange fee Handling fee
Provision of safe custody facilities	Safety deposit box fee
Loans, advances or credit	Application fee Documentation fee Renewal fee

3. Zero-Rated Supply

Financial services rendered for customers abroad will be zero-rated if the recipient is established outside the GCC. This is considered as an export of service. Similarly, any financial services rendered in connection with land and goods situated outside Implementing State are also zero-rated.

Article (42) of Executive Regulation on VAT: Tax Treatment of Financial Services

1. For the purposes of this Article:
 - a. The phrase “debt security” means any interest in or right to be paid money that is, or is to be, owing by any Person, or any option to acquire any such interest or right;
 - b. The phrase “equity security” means any interest in or right to a share in the capital of a legal person, or any option to acquire any such interest or right;
 - c. The phrase “life insurance contract” means a contract lawfully entered into to the extent that it places a sum or sums at risk upon the contingency of the termination or continuance of human life, marriage, similar relationships permitted under applicable law, or the birth of a child.
 - d. The phrase “Islamic financial arrangement” means a written contract which relates to a supply of financing in accordance with the principles of Sharia.

2. Financial services are services connected to dealings in money (or its equivalent) and the provision of credit and include for instance the following:
 - a. The exchange of currency, whether effected by the exchange of bank notes or coin, by crediting or debiting accounts, or otherwise.
 - b. The issue, payment, collection, or transfer of ownership of a cheque or letter of credit.
 - c. The issue, allotment, drawing, acceptance, endorsement, or transfer of ownership of a debt security.
 - d. The provision of any loan, advance or credit.
 - e. The renewal or variation of a debt security, equity security, or credit contract.
 - f. The provision, taking, variation, or release of a guarantee, indemnity, security, or bond in respect of the performance of obligations under a cheque, credit, equity security, debt security, or in respect of the activities specified in paragraphs (b) to (e) of this Article.
 - g. The operation of any current, deposit or savings account.
 - h. The provision or transfer of ownership of financial instruments such as derivatives, options, swaps, credit default swaps, and futures.
 - i. The payment or collection of any amount of interest, principal, dividend, or other amount whatever in respect of any debt security, equity security, credit, and contract of life insurance.
 - j. Agreeing to do, or arranging, any of the activities specified in paragraphs (a) to (i) of this Clause, other than advising thereon.
3. The following financial services shall be exempted:
 - a. Activities under Clause (2) of this Article where they are not conducted in return for an explicit fee, discount, commission, and rebate or similar.
 - b. The issue, allotment, or transfer of ownership of an equity security or a debt security;
 - c. The provision or transfer of ownership of a life insurance contract or the provision of re-insurance in respect of any such contract.
4. Activities under Clause (2) of this Article shall be subject to tax where the consideration payable in respect of a supply of Services is an explicit fee, commission, discount, and rebate or similar.
5. Islamic finance products, being financial products under contract which are certified as Islamic Shariah compliant, which simulate the intention and achieve effectively the same result as a Non-Shariah compliant financial product, will be treated in a similar manner as the equivalent Non-Shariah financial product for the purpose of applying exemption from Tax.
6. Any supply made under an Islamic financial arrangement shall be treated in such a way as to give an outcome for the purposes of the Decree-Law and the decisions issued by the Authority, comparable to that which would be the case for their non-Islamic counterparts.
7. Where Article (31) of this Decision applies in respect of a supply of financial services, this supply should be treated as zero-rated.

ii). Supply of residential buildings through sale or lease, other than that which is zero-rated according to Clauses (9) and (11) of Article (45) of this Decree-Law

In accordance with Article 43 of Executive Regulation on VAT, the supply of residential accommodation will only be exempt from VAT where:

- The duration of lease period exceeds 6 months; or
- The tenant of the property holds an Emirates ID

Article 43 of Executive Regulation on VAT: Exemption of Residential Buildings

1. The supply of residential buildings is exempt, unless it is zero-rated, where the lease is more than (6) six months or the tenant of the property is a holder of an ID card issued by Federal Authority for Identity and Citizenship.
2. The period of tenancy referred to in Clause (1) of this Article shall be identified with reference to the contractual period of tenancy and shall not take into account any period arising from a right or option to extend the period of tenancy or renew the tenancy.
3. For the purposes of Clause (1) of this Article, a right of any party to terminate the lease early shall be ignored.

iii). Supply of bare land

As per Article 44 of Executive Regulation, “bare land” means land that is not covered by completed, partially completed buildings or civil engineering works.

iv) Supply of local passenger transport services

Local passenger transportation under this clause is the service of carrying passengers by qualifying means from a place in UAE to another place in UAE as stated below. Both the point of origin and the point of destination are places in UAE.

Where such services have been availed with the principal objective of pleasure trip, sight-seeing or other forms of pleasure or entertainment, it shall not be treated as local passenger transportation and hence, the same will not be exempt from VAT. Let's look at different type of local passenger transportation services and tax impact on the same below.

i) Transportation by bus

a. Express bus	exempt
b. Feeder or shuttle bus	exempt
c. State bus operated by RTA	exempt
d. Employees bus	exempt
e. School bus	exempt
f. Charter or tour bus	standard rate

ii) Transportation by taxis

a. Taxi operated by RTA	exempt
b. Airport taxi	exempt
c. Limousine taxi	standard rate as the principle objective is pleasure trip

iii) Transportation by rail

Public transport by rail (Dubai Metro, Monorail, Hyperloop, Tram)	Exempt
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iv) Transportation by water

boats, ferries, abra and ships used as public transport	Exempt
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iv) Transportation by air

Air passenger transport including helicopter services	Exempt
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It is to be noted that where the transport is by aircraft and constitutes “international carriage” as defined in the Warsaw Convention, the same shall not be exempt as per clause 3 of Article 45.

Article 45 of Executive Regulation on VAT: Exemption of Local Passenger Transport Services

1. The supply of local passenger transport Services in a qualifying means of transport by land, water or air from a place in the State to another place in the State shall be exempt.
2. The phrase “qualifying means of transport” means:
 - a. A motor vehicle, including a taxi, bus, railway train, tram, mono-rail or similar means of transport, designed or adapted for transport of passengers.
 - b. A ferry boat, abra or other similar vessel designed or adapted for transport of passengers.
 - c. A helicopter or airplane designed or adapted for transport of passengers and approved for transport of passengers in accordance with Federal Law No. (20) of 1991 on Civil Aviation.
3. As an exception to Clause (1) of this Article, the Service of transporting of passengers from a place in the State to another place in the State shall not be considered a local passenger transport Service where the transport is by aircraft and constitutes “international carriage” as defined in the Warsaw International Convention for the Unification of Certain Rules Relating to International Carriage by Air 1929.
4. As an exception to Clause (1) of this Article, the transport of passengers shall not constitute a supply of local passenger transport Services where it is undertaken in the context of a pleasure trip where the manner in which the trip is held out indicates that its principal objective may reasonably be said to be sightseeing, or the enjoyment of catering services, or other forms of pleasure or entertainment.

6.4 SUPPLY OF MORE THAN ONE COMPONENT

The Executive Regulation of this Decree-Law will specify the controls to determine the tax treatment of any supply composed of more than one component for a single price, where each component is subject to a different tax treatment.

Composite Supply

Composite supply is the supply of goods and services composed of more than one component for a single price.

Where a supply is a single composite supply and components of the composite supply includes both exempted / zero-rated and standard-rated goods and services, tax treatment of the composite supply shall follow the tax treatment of the principal component of the supply. So, it means if the principal component of the supply is subjected to tax at the standard rate i.e. 5 %, then the composite supply will also be taxable at the standard rate.

Similarly, if the principal component of the supply is zero-rated, then the composite supply will also be taxable at zero rate. Take for instance, an Airline Company supplies zero- rated international flights for a single price. This includes the provision of in-flight catering services as well for which the airline doesn't charge separately and its price is included in the total airfare. In this case, transportation service is the principal component against which airline charges the passenger. Since, international transportation services are zero rated, total airfare shall be taxable at zero-rate.

Mixed Supply

As we learnt in the previous module on Supply, a mixed supply is the supply of goods and services composed of more than one component for a single price and it is not a single composite supply. In other sense, where a supply consisting of multiple components is not a single composite supply, the supply of each component is to be treated as a separate supply and different components are subjected to tax accordingly.

Taking the same example as above, if an Airline Company charges separately for the catering services i.e. food served to passenger onboard of an international flight, charges against the food supplied will be subjected to standard rate of tax i.e. 5 %

whereas international transportation service provided will be subject to zero rate. In this case, the components of the supply i.e. transportation and food catering are independent and thus it cannot be treated as a single composite supply.

6.5 CONCLUDING SUMMARY

The below table outlines all supplies that will be subject to the 5% Value Added Tax, as well as zero-rated supplies and exempt supplies.

Education	VAT Rate
Private and Public School Education (excluding higher education) and related goods and services provided by Education Institution	0%
Higher Education provided by institution owned by government or 50% funded by government, and related goods and services	0%
Education provided by private higher educational institutional, and related goods and services	5%
Nursery education and pre-school education	0%
School Uniforms	5%
Stationery	5%
Electronic equipments (tablets, laptops, etc.)	5%
Renting of school grounds for events	5%
After school activities for extra fee.	5%
After school activities supplied by teachers and not for extra charge	0%
School trips where purpose is educational and within curriculum	0%
School trips for recreation or not within curriculum	5%

Healthcare	VAT Rate
Preventive healthcare services including vaccinations	0%
Healthcare services aimed at treatment of humans including medical services and dental services	0%
Other healthcare services that are not for treatment and not preventive (e.g. Elective, cosmetic, etc.)	5%
Medicines and medical equipment as listed in Cabinet Decision	0%
Medicines and Medical equipment not listed in Cabinet Decision	5%
Other Medical Supplies	5%

Oil and Gas	VAT Rate
Crude Oil and Natural Gas	0%
Other oil and gas products including petrol at the pump	5%

Transportation	VAT Rate
Domestic passenger transportation (including flights within UAE)	Exempt
International transportation of passengers and goods (including intra – GCC)	0%
Supply of a means of transport (air, sea and land) for the commercial transportation of goods and passengers (over 10 people)	0%
Supply of goods and services relating to these means of transport and to the transportation of goods and passengers	0%

Real Estate	VAT Rate
Sale and rent of commercial buildings (not residential buildings)	5%
First sale/rent of residential building after completion of construction or conversion	0%
First sale of charitable building	0%
Sale/rent of residential building subsequent to first supply	Exempt
Hotels, motels and serviced accommodation	5%
Bare land	Exempt
Land (not bare land)	5%
UAE citizen building own home	5% (recoverable)

Financial Services	VAT Rate
Margin based products (products not having an explicit fee, commission, rebate, discount or similar)	Exempt
Products with an explicit fee, commission, rebate, discount or similar	5%
Interest on forms of lending (including loans, credit loans, finance leasing)	Exempt
Issue, allotment or transfer of an equity or debt security	Exempt

Investment Gold, Silver and Platinum Jewellery	VAT Rate
> 99% pure and tradable in global markets	0%
< 99% Pure	5%
Jewellery	5%

Insurance and Reinsurance	VAT Rate
Insurance and Reinsurance (including health, motor, property, etc.)	5%
Life Insurance and Life Reinsurance	Exempt

Food & Beverages	VAT Rate
Food & Beverages	5%

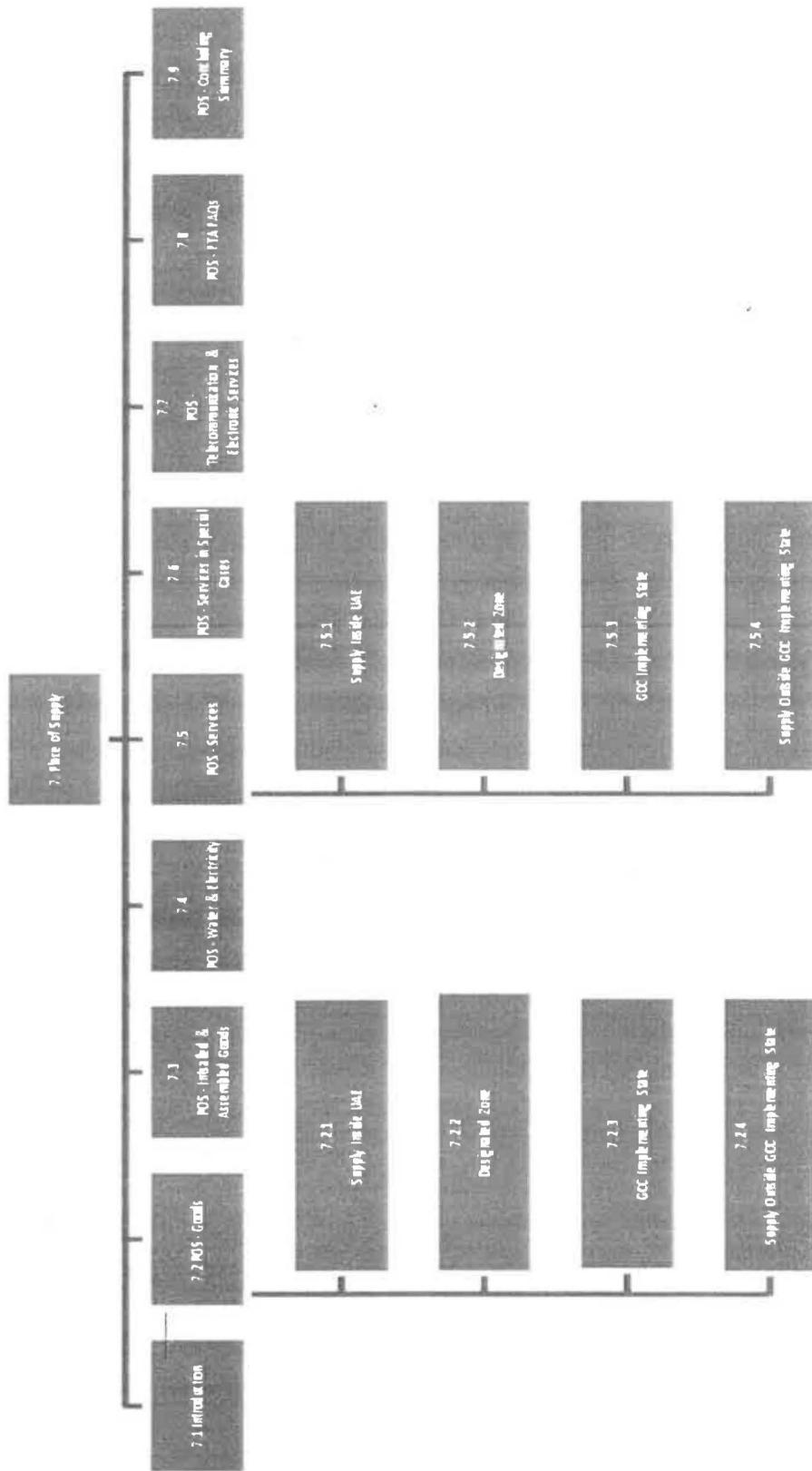
Telecommunications and Electronic Services	VAT Rate
Wired and Wireless Telecommunications and Electronic services	5%

Other	VAT Rate
Export of goods and services to outside the GCC implementing states	0%
Activities undertaken by employees in the course of their employment, including salaries	Considered outside VAT system
Supplies between members of a single tax group	Considered outside VAT system
Any supplies of services or goods not mentioned above (includes any items sold in the UAE or service provided)	5%
Second hand goods (e.g. Used cars sold by retainers), antiques and collector's items	5% of the profit margin

MODULE 7

PLACE OF SUPPLY

CONTENT OVERVIEW



PLACE OF SUPPLY

ARTICLES OF DECREE LAW ON VAT RELEVANT TO THIS MODULE

Article (27)	Place of Supply of Goods
Article (28)	Place of Supply of Water and Energy
Article (29)	Place of Supply of Services
Article (30)	Place of Supply in Special Cases
Article (31)	Place of Supply of Telecommunication and Electronic Services
Article (32)	Place of Residence of Supplier or Recipient of Services
Article (33)	Place of Residence of Agent

ARTICLES OF EXECUTIVE REGULATION ON VAT RELEVANT TO THIS MODULE

Article (20)	Place of Supply of Goods Delivered within the State
Article (21)	Place of Supply of Services Related to Real Estate
Article (22)	Place of Supply of Certain Transport Services
Article (23)	Telecommunication and electronic services
Article (51)	Place of Supply - Designated Zones

7.1 INTRODUCTION

Value Added Tax (VAT) is a type of general **destination-based tax consumption tax** that is collected incrementally, based on the value added, at each stage of production or distribution/sales. VAT is charged at each stage of the 'supply chain'.

The destination based principle is that tax on supply of goods and services should be charged at the point of consumption. So, the place of supply provisions in the decree law determines the place of consumption and the tax jurisdiction.

The Place of Supply of goods or services is where the supply is made or treated to be made. A supply of goods or services will be within the scope of VAT only if the place of supply is in UAE. Supplies made outside UAE are considered to be out of the scope of VAT.

In simple words, VAT is to be charged based on the destination principle on the local supply and importation of goods and services (i.e. VAT applies where the goods and services are consumed in the UAE), with exports subject to VAT at zero rate.

This is to be noted that there are separate rules for determining the place of supply for goods and the place of supply for services.

The module provides answers to below questions pertaining to Place of Supply.

- What shall be point of taxation in case of domestic supply?
- What shall be the point of taxation in case of import?

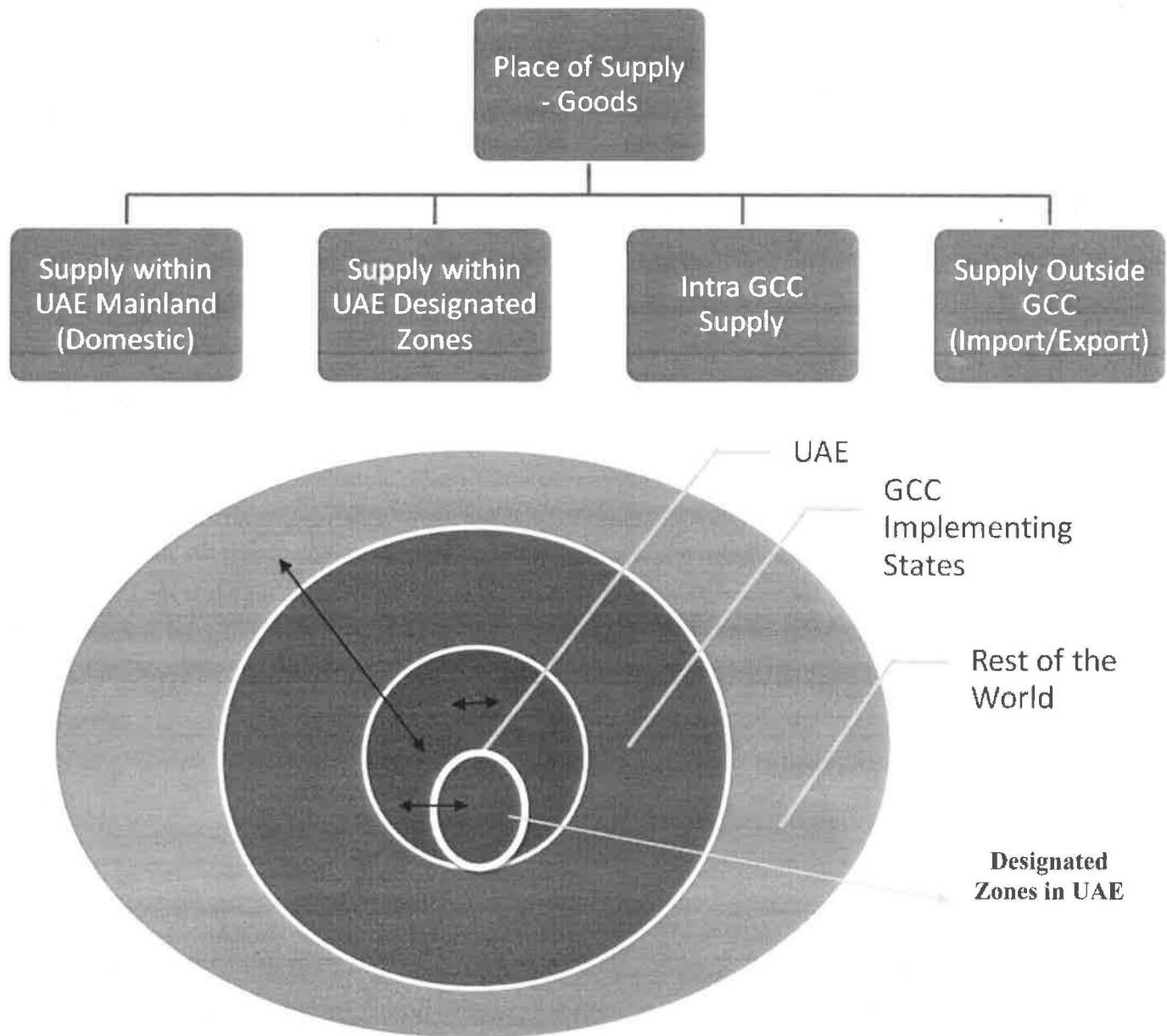
- What is the point of taxation in case of exports?
- What shall be the point of taxation in case of international supply of services?
- What shall be the point of taxation in case of domestic supply of services?

7.2 PLACE OF SUPPLY OF GOODS

The place of supply will determine whether a supply is made within the UAE (in which case the UAE VAT law will apply), or outside the UAE for VAT purposes.

For a supply of goods, the place of supply should be the location of goods when the supply takes place with special rules for certain categories of supplies (e.g. water and energy, cross border supplies).

For the purpose of simplicity, our study can be broadly grouped into following categories.



In the above diagram, Black arrows indicate that 'place of supply' is UAE in case destination in within UAE or outside GCC.

7.2.1 SUPPLY OF GOODS INSIDE UAE

As per Article 27 of Federal law No. 8 of 2017 on VAT, **the place of supply of Goods shall be in the State if the supply was made in the State**, and does not include Export from or Import into the State.

So, in the case of domestic supply, what we have to check is the physical location of goods when supply i.e. transfer of ownership or right to use goods takes place. In layman language, the supply is said to take place in UAE if the goods are sold and delivered in UAE.

- Such domestic supply is subject to the applicable VAT rate in the UAE. These are either taxable at zero rate or standard rate of 5 %.

An example is illustrated as follows:

Example 1:

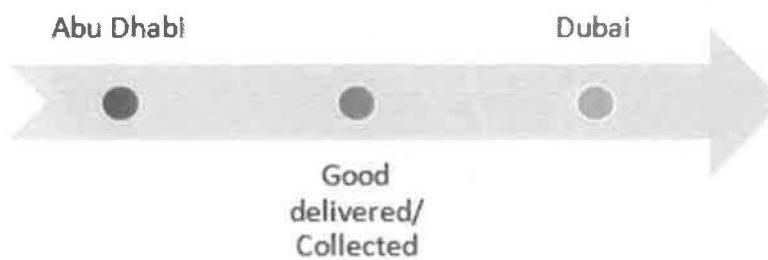
ABC LLC which is located in Abu Dhabi sends some electronic items to a buyer who is in Dubai. The goods are transported by a cargo plane that travelled from Dubai to another city in a neighbouring country before arriving at Abu Dhabi. The place of supply is in UAE.

In relation to supply of goods, the destination of the journey of the goods is relevant. This is in line with destination based consumption principle. Also, provisions of Article 20 of Executive Regulation on VAT should be considered in this regard which states as tabulated below.

Article 20 of Executive Regulation on VAT: Place of Supply of Goods Delivered within the State

Where as part of a supply of Goods, those Goods are required to exit and re-enter the State in the course of being delivered from one location in the State to another location in the State, the Goods shall not be treated as exported or imported where all of the following conditions are met:

- a. Where the exit from and re-entry into the State takes place in the course of a journey between two points in the State.
- b. Where there is no significant break in transportation whilst outside of the State, and any break is limited to what is reasonably expected in the course of physically transporting Goods.
- c. Where the Goods are not unloaded from the relevant means of transport whilst outside the State.
- d. Where the Goods are not consumed, supplied, or subjected to any process whilst outside of the State;
- e. Where the nature, quantity or quality of the Goods does not change as a result of exiting and re-entering the State.

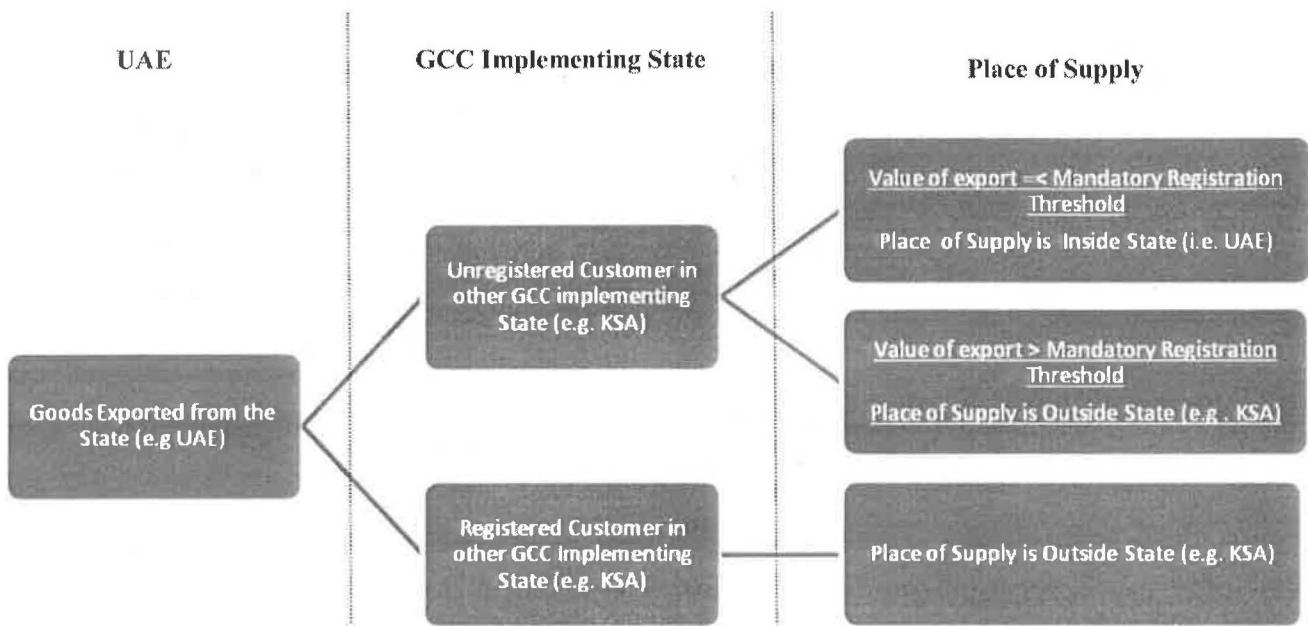


Moreover, in UAE there is a requirement that VAT will need to be reported by each Emirate which means that the Place of Supply rules not only need to identify the country for the purpose of VAT but the Emirates also.

So, if goods are supplied from Sharjah to Dubai then the VAT would be reported under the Sharjah Emirates.

7.2.2 Supply of Goods Involving GCC Implementing States

A. EXPORTS FROM UAE TO 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 exports to a customer in another implementing states and if the customer is not registered for VAT in that another implementing state and if the value of the exports to that another implementing state does not exceed the mandatory registration threshold of that another implementing state.

However, the Place of Supply will be outside UAE i.e. Implementing State if either of the below conditions are fulfilled in case of exports from UAE to customers in another GCC Implementing State.

- i) The customer is unregistered in such another implementing state and the value of export to that another implementing state exceeds mandatory registration threshold.
- ii) The customer is registered in that another implementing state where the goods are exported from the state i.e. UAE.

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

In simple language, it can be summarized that **place of supply will always be outside state in case of exports from UAE to another Implementing State**. The rationale behind this provision is that place of final consumption will be another Implementing State and not the UAE in case of exports from UAE. This is aligned with Destination based consumption principle.

However, there is an exception. Where the goods are exported to unregistered customers in another VAT Implementing State and the value of such export doesn't exceed the mandatory registration threshold, Place of Supply will be the State i.e. UAE. This provision has been made only for the purpose of exercising greater administrative control which contradicts the underlying Destination based Consumption Principle.