VAT Public Clarification

Amendments to Emirates’ Reporting – Electronic Commerce Supplies by Qualifying Registrants

Issue

Registrants are required to report their standard rated supplies per Emirate in the relevant box 1 of their VAT returns. This requires them to keep records of their transactions to prove in which Emirate the supply was made.

According to the general rule, supplies should be reported in the Emirate in which the taxable person’s establishment that is most closely related to the supply, is located.

Cabinet Decision No. 99 of 2022 on the Amendment of Some Provisions of Cabinet Decision No. 52 of 2017 on the Executive Regulation of Federal Decree-Law No. 8 of 2017 on Value Added Tax has amended Article 72 of the Executive Regulation, and requires certain taxable persons to report, and keep records of e-commerce transactions according to the Emirate in which these supplies are received.

In accordance with the new amendment to Article 72 of the Executive Regulation, the Ministerial Decision No. 26 of 2023 on the Criteria and Conditions for Electronic Commerce for the Purposes of Keeping Records of the Supplies Made, was issued, which is discussed in further

وينبغي الإقرار عن التوريدات من التداولات الإلكترونية وفقًا للقاعدة العامة، ينبغي الإقرار عن التوريدات من التداولات الإلكترونية، يجب أن يتم فيها منشأة الخاضع للضريبة الأكثر ارتباطًا بالتوريد.

ووفقًا للقاعدة العامة، ينبغي الإقرار عن التوريدات من التداولات الإلكترونية في الإمارة التي تقع فيها منشأة الخاضع للضريبة الأكثر ارتباطًا بالتوريد.

وبناءً على قرار مجلس الوزراء رقم (99) لسنة 2022 بشأن تعديل بعض أحكام قرار مجلس الوزراء رقم (52) لسنة 2017 في شأن اللائحة التنفيذية للمرسوم بقانون اتحادي رقم (8) لسنة 2017 في شأن ضريبة القيمة المضافة، تم تعديل المادة (72) من اللائحة التنفيذية، والتي توجب خاضعين للضريبة محدودين بالإقرار عن معاملات التجارة الإلكترونية والاحتفاظ بسجلاتها، لحساب الإمارة التي يتم فيها استلام هذه التوريدات.

ويمحص التعديل الجديد على المادة (72) من اللائحة التنفيذية، تم إصدار القرار الوزاري رقم (26) لسنة 2023 بشأن معايير وشروط التجارة الإلكترونية لغايات الاحتفاظ بسجلات التوريدات المقدمة، والذي سيتم تناول تفاصيله في هذا التوضيح العام.

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This Public Clarification provides guidance on how to determine which persons fall outside the general rule and for what supplies that are considered taxable supplies made through electronic commerce, and in which Emirate these supplies shall be reported in Box 1 of the VAT return.

**Summary**
Taxable persons supplying goods and services through electronic commerce which exceed AED 100 million over a calendar year are referred to as “Qualifying Registrants”.

From 1 July 2023, Qualifying Registrants are required to report supplies made through e-commerce in box 1 of the VAT Return based on the Emirate in which the supplies of the goods or services are received by the customer, and keep the relevant supporting evidence.

**Detailed analysis**

**General**
Registrants are required to report taxable supplies subject to VAT at the standard rate, made in each Emirate during a tax period, in the relevant box 1 of the VAT return, covering the tax period in which the supply is made.

For Qualifying Registrants, special rules have been introduced to determine the Emirate against which the supplies are required to be reported.
which e-commerce supplies are to be recorded and reported for VAT purposes.

For the purposes of Emirates’ reporting, the term “e-commerce” is defined as “the process of selling goods or services through electronic means, an electronic platform, a store in social media, or electronic applications in accordance with criteria and conditions determined by the Minister”.

Electronic means, an electronic platform, a store in social media, or electronic applications

Electronic means, an electronic platform, a store in social media, or electronic applications are included under the definition of “Electronic Commerce Medium” whereby this definition further covers a website, portal, gateway, interface, platform, marketplace, API and similar applications.

Electronic Commerce Medium therefore covers a broad range of concepts, such as stores in the metaverse, smart kiosks, robotic devices, etc.

Electronic Commerce supply made through an Electronic Commerce Medium

For the purposes of the revised Emirates Reporting under Article 72(4) of the Executive Regulation, only taxable supplies made through electronic commerce shall be considered. Hence for the calculation of the threshold of one hundred
million dirhams (exclusive of VAT) during the calendar year, only such taxable supplies shall be taken into account.

Article 3 of the Ministerial Decision sets out the criteria and conditions for the supplies of goods or services to be considered as being supplied through an Electronic Commerce Medium. If all the criteria and conditions, as clarified below, are met, such supplies will be subject to the reporting rules as defined under Article 72(4) of the Executive Regulation subject to their annual value exceeding the threshold of one hundred million Dirhams per year:

- **The Goods and Services are listed or advertised on the Electronic Commerce Medium**

  This condition is met if the customer is provided with sufficient information to allow an informed purchase of the goods or services. Listing or advertising general categories of goods or services on the Electronic Commerce Medium without individually listing or advertising the goods or services falling under such categories or without a price or cost, does not meet with this condition.

  Similarly, if the Electronic Commerce Medium only provides for a link to another website where the goods or services are listed or only displays a QR code, this does not meet the condition of goods or services being listed or advertised on the Electronic Commerce
The goods and services are ordered through the Electronic Commerce Medium, regardless of whether the payment is made online or not. This condition requires the order to be fully executed, through the use of the Electronic Commerce Medium.

For example, if the customer is required to sign a contract in person (offline) or separately agree to terms and conditions on another electronic medium or via email, for the order to be confirmed, the condition will not be met since the order will not be fully completed through the electronic medium.

The manner or form of payment is not a determining factor for meeting this condition. Payment for the electronic commerce supply can be done through online means, separate bank transfer, cash on delivery, or any other commercially acceptable form of payment.

In the case of a supply of goods, the goods are delivered to a location specified by the customer whereby this location is not owned by the supplier nor operated by that supplier.

The delivery must be to a location specified by the customer, whereby the location specified by the customer will determine the Emirate in which the supply is received for the purposes of payment.
الذي يحدده العميل.

لن يكون هذا الشرط مستوفيً إذا ما حدد العميل أي مكان يملكه المورّد أو يديره كعنوان للتسليم.

على سبيل المثال، إذا اختار العميل استلام السلع من أي من أماكن المورّد (كالمتاجر أو المستودعات)، فإن مثل هذا التوريد لن يعتبر توريدًا عبر التجارة الإلكترونية ويجب تجاهله عند تحديد ما إذا كان المورّد مسجلاً مؤهلاً.

في حال توريد الخدمات، أن يتم تقديم الخدمات أو منح حق تلقي الخدمات إلى العميل بأقل أو بدون تدخل بشري.

يشمل هذا الشرط توريد الخدمات المقدمة من خلال الوسيلة الإلكترونية التي يتم الإعلان عن السلع من خلالها أو إدراجها فيها وطلبها من خلالها، كما ويشمل الشرط أيضًا منح الحق في تلقي الخدمات.

In the case of a supply of services, the services are provided, or the right to receive the services is granted to the customer with minimal or no human intervention.

This condition covers a supply of services provided through the electronic medium on which the services are advertised or listed and through which the order was made. The condition also covers the granting of the right to receive services.
The services or the granting of the right to receive the services must be provided with minimal or no human intervention.

For example, where a training is provided by a human lecturer through live-stream, such service shall be disregarded in assessing whether a supplier is a Qualifying Registrant. However, if the training consists of the automatic broadcasting of a pre-recorded training course with an automated assessment, the condition will be met and, hence, this service should be considered in assessing whether the supplier is a Qualifying Registrant.

Another example is where the granting of the right to receive services is provided through the intervention of a chatbox, operated by a human being in a call centre. In this case, the condition is not met.

Where an Electronic Commerce Medium automatically grants the right to receive meal delivery services, this condition will be met, even though the delivery services are performed by human drivers.

But if the customer merely checks the list of goods or services on the Electronic Commerce Medium and then calls or otherwise contacts the supplier who delivers the goods, the service of the transport is not considered to have been received through the Electronic Commerce Medium.
Commerce Medium nor has the right to receive it, been granted through the Electronic Commerce Medium.

For the purposes of the requirement under Article 72(4) of the Executive Regulation, the Emirate in which the services are received, shall be determined in accordance with the relevant factors.

As a default factor, the FTA will accept the place of residence, i.e. the residential address of a consumer, or the establishment most closely connected to the service for a business customer, as the location where the services are received, taking precedence over, for example, billing address or IP address.

Undisclosed agent arrangements

If the e-Commerce Medium does not disclose the name of the supplier of the relevant goods or services, it shall be regarded as an undisclosed agent.

In such cases, the supplier shall be regarded as supplying the goods or services to the e-Commerce Medium, and the e-Commerce Medium shall be regarded as supplying the same goods or services to the customer.

In such an arrangement, the operator of the e-Commerce Medium shall be responsible to account for VAT on the supply to the customer if the e-Commerce Medium is a taxable person.

Unlawful arrangements

If the e-Commerce Medium does not disclose the name of the supplier of the relevant goods or services, it shall be regarded as an undisclosed agent.

In such cases, the supplier shall be regarded as supplying the goods or services to the e-Commerce Medium, and the e-Commerce Medium shall be regarded as supplying the same goods or services to the customer.

In such an arrangement, the operator of the e-Commerce Medium shall be responsible to account for VAT on the supply to the customer if the e-Commerce Medium is a taxable person.
unless the supply is out of scope or exempt from VAT. Therefore, the operator of the e-Commerce Medium, and not the supplier, is required to consider the supply to the end customer when determining the value of the taxable supplies made by it through e-commerce.

The supplier is required to consider the supply to the e-Commerce Medium and whether it has UAE VAT implications.

**Incidental supplies to the electronic commerce supplies**

Activities that support online transactions, such as payment systems, logistics for the delivery of goods and other similar platform services fall within the remit of an electronic commerce supply of goods provided these ancillary services are provided by the same supplier of the goods. The principles of Article 4 of the Executive Regulation will apply.

**Threshold for Qualifying Registrants**

From 1 July 2023, Qualifying Registrants, including registrants acting as undisclosed agents, are required to notify the FTA via the first VAT return to be submitted after exceeding the AED 100 million threshold. At notification, the Registrant is required to also confirm the date when the AED 100 million threshold was exceeded.
The first assessment of whether the AED 100 million threshold is exceeded is based on the 2022 calendar year, i.e. 1 January 2022 to 31 December 2022.

If the threshold was not exceeded for the calendar year 2022, the registrant making e-commerce supplies shall regularly conduct an assessment to determine whether the threshold of AED 100 million was exceeded during any subsequent calendar years. The registrant shall notify the FTA through the first return submitted after the threshold was exceeded for any calendar year and confirm the date on which it exceeded the threshold.

Revised Reporting Mechanism for Qualifying Registrants

From 1 July 2023 or the first tax period following the calendar year in which the AED 100 million threshold was exceeded, as the case may be, Qualifying Registrants will be required to separately identify the Emirate in which e-commerce and non-e-commerce standard rated supplies are to be reported, per tax period. This information shall be submitted as an underlying declaration and split between e-commerce and non-e-commerce standard rated supplies.

The amounts declared in each of the relevant Emirate fields under box 1 of the VAT return shall still be the aggregate of e-commerce and non-e-commerce standard rated supplies.

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commerce standard rated supplies for each Emirate.

Declaration of the amounts against the appropriate Emirate, under box 1 of the VAT return will be as follows:

- For any standard-rated taxable supply made in the UAE, the Emirate in which the registrant’s fixed establishment, most closely related to a supply is located.

- For any standard-rated taxable supply, if the registrant does not have fixed establishment in the UAE, the Emirate in which the place of establishment in the UAE is located.

- For any standard-rated taxable supply and if the registrant neither has a place of establishment nor a fixed establishment in the UAE, the Emirate in which the supply is received.

- For standard-rated e-commerce supplies by Qualifying Registrants, the Emirate in which the supply is received, subject to e-commerce supplies meeting all conditions.

Qualifying Registrants must also maintain relevant supporting documents and information proving the Emirate in which the goods or services were received. The FTA may require these documents and information as part of a tax audit.

Once a registrant has been classified as a Qualifying Registrant and is subject to the related
reporting obligations, it will be required to abide by the reporting mechanism clarified above for the following period(s):

- (18) Eighteen months starting from the first tax period commencing on or after 1 July 2023 for registrants that have exceeded the AED 100 million threshold during the calendar year 2022.

- Two (2) years starting from the first tax period of the calendar year commencing after the date on which the registrant has exceeded AED 100 million threshold for any year after 2022.

For example, if the e-commerce supplier exceeded the threshold for the first time in October 2023, the relevant reporting obligations start for the first tax period starting in the calendar year 2024 and will apply for a period of 2 years. In this case, if the Qualifying Registrant’s first tax period in 2024 starts on 1 February 2024, then the obligation to report as per the above clarified mechanism in relation to e-Commerce supplies will apply until the tax period ending 31 January 2026.

At the end of the 18 months or 2 years, as the case may be, the Qualifying Registrant shall re-assess whether it exceeded the threshold for the calendar year that just ended, and notify the FTA.
accordingly through its tax return if it needs to continue applying the special reporting mechanism in relation to e-Commerce supplies.

For example, where the Qualifying Registrant still exceeded the threshold in the calendar year 2025, the Qualifying Registrant shall inform the FTA again in the return submitted for the first tax period starting in the calendar year 2026. The qualifying registrant will then continue to apply the reporting mechanism as clarified in this Public Clarification for a further 2 years.

**Awareness**

The FTA kindly requests registrants who expect to be Qualifying Registrants to inform the FTA by 15 March 2023, including their registered name and TRN, via Emiratesreporting@tax.gov.ae, of the following:

− Whether they are interested in attending an awareness session on this matter; and
− Questions that they have on the matter that they would like covered in the session.

This Public Clarification issued by the FTA is meant to clarify certain aspects related to the implementation of the Federal Law No. 7 of 2017 on Tax Procedures and its amendments, Federal Decree-Law No. 8 of 2017 on Value Added Tax and its amendments, and their Executive Regulations.

This Public Clarification states the position of the FTA and neither amends nor seeks to amend any provision of the aforementioned legislation. Therefore, it is effective as of the date of implementation of the relevant legislation, unless otherwise noted.
الصلة، ما لم يتم برد خلاف ذلك.

Legislative References:

في هذا التوضيح، يُشار إلى المرسوم بقانون اتحادي رقم (8) لسنة 2017 في شأن ضريبة القيمة المضافة، وتعديلاته، بعبارة "المرسوم بقانون"، والقرار مجلس الوزراء رقم (52) لسنة 2017 في شأن اللائحة التنفيذية للمرسوم بقانون اتحادي رقم (8) لسنة 2017 في شأن ضريبة القيمة المضافة، وتعديلاته، بعبارة "اللائحة التنفيذية"، والقرار الوزاري رقم (26) لسنة 2023 في شأن معايير وشروط التجارة الإلكترونية لغيابات الاحتفاظ بسجلات التوريدات المقدّمة بعبارة "القرار الوزاري".

1. تنص المادة (72) من اللائحة التنفيذية على أنه:

1. يجب الاحتفاظ بسجلات جميع السلع والخدمات التي تم توريدها من قبل الخاضع للضريبة أو لصالحه والتي توضح السلع والخدمات والمزودين ووكلائهم بالقدر الكافي من التفصيل بحيث تتمكن الهيئة من التعرف على تلك السلع والخدمات والمزودين والوكلاء بسهولة.

2. Without prejudice to Article 78 of the Decree-Law, the Taxable Person who makes a Taxable Supply of Goods or Services in the State must keep records of the transaction to prove the Emirate in which the Fixed Establishment related to this supply is located.

3. As an exception to Clause 2 of this Article, if the Taxable Person who makes any Taxable Supply of Goods or Services does not have a Fixed Establishment in the State, the following shall apply:

   a. If he has a Place of Establishment in the State, he must keep records of the transaction to prove the Emirate in which the Place of Establishment is located.
b. In the event that he does not have a Place of Establishment in the State, he must keep records of the transaction to prove the Emirate in which the supply is received.

4. As an exception to Clauses 2 and 3 of this Article, if the value of the Taxable Supplies made by the Taxable Person through electronic commerce exceeded (100,000,000) one hundred million dirhams during the calendar year, he must keep records of the transaction to prove the Emirate in which the supply is received in the period specified in Clause 6 of this Article.

5. For the purposes of Clause 4 of this Article, electronic commerce refers to the process of selling Goods or Services through electronic means, an electronic platform, a store in social media, or electronic applications in accordance with criteria and conditions determined by the Minister.

6. For the purpose of implementing the provisions of Clause 4 of this Article, the provisions of Taxable Supplies via electronic commerce shall apply to a Taxable Person as follows:

a. From the first Tax Period that begins on or after 1 July 2023 for 18 months for the Taxable Person whose Taxable Supplies made via electronic commerce exceeded the threshold prescribed in Clause 4 of this Article during the calendar year ending 31 December 2022.

b. For two years commencing from the first Tax Period of the calendar year that begins after the date on which the Taxable Supplies made by the Taxable Person through electronic commerce exceeded the threshold prescribed in Clause 4 of this Article.
2. Article 1 of the Ministerial Decision defines Electronic Commerce Medium as “A website, portal, gateway, interface, platform, marketplace, programme interface (API), or similar application which facilitates the sale of Goods or Services, including electronic means, electronic platform, a store in social media and electronic applications or similar”.

3. Article 3 of the Ministerial Decision states that:

A supply of Goods and Services shall be considered to be an electronic commerce supply made via an Electronic Commerce Medium where all of the following criteria and conditions are met:

a. The Goods and Services are listed or advertised on an Electronic Commerce Medium;

b. The Goods and Services are ordered through the Electronic Commerce Medium, regardless of whether the payment is made online or not;

c. In the case of a supply of Goods, the Goods are delivered to a location specified by the customer whereby this location is not owned by the supplier nor operated by that supplier.

d. In the case of a supply of Services, the Services are provided, or the right to receive the Services is granted to the customer with minimal or no human intervention.

2. تعرف المادة (1) من القرار الوزاري وسيلة التجارة الإلكترونية بأنها “موقع إلكتروني أو بوابة أو واجهة أو منصة أو سوق أو واجهة برنامج (API) أو تطبيق مشابه يعمل على تسهيل بيع السلع أو الخدمات بما في ذلك الوسائط الإلكترونية، المنصة الإلكترونية، متجر في وسائل التواصل الاجتماعي والتطبيقات الإلكترونية وما يشابهها”.

3. تنص المادة (3) من القرار الوزاري على ما يأتي:

بعد توريد السلع والخدمات توريد تجارة إلكترونية تم من خلال وسيلة تجارة إلكترونية عند توافر كافة المعايير والشروط الآتية:

أ. أن تكون السلع والخدمات مدرجة أو يتم الإعلان عنها على وسيلة تجارة إلكترونية.

ب. أن يتم طلب السلع والخدمات من خلال وسيلة التجارة الإلكترونية، بغض النظر عن ما إذا تم الدفع عبر الإنترنت أم لا.

c. في حال توريد السلع، أن يتم تسليم السلع إلى موقع محدد من قبل العميل، ما لم يكن الموقع المحدد من قبل العميل مملوكًا للموزع أو مشغلاً من قبل ذلك الموزع.

d. في حال توريد الخدمات، أن يتم تقديم الخدمات أو منح حق تلقى الخدمات إلى العميل بأقل أو بدون تدخل بشري.