



SPECIAL REVERSE CHARGE MECHANISM ON ELECTRONIC DEVICES

BACKGROUND

The Federal Tax Authority ('FTA') has recently issued a Public Clarification ('PC') on “**Application of the Reverse Charge Mechanism on Electronic Devices among Registrants in the State for the purposes of Value Added Tax**”. As per said Public Clarification read with Cabinet Decision No. 91 of 2023 ('Cabinet Decision'), Registrants supplying Electronic Devices to other registrants who intend to use these Electronic Devices for resale or manufacturing, will not account for VAT on such supplies, and due tax on the supplies will be accounted under reverse charge mechanism by the Recipient of Goods.

OVERVIEW

As per said Cabinet Decision, if a registered supplier provides Electronic Devices (items such as mobile phones, smartphones, computer devices, tablets pieces and parts thereof) to a registered recipient of goods and the intention of the Recipient of Goods was/is to resell or use them in producing or manufacturing Electronic Devices, the following rules shall apply:

- The supplier shall not be responsible for accounting and reporting tax related to said supply of electronic devices in their VAT return.
- The recipient of electronic devices shall be responsible for accounting and all applicable tax obligations related to said supply

It is pertinent to note that, “Resell is to be understood as being a part of the Business of the Recipient of the Electronic Devices to trade in such devices. The resale by the Recipient of the Electronic Devices can be at a **wholesale or retail level**”. A recipient who is acquiring the Electronic Devices for use in his business, other than for production or manufacturing, has no “intention to resell”.

Further with respect to the phrase “producing or manufacturing”, Electronic Devices covers both partial and full production or manufacturing of Electronic Devices.

Moreover, with respect to the parts and pieces of Electronic Devices, the Minister of Finance shall issue a decision that will specify the criteria that should be followed in determining the pieces or parts related to Electronic Devices.

REQUIREMENT

As per Cabinet Decision, for application of special recharge mechanism on electronic devices, the following shall be considered:

- The recipient of electronic devices must furnish a written declaration to supplier, prior to the date of supply indicating that the intention of supply of electronic devices is for the purposes as mentioned above along with a confirmation that the recipient is registered with the FTA
- The supplier of electronic devices shall receive and retain the declaration (as referred above) and also verify that the recipient is registered with the FTA.

It must be noted that the **supplier must comply with all other obligations incumbent on him**, including but not limited to the issuance of a Tax invoice that contains the particulars under Article 59(1)(l) of the UAE VAT Executive Regulations and the Recipient shall declare the Due Tax in box 3 of its VAT return.

Further it is to be noted that the provisions of Cabinet Decision do not apply in case the supplier, registered for VAT, makes a direct or indirect export of Electronic Devices. However, a supply of Electronic Devices from the UAE mainland to a Designated Zone, or a movement of such goods from the UAE mainland to a Designated Zone, shall not fall under said exception and all other relevant provisions of Cabinet decision will apply.

OBLIGATION ON RECIPIENT

Before the date of supply, the Recipient of the Electronic Devices must provide two declarations to the supplier (it can be combined into a single document), as follows:

- A written declaration indicating that the intent of the supply of Electronic Devices is for the purposes of reselling or to use the Electronic Devices in producing or manufacturing Electronic Devices;
- A written declaration confirming that he is registered with the FTA

OBLIGATION ON SUPPLIER

Before the date of supply, the supplier of the Electronic Devices must comply with two requirements as follows:

- He must have received, and then keep, the declarations provided by the Recipient as clarified above.
- He must verify and confirm that the Recipient is a registrant.

For verification of the recipient's TRN, the supplier should use the functionality provided on the FTA's website, i.e., under the "TRN verification" tab on the right side of the homepage.

OUR COMMENTS

If the Recipient did not, prior to the date of the supply, provide the supplier with the declaration of intent and the declaration confirming that he is a Registrant, **then the supplier must account for Output Tax on the supply of the Electronic Devices**, unless the supply meets the conditions for zero-rating. Further the recipient also cannot consider that the Electronic Devices are used or intended to be used to make taxable supplies or to make supplies that are made outside the UAE, but would have been taxable supplies had they been made in the UAE.

Thus, as per Article 54(1)(a) and (b) of the UAE VAT Decree Law, if the Electronic Devices are not used or intended to be used by the Recipient for the supplies that allow recovery of Input Tax, he cannot recover such input tax. As a result, if the Recipient, did not declare his intent of use of Electronic Devices, as required by Cabinet Decision, the Input Tax incurred by him on the supply of the Electronic Devices is not recoverable.

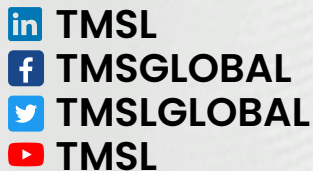
Further as per Article 51 of Tax Procedures Law, **the burden of proof with regards to the entitlement of recovery of Input Tax, falls on the Taxable Person**. If the Recipient does not provide a declaration of intent, as clarified above to the supplier, the Recipient is not meeting the set requirements to prove that he is using or intending to use the Electronic Devices for the purposes as mentioned above as per Article 54(1)(a) and (b) of UAE VAT Decree Law and hence, he will not be entitled to recover the input VAT incurred.

It is to be noted that said Cabinet Decision shall come into effect on 30 October 2023 and thus all supplies of Electronic Devices with a date of supply of 30 October 2023 or later, shall be subject to the VAT treatment and compliance requirements as clarified in said Public Clarification.

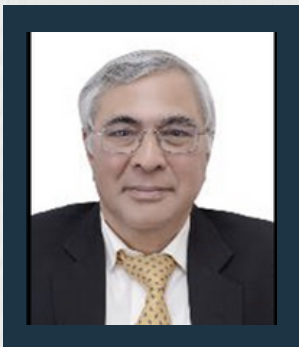
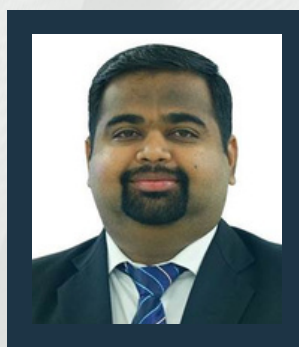
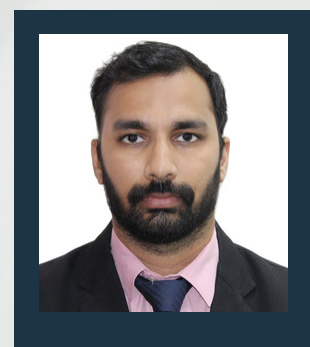
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Attention of the readers is also invited to MoFs press-release dated 19 May 2023 per which "a number of post circulating on social media and other platforms that are issued by private parties, contain inaccurate and unreliable interpretations and analyses of Corporate Tax". The Ministry reminded that official sources of information on Federal Taxes in the UAE are MoF and FTA only. Therefore, analyses that are not issued by them are unreliable and may contain misleading interpretations of the UAE CT Law. The readers are requested to factor in the same and also the fact that this post is not commissioned by MoF or FTA.

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