



**GCC Tax & Other
Regulatory Communique**

October 2023



VAT UPDATES



VAT IN UAE

UAE CT, VAT AND OTHER REGULATORY UPDATES

VAT UPDATES

Application of the Reverse Charge Mechanism on Electronic Devices

The 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". 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.

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.

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VAT UPDATES

Criteria for Determination of Parts and Pieces of Electronic Devices

The FTA has recently issued a Ministerial Decision (“Decision”) specifying “The criteria that should be followed in determining the Pieces and Parts related to Electronic Devices”. It is to be noted that said Decision is effective from 30 October 2023.

It is pertinent to note that the “pieces and parts” which are not necessary for the electronic devices and are merely used to enhance the functioning or enjoyment of Electronic Devices, will not be considered under the scope of the said decision and SIM cards and other external smart cards that share similar characteristics or serve the same purpose.



CORPORATE TAX UPDATES

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Corporate Tax Guides – Non-Resident Persons

The Corporate Tax General Guide was issued by the Federal Tax Authority to provide general guidance on Non-Resident Persons in the UAE

1. A Non-Resident Person is:
 - A natural person who is not a Resident Person but:
 - Has a Permanent Establishment ('PE') in the UAE and has a turnover attributable to their PE that exceeds AED 1 Mn within a Gregorian calendar year; or
 - Derives State Sourced Income.
 - A juridical person that is incorporated or formed outside the UAE and not effectively managed and controlled in the UAE to the extent they:
 - Have a PE in the UAE.
 - Derive State Sourced Income.
 - Have a nexus in the UAE i.e. if the juridical person earn income from Immovable Property in the UAE.
2. Non-Resident Persons are not eligible for the Small Business Relief.
3. A Non-Resident Person must determine its Taxable Income which is attributable to a PE or nexus in the UAE. Attribution of income and expenditure to a PE should be based on the arm's length principle.

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4. Income derived by a Non-Resident Person from operating aircraft or ships in international transportation is exempt if the following business or activities are undertaken by the Non-Resident Person:
 - International transport of passengers, livestock, mail, parcels, merchandise or goods by air or by sea.
 - Leasing or chartering aircrafts or ships used in international transportation.
 - Leasing of equipment which are integral to the seaworthiness of ships or the airworthiness of aircrafts used in international transportation.
5. A Non-Resident Person who is subject to tax under the provision of the Corporate Tax Law may be entitled to seek relief under a relevant Double Taxable Agreement. A Double Taxation Agreement that is in force in the UAE, takes precedence over the provisions of the Corporate Tax Law to the extent there is any inconsistency.
6. Certain essential factors and guiding principles that must be tested to determine whether a Non-Resident Person has a fixed PE in the UAE:
 - Must have a fixed place of business (aggregate period of more than 6 months in the relevant 12 months)
 - Place of business must be at the disposal of the Non-Resident Person
 - Activities performed at such places must be core income generating and not a preparatory or auxiliary in nature

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7. The following factors would typically be immaterial for determining whether a Non-Resident Person has a PE in the UAE:
 - Ownership is immaterial. Even rented premises can constitute a PE.
 - The formal legal right to use a particular place is not required if the Non-Resident Person has effective control of the location.
 - An exclusive right of the place is not required.

8. Corporate Tax Law provides a list of illustrative and non-exhaustive examples of a fixed or permanent place of Business in the UAE. They are i) a place of management where management and commercial decisions that are necessary for the conduct of the Business are, in substance, made, ii) a branch, iii) an office, iv) a factory, v) a workshop, vi) land, building and other real property, vii) an installation or structure for the exploration of renewable or non-renewable natural resources, viii) A mine, an oil or gas well, a quarry or any other place of extraction of natural resources, including vessels and structures used for the extraction of such resources. ix) A building site, a construction project, or place of assembly or installation, or supervisory activities in connection therewith, but only if such site, project or activities, whether separately or together with other sites, projects or activities, last more than 6 months, including connected activities that are conducted at the site or project by one or more Related Parties of the Non-Resident Person.

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9. A Non-Resident Person must maintain all records and documentation for a period of 7 years following the end of the Tax Period to which they relate.
10. Mere ownership of land, building and immovable property by a Non-Resident Person in the UAE would not trigger a PE unless the requirements of a fixed PE are met. However, a Non-Resident juridical person earning income from an Immovable Property located in the UAE would have a nexus in the UAE.
11. If a Non-Resident Person subcontracts all or multiple parts, the period spent by a subcontractor working on the site must be considered as being time spent by the Non-Resident Person.
12. A PE does not exist if the Non-Resident Person merely sets up the machines and then leases the machines to other enterprises.
13. A Non-Resident Person conducting business activities in the UAE will not constitute a PE if such activities are not core business or income generating activities. Such activities may be categorized as preparatory or auxiliary activities. Preparatory activities are those activities which precede the business commencement of core business activities and support the core business activities. Auxiliary activities are those which aid or support the core business function, without being part of the essential and significant part of the activities of the business.

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14. A Non-Resident Person owning and providing warehouse services, providing activities which are traditionally of a preparatory and auxiliary nature for another person, any independent agents acting exclusively on behalf of the Non-Resident Person or is legally or economically dependent on the Non-Resident Person. All the above conditions would create a PE for the Non-Residents in the UAE
15. If a logistics company operates a warehouse in UAE and stores merchandise belonging to a Non-Resident Person to which the logistics company is not related, the warehouse does not constitute a fixed place of business.
16. A subsidiary company, incorporated in the UAE of a non-resident parent company, is managed/overseen by the parent company, does not imply it to be a PE of the parent company as all factors needed to give rise to a fixed place PE may not be present. However, this has to be tested against whether the subsidiary is in essence acting as an agent or has been incorporated to artificially split/dissect cohesive Business Activities of the non-resident parent.
17. Corporate Tax will be imposed on a Non-Resident Person if derives State Sourced Income i.e. income accruing in, or derived from the UAE. Non-Resident Person will not be required to register for Corporate Tax if the State Sourced Income they derive is not attributable to a UAE PE or a nexus in the UAE. State Sourced Income derived by a Non-Resident Person that is not attributable to a PE may be subjected to Withholding Tax which is currently levied at 0%.

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18. Examples of State Sourced Income are Income from the sale of goods, Income from services, Income from a contract, Income from movable or immovable property, Income from the disposal of shares or capital rights of a Resident Person, Income from intellectual or intangible property, Interest Income and Insurance Income.
19. Non-Resident Persons that have a nexus in the UAE are required to register for Corporate Tax purposes. If a Non-Resident Person is a Qualifying Free Zone Person, then the provisions related to the Free Zone Corporate Tax regime will apply on income from Immovable Property received by such person.

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Corporate Tax Guides – Exempt Income : Dividends and Participation Exemption

The Corporate Tax General Guide was issued by the Federal Tax Authority to provide general guidance on Dividends and Participation Exemption in the UAE

1. Dividends and other profit distributions received from a juridical person that is a Resident Person are exempt with no conditions. Dividends and other profit distributions received from a foreign juridical person are exempt under the Participation Exemption, provided the relevant conditions are satisfied. The purpose of the exemption from Corporate Tax is to prevent Dividends and other profit distributions from double taxation.
2. The definition of a Dividend includes a number of important concepts listed below:
 - **Ordinary Dividend** – Any payment or distribution that is declared or paid on or in respect of shares or other rights to participate in the profits of the issuer of such shares or rights, payable out of profits or retained earnings or from any account or legal reserve or from capital reserve or revenue.
 - **Dividend in kind** – Dividend in kind includes stock dividends, bonus shares (for example scrip dividends), and other forms of actual or constructive profit distributions. Thus, a Dividend can take the form of cash, securities, or other property or assets.
 - **Other distributions** – Any payment or benefit made in connection with the acquisition of shares by the issuing entity, or redemption or cancellation of shares or termination of other ownership interests or rights which in substance constitutes a distribution of profit will be treated as a Dividend.

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- **Non-arm's length payments** – Any payment or benefit that arises to a Related Party or Connected Person (who is a shareholder) as a result of a transaction or arrangement which does not comply with the arm's length principle will constitute a distribution of profit in substance and accordingly, qualify as a Dividend, to the extent to which it is not at arm's length.
3. A return on debt-claims does not qualify as a Dividend. Accordingly, income from convertible debentures or bonds cannot be considered as a Dividend, until and unless the instruments are actually converted into shares.
 4. Bonus shares are paid out of a company's profit and reserves, thus meet the definition of a Dividend.
 5. A payment or benefit made in connection with the following would be considered a Dividend to the extent it constitutes, in substance, a distribution of profit:
 - The acquisition by a company of its own shares (buy back of shares);
 - The redemption of shares;
 - The cancellation of shares (capital reduction); or
 - The termination of other ownership interest or rights.

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6. Where payments are made to shareholders or rights holders in connection with the acquisition, redemption or cancellation of shares or termination of other ownership interests or rights, the Dividend amount will be the difference between the proceeds received by the shareholder and the paid-up value of the shares, limited to the amount of distributable accumulated profits (or retained earnings). The balance amount (if any) may be an exempt capital gain if the conditions of the Participation Exemption are satisfied.
7. Certain income received by a Taxable Person from a Participating Interest in a juridical person is exempt from Corporate Tax. This goes beyond the automatic exemption for Dividends from a juridical person that is a Resident Person, and provides an exemption (subject to conditions) for foreign Dividends, capital gains or losses, foreign exchange gains or losses, and impairment gains or losses.
8. All of the following conditions must be satisfied in order to qualify as a Participating Interest:
 - Minimum ownership test – A Participating Interest represents a 5% or greater ownership interest in a Participation.
 - Minimum acquisition cost test – The ownership test can be satisfied if the acquisition cost of the ownership interest is equal to or exceeds a specified threshold of AED 4 Mn.
 - Holding period test – The Participating Interest must be held, or intended to be held, for an uninterrupted period of 12 months
 - Subject to tax test – The Participation must be subject to Corporate Tax, or equivalent foreign corporate tax at a rate of 9% or more.

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- Entitlement to profits and liquidation proceeds test – The ownership interest in Participation must entitle the holder to receive at least 5% of the profits and liquidation proceeds.
- Assets test – Not more than 50% of the direct and indirect assets of the Participation must consist of ownership interests which would not qualify for the Participation Exemption if held directly.

9. The Participation Exemption applies the same treatment to both gains and losses. Thus, no deduction for Corporate Tax is allowed for capital losses, foreign exchange losses or impairment losses where the conditions for a Participating Interest are met.

10. The holding of an option would not be considered as holding an ownership interest.

11. Participation Exemption does not apply for a period of two years where the Participation is acquired under the following circumstances
- In exchange for the transfer of an ownership interest that is not a Participating Interest, i.e. the asset held previously would not have qualified for the Participation Exemption;
 - In the case of an exempt transfer within a Qualifying Group; or
 - In the case of an exempt transfer covered by Business Restructuring Relief.

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12. Holding companies are treated as having satisfied the subject to tax test if both of the following conditions are met:
 - The principal objective and activity of the holding company is the acquisition and holding of investments that also meet the conditions of Participating Interest
 - The income of the holding company substantially consists of income from the Participating Interests.
13. Small Business Relief would not prevent it from being a Participating Interest. Taxable Person would not need to rely on the Participation Exemption until they exceed the threshold for Small Business Relief.
14. Certain income and losses from, or in relation to, a Participating Interest are excluded from Taxable Income. These are Dividends from a foreign Participation, gains or losses on the transfer, sale or other disposition of a Participating Interest, foreign exchange gains and losses and impairment gains or losses in relation to Participating Interest.
15. According to Article 23(5)(b) of the Corporate Tax Law, gains resulting from the transfer, sale or other disposition (“disposal”) of a Participating Interest, or part thereof, derived after expiry of the 12-month holding period are generally exempt from Corporate Tax.

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16. The gain or loss resulting from the disposal of the Participating Interest will be the amount recorded under the Accounting Standards applied by the Taxable Person. The calculation will typically be as follows:

Proceeds

Less: cost of the disposal

Less: book value of the Participating Interest at the time of the disposal

Equals: capital gain/loss

17. Gains in respect of the liquidation of a Participating Interest are exempt from Corporate Tax. As an exception to the general rule, losses realised on the liquidation of a Participating Interest are not exempt, but rather they are deductible from Taxable Income. The gain or loss from a liquidation is computed as the difference between the acquisition cost of the Participation for Corporate Tax purposes and the fair value of the liquidation proceeds received by the Taxable Person.

18. A gain or loss realised on the value of a Participating Interest (for example on sale of Participating Interest) will be “in relation to” the Participating Interest and hence excluded from Taxable Income under Article 23(5)(c) of the Corporate Tax Law.

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19. Article 23(5)(d) of the Corporate Tax Law provides for impairment gains or losses in relation to a Participating Interest to be exempt from Corporate Tax.
20. A reversal of an impairment loss is exempt from Corporate Tax to the extent that the Participation Exemption was not applied to income from a Participating Interest due to a previously deducted impairment loss or impairment losses.
21. Expenditure related to Exempt Income cannot be taken into account in determining Taxable Income.
22. Where Taxable Person incurs a common expense for the purpose of earning both Exempt Income and non-Exempt Income, the tax treatment of such common expense will be expenditure identified as incurred for deriving Taxable Income is deductible, incurred for deriving Exempt Income is not deductible and if unidentifiable balance shall be apportioned between Taxable Income and Exempt Income on a fair and reasonable basis.
23. Expenditure incurred in relation to the acquisition, sale, transfer, or disposal of an entire Participating Interest, or part of a Participating Interest, is not tax deductible (with the exception of Interest expense). Instead, such costs should be capitalised as part of the cost of the Participating Interest.

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24. Any income from a Participating Interest in the same Tax Group (for example, Dividend income) will be disregarded when the Parent Company prepares consolidated Financial Statements. Thus, the Participation Exemption is not required or relevant in relation to Dividends or other profit distributions from Subsidiaries within a Tax Group to the extent it is received by a member of the same Tax Group.
25. Where a member of a Tax Group receives income from a Participating Interest that is not a member of the Tax Group, the Participation Exemption may be available. Hence, when determining the consolidated Taxable Income of the Tax Group, an adjustment should be made for any remaining income and losses which are exempt, including related expenses.

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Corporate Tax Guides – Transfer Pricing Guide

The Corporate Tax General Guide was issued by the Federal Tax Authority to provide general guidance on Transfer Pricing ('TP') in the UAE

1. TP refers to the pricing of transactions or arrangements between Related Parties ('RP') or Connected Persons ('CP') that are influenced by the relationship between the transacting parties.
2. To reduce the risk of audits and double taxation, when transacting with RP or CP, Taxable Persons should ensure the transfer price between the parties is at arm's length (i.e. as if they were independent parties negotiating freely) and should record operating profits in line with their respective functions, assets, and risks and contributions to the value chain across the Group and maintain supporting TP documentation.
3. TP rules in the UAE apply not only to MNE Groups, but also to any transactions and arrangements with RP or CP in domestic groups. All these transactions need to meet the arm's length principle.
4. Transactions above the materiality threshold to be set through a yet to be published FTA decision will need to be disclosed for the purposes of TP Documentation.

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5. TP rules apply to RP, which are defined under Article 35 of the Corporate Tax Law as any associated Persons, according to a specified degree of association. This association means pre-existing relationship with another Person through up to the fourth degree kinship (in case of natural persons) and ownership or control directly or indirectly, regardless of whether that other person is resident or not in the UAE.
6. Control includes but is not limited to instances where:
 - A Person can exercise 50% or more of the voting rights of another Person;
 - A Person can determine the composition of 50% or more of the board of directors of another Person;
 - A Person can receive 50% or more of the profits of another Person; or
 - A Person can determine, or exercise significant influence over, the conduct of the Business and affairs of another Person.
7. A Person is considered a CP of a Taxable Person if that Person is:
 - An individual, who directly or indirectly owns an ownership interest in the Taxable Person or Controls such Taxable Person, or a RP of such individual;
 - A director or officer of the Taxable Person, or a RP of the said director or officer; or
 - A partner in an Unincorporated Partnership, and any RP of such partner.

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8. A Controlled Transaction is a transaction or arrangement between RP or CP. Controlled Transaction generally include the supply or transfer of tangible goods, provision and receipt of services, funding and other financial transactions, and commercial exploitation of intangible assets such as patents, brands and know-how. For the purposes of the UAE TP rules, all cross border as well as domestic Controlled Transaction must follow the Arm's Length Principle.
9. Three key steps in applying the Arm's Length Principal for Controlled Transactions are:
 - Identify RP, CP, relevant transactions and arrangements and perform a comparability analysis accordingly.
 - Selection of the most appropriate TP method.
 - Determination of the Arm's Length Price.
10. There is a six-step process for analysing the risks in a Controlled Transaction, in order to accurately delineate the actual transaction in respect to those risks. The Steps in the Process are:
 - Step 1: Identify economically significant risks with specificity
 - Step 2: Identify the contractual assumption of risk
 - Step 3: Functional Analysis in relation to risk
 - Step 4: Risk analysis
 - Step 5: Allocation of risk
 - Step 6: Pricing Controlled Transaction considering the consequences of risk allocation

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11. TP methods are used to establish whether Controlled Transaction are conducted at arm's length. TP methods provide clear guidelines for MNEs and tax authorities in determining the appropriate pricing of Controlled Transaction. The Methods are:
- The **Comparable Uncontrolled Price Method** ('CUP') compares the price charged for property or services transferred in a Controlled Transaction to the price charged for property or services transferred in a Comparable Uncontrolled Transaction in comparable circumstances.
 - The **Resale Price Method** ('RPM') is based on the price at which a product, that has been purchased from a RP, is resold to an independent party.
 - The **Cost Plus Method** ('CPM') considers the direct and indirect costs incurred by a supplier in supplying goods or services in a CT and applies an appropriate mark-up to these costs based on the functions performed by the supplier and the profit that would have been earned from an arm's length transaction depending on the market conditions.
 - The **Transactional Net Margin Method** ('TNMM') examines the net profit earned from a CT relative to an appropriate base, such as the costs, sales or assets.
 - The **Profit Split Method** ('PSM') seeks to determine the division of profits that independent parties would have expected to realise from engaging in comparable transactions.
 - **Other Transfer Pricing Methods** - Article 34(4) of the Corporate Tax Law stipulates that the Arm's Length Price may be calculated using methods other than the five Transfer Pricing methods listed in the UAE CT Law, if none of the five recognised methods can be reasonably or reliably applied, and provided these other methods satisfy the Arm's Length Principle.

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12. The CUP Method, RPM and the CPM are considered traditional transaction methods and regarded as the most direct means of establishing whether conditions in the commercial and financial relations between RP or CP are at arm's length. The TNMM and the PSM are considered transactional profit methods, which are relevant in cases where each of the parties makes valuable and unique contributions in relation to the Controlled Transaction, or where the parties engage in highly integrated activities, and where there is limited or no publicly available data on third parties.
13. Article 55 of the Corporate Tax Law specifies the Transfer Pricing documentation obligations on a Taxable Person that enters into transactions with its Related Parties or Connected Persons which includes:
- **Transfer Pricing disclosure form** which covers details of the Controlled Transactions during a Tax Period.
 - **Master File** which provides a high-level overview of the Group's business and the allocation of income and economic activity within a Group. It only applies to large businesses as set out in the Ministerial Decision No. 97 of 2023.
 - **Local File** which provides detailed information on operations of the local entity and analysis and testing of the outcomes of the Controlled Transactions against the Arm's Length Principle. It only applies to large businesses as set out in the Ministerial Decision No. 97 of 2023.
 - **CbCR** which provides jurisdictional quantitative information about an MNE Group as well as an overview of the different activities conducted by affiliates of an MNE Group, as set out in Cabinet Resolution No. 44 of 2020.
 - **Additional supporting information** upon request of the FTA, pursuant to Article 55(4) of the Corporate Tax Law.

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14. As per Ministerial Decision No. 97 of 2023, a Master file and local file are required from businesses that are part of an MNE Group with consolidated revenue over 3.15 Bn AED or where the Taxable Person's Revenue exceeds 200 Mn AED. CbCR also only applies to businesses that are part of an MNE Group with consolidated revenue over 3.15 Bn AED. As an exception, any Taxable Person that is a part of a UAE headquartered group that is not a MNE Group is not required to maintain a Master File. However, they should maintain a Local File as per the thresholds.
15. Under Article 55(4) of the UAE Corporate Tax Law, the FTA may request certain information from Taxable Persons who are not required to maintain a Local File and Master File.
16. TP documentation is prepared with the intention of serving three primary objectives:
 - Ensuring that Taxable Persons appropriately consider TP requirements when setting prices and other terms for transactions between RP or CP, and accurately report outcomes of these transactions on their Tax Returns;
 - Providing the FTA with the necessary data to conduct a TP risk assessment and arrive at an informed position regarding the need for an audit; and
 - Providing the FTA with the necessary information to facilitate a comprehensive audit of the TP practices of Persons subject to Corporate Tax in the UAE, while recognising the potential need for additional information as the audit progresses.

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17. The burden of proof falls on the Taxable Person to maintain sufficient supporting documentation.
18. TP adjustments are designed to ensure that the taxable outcome of the Controlled Transaction is aligned with the Arm's Length Principle. Transfer Pricing adjustments can be initiated by both Taxable Persons and the FTA in cases where it is believed that a transaction has not been conducted in an arm's length manner.



OTHER REGULATORY UPDATES IN “KSA”

KSA OTHER REGULATORY UPDATES

OTHER REGULATORY UPDATES

Issuance of Draft Income Tax Law

The ZATCA of KSA has recently issued “Draft Income Tax Law (ITL)” for public consultation. The said income tax law is designed to amend the existing ITL and encourage Foreign Direct Investment (FDI) without impeding overall economic advancement.

It is pertinent to note that the draft ITL proposes changes for Capital Gain Tax, Income Tax Exemption, New provisions for transfer pricing, changes to Withholding tax rates.



VAT IN OMAN

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VAT UPDATES

Amendment in Executive Regulations

The Oman Tax Authority ('OTA') has issued Decision amending the Oman Value Added Tax ("VAT") Executive Regulations. The Decision was published on 29 October 2023 and became effective from 30 October 2023.

Said amendment outlines the additional cases and criteria for the refund of VAT by Charitable Organizations, refund of VAT by import of goods from a non-taxable person and refund of VAT by import of goods for re-export.

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Excise Tax Registration

The Oman Tax Authority ('OTA') has issued an explanatory guide on “**Excise Tax Registration**” in Arabic as well as in English.

It is to be noted that the said Excise Registration Manual provides a step-by-step guide for Registration form using print-screens and detailed info.



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