

Value Added Tax (VAT) is coming to the UAE, effective as of 1 January 2018.

President His Highness Shaikh Khalifa Bin Zayed Al Nahyan issued Federal Decree-Law No. 8 of 2017 on Value Added Tax (VAT Law) on 27 August 2017 which has confirmed the standard rate of VAT at 5%, which will be imposed on goods and services that are not otherwise zero-rated or exempt.

Whilst the VAT Law does allow for goods to be transferred from one 'designated zone to another designated zone without any tax becoming due', the general consensus of the business community as at the time of writing is that VAT will apply to companies within the DMCC (and other free-zones). We must await publication of the VAT Law's executive/implementing regulation to find out what areas/free-zones will qualify as a 'designated zone'. As such we must all prepare and have a working knowledge of VAT and the effect it will have on our businesses.

Businesses making taxable supplies and imports exceeding the mandatory registration threshold of AED 375,000 must register for VAT. Those businesses with taxable supplies and imports less than the mandatory threshold but exceeding the voluntary registration of AED 187,500 have the option to register for VAT voluntarily. Similarly, businesses may register voluntarily if their expenses exceed the voluntary registration threshold. This latter opportunity to register voluntarily is designed to enable start-up businesses with no turnover to register for VAT.

We expect electronic registration to become available from September 2017.

The supply of the majority of goods and services will be taxed at either the 'standard rate' of 5% or be deemed 'zero-rated' and taxed at 0%. In addition, certain goods and services (including but not limited to specified healthcare and education services, specified investment grade precious metals and export of goods and services outside the GCC (which will be of significant importance to a number of DMCC trading companies)) will be deemed exempt from the application of VAT and fall outside the scope of VAT.

The Tax Procedures Law (Federal Law No. (7) of 2017) was approved and published earlier this month and delivers the framework for the procedures which must be followed in respect of tax administration (including but not exclusively in relation to VAT) and also includes regulation in respect of the recently announced Excise Duty on tobacco products, carbonated and energy drinks.

With the implementation of VAT imminent, businesses should undertake a full legal review of all existing (and pending/future) contracts/agreements which may span the introduction of VAT, i.e. which will be in force on 1 January 2018 and thereafter, to ensure that the issue and more importantly the cost of VAT is addressed and apportioned to the correct party. Failure to do so may result in additional costs to the business, in addition to negatively impacted cash-flow, and costs of implementing and managing correct VAT procedures. Businesses should educate key employees as to the specific requirements so as to avoid fines and the inability to claim input VAT credits. Article 80(2) of the VAT Law provides for the scenario where an existing contract does not address the issue of VAT and provides that the consideration in respect of such a supply will be deemed inclusive of VAT. However, Article 80(3) provides that the executive/implementing regulation will provide 'special provisions' in such cases, which may indeed contradict or supplement such a general rule. In any event, the effect of the VAT Law and the executive/implementing regulation on businesses shall require careful scrutiny.

Consideration should also be given as to a business's ability to benefit from the Capital Assets Scheme (Article 60 VAT Law).

For a consultation in respect of the legal effect of VAT on your business and contracts feel free to contact Jonathan Burton of Gateley UK LLP (DMCC Branch) at JBurton@gateleyae.com