



**BETA CONSULTANTS**

**UAE VAT**

**FAQ ON REAL ESTATE TRANSACTIONS**

## 1. What is Real Estate?

Real estate is generally considered to be property consisting of land or buildings, and includes:

- Any area of land over which rights or interests or services can be created;
- Any building, structure or engineering work permanently attached to the land;
- Any fixture or equipment which makes up a permanent part of the land or is permanently attached to the building, structure or engineering work.

## 2. What is a supply of real estate?

For VAT purposes, a supply of real estate is treated as a supply of goods (see Article 2 of VAT Executive Regulations).

As a result, a supply of real estate involves **the transfer of ownership** of the real estate, or the **right to use the real estate**, to another person.

## 3. How is the time of supply ascertained for real estate transaction?

Time of supply for real estate transactions will be ascertained as per nature of supply of transactions as stated below:

### a. For one-time payment for sale or lease – earliest of any of the following dates:

1. The date on which property is transferred, or
2. The date on which possession of property is handed over, or
3. The date on which construction of the property is completed, or
4. The date of receipt of Payment, or
5. The date on which Tax Invoice was issued.

### b. For any contract that includes periodic payments or consecutive invoices - earliest of the following dates:

1. The date of issuance of Tax Invoice, or
2. The date of payment is due as shown on the Tax Invoice, or
3. The date of receipt of payment.

In the event that 12 months has passed from the date of provision of the goods or services and none of the above events has occurred, date of supply will be triggered at the 12-month point.

The certification of a construction project at a particular point in time will not trigger the date of supply for VAT purposes. However, certification of a project is often linked to other obligations such as a due date for payment, which may itself trigger the date of supply.

## 4. Are real-estate transactions taxable under UAE VAT?

Yes, it is taxable as supply of real-estate is treated as a supply of goods.

*However, there are exceptions, and certain supply under real-estate are either zero rated or are considered as exempted supply.*

## 5. What type of real-estate transactions are Exempted?

Following types of real-estate transactions are exempted from UAE VAT:

- a. Supply of existing residential property (Further discussed in Q. No. 11)
- b. Supply of Bare Land. (Further discussed in Q. No.19 & 20)

## **6. What type of real-estate transactions are Zero Rated?**

Following types of real-estate transaction are zero-rated (0% VAT) from UAE VAT:

- a. First Supply of a residential building. (Further Discussed in Q. No. 10)
- b. Supply of a new charitable building.

Note: Supply of real estate made within Designated Zone are outside the scope of UAE VAT.

## **7. What is a residential building?**

A residential building is a building which is intended and designed for human occupation.

## **8. What is not a residential building?**

Following are not considered a residential building/property:

- Any place that is not a building fixed to the ground and which can be moved without being damaged;
- Any building that is used as a hotel, motel, bed & breakfast establishment, or hospital or the like;
- A serviced apartment for which services in addition to the supply of accommodation are provided;
- Any building constructed or converted without lawful authority.

## **9. Which supply of residential building is taxable at standard rate of tax?**

Generally, Supply of residential building is either exempted or zero rated, however in case of Supply of residential property for period not more than 6 months to a person who does not hold ID card issued by Federal Authority for Identity and Citizenship is taxable at standard rates.

## **10. Which supply is considered to be “First supply of residential building” to be zero rated?**

The ‘first supply’ includes a supply of the building by either sale or lease, but it must be made within 3 years of the buildings’ completion date. This treatment shall apply regardless to whom the building is supplied to (e.g. a registered customer, a non-registered customer, a related party etc.) provided that it is supplied within the relevant timeframe.

Any subsequent supplies of the building, either by sale or lease, within 3 years from its completion date shall not be zero-rated, as they will not qualify as the first supply of the building.

## **11. Which supply is considered to be “existing residential property” that is exempted?**

The supply of a residential building other than the first supply, is exempt from VAT. This includes where the subsequent supply of the property is supplied within 3 years from the buildings’ completion.

## **12. Can supplier of existing residential property claim the input VAT on costs related to the building?**

Where the supplier of the residential building incurs VAT on costs relating to such a subsequent supply e.g. agent fees or incurs VAT on costs relating to the general upkeep and maintenance of the property after the first supply, then such costs are considered to directly relate to the exempt supply of the building. As such, the supplier will be unable to recover any VAT on such costs via its VAT return.

## **13. Are charges collected from tenants for maintenance or upkeep of the property by the owner taxable under VAT?**

A community master developer or building owner will often make charges to the owners or tenants of units within the community/building in return for the upkeep of the communal areas of the property. Such charges will be subject to VAT at the standard rate, on the basis that they represent a charge for the services of maintaining and running the communal areas.

#### **14. Are Labour camps residential buildings?**

Labour camps are generally areas where labourers are housed by their employers. They can take many different forms, and some may provide residents with additional services on top of the living accommodation.

It is therefore necessary to consider on a case by case basis whether a labour camp meets the definition of a residential building.

#### **15. If an employer charges the employee a consideration in exchange for the residential accommodation will it be taxable under VAT?**

This shall be treated as a supply for VAT purposes. The consideration received will either be zero-rated (in respect of the first supply of a residential building) or exempt from VAT. Consideration may be received from an employee in a number of ways, including but not limited to:

- A direct charge made to the employee for the accommodation;
- A deduction from the employee's salary in respect of the accommodation; and
- Provision of accommodation in lieu of the payment of a housing allowance to the employee.

Any costs which directly relate to the provision of that residential accommodation to the employee, for example agent's fees, shall normally be treated as relating to an exempt supply and shall not be recoverable.

#### **16. In case an employer does not make a charge to the employee for the provision of residential accommodation, will it be chargeable for VAT**

If employer does not make any charge to the employee, provision of residential accommodation will not be considered as supply for VAT purposes. However, it should comply with the following:

- It is a legal obligation to provide those services or goods to those employees under any applicable labour law in the UAE or Designated Zone; or
- It is a contractual obligation or documented policy to provide those services or goods to those employees in order that they may perform their role and it can be proven to be normal business practice in the course of employing those people; or
- Where the provision of goods or services is a deemed supply under the provision of the VAT Decree-Law.

In such cases, any VAT incurred on costs relating to the provision of the residential accommodation may be recovered as a general overhead cost of the business. This shall include VAT incurred on costs such as utilities which service the residential accommodation, which are used by the employees for their personal benefit.

#### **17. Are sales of residential buildings off plan or prior to completion taxable under UAE VAT?**

The purchase of a residential building 'off plan' i.e. direct from the developer prior to construction of the property, or purchase of a partly completed residential building, *shall be zero rated*, as a future supply of a residential building or as it will be used for residential purposes. This is assuming that the relevant conditions are met so as to be treated as a residential building.

#### **18. Is a farm house considered as a residential building?**

Farm houses which are located on agricultural land will be considered as residential buildings where they are occupied or intended to be occupied as a person's principal place of residence and meet the conditions to be treated as a residential building.

## **19. What is a Bare Land and is supply of bare land taxable?**

“Bare Land” under UAE VAT refers to barren land which does not have either a Completed building, a Partially completed building or any Civil engineering works on top of the land:

The supply of bare land is exempt from VAT. This includes the supply by either lease or by sale. As a result, any VAT on costs associated with the supply of bare land e.g. legal fees or agents’ fees, shall not be recoverable by the supplier.

## **20. When is a supply of Bare Land considered as commercial land chargeable to tax?**

Where a plot of land is supplied which does not meet the definition of ‘bare land’, it shall be considered to be commercial land and the supply shall be subject to VAT at the standard rate. This will be evaluated on a case by case basis.

## **21. When does construction reach a stage where it is considered to be a partially completed building?**

Construction would be considered to be sufficient enough to represent a partially completed building when the stage of the construction has progressed beyond foundation level.

## **22. When is land considered to be covered by civil engineering works?**

Examples of civil engineering works include roads, bridges, and pipes used for mains water or power services. Land will not be considered to be “bare land” where it is covered by civil engineering works which are complete, or partially complete.

## **23. What is a farm Land?**

Farm land will normally be considered to be commercial land as it will normally be covered with infrastructure or civil engineering works required to make it operational as a farm e.g. irrigation systems, roads, utility connections etc. It will be necessary, however, to assess each supply of land on a case by case basis to confirm whether it meets the definition of bare land or covered land.

## **24. How will the leasing of bare land for development impact the taxability of revenue?**

Where a landlord leases a plot of land to a tenant who intends to develop on the land, it is important that the landlord identifies whether he is supplying bare land or covered land to the tenant.

It may be the case that a landlord supplies land to a tenant which meets the definition of “bare land” at the point it is first leased to the tenant, however once the tenant begins to develop on the land then the nature of the landlord’s supply will change.

As soon as the land becomes covered by completed or partially completed buildings or civil engineering works, the landlord will no longer be making a supply of bare land to the tenant. From the point the land ceases to be bare land, the landlord should charge VAT at the standard rate to the tenant.

## **25. What is the payment process for sale of commercial real estate?**

A special payment process exists where sales of commercial real estate are made within the UAE.

The special payment process applies only in the case where commercial real estate is sold in the UAE by any supplier other than the developer of that property and would be subject to VAT at 5%. Therefore, it does not apply to the following:

- Sales or leases of residential property;
- Leases of commercial property
- Sales of commercial property by the developer of that property; and
- The sale of commercial property with the benefit of sitting tenants to a buyer who is a taxable person which qualifies as the transfer of a business.

In such cases, the seller of the property will issue a tax invoice to the buyer in relation to the sale proceeds of the property as normal.

However, before completing the ownership transfer process with the Land Department, the buyer of the commercial property will be required to pay the VAT due on the purchase directly to the FTA.

Once the payment of the VAT has been made to the FTA, the buyer will receive a Payment Transaction Number. The buyer will be required to produce the Payment Transaction Number to the Land Department in order to process the ownership transfer. Without this evidence that the VAT on the purchase has been paid, the purchase of the property cannot proceed, and this will lead to delays.

The supplier will declare the output tax due on the property within its VAT return in the normal way and will then also include the value of the output tax in the adjustments column of the return. This will avoid paying the output tax to the FTA twice.

In all other cases, the normal VAT rules regarding VAT accounting and payment are applicable.

## **26. What is a mixed-use development?**

A mixed-use development is a building or plot of land which has clear and distinct areas which are put to different uses which would have a different VAT treatment when supplied. For example, a building which has retail units on the ground floor level, office or commercial space on the middle floors of the building and residential units on the top floor would be considered a mixed-use development.

## **27. How is the Input VAT on repair and maintenance cost of mixed used development recovered?**

Input tax incurred on the repair and maintenance costs of a property which is used for wholly commercial purposes is recoverable in full.

Input tax incurred on the repairs and maintenance of a property which is used for wholly residential purposes is not recoverable.

Where input tax is incurred on a property which is used for both commercial and residential purposes, the taxpayer is required to directly attribute the VAT on costs incurred as far as reasonably possible. (i.e. On proportionate basis and claim input vat only attributable to commercial portion)

## **28. What is an Owners Association?**

Owners associations (“OA’s”) are often established to manage and administer the common areas of a building on behalf of all the owners of a building. They commonly deal with issues such as cleaning, maintenance, security etc. and are often comprised of members which are the owners of the individual units themselves.

### **29. Is an Owners Association required to be registered for VAT purposes?**

An Owners Association is required to register for VAT. Although OA's can take many different legal forms and can enter into arrangements with suppliers and tenants, in multiple different ways, they will be making taxable supplies or undertaking an economic activity and the normal VAT rules will apply.

### **30. How does a master developer recover Input VAT on infrastructure costs?**

Where a master developer incurs VAT during constructing communal infrastructure on a large plot of land, such costs are incurred in the normal course of the master developer's business. As such, the VAT on such costs should be recoverable as a general overhead cost of the business.

Where the business makes full taxable supplies, the VAT incurred on the infrastructure costs shall therefore be recoverable in full.

However, where the smaller plots of land in the master community are sold as bare land they shall be exempt from VAT, with no right to recover any VAT.

If a mixture of bare land and commercial real estate is sold from the site, then the VAT incurred on infrastructure costs should be apportioned under the normal input tax apportionment rules.

### **31. What is tax treatment for inducement?**

Where a landlord pays a prospective tenant to enter into a lease, the tenant is considered to be making a supply to the landlord of agreeing to enter into a contract. If the tenant is registered for VAT then his services shall be subject to VAT at 5%, regardless of whether the property is a commercial or residential property.

Where the prospective tenant is not VAT registered any inducement paid by the landlord is outside the scope of VAT.

### **32. How is the rent-free periods granted by landlord treated for VAT purpose?**

Where the landlord grants a rent-free period in return for no consideration, the rent-free period does not normally constitute a supply for VAT purposes. This is only the case where the tenant is not obliged or required to provide anything in return, and the tenant is not a related party.

However, if a tenant undertakes to provide anything to the landlord in return for the rent-free period, this would represent a barter transaction. For example, a landlord may grant a rent-free period to a tenant in return for the tenant agreeing to refurbish the property. In such cases, both supplies will be of equal value, but will not necessarily have the same VAT liability (for example, where the landlord is supplying residential property). Where VAT is charged on the value of the barter transaction this would be recoverable subject to the normal rules.

### **33. Is consideration paid for lease surrender or making variation in lease agreement taxable?**

If a landlord pays a tenant or licensee to surrender any interest in, right over or licence to occupy land or make variation in lease agreement, then that is a supply to the landlord by the tenant. The tenant is considered to be making a supply of agreeing to exit the lease early or amendment in lease agreement. If the tenant is registered for VAT then his services shall be subject to VAT at 5%. This is regardless of whether the property is a commercial or residential property.

### **34. Is contribution by landlord towards tenants' costs are taxable?**

Simple contributions to tenants' costs do not constitute a supply by the tenant to the landlord unless there is a contractual obligation for the tenant to do something in return for the contribution received.

### **35. What is dilapidation payment and are they taxable?**

The terms of a lease may provide for the landlord to recover from tenants, at or near the termination of the lease, an amount to cover the cost of restoring the property to its original condition. The amount is often agreed between the parties and may be based on a surveyor or contractor's estimate.

Depending on the terms of the contract, dilapidation payments which are paid as damages or for breach of contract relating to a requirement to properly maintain the property may be considered to be outside the scope of VAT.

However, if the dilapidation payment represents consideration for repairs and maintenance works which should have been undertaken over the life of the lease by the tenant and which will be undertaken by the landlord, the payment involved is the consideration for a supply for VAT purposes and is subject to VAT at 5%.

### **36. How is the place of supply of real estate is determined?**

Any real estate located in the UAE (except property located in a Designated Zone) is supplied in the UAE. As a result, it will be subject to UAE VAT.

### **37. How is the place of supply of real estate related services determined?**

Where a supply of services is considered to be related to real estate, the place of supply of the services is where the real estate is located. Therefore, any services which are related to real estate located in the UAE shall also be treated as supplied in the UAE and UAE VAT will be applicable on the supply.

*If a land related service is provided alongside other services that don't relate to land it will be necessary to consider whether there are separate supplies being made or a single composite supply to which other services are ancillary. If there is a single composite supply directly related to land, this treatment covers all the elements that make up the supply. If there are multiple supplies each will need to be considered on its own.*

### **38. Are Non-Resident landlords required to registered under VAT?**

The VAT registration threshold for non-residents who make taxable supplies in the UAE is nil. Where a non-resident landlord makes any taxable supplies related to any real estate located in the UAE, they will be required to register, charge and account for VAT.

### **39. Are construction services for building residential buildings taxable?**

Construction services which are supplied in the UAE are subject to VAT at 5%. This VAT treatment will apply regardless of the type of building which is being constructed.

### **40. How is the date of supply for construction service is determined?**

The normal date of supply rules applies to construction services in the same way as they apply to any other service i.e. the date of supply will be the earlier date of the following:

*Please refer Q.3 for more details*

### **41. How are the retention payments related to construction services taxed?**

There are no special rules for determining the date of supply in relation to retention payments, therefore the normal date of supply rules must apply.

If the services are considered to have already been completed by the supplier, the date of supply will be triggered on the date the services were completed (or on the date of issue of the tax invoice or receipt of payment if



earlier). However, if the services are not contractually treated as completed until such time that the sign off is given by the recipient, then the date of supply will be delayed until the earlier of:

- The time the retention payment has been made;
- The work has been signed off as complete; or
- The tax invoice has been issued.

This means that where the construction services are not considered to be contractually complete, VAT is only due to the extent of any payments received or invoices issued during delivery of the services. The VAT applicable on the retention payment would not be due to be accounted for by the supplier until the time the retention payment is received by the supplier, or an invoice in respect of the retention payment is issued, whichever is earlier.

#### **42. Can an individual claim refund on VAT payments made for construction of new residences?**

Where a UAE citizen owns or acquires land in the UAE on which the person builds or commissions the construction of his own residence, he shall be entitled to make a claim to the FTA to repay the VAT on the expenses of constructing the residence. The claim may only be made by a natural person who is a UAE national.

#### **43. What are the conditions which required to be fulfilled to claim the refund on payment for construction of new residences?**

In order to claim a refund of the VAT incurred on the construction of a residence, the following conditions must be met:

- The claim may only be made by a natural person who is a UAE national;
- The claim must relate to a newly constructed building to be used solely as the residence of the person or the person's family; and
- The claim may not be made in connection with a building that will not be used solely as a residence by the person or the person's family, for example if it is to be used as a hotel, guest house, hospital or for any other purpose not consistent with it being used as a residence.

The refund claim must be lodged with the FTA within 6 months from the date of completion of the newly built residence.

#### **44. What are the eligible costs incurred on construction of new residence, for which VAT refund may be claimed under the scheme?**

Where a person is eligible to submit a refund claim under the scheme, VAT may be reclaimed on the following categories of expenses:

- Services provided by contractors, including the services of builders, architects, engineers and other similar services necessary for the successful construction of the residence;
- Building materials, being goods of a type normally incorporated by builders in a residential building or its site, but not including furniture or electrical appliances.

Goods are normally considered to be incorporated into a building when they are fixed in such a way that the fixing or removal of those goods would either require the use of tools or result in the need for remedial work to the fabric of the building, or substantial damage to the goods themselves.

Examples of goods which are **not** considered to be incorporated into the building include: Appliances; Furniture which is not fixed into the building such as sofas, tables, chairs etc.; and Landscaping, such as trees, grass and plants.

Examples of goods which are considered to be incorporated into the building and would be eligible for a refund of VAT include: Central Air conditioning; Doors; Fire alarms and smoke detectors; Flooring (excluding carpets); Kitchen sinks, work surfaces and fitted cupboards; Sanitary ware; Shower units; Window frames and glazing; Wiring when embedded inside the structure of the building.

**45. How one can submit the refund application for VAT incurred on construction of new residence?**

The VAT refund for New Residences can be claimed by completing a form available on the FTA website and submitting it online, along with copies of supporting documents. It is important that copies of all documentation (i.e. valid tax invoices) supporting the original payment of the VAT are retained in order for the claim to be validated by the FTA.



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