



GCC TAX ROUND-UP Q1 2022

CONTENT

BAHRAIN	3
KUWAIT	6
SULTANATE OF OMAN	8
UNITED ARAB EMIRATES	11

INTRODUCTION

The big tax news in the first quarter of 2022 comes from the United Arab Emirates (UAE), with the announcement that corporation tax is being introduced in the Emirates. A summary of the information that has been released so far can be found in the UAE section of this newsletter. Full details of the new tax will be published later in the year.

There have been some interesting announcements in Kuwait, where the Ministry of Finance is considering the application of income tax on Kuwait-registered branches of GCC banks. There is a detailed note on this development in the Kuwait section, below.

Elsewhere, Oman has entered the final stage of VAT implementation. This entails the registration of businesses with turnover between OMR 38,000 and OMR 249,999, with effect from 1 April 2022.

In Bahrain, the tax authorities have released useful technical clarifications, including guidance on the VAT treatment of cryptocurrency. This is a hot topic, and the Bahraini guidance might provide a helpful pointer to VAT treatment in other jurisdictions.

There have been no significant changes in Qatar in the past quarter (but please see the section on Oman, which covers the new double tax treaty between Oman and Qatar). Saudi Arabia has also been fairly quiet. However, Phase 1 of the Saudi e-invoicing regime is now up and running and in the next edition, we will be giving an update on how that is bedding in.

BAHRAIN



BAHRAIN

KUWAIT

SULTANATE OF OMANA

UNITED ARAB EMIRATES

VALUE ADDED TAX

Inspection campaigns launched to monitor VAT violations

The National Bureau for Revenue (NBR), in association with the Ministry of Industry, Commerce and Tourism, has organised an inspection campaign to ensure the proper application of VAT in all its technical aspects. The inspections are aimed at checking the readiness of various shops, outlets and commercial establishments for the recent VAT rate change (the VAT rate increased from 5% to 10% on 1 January 2022). This includes the readiness of point-of-sale systems, tax invoices and changes to displayed prices. As a result of the inspection campaign, the NBR has reported violations requiring the imposition of administrative fines and in some cases, tax evasion has been identified.

Acceptance of alternative document for importation

The NBR has updated the Import/Export VAT Guide in relation to the alternative documents that can be used for claiming an input tax credit. This clarification covers situations where a shipment contains goods for multiple customers of a clearing agent, and the customs declaration is issued in the name of the clearing agent instead of the individual customers.

In such circumstances, for the purposes of claiming input VAT, the NBR will accept an alternative document issued by the clearing agent containing:

- ▶ Details of the VAT payer on whose behalf the agent imported the goods (to include name, address and VAT account number);
- ▶ Details of the goods imported by the agent on behalf of the VAT payer;
- ▶ Reference number of the customs document under which the import was made;
- ▶ Date of the import;
- ▶ .Amount of VAT paid in respect of the goods imported; and
- ▶ Statement confirming that the VAT amount has been paid to Bahrain Customs Affairs.

The document should be on the clearing agent's letterhead, signed and stamped.

NBR clarifies the VAT treatment of cryptocurrency transactions.

The NBR has published an updated version of the Financial Services VAT Guide, which clarifies the VAT treatment of cryptocurrency transactions. Bahrain has recognised four types of tokens and has indicated the VAT treatment, as follows:

Token Type	VAT Treatment
Payment tokens	<ul style="list-style-type: none"> ▶ Payment tokens received by miners for their mining activities are outside the scope of VAT ▶ The exchange of tokens for legal tender or other tokens, and vice versa, is exempt from VAT ▶ The use of tokens to acquire goods or services is outside the scope of VAT ▶ The supply of goods and services remunerated by payment tokens should be treated in the same way as supplies remunerated by other payment methods ▶ If consideration is expressed in payment tokens, the value for VAT is equivalent to the value in BHD at the time of the transaction ▶ Charges over and above the value of payment tokens for arranging a transaction is VAT exempt, unless expressly determined as a fee, commission or commercial discount (which are taxable).
Utility tokens	Utility tokens are similar to vouchers and should be treated in the same way for VAT purposes, as they are intended to provide access to a specific application or service. The date of supply will be determined by whether the utility token qualifies as a single purpose voucher or multi-purpose voucher.
Asset tokens	Asset tokens represent assets, such as a debt or equity claims on the issuer, and are analogous to equities, bonds or derivatives. These tokens are exempt supplies of financial services, unless supplied for an additional explicit fee, commission or commercial discount (which would be taxable).
Hybrid tokens	Hybrid tokens are a combination of the other three types of tokens mentioned above. The VAT treatment of such tokens will be evaluated on a case-by-case basis.

Updated VAT return format

The NBR has updated the VAT return format on its website. Starting from the January 2022 tax filing, businesses must submit their VAT returns using the new format and declare the VAT on sales and purchases at 5% or 10%, as appropriate.

Proposal for VAT payment option plan

Parliament's financial and economic affairs committee has proposed a VAT payment option plan that would allow traders to elect to pay import VAT on a monthly basis after selling the products, as opposed to making a lump-sum payment to the Bahrain Customs Authorities at the time the goods clear customs.

If the proposal is adopted by Parliament, Bahrain would follow the footsteps of other GCC member states that have already introduced mechanisms for deferring the payment of import VAT.

Updated list of basic food items

The NBR has included imported livestock in the list of 94 basic food items that are not subject to VAT.

UPDATED LIST OF EXCISE GOODS

The NBR has updated the list of excise goods. Click on the link to access the updated list.

COUNTRY-BY-COUNTRY REPORTING (CbCR) NOTIFICATION DUE DATE

The reporting window for filing the CbCR notification for the fiscal year end of 2020 was 31 December 2021 to 28 February 2022.

Constituent entities and the ultimate parent entity of multinational entities (MNE) groups operating in Bahrain with a consolidated revenue of BHD 342 million during the year immediately preceding the reporting fiscal year were, respectively, required to submit CbCR notifications and CbCR reports.

ECONOMIC SUBSTANCE REQUIREMENTS (ESR) SUBMISSION FOR FISCAL YEAR END 2021

As per the ESR guidelines published by the Ministry of Industry, Commerce and Tourism (MOICT), covered entities must complete their ESR submissions on an annual basis within three months after the last day of the end of each fiscal period. For the financial year end 31 December 2021, the filing due date is 31 March 2022.

If the deadlines have been missed, penalties may be imposed.

INSTRUMENTS DEPOSITED FOR THE RATIFICATION OF MULTILATERAL BASE EROSION AND PROFIT SHIFTING CONVENTION.

The Organisation for Economic Co-operation and Development (OECD) announced on 28 February 2022 that Bahrain has deposited the instrument of approval or ratification for the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the MLI).

By ratifying the instrument, Bahrain has shown its strong commitment to prevent the abuse of tax treaties and Base Erosion and Profit Shifting by multinational enterprises. For Bahrain, the MLI will come into force on 1 June 2022.

BAHRAIN DEPOSITS INSTRUMENTS FOR RATIFICATION OF MULTILATERAL BASE EROSION AND PROFIT SHIFTING CONVENTION.

The Organisation for Economic Co-operation and Development (OECD) on 28 February 2022 has announced that Bahrain has deposited the instrument of approval or ratification for the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (MLI).

By ratifying the instrument, Bahrain has shown its strong commitment to prevent the abuse of tax treaties and Base Erosion and Profit Shifting (BEPS) by multinational enterprises. For Bahrain, the MLI will come into force on 1 June 2022 onwards.



KUWAIT



BAHRAIN

KUWAIT

SULTANATE OF OMAN

UNITED ARAB EMIRATES

KUWAIT INCOME TAX

Income tax on Kuwait-registered branches of GCC banks proposed

The Ministry of Finance (MOF) is considering the application of Kuwait income tax on Kuwait-registered branches of GCC banks, which are currently exempt from income tax in Kuwait. By way of background, under Kuwait income tax law, every body corporate carrying out a trade or business within Kuwait is potentially subject to income tax, irrespective of its place of incorporation. However, it has been the practice of the MOF to exempt Kuwaiti and GCC companies from income tax, and levy income tax only on foreign (non-GCC) entities operating in Kuwait and on foreign shareholders in a Kuwaiti/GCC company carrying out a trade or business in Kuwait. The current income tax rate is 15%.

Given that certain GCC countries apply income tax on all branches of foreign banks, including those headquartered in other GCC countries, the Kuwait MOF is considering the same approach. We understand the MOF will be discussing the proposal with the government's

legal department before moving ahead with the next steps. It is unclear at this stage as to when the proposed changes will apply and whether other local taxes/contributions currently levied on such branches will be eliminated (e.g., Zakat and KFAS (Kuwait Foundation for the Advancement of Sciences)).

MOF introduces charges for issuance of electronic tax clearance certificates

The Kuwait MOF has issued Administrative Decision no. 1422 of 2021 concerning the addition of an executive rule (Executive Rule no. 60) to the Executive Rules and Instructions of the Income Tax Decree no. 3 of 1955, as amended by the Law no. 2 of 2008. As per the newly added executive rule, a fee of KD 50 (approximately USD 150) will be applicable for each electronic tax clearance certificate issued by the Kuwait MOF through its Tax Certification System portal. Previously, such tax clearance certificates were issued free of charge upon request to the following parties:

- ▶ Kuwaiti and Gulf companies (with no foreign entity ownership)
- ▶ Individual institutions
- ▶ Individuals (Kuwaiti, foreign or Gulf)

It is unclear whether the above charges will be applicable to tax clearance certificates issued to foreign companies.

INTRODUCTION OF EXCISE TAX

According to recent media reports, the Kuwait government is considering the introduction of excise tax on certain goods harmful to health such as tobacco and its derivatives, soft and sweetened drinks as well as luxury goods such as watches, jewellery, precious stones, yachts etc. Sources indicate that the excise tax will be in the range of 10% to 25%. The government expects that once excise tax is implemented; it would generate KD 500 million revenue from such tax on an annual basis. The draft law has not been circulated or discussed at the Kuwait Parliament yet. We will keep you informed on the developments. It is to be noted that Kuwait is the only GCC country that has not yet introduced excise tax.

UPDATE TO THE MOF AEOI FATCA PORTAL

In February 2022, the MOF issued a notice to financial institutions (FIs) in Kuwait concerning a recent update to the MOF AEOI FATCA Portal (Portal).

The main update to the Portal assists filers in dealing with reportable accounts where there is no U.S. TIN (Tax Identification Number) available for the account holder or substantial owner and is based on guidance issued by the U.S. Internal Revenue Service (IRS) in May 2021. The table below contains a summary of the main update to the Portal:

- ▶ Where the account holder or substantial owner is a U.S. individual/entity without a U.S. TIN, the IRS guidance advises that new codes (222222222 - 777777777) may be entered that indicate why a U.S. TIN is unavailable. The updates to the Portal accommodate these codes.
- ▶ Where either the account holder or substantial owner is a foreign individual/entity, the IRS guidance provides that “AAAAAAAAA” and “000000000” will no longer be accepted. The “issued by” attribute should be correctly used to indicate a foreign TIN is being provided and “N/A” should be used if a foreign TIN is not available. The Portal has been updated to provide the above options.
- ▶ Country names in documentation sections for country codes CV, CZ, MK and SZ are updated to reflect the changes of the country names in the country code standard.
- ▶ In addition to the above, minor changes have been made to the Portal user interface. By way of background, from 2020 reportable data, a U.S. TIN must be reported. However, for the IRS to better understand the issues that FIs face in obtaining a U.S. TIN, it has developed a series of codes that may be used by a reporting Model 1 FI to populate the TIN field where the TIN has not been obtained in specified situations. The IRS clarified that the use of these codes is not mandatory and does not mean that an FI will not be at risk of being significantly noncompliant due to a failure to report each required U.S. TIN. The codes are as follows, and can be used in the Portal where a U.S. TIN is unavailable:



Code	Reason
22222222	Pre-existing individual account with the only U.S. indicia being a U.S. place of birth.
33333333	<p>New individual account that has indicia of a U.S. place of birth and either:</p> <ol style="list-style-type: none"> 1. has a change in circumstances causing the self-certification obtained at the time the account was opened to be incorrect or unreliable, and a new self-certification has not been obtained; or 2. was below the threshold for documenting and reporting the account at the time the account was opened and subsequently exceeded the threshold, and a self-certification has not been obtained.
44444444	<p>Pre-existing individual and entity account that has U.S. indicia other than a U.S. place of birth, and either:</p> <ol style="list-style-type: none"> 1. has a change in circumstances, causing the self-certification or other documentation originally obtained to be incorrect or unreliable, and a new self-certification or other documentation has not been obtained; or 2. was below the threshold for documenting and reporting at the time the account was opened and subsequently exceeded the threshold, and a self-certification or other documentation has not been obtained.
55555555	<p>New individual and entity account that has U.S. indicia other than a U.S. place of birth, and either:</p> <ol style="list-style-type: none"> 1. has a change in circumstances causing the self-certification or other documentation originally obtained to be incorrect or unreliable, and a new self-certification or other documentation has not been obtained; or 2. was below the threshold for documenting and reporting the account at the time the account was opened and subsequently exceeded the threshold, and a self-certification or other documentation has not been obtained.
66666666	Pre-existing entity account with an account balance exceeding USD 1 million held by a passive non-financial foreign entity with respect to which no self-certifications have been obtained, and no U.S. indicia have been identified in relation to its controlling persons.
77777777	For pre-existing accounts where no TIN is available and the account has been dormant or inactive, but remains above the reporting threshold, also known as a “dormant account.”

SULTANATE OF OMAN



BAHRAIN

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VALUE ADDED TAX

Final phase of VAT implementation

Pursuant to the Chairman's decision No. 121/2020, businesses with annual turnover between OMR 38,000 and OMR 249,999 are required to register for VAT with effect from 1 April 2022. Businesses could apply for registration between 1 December 2021 to 28 February 2022. With less than a month remaining before the go-live date, businesses need to have their VAT treatment and information technology systems aligned.

.New Taxpayer Guides published

- ▶ Taxpayer General VAT Guide: The tax authorities in Oman have released a general guide detailing the mechanics of VAT and its application on the supply of goods and services. Taxpayers in general will benefit from this publication, which provides a broad level of guidance.
- ▶ Taxpayer Guide on the Transport Sector: The tax authorities have issued a detailed guide on the VAT treatment of the transport sector, including international and domestic means of

transport and detailed guidance on applying VAT at a zero rate on the supply of goods or services related to the international transport of goods or passengers.

- ▶ Taxpayer Guide on the Supply of Goods or Services by Nonresidents: The tax authorities have issued a detailed guide on VAT registration obligations and the applicability of the reverse charge mechanism on services provided by nonresident businesses. This guide will help nonresident service providers understand their VAT obligations in Oman. In addition, taxpayers in Oman may benefit from the guidance on the reverse charge and consequent compliance obligations.
- ▶ Taxpayer Guide on Transaction Between Associated Persons: The tax authorities have issued a guide on the VAT treatment of transactions between related parties, which contains guidance on the registration obligations of associated persons, tax group registration, valuation of supply, time of supply and associated compliance requirements.
- ▶ Double Tax Treaty (DTT) between The Sultanate of Oman and State of Qatar
- ▶ In November 2021, Oman signed a DTT with Qatar, its first DTT with a GCC member state. The signing of the DTT was a consequence of the growth in bilateral trade and investment. It was executed around the time His Majesty Sultan Haitham visited the State of Qatar.
- ▶ In January 2022, Oman ratified the DTT by issuing Royal Decree 4/2022. However, Qatar is yet to ratify the DTT. the English text of the DTT is awaited.
- ▶ the effect of the DTT is that Withholding Tax applied to most services could be nil and that a reduced WHT rate will apply to royalty, technical services and dividends.

DOUBLE TAX TREATY (DTT) BETWEEN THE SULTANATE OF OMAN AND STATE OF QATAR.

In November 2021, Oman signed first DTT with a GCC member state i.e. Qatar. The signing of the DTT was a consequence of growth in bilateral trade / investment and was executed around the time His Majesty Sultan Haitham visited the brotherly State of Qatar.

In January 2022, Oman ratified the said DTT by issuing Royal Decree 4/2022. However, Qatar is yet to ratify the said DTT. English text of the DTT is awaited.

Based on the reading of the DTT, it appears that Withholding Tax (WHT) applied to generic services (other than technical services) and interest could be Nil; and reduced WHT rate shall apply to royalty, technical services and dividends.



UNITED ARAB EMIRATES



BAHRAIN

KUWAIT

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CORPORATE TAX

Corporate Tax to be introduced from 1 June 2023

The UAE has introduced significant tax reforms in the last few years to demonstrate its commitment to international standards for tax transparency and to broaden the non-oil revenue base for the federal government. Following the introduction of VAT and the ESR in 2018 and 2019, respectively, the Ministry of Finance has announced the introduction of a new federal corporate tax, a direct tax levied on the net income or profit of corporations and businesses that will be effective for financial years commencing on or after 1 June 2023. Corporate tax will be levied at a rate of 9% on taxable income above AED 375,000.

The UAE regime is designed to incorporate best practices globally and minimize the compliance burden on businesses. According to an International Monetary Fund Press Release and Staff Report on the UAE, broadening the tax base through corporate taxation would help to bring the non-oil revenue to 30%-40% of GDP.

Some of the salient features of the corporate tax, as per the FAQs published on the Federal Tax Authority (FTA) portal, are as follows:

- ▶ The tax is a federal tax to be administered by the FTA and will apply across all Emirates.
- ▶ The tax will apply to all UAE businesses and commercial activities. Businesses engaged in the extraction of natural resources will remain subject to Emirate-level corporate taxation and be outside the scope of the UAE corporate tax,
- ▶ Foreign entities and individuals will be subject to the corporate tax only if they conduct a trade or business in the UAE in an ongoing or regular manner.
- ▶ All activities undertaken by a legal entity will be deemed to be “business activities” and, hence, within the scope of the corporate tax.
- ▶ Taxable income will be the accounting net profit/income of a business, after making adjustments for certain items to be specified under the corporate tax law.
- ▶ The accounting net profit/income of a business will be the amount reported in the financial statements prepared in accordance with internationally acceptable accounting standards
- ▶ A separate tax rate will apply to large multinationals that meet specific criteria set with reference to Pillar Two of the OECD Base Erosion and Profit Shifting project.
- ▶ Individuals will not be subject to UAE corporate tax on dividends, capital gains and other income earned from the ownership of shares or other securities in their personal capacity. Corporate tax also will not apply on an individual’s salary and other employment income (whether received from the public or private sector).
- ▶ Investment in real estate by individuals in their personal capacity will not be subject to the corporate tax provided the individual is not required to obtain a commercial license or permit to carry out such activity in the UAE.

- ▶ A company established in a free zone will be required to register and file a corporate tax return. However, the corporate tax regime will honour the incentives currently being offered to free zone businesses that comply with all regulatory requirements and that do not conduct business with mainland UAE.
- ▶ Losses incurred under the corporate tax regime will be allowed to be carried forward for offset against taxable income in subsequent financial periods provided certain conditions are fulfilled. Tax losses incurred by one group company may be used to offset the taxable income of another group company, provided certain conditions are fulfilled.
- ▶ No withholding tax will be levied on domestic and cross-border payments of any nature.
- ▶ Transfer pricing rules and documentation requirements will be applicable as per the OECD Transfer Pricing Guidelines to ensure that transactions between related parties are carried out on arm's length terms (i.e., as if the transaction was carried out between independent parties).
- ▶ The corporate tax return will have to be filed electronically. Only one return will need to be filed per financial period; UAE businesses will not be required to make provisional or advance tax payments.

It should be noted that the UAE 9% corporate tax rate will be lower than the rates applied in the other GCC countries: 10% in Qatar, 15% in Oman and Kuwait and 20% in Saudi Arabia.

EXTENSION OF DEADLINE FOR PENALTY REDETERMINATION

Cabinet Decision 108 of 2021 issued on 30 December 2021 has extended the period for the redetermination of administrative penalties to 31 December 2022. This follows on from Cabinet Decision No 49 of 2021, which allowed penalties imposed before 28 June 2021 to be reduced if the following conditions were satisfied:

- ▶ All tax dues are paid up to 31 December 2021; and
- ▶ 30% of the total unsettled penalties imposed before 28 June 2021 are paid by 31 December 2021.

If both conditions are fulfilled, the FTA will redetermine the penalties payable and determine them to be at 30%; the balance of 70% will not be payable.

The above deadline has now been extended until 31 December 2022.

VOLUNTARY DISCLOSURE RULES UPDATED

In line with the reduction of late payment penalties on voluntary disclosure under Cabinet Decision No 49 of 2021, the FTA has updated the voluntary disclosure guide to state that the late payment penalty for voluntary

disclosures will be levied from the date the disclosure was lodged, rather than the date of supply of the transaction. This is a significant and welcome change as it encourages taxpayers to report errors and omissions identified through voluntary disclosures quickly to minimise the penalty costs.

ECONOMIC SUBSTANCE REGULATIONS

The due date for ESR reporting for businesses with financial year end of 31 March 2021 is 31 March 2022, if the business carried out a relevant activity during the financial year. The ESR report is required if the business is earning income from the relevant activity reported and is not eligible to claim an exemption under the ESR.

Businesses with a financial year ending 30 September 2021 must submit an ESR notification by 31 March 2022 if a relevant activity is undertaken. This notification would be required even if the same activity was performed and notified for financial year ended 30 September 2020.

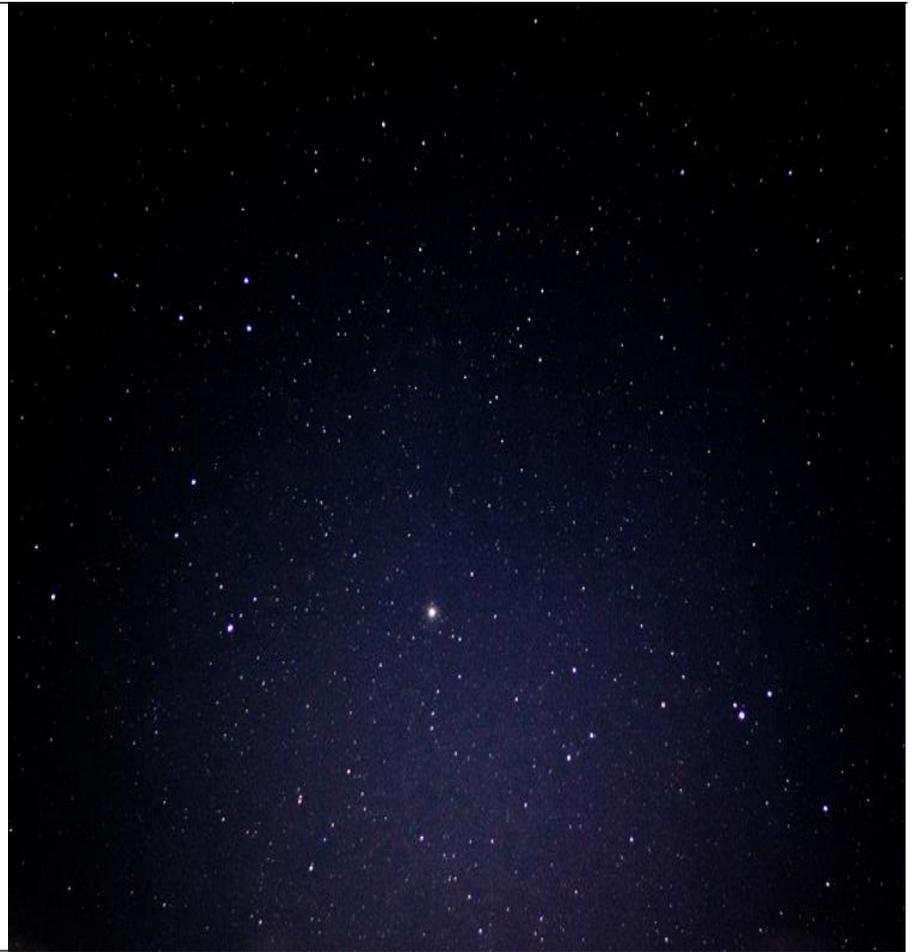
ESR notification and reporting are two separate filings and is an annual obligation for licensees within the scope of the ESR.

If these deadlines have been missed, penalties can be levied.

FTA PRACTICE ON PRE-REGISTRATION INPUT TAX

We have observed recently that the FTA has disallowed input VAT on expenses “consumed” for making supplies before the effective date of registration; for example, rent paid for periods that ended before the effective date of registration. Article 56 of the UAE VAT Law allows input VAT recovery on pre-registration expenses except in the following cases:

- ▶ The receipt of goods and services for purposes other than making taxable supplies
- ▶ Input tax related to the part of the capital assets that depreciated before the date of tax registration
- ▶ If the services were received more than five years prior to the date of tax registration
- ▶ Where a person has moved the goods to another implementing state before tax registration in the UAE.



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