VAT Public Clarification

Mobile Phones, Airtime, and Data Packages Made Available to Employees for Business Use

**Issue**

Many businesses enter into agreements with telecommunication service providers to make mobile phones ("Phones"), airtime ("Airtime") (i.e. call minutes) and data packages ("Packages"), available to their employees to perform their roles outside office hours or at locations away from the office. Due to COVID-19, there has been an increase in work-from-home arrangements, resulting in some instances where employers pay for Phones, Airtime, and Packages’ expenses to allow employees to perform their roles remotely.

Due to the potential private use of Phones, Airtime, and Packages, there has been uncertainty as to whether a business is entitled to recover the related input tax and, if so, what the requirements are to be entitled to input tax recovery.

This Public Clarification provides guidance on the application of the VAT legislation in respect of the recovery of input tax incurred on Phones, Airtime, and Packages acquired for business use.
Summary

In instances where an employer acquires Phones, Airtime, and Packages for use by its employees solely for business purposes and has a strict policy in place to restrict the use of such Phones, Airtime, and Packages to business purposes, the right to use the Phones, Airtime, and Packages would not constitute a personal benefit for the employee, provided the value of the Airtime and Packages was determined based on actual historical business usage. Note that backdated policies shall not be accepted.

Detailed discussion

Input Tax Recovery – General Rule

A taxable person may generally recover input tax paid for goods and services used (or intended to be used) for making taxable supplies.\(^1\)

The right to recover input tax is, however, limited in instances provided for in the Executive Regulation, regardless of whether the cost was incurred to make taxable supplies.\(^2\)

Non-permissible Recovery of Input Tax

Article 53(1)(c) of the Executive Regulation\(^3\) prohibits the recovery of input tax incurred on goods or services purchased to be used by an employee for their personal benefit without any charge to the employee, unless there is a legal or
contractual obligation on the employer to provide such service in order for the employee to perform their role, or it is a deemed supply.

In instances where an employer acquires Phones, Airtime, and Packages solely for business purposes and has a strict policy in place to restrict the use of such Phones, Airtime, and Packages to business purposes, the right to use Phones, Airtime, and Packages would not constitute a personal benefit for the employee.

** Solely for Business Use **

Article 53(1)(c) of the Executive Regulation does not apply where a taxable person can prove that the Phones, Airtime, and Packages are used solely for business purposes. In addition to having a documented policy on the restricted use of Phones, Airtime, and Packages, the business would be required to demonstrate that it monitors the use of Airtime, and Packages and takes appropriate action against employees who use the Phones, Airtime, and Packages for personal use in accordance with the documented policy.

As part of monitoring the acceptable use of Phones, Airtime, and Packages, the taxable person shall consider the variance between the actual usage and the average Airtime and Packages used for the specific role of the employee business purposes. If the business acquires Airtime and Packages based on the expected business use, it may apply to claim the use of these items as a personal benefit.

In the cases where an employer acquires Phones, Airtime, and Packages solely for business purposes and has a strict policy in place to restrict the use of such Phones, Airtime, and Packages to business purposes, the right to use these items would not constitute a personal benefit for the employee. Additionally, in instances where an employer acquires Phones, Airtime, and Packages for business purposes and has a strict policy in place to restrict the use of such items, the business would be required to demonstrate that it monitors the use of Airtime, and Packages and takes appropriate action against employees who use the Phones, Airtime, and Packages for personal use in accordance with the documented policy.

As part of monitoring the acceptable use of Phones, Airtime, and Packages, the taxable person shall consider the variance between the actual usage and the average Airtime and Packages used for the specific role of the employee business purposes. If the business acquires Airtime and Packages based on the expected business use, it may apply to claim the use of these items as a personal benefit. However, in instances where an employer acquires Phones, Airtime, and Packages solely for business purposes and has a strict policy in place to restrict the use of such items, the right to use these items would not constitute a personal benefit for the employee. Additionally, in instances where an employer acquires Phones, Airtime, and Packages for business purposes and has a strict policy in place to restrict the use of such items, the business would be required to demonstrate that it monitors the use of Airtime, and Packages and takes appropriate action against employees who use the Phones, Airtime, and Packages for personal use in accordance with the documented policy.
requirements, any Airtime and Packages used in excess of the business plan would be regarded as non-business use, unless the additional Airtime and Packages is recharged to the employee with output tax, or if there is robust monitoring in place to substantiate the actual use.

As part of the documented policy, employees should be made aware of the repercussions of not abiding by the policy and the taxable person should retain proof of action taken against employees not complying with the documented policy.

**Input Tax Recovery Requirements**

Considering the above, a business is entitled to recover input tax in respect of Phones, Airtime, and Packages acquired if these costs are incurred to make taxable supplies and the following requirements are met:

- The business is registered for VAT and acquired Phones, Airtime, and Packages in its own name, e.g. the business’ details are reflected on the tax invoices and contract with the service provider;

- The business has a documented policy in place which clearly states that the Phones, Airtime, and Packages may only be used for business purposes, and the consequences of any personal use;

- An تكون الأعمال مسجلة لضريبة القيمة المضافة وحصلت على الهواتف والكمالات والحزم باسمها، أي أنه ترد بيانات الأعمال في الفواتير الضريبية والعقد المبرم مع مقدم خدمة الاتصالات;

- An تطبيق الأعمال سياسة موثقة تنص بوضوح على أنه لاجوز استخدام الهواتف والكمالات والحزم سوى لأغراض الأعمال، وكذلك العواقب المرتبطة على أي استخدام شخصي.
The business regularly monitors the use of Airtime and Packages and retains justification for the variances;

The business takes action against employees using Phones, Airtime, and Packages for personal use in accordance with the documented policy; and

The business retains valid tax invoices in respect of the Phones, Airtime, and Packages acquired.

Note that only documented policies which were already in place at the time the Phones, Airtime, and Packages were made available to the employee will be considered.

If all of the above requirements are not met, the recovery of input tax incurred in respect of Phones, Airtime, and Packages will be blocked in accordance with Article 53(1)(c) of the Executive Regulation.

This Public Clarification issued by the FTA is meant to clarify certain aspects related to the implementation of the Federal Law No. 7 of 2017 on Tax Procedures and its amendments, Federal Decree-Law No. 8 of 2017 on Value Added Tax and their Executive Regulations.

This Public Clarification states the position of the FTA and neither amends nor seeks to amend any provision of the aforementioned legislation. Therefore, it is effective as of the date of implementation of the relevant legislation, unless stated otherwise.

In this clarification, Federal Decree-Law No. 8 of 2017 on Value Added Tax is referred to as “Decree-Law” and Cabinet Decision No. 52 of 2017 on the Executive Regulation of the Federal Decree-Law No. 8 of 2017 on Value Added Tax is referred to as “Cabinet Decision No. 52 of 2017.”

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Value Added Tax and its amendments is referred to as "Executive Regulation".

1. Article 54(1)(a) of the Decree-Law states that the input tax that is recoverable by a taxable person for any tax period is the total of input tax paid for goods and services which are used or intended to be used for making of taxable supplies.

2. Article 54(5) of the Decree Law states that the Executive Regulation shall specify the instances where input tax is excepted from being recovered.

3. Article 53(1)(c) of the Executive Regulation states that input tax shall be non-recoverable if it is incurred by a person in respect of a taxable supplies where goods or services were purchased to be used by employees for no charge to them and for their personal benefit including the provision of entertainment services, except in the following cases:
   1) where it is a legal obligation to provide those services or goods to those employees under any applicable labour law in the State or Designated Zone.
   2) 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;
   3) where the provision of goods or services is a deemed supply under the provisions of the Decree-Law.

نتصّف الفقرة (أ) من البند (1) من المادة (54) من المرسوم بقانون على أن ضريبة المدخلات القابلة للاسترداد من قبل الخاضع للضريبة عن أي فترة ضريبية هي مجموع ضريبة المدخلات المدفوعة على السلع والخدمات التي استخدمت أو يُقصد باستخدامها القيام بترابطات خاضعة للضريبة.

ينص البند (5) من المادة (54) من المرسوم بقانون على أن تحدد اللائحة التنفيذية الحالات التي تكون ضريبة المدخلات فيها مستثناة من الاسترداد.

تنص الفقرة (ج) من البند (1) من المادة (53) من اللائحة التنفيذية على أنه تكون ضريبة المدخلات مستثناة من الاسترداد إذا تم تحملها من قبل شخص في شأن التوريدات خاضعة للضريبة إذا تم شراء سلع أو خدمات يستخدمها الموظفين بدون تحملهم لأية رسوم ومنح عليهم الشخصية بما في ذلك الخدمات الترفيهية، ما عدا الحالات الآتية:

إذا كان هناك التزام قانوني بتزويد الموظفين بلهك السلاح أو الخدمات وفقاً لأي قانون يعمل طبق في الدولة أو منطقة محددة.

إذا كان هناك التزام تعاقدي أو سياسة موثقة بتزويد الموظفين بهذه السلاح أو الخدمات إذا كان من متطلبات اعتيادية في الأعمال في سياق توظيف الموظفين.

إذا كان تقديم السلع أو الخدمات تزويد اعتيادي وفقاً لأحكام المرسوم بقانون.