



# Director's Services

## VAT Guide | VATGDS01

April 2018



## Contents

<b>1. Guidance Note</b> .....	<b>2</b>
<b>1.1. Overview</b> .....	<b>2</b>
1.1.1. Short brief .....	2
1.1.2. Purpose of this document .....	2
1.1.3. Who should read this document? .....	2
<b>2. Director's Services</b> .....	<b>3</b>
<b>2.1. VAT treatment of director services</b> .....	<b>3</b>
2.1.1. Summary .....	3
2.1.2. Why are director's services subject to VAT? .....	3
2.2. Determining Place of Supply for Director's Services provided .....	4
2.3. Imposition of VAT .....	5
2.4. Recovery of input tax .....	5
2.5. Director Fee – Special scenarios .....	6
2.5.1. Director providing services overseas .....	6
2.5.2. Director providing services to overseas company .....	6
2.5.3. Business supplied director .....	6
2.5.4. Common director .....	7
2.5.5. Right to a director .....	7



# 1. Guidance Note

## 1.1. Overview

### 1.1.1. Short brief

VAT has been introduced in the UAE with effect from 1 January 2018. As a general consumption tax on the supply of goods and services, its effects must be understood by businesses, individual persons, and government entities in the following contexts:

- Whether director's services that are provided to other persons, are considered a supply subject to VAT.
- How the place of supply shall be determined for director's services in order to apply VAT to the correct country, if applicable.
- Applicability of different VAT rates to director services.

In particular, employees who perform services for their employer are not considered to be making a taxable supply. However, taxable persons who provide independent director's services to other legal entities would be considered to be making a taxable supply of services (subject to place of supply rules). The services are subject to VAT at 5%, with a few possible exceptions where 0% VAT may apply.

### 1.1.2. Purpose of this document

This document contains guidance about the characterisation of director's services under several models to determine whether a taxable supply of services exists for VAT purposes.

### 1.1.3. Who should read this document?

This document should be read by anyone appointed in a director capacity, and key stakeholders who are responsible for tax matters.



## 2. Director's Services

### 2.1. VAT treatment of director services

#### 2.1.1. Summary

The general rule is that directors provide a service for VAT purposes to their company. As such, if the fees for services (in addition to any other supplies that might be made by the person) exceed the VAT mandatory registration threshold, namely AED 375,000, then directors are liable to register for VAT and charge VAT on the director fees.

Specifically, services provided by a director should be taxable if:

- the director undertakes services on a regular, ongoing and independent basis (such as an individual who acts as an executive or non-executive director on a board or a number of different boards); and
- the total value of taxable supplies made by the director, including supplies of director services, exceed the mandatory registration threshold.

#### 2.1.2. Why are director's services subject to VAT?

VAT is charged on taxable supplies made by a taxable person. Therefore, it is necessary to identify whether a director is a taxable person who makes taxable supplies.

#### "Taxable supply"

A "taxable supply" is defined in the VAT legislation as any supply of goods or services for consideration by a person conducting business in the UAE, excluding exempt supplies. Therefore, a supply would be a taxable supply if the following conditions are met:

- It is a supply of goods or services;
- for consideration;
- by a person conducting business;
- in the UAE; and
- not an exempt supply.

The Federal Decree-Law No. (8) of 2017 on Value Added Tax defines a "supply of services" to be any supply that is not considered a supply of goods. Directorship services would not be a supply of goods, and therefore is a supply of services for VAT purposes.

To be a taxable supply, services must usually be provided for consideration. "Consideration" is all that is received or expected to be received for the supply of the services, irrespective of whether in money or other forms of payment. Applied to directors, depending on circumstances, consideration may include the director fee,



bonuses, stock options, recharges for goods and services acquired by the director, and so forth.

The third condition is that services must be provided by a person in the course of conducting business. The VAT legislation defines “business” as any activity conducted regularly, on an ongoing basis and independently by any person, in any location such as industrial, commercial, agricultural, professional, service or excavation activities or anything related to the use of tangible or intangible properties. This is a very broad definition, which may encompass most activities which are conducted regularly and independently. As a consequence, directorship activities would be able to be performed in the course of conduct of business.

The identification of whether or not services are provided in the UAE is done on the basis of place of supply rules. The default rule, subject to certain exceptions for cross-border supplies, is that the services are treated as taking place where the supplier is located. Therefore, generally, director’s services provided by UAE residents will be treated as taking place in the UAE.

Finally, directorship services are not an exempt supply.

### “Taxable person”

A “taxable person” is defined in the VAT legislation as any person registered or obligated to register for tax purposes.

A person is required to register for VAT if the total value of their taxable supplies have exceeded the mandatory registration threshold of AED 375,000 in the preceding 12 months, or will exceed the threshold in the next 30 days. As discussed above, such calculation would include taxable supplies of director services.

A director may also choose to voluntarily register for VAT where the value of taxable supplies (including director fees) exceed the voluntary registration threshold of AED 187,500.

In conclusion, assuming a person provides services as a director regularly and independently (that is, they are not simply an employee of the company), the person will be required to charge VAT on their services.

## **2.2. Determining Place of Supply for Director’s Services provided**

UAE VAT is only charged where a supply is treated as taking place in the UAE. Therefore, it is important to be able to identify where a supply takes place.

The following “place of supply” rules apply to director services:

- By default, the place of supply for services is the “place of residence” of the supplier<sup>1</sup> (i.e. the place of residence of the director).

---

<sup>1</sup> Article (29) Federal Decree-Law No. (8) of 2017 on Value Added Tax



- In the case where the recipient of the services has a place of residence in another GCC Implementing State and is registered for VAT therein, the place of supply shall be the place of residence of the recipient of services<sup>2</sup>.
- Where the recipient of services is in business and has a place of residence in the UAE, and the director does not have a place of residence in the UAE, the place of supply is the UAE<sup>3</sup>.

It can be noted from the above that special place of supply rules exist for transactions between GCC Implementing States. In short, for the purposes of the VAT rules, an “Implementing State” is a GCC country which is in full compliance with the provisions of the Common VAT Agreement of the States of the Gulf Cooperation Council.

### 2.3. Imposition of VAT

Once it is determined that a director is a taxable person who makes a taxable supply in the UAE, the director shall charge VAT at the appropriate rate on the value of its supplies.

In most situations, the value of supply will be calculated with reference of any consideration the director receives in respect of the services. Such consideration may be monetary (e.g. basic director fees and cash bonuses) or non-monetary (e.g. stock options or free accommodation).

### 2.4. Recovery of input tax

In conducting its independent director activities, a taxable person will incur expenses which are subject to VAT. The incurred VAT is also known as “input tax”.

A taxable person is able to recover input tax incurred on the purchase of goods and services in the course of business, subject to certain conditions. The recovery of input tax will generally be permitted where acquired goods and services are used, or intended to be used, in making any of the following<sup>4</sup>:

- taxable supplies; and
- supplies that are made outside the UAE which would have been considered taxable had they been made in the UAE.

As a consequence, a director making taxable or out of scope supplies of director services should be able to recover input tax attributable to making such supplies. This can include, for example, transportation expenses to commute to work and equipment needed for such businesses, and other similar goods and services incurred for the purpose of the business.

---

<sup>2</sup> Article 30 Federal Decree-Law No. 8 of 2017 on Value Added Tax

<sup>3</sup> Article 30 Federal Decree-Law No. 8 of 2017 on Value Added Tax

<sup>4</sup> Article 54(1) Federal Decree-Law No. 8 of 2017 on Value Added Tax



In certain circumstances, acquired goods or services can be used partly in the course of making supplies that allow for the recovery of input tax and partly for making supplies for which VAT is not recoverable. In these situations, the director may need to use input tax apportionment rules to identify the proportion of VAT which may be recovered.<sup>5</sup>

A director should not recover any VAT in respect of expenses incurred for solely non-business purposes.

## **2.5. Director Fee – Special scenarios**

### **2.5.1. Director providing services overseas**

Where a director who is resident in the UAE provides director's services which are physically performed outside the GCC Implementing States, such services will be zero-rated.<sup>6</sup>

For example, a UAE resident director may be contracted to physically attend board meetings in the UK. The director can zero-rate the supply of these services since the nature of the services requires that they are physically performed outside the GCC Implementing States.

In contrast, if the services are physically provided in another GCC Implementing State to a company which is resident and registered in that other GCC Implementing State, the supply will be treated as taking place in that other Implementing State. Therefore, no UAE VAT will be charged.

### **2.5.2. Director providing services to overseas company**

If a UAE resident director provides services from the UAE to a company not resident in the GCC Implementing States, the services may be zero rated if the company does not have a presence in the UAE, and the performance of the services is not received in the UAE by any person who would be able to recover VAT incurred.<sup>7</sup>

If such services are provided to a company which is resident and registered in another GCC Implementing State, the supply will be treated as taking place in that other Implementing State. Therefore, no UAE VAT will be charged.

### **2.5.3. Business supplied director**

A business or Government entity may provide an employee or director to serve as a director of another Government entity, company, or another type of business. In these circumstances the normal rules relating to supplies of services should apply. Specifically, the supplier entity must account for VAT on any payment it receives for agreeing to the appointment, provided the place of supply is in the UAE.

---

<sup>5</sup> Article 55 Cabinet Decision No. 52 of 2017 on the Executive Regulations of the Federal Decree-Law No (8) of 2017 on Value Added Tax

<sup>6</sup> Article 31 Cabinet Decision No. 52 of 2017 on the Executive Regulations of the Federal Decree-Law No (8) of 2017 on Value Added Tax

<sup>7</sup> Article 31 Cabinet Decision No. 52 of 2017 on the Executive Regulations of the Federal Decree-Law No (8) of 2017 on Value Added Tax



Although the default rate is 5%, similar to the above, VAT may be charged at 0% if conditions in Article 31 of the Cabinet Decision No. 52 of 2017 on the Executive Regulations of the Federal Decree-Law No (8) of 2017 on Value Added Tax are met (i.e. if the supply is considered to be an export as per sections 2.3.1 and 2.3.2).

#### 2.5.4. Common director

An individual may act as a director of a number of companies, including in related companies. For convenience, one company may pay all the director's fees and then allocate the costs to recover appropriate proportions from the others.

The individual's services, such as attending meetings or approving expenditure, are supplied by the individual to the companies of which they are a director. The services are supplied directly to the relevant businesses by the individual and not from one company to another. In this case, there is no supply between the companies and accordingly, no VAT is due on the share of money recovered from each company.

#### 2.5.5. Right to a director

This often occurs in situations where one company is investing in another and is exercising a legal or contractual right to appoint a director to the board of the company in which they are investing. The director is usually selected because of their specialised knowledge and is appointed to give expert advice to the other company.

Typically, a fee is charged by the company appointing the director and is paid by the company to which the director has been appointed. This fee should be treated as consideration for a taxable supply made by the director's original company and the fee is subject to VAT.