

# VAT alert | UAE insurance clarifications

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On 2 October, the UAE's Federal Tax Authority (FTA) released a guide on how VAT applies to the insurance industry. This is welcome news for the industry, for which VAT has been problematic, compounded by a lack of clarity regarding certain industry-specific transactions. The guide confirms a number of current practices by insurers doing business in the UAE.

## How should insurers treat policies with taxable and exempt components?

The FTA guide acknowledges that policies that include both taxable and exempt components could potentially be seen as two separate supplies or as a single supply which follows the VAT treatment of the primary supply. It includes guidance that should be followed to determine whether these policies should be seen as a single supply (with one VAT treatment) or as multiple supplies (potentially with multiple VAT treatments).

### Keypoint analysis:

This is consistent with other VAT/GST jurisdictions. The FTA's explicit confirmation that this applies to insurance policies is welcome. Insurers who issue policies that include both taxable and exempt components (such as health insurance policies with a small life rider) should re-examine previously applied VAT treatments.

## How should policies that spanned implementation be treated?

The FTA takes the view that policies which spanned 1 January 2018 need to be apportioned on a pro-rata basis with the proportion of the policy relating to the period after 1 January 2018 subject to VAT. It also confirms that the consideration in the insurance contract is inclusive of VAT (unless a VAT clause was included which explicitly states otherwise).

### Keypoint analysis:

This is consistent with the UAE's transitional provisions. Any insurers who have not accounted for VAT on their UPR should consider urgently filing a voluntary disclosure with respect to underpaid tax amounts.

## Can VAT incurred on health insurance provided by employers to employees be recovered?

Businesses often ask if VAT incurred on health insurance policies provided to their employees is recoverable. Briefly, any incurred VAT will only be recoverable if it is a legal obligation to provide health insurance or where it is a contractual obligation or documented policy to provide health insurance to the employee to enable them to perform their role.

### Keypoint analysis:

This is consistent with the input tax blocking provisions set out in the law. VAT incurred providing health insurance to an employee's dependents are not recoverable by businesses unless there is a statutory obligation on the employer to also provide health insurance to dependents. Employers who provide health insurance coverage to employees should ensure VAT recovery is consistent with this guidance.

## Is insurance in respect of real estate a "service related to real estate"?

The FTA has expressed their view that insurance with respect to real estate should not be considered a service related to real estate for determining place of supply. This means that VAT treatment does not follow the location of the real estate but is determined based on the residence of the insurer and the recipient, unless included as part of the service charge relating to the property.

### Keypoint analysis:

This has been an area of ambiguity for some time. Insurers who have treated supplies of insurance as land-related should re-visit this treatment and evaluate potential exposure.



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While the clarification is welcome, there is an obvious conflict between the FTA's view on land-related insurance and GAZT's interpretation - that insurance provided in relation to land should be a service related to real estate and therefore that the VAT treatment should be determined by reference to where the land is located (see the GAZT guide on financial services section 7.4). This creates a discrepancy - and potential arbitrage - between the two states.

**Can VAT incurred on claims be recovered?**

The guide clarifies which party can recover VAT incurred on acquiring goods and services to settle an insurance claim. Where the insurer has incurred the costs directly (such as through a network provider), the insurer has the right to recover VAT. If, however, a policyholder directly contracts for the goods or services and then seeks reimbursement for the cost incurred, the policyholder has VAT recovery rights (assuming they are VAT-registered and meet the general VAT recovery rules).

**Keypoint analysis**

This confirms our views on claims and cash reimbursements. Insurers settling claims by reimbursing cash should reexamine policies issued to VAT-registered businesses to see whether they are required to reimburse the gross amount (including VAT) or whether they are only required to reimburse the net amount (that is, the expense less the VAT recovered by the policyholder).

**Important note**

These briefs are based on a translation of the GCC VAT Treaty, UAE and Saudi Arabia's VAT legislation and regulations and general VAT principles. They are provided for information purposes only. Saudi Arabia and the UAE implemented VAT on 1 January 2018 and the other GCC countries continue - as of the date of release of this brief - to work towards implementation in 2019. This brief is not a substitute for professional advice. You should seek appropriate professional advice from a tax advisor before making any decision relating to your particular circumstances.

**What about the VAT treatment of travel insurance?**

The guide includes an appendix which summarises the VAT treatment of some common insurance policies. The VAT treatment of travel insurance policies has been contentious, with different UAE insurers applying different VAT treatments. The UAE has taken the view that travel insurance policies sold to resident customers is subject to VAT at 5%.

**Keypoint analysis**

This is consistent with the wording of the zero-rating provisions and with our view on travel insurance policies. Insurers that have zero-rated these policies should consider revisiting the VAT treatments. Where necessary, the insurers may need to consider making a voluntary disclosure with respect to the underdeclared tax amounts with respect to travel policies issued.

The provisions do not allow for the zero-rating of policies based on the location of the risk - they are strictly determined by the residence of the contractual supplier and the contractual recipient (with a limited exception for the insurance of international transportation).

In our view, the zero-rating of international transport provisions cannot apply to travel insurance as travel insurance (despite the name) is essentially a combination of contents and medical insurance and is not insuring the transportation itself.