

VAT alert | UAE real estate clarifications

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The FTA has released an [updated guide](#) on how VAT applies to the real estate industry with additional commentary and examples.

The definition of "residential building"

The updated guide clarifies the types of properties that will and won't be considered residential for VAT purposes. For example, any serviced apartments where services are provided in addition to the supply of accommodation are excluded.

It also clarifies that:

- Labour camps need to be considered on a case-by-case basis. A helpful list of factors that should be considered when determining whether or not these constitute residential buildings for VAT purposes is included.
- Farmhouses on agricultural land are residential properties for VAT purposes, provided they are intended to be occupied as a person's main place of residence.

Keypoint analysis:

This is welcome guidance – particularly the list of factors that should be considered in determining whether a building is residential or not. However, there will always be areas of uncertainty – for example, it is still not clear what level of service needs to be provided in a serviced apartment before it is no longer considered an exempt supply.

Where the VAT position is not immediately clear, property developers and landlords should consider seeking guidance or a ruling from the FTA to give them certainty as to the VAT treatment.

Zero-rating under the "first supply" rule

The guide makes it clear that zero-rating of the first supply applies to the sale or lease of qualifying property, regardless of who the property is supplied to (whether another VAT-registered customer, a non-registered customer, or a related party), as long as the supply is made within three years. It also clarifies that 'first supply' does not mean the first supply made after 1 January 2018 – it must be the first supply of that residential property (whether the supply took place before or after 1 January 2018).

When determining how the three-year period is calculated, the completion date of the building is when the building is certified as being complete by an appropriately qualified party. If, however, the building is occupied prior to this date, the date the building is first occupied is the date of completion.

Keypoint analysis:

Clarifying how the three-year period is calculated is a welcome development, although widely anticipated by those who have advised on land and property VAT issues in other global jurisdictions where the completion certification date is generally the benchmark.

If the first supply is made by way of a lease, it appears there is no time-limit on how long that supply can be (it could, for example, be a zero-rated 99-year lease). The ability to zero-rate the first 'long lease' is, again, consistent with the application of VAT elsewhere. However, the availability of the zero-rate for 'short' leases, and its positive impact on VAT recovery, should benefit UAE property suppliers.

Bare land

The supply of bare land is VAT-exempt, while the supply of covered land with buildings or civil engineering works is generally standard-rated.

The guide clarifies what the FTA will analyse to decide land is no longer bare or has civil engineering works.

Keypoint analysis:

This guidance is extremely useful, particularly for parties that buy or sell incomplete developments. Where it is not particularly clear whether land should be considered bare for VAT purposes, parties may wish to jointly seek a ruling from the FTA or consider progressing the development to a point where it is clear the land is no longer bare for VAT purposes, giving the parties increased certainty as to the VAT treatment.

Sellers of land under development should ensure they include VAT clauses so that they have the contractual right to ask for an additional five percent if the FTA takes the view the land has been sufficiently developed to no longer be bare. At present, there is no explicit clarification as to whether such land can be treated under transfer of going concern rules and so outside the scope of VAT, as we have seen elsewhere.

Owner associations

Owner associations must be registered for VAT as they are making taxable supplies. This guidance is welcome as VAT/GST jurisdictions overseas have taken differing views on this point.

Keypoint analysis

Members of owner associations should raise this as an agenda item at their next owner association meeting and ensure the association complies with the VAT rules to avoid penalties.

Sales of mixed developments

Where a mixed-use development is sold, the contract price may need to be apportioned to determine the appropriate consideration for the residential and commercial parts of the development. Similarly, if a piece of land is for mixed use (such as farmland used for commercial farming that includes a farmhouse), the consideration will also need to be apportioned.

Keypoint analysis:

While the apportionment rules are sensible, the guide does not specify how considerations should be apportioned – by detailed valuation, by floor space, or by some other method. Sellers of mixed developments and suppliers of mixed-use land and property should ensure the method they use to apportion considerations is commercially justifiable and backed by evidence.

VAT treatment of lease inducement payments

The updated guide includes an entirely new section on the VAT treatment of lease inducement payments and similar arrangements such as rent-free periods, lease surrenders, lease variations, landlord contributions and dilapidation payments.

Keypoint analysis

This is a particularly complicated and much-debated point of VAT application and practice. The guidance mirrors closely the UK's treatment of such payments and activities - and the wealth of applicable case law.



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Real estate-related services

The relation between the services provided and the land itself must be more direct than we have seen applied elsewhere in the GCC – those who have read the UAE's guide on insurance will note the FTA's stance that land-related insurance is not itself a supply in relation to land, whereas the converse is true in Saudi Arabia.

Keypoint analysis

Businesses that supply services related to real estate should review the services they provide and ensure their VAT treatment is in line with this guidance. As the place of supply may change as a consequence of providing a land-related service, suppliers should carefully consider the application of VAT and seek clarity if in doubt.

Retention payments

The guide confirms that the time of supply for retention payments is generally triggered upon the earlier of a retention amount being received or an invoice being issued with respect to the retention.

Keypoint analysis

This is in line with our view that no specific time of supply rule applies to retention payments. Suppliers with retentions should consider whether they want to invoice for the net amounts (less the retention) to reduce the amount of output tax they need to account for up-front.

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.

VAT refunds for Emirati home builders

The guide includes a section on the VAT refund mechanism for residences built by Emirati nationals, including the types of costs that are eligible for refunds and the conditions which need to be met to qualify.

Importantly, the guide also excludes certain costs. In line with global practice, VAT on appliances and furnishings such as carpets and other goods 'not incorporated' in the integral structure of the property, cannot be recovered for DIY housebuilders. Satisfaction of the 'incorporation' test does, however, mean that VAT on 'fitted' furniture is recoverable – such as fitted kitchen furniture.

Keypoint analysis

One notable requirement is that copies of supporting documents must be provided. Emirati nationals considering constructing a new residence should keep copies of all vendor invoices to maximise their VAT refund entitlement. DIY constructors should pay close attention to allowable costs to avoid rejection of claims and delays in receiving repayments.