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1. Real Estate Guidance

1.1. Overview

1.1.1. Short brief

VAT was introduced on 1 January 2018 in the UAE. As a general consumption tax on the supply of goods and services, its effects are applicable to supplies of real estate made in the UAE. 1.1.2. Purpose of this document

This document contains guidance about the VAT treatment of supplies of real estate, as well as various common transactions which occur within the real estate sector. The purpose of this document is to provide guidance on how VAT affects businesses which operate within the real estate sector, as well as for owners or landlords of real estate. 1.1.3. Who should read this document?

This document should be read by owners of commercial and residential real estate, landlords making supplies of commercial or residential real estate, and businesses operating within the construction industry, or making supplies which relate to real estate. Property managers and owners' associations may also find this guide useful. It is intended to be read in conjunction with other relevant guidance published by the Federal Tax Authority ("FTA"). 1.1.4. Status of the document

This guide is issued in accordance with Article 73 of the Executive Regulations and provides general guidance concerning the application of the Decree-Law and Executive Regulations in respect of real estate in the United Arab Emirates. This guide does not deal with all the legal detail associated with VAT and is not intended for legal reference. For details in respect of the general operation of VAT, refer to the Taxable Person Guide – Value Added Tax which is available on the Federal Tax Authority (FTA) website (www.tax.gov.ae). In this guide, 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 Regulations of the Federal Decree-Law No. 8 of 2017 on Value Added Tax is referred to as "Executive Regulations". This guidance is not legally binding on the FTA but is intended to provide assistance in understanding and applying the VAT legislation as it applies to real

ed Arab Emirates. This guide does not deal with all the legal detail associated with VAT and is not intended for legal reference. For details in respect of the general operation of VAT, refer to the Taxable Person Guide – Value Added Tax which is available on the Federal Tax Authority (FTA) website (www.tax.gov.ae).

In this guide, 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 Regulations of the Federal Decree-Law No. 8 of 2017 on Value Added Tax is referred to as “Executive Regulations”. This guidance is not legally binding on the FTA but is intended to provide assistance in understanding and applying the VAT legislation as it applies to real estate.

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2. Supplies of Real Estate

2.1. What is real estate

Real estate is generally considered to be property consisting of land or buildings, and includes¹:

- Any area of land over which rights or interests or services can be created;
- Any building, structure or engineering work permanently attached to the land;
- Any fixture or equipment which makes up a permanent part of the land or is

permanently attached to the building, structure or engineering work.

2.2. What is a supply of real estate?

For VAT purposes, a supply of real estate is treated as a supply of goods (see Article 2 of VAT Executive Regulations). As a result, a supply of real estate involves the transfer of ownership of the real estate, or the right to use the real estate, to another person. The time of supply rules under Articles 25 and 26 of the VAT Decree-Law should be applied to real estate transactions according to the applicable circumstances. The date of supply will be triggered on the earliest event, which may be on any payment received if that is the earliest event. It is also possible to make a supply of services which are directly connected to real estate.

This will be the case where the services are directly connected to the real estate, or where the supply involves the grant of a right to use the real estate. Examples of real estate related services include²:

- The grant, assignment or surrender of any interest in or right over real estate;
- The grant, assignment or surrender of a personal right to be granted any

interest in or right over real estate;- The grant, assignment or surrender of a licence to occupy land or any other

- contractual right exercisable over or in relation to real estate, including the provision, lease and rental of sleeping accommodation in a hotel or similar establishment;
- A supply of services by real estate experts or estate agents; and
- A supply of services involving the preparation, coordination and performance

of construction, destruction, maintenance, conversion or similar work. 1 Article 21(1), VAT Executive Regulations. 2 Article 21(3), VAT Executive Regulations. 5

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The grant, assignment or surrender of any interest in or right over real estate;

- The grant, assignment or surrender of a personal right to be granted any

interest in or right over real estate;

- The grant, assignment or surrender of a licence to occupy land or any other

contractual right exercisable over or in relation to real estate, including the provision, lease and rental of sleeping accommodation in a hotel or similar establishment;

- A supply of services by real estate experts or estate agents; and
- A supply of services involving the preparation, coordination and performance

of construction, destruction, maintenance, conversion or similar work.

1 Article 21(1), VAT Executive Regulations.

2 Article 21(3), VAT Executive Regulations.

2.3.

Summary of the VAT liability of supplies of real estate

....then the VAT liability: is.... |and you can find: further information in....

If you supply....: A commercial property

If you supply....: A new residential property

If you supply....: An existing residential property

If you supply....: Bare land

If you supply....: Covered land

If you supply....: A first supply of a charitable building

If you supply....: A subsequent supply of charitable building

If you supply....: A property located within a Designated Zone

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1 Article 21(1), VAT Executive Regulations.

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2.3.

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If you supply....: A subsequent supply of charitable building

If you supply....: A property located within a Designated Zone

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3. Residential buildings

3.1. Definition

A residential building is a building which is intended and designed for human occupation. This includes³:

- Any building or part of a building that the person occupies, or that it can be

foreseen that a person will occupy, as their principal place of residence; • Residential accommodation for students or school pupils; • Residential accommodation for armed forces and police; • Orphanages, nursing homes and rest homes. A residential building is not⁴:

- Any place that is not a building fixed to the ground and which can be moved

without being damaged; • Any building that is used as a hotel, motel, bed & breakfast establishment, or

hospital or the like; • A serviced apartment for which services in addition to the supply of

accommodation are provided; • Any building constructed or converted without lawful authority. A building is still considered to be a residential building if a small proportion of it is used as an office or workspace by the occupants, if it includes garages and gardens used in conjunction with the property, or if it includes any other features that may be said to comprise part of the residential building⁵.

3.2. First supply of a residential building

The first supply of a residential building will be zero-rated for VAT purposes. This means that the VAT incurred on costs relating to the first supply of the building should be recoverable in full. The 'first supply' includes a supply of the building by either sale or lease, but it must

be made within 3 years of the buildings' completion date. This treatment shall apply regardless of who the building is supplied to (e.g. a registered customer, a non-registered customer, a related party etc.) provided that it is supplied within the relevant timeframe. The completion date of a building is normally the date the building is certified as being complete by an appropriately qualified party. However, if the building is occupied before this date, the date on which the building is occupied shall be taken to be the date of completion. 3 Article 37(1), VAT Executive Regulations. 4 Article 37(2), VAT Executive Regulations. 5 Article 37(3), VAT Executive Regulations. 7

but it must

be made within 3 years of the buildings' completion date. This treatment shall apply regardless of who the building is supplied to (e.g. a registered customer, a non-registered customer, a related party etc.) provided that it is supplied within the relevant timeframe.

The completion date of a building is normally the date the building is certified as being complete by an appropriately qualified party. However, if the building is occupied before this date, the date on which the building is occupied shall be taken to be the date of completion.

3 Article 37(1), VAT Executive Regulations.

4 Article 37(2), VAT Executive Regulations.

5 Article 37(3), VAT Executive Regulations.

Where a building was completed prior to 1 January 2018, but the first supply of that building within 3 years of its completion takes place after 1 January 2018 the supply will still qualify for zero-rating. It is important to note however, that this rule applies to the first supply of the property, and not to the first supply after the introduction of VAT. If the building was actually transferred or made available for use to the buyer or lessee prior to 1 January 2018, any subsequent supply after 1 January 2018 will not qualify as the first supply of the building even where the building was completed within the last 3 years.

Any subsequent supplies of the building, either by sale or lease, within 3 years from its completion date shall not be zero-rated, as they will not qualify as the first supply of the building.

Where a taxable person incurs the costs of constructing a residential building, all of the VAT incurred on the costs of such development shall be recoverable in full on the basis that the costs relate to the zero-rated first supply. Any future supplies of the building by that taxable person (e.g. a subsequent lease, which would be exempt from VAT after the first supply) does not impact the developer's right to recover input tax incurred before the date of first supply.

This means that the taxable person is not required to make any adjustments to its initial input tax recovery on the development costs under the capital assets scheme⁶.

3.3.

Subsequent supplies of residential buildings

The supply of a residential building other than the first supply, is exempt from VAT. This includes where the subsequent supply of the property is supplied within 3 years from the buildings' completion.

Where the supplier of the residential building incurs VAT on costs relating to such a subsequent supply e.g. agent fees, or incurs VAT on costs relating to the general upkeep and maintenance of the property after the first supply, then such costs are considered to directly relate to the exempt supply of the building. As such, the supplier will be unable to recover any VAT on such costs via its VAT return.

3.4.

VAT Liability of service charges relating to residential buildings

A community master developer or building owner will often make charges to the owners or tenants of units within the community/building in return for the upkeep of the communal areas of the property. Such charges will be subject to VAT at the standard rate, on the basis that they represent a charge for the services of maintaining and running the communal areas. Such charges do not represent the consideration for a supply of a residential building and as such will not be eligible for zero-rating or exemption.

6 Article 52(4), VAT Executive Regulations.

3.5.

Are Labour camps residential buildings?

Labour camps are generally areas where labourers are housed by their employers. They can take many different forms and some may provide residents with additional services on top of the living accommodation. It is therefore necessary to consider on a case by case basis whether a labour camp meets the definition of a residential building.

A labour camp will be considered to comprise of lodgings which are to be treated as residential buildings where:

- The building or lodging is occupied by the employee as their principal place of

residence. This means that the building should be the place where that individual usually lives. A person can only have one principal place of residence, although they may share that principal place of residence with other people;

- It is a building which is fixed to the ground and which cannot be moved without

being damaged;

- The building has been constructed or converted with lawful authority; and
- It is not a building which is similar to a hotel, motel, bed & breakfast

establishment, or serviced apartment for which services in addition to the supply of accommodation are provided.

3.6.

Supply of accommodation in labour camps

Where an employer houses its staff in a labour camp which qualifies as residential accommodation, or any other type of residential accommodation, the employer must determine whether it is making an exempt supply of the residential building to its staff.

Where the employer charges the employee a form of consideration in exchange for the residential accommodation, this shall be treated as a supply for VAT purposes.

The consideration received will either be zero-rated (in respect of the first supply of a residential building) or exempt from VAT. Consideration may be received from an employee in a number of ways, including but not limited to:

- A direct charge made to the employee for the accommodation;
- A deduction from the employee's salary in respect of the accommodation; and
- Provision of accommodation in lieu of the payment of a housing allowance to

Any costs which directly relate to the provision of that residential accommodation to the employee, for example agent's fees, shall normally be treated as relating to an exempt supply and shall not be recoverable.

Where the employer does not make a charge to the employee for the provision of residential accommodation, it is not making a supply for VAT purposes. In such cases, any VAT incurred on costs relating to the provision of the residential accommodation may be recovered as a general overhead cost of the business. This shall include VAT incurred on costs such as utilities which service the residential accommodation, which

commodation; and

- Provision of accommodation in lieu of the payment of a housing allowance to

Any costs which directly relate to the provision of that residential accommodation to the employee, for example agent's fees, shall normally be treated as relating to an exempt supply and shall not be recoverable.

Where the employer does not make a charge to the employee for the provision of residential accommodation, it is not making a supply for VAT purposes. In such cases, any VAT incurred on costs relating to the provision of the residential accommodation may be recovered as a general overhead cost of the business. This shall include VAT incurred on costs such as utilities which service the residential accommodation, which

are used by the employees for their personal benefit, where any of the following conditions are met⁷:

- It is a legal obligation to provide those services or goods to those employees

under any applicable labour law in the UAE or Designated Zone; or

- 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; or

- Where the provision of goods or services is a deemed supply under the

In situations where accommodation is not necessary for the employee to perform their role, for example accommodation in hotel apartments, input tax shall not be recoverable.

3.7.

Purchase of residential buildings off plan or prior to completion

The purchase of a residential building 'off plan' i.e. direct from the developer prior to construction of the property, or purchase of a partly completed residential building, shall be zero rated, as a future supply of a residential building or as it will be used for residential purposes. This is assuming that the relevant conditions are met so as to be treated as a residential building.

Farm houses which are located on agricultural land will be considered to be residential buildings where they are occupied, or intended to be occupied as a person's principal place of residence and meet the conditions to be treated as a residential building.

3.9.

Conversion of a building into a new residential building

The first supply of a building, or part of a building, which has been converted to a residential building will be zero-rated. The zero-rating will apply provided the following conditions are met:

- the supply must take place within 3 years of the completion of the conversion;
- the original building which was converted, or any part of it, must not have been

used as a residential building or comprise of a residential building within 5 years prior to the conversion work commencing.

The presence of shared or common facilities, or dividing walls or similar features in a residential building should not cause the residential building to be considered part of a pre-existing residential building.⁸

⁷ Article 53, VAT Executive Regulations.

⁸ Article 39, VAT Executive Regulations.

part of a building, which has been converted to a residential building will be zero-rated. The zero-rating will apply provided the following conditions are met:

- the supply must take place within 3 years of the completion of the conversion;
- the original building which was converted, or any part of it, must not have been

used as a residential building or comprise of a residential building within 5 years prior to the conversion work commencing.

The presence of shared or common facilities, or dividing walls or similar features in a residential building should not cause the residential building to be considered part of a pre-existing residential building.⁸

⁷ Article 53, VAT Executive Regulations.

⁸ Article 39, VAT Executive Regulations.

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4. Charitable buildings

4.1. Definition

A charitable building means any building, or any part of a building, that is specifically designed to be used by a charity and solely for a relevant charitable activity. A charity is a society or association of public welfare, which does not aim to make a profit. Only those charities which are listed in a decision of the cabinet regarding Designated Charitable Bodies shall be eligible to use a building for a relevant charitable activity. This means that where a building is used by an organisation which is not for profit or has charitable objectives, but which is not listed within a decision of the cabinet, it will not be regarded as a charitable building. 4.2. First supply of a charitable building

The first supply of a building, or any part of a building, is zero-rated if the building was specifically designed to be used by a Charity and solely for a relevant charitable activity. The 'first supply' includes a supply of the building by either sale or lease. There is no time limit from the date of completion during which the first supply must be made in order to qualify for zero-rating in such cases.

This treatment shall apply regardless of who the building is supplied to (e.g. a registered customer, a non-registered customer, a related party etc.). Where a building was completed prior to 1 January 2018, but the first supply of that

building takes place after 1 January 2018 the supply will still qualify for zero-rating. It is important to note however, that this rule applies to the first supply of the property, and not to the first supply after the introduction of VAT. If the building was actually transferred to or made available for use to the charity prior to 1 January 2018, any subsequent supply after 1 January 2018 will not qualify as the first supply of the building. Any subsequent supplies of the building, either by sale or lease, shall not be zero-rated, as they will not qualify as the first supply of the building. Where a taxable person incurs the costs of constructing a charitable building, all of the VAT incurred on the costs of such development shall be recoverable in full on the basis that the costs relate to the zero-rated first supply of the building. 4.3. Subsequent supplies of charitable buildings

The supply of a charitable building other than the first supply, is subject to VAT at the standard rate. This is on the basis that the supply of the building is then considered to be for commercial purposes. 11

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nt supply after 1 January 2018 will not qualify as the first supply of the building.

Any subsequent supplies of the building, either by sale or lease, shall not be zero-rated, as they will not qualify as the first supply of the building.

Where a taxable person incurs the costs of constructing a charitable building, all of the VAT incurred on the costs of such development shall be recoverable in full on the basis that the costs relate to the zero-rated first supply of the building.

4.3.

Subsequent supplies of charitable buildings

The supply of a charitable building other than the first supply, is subject to VAT at the standard rate. This is on the basis that the supply of the building is then considered to be for commercial purposes.

4.4.

What is a relevant charitable activity?

- undertaken by the charity in the course or furtherance of its charitable purpose or objectives to carry out a charitable activity in the UAE, as approved by the Ministry of Community Development, or under the conditions of its establishment as a charity under Federal or Emirate Decree, or as otherwise licensed to operate as a charity by an agency of the Federal or Emirate Governments authorised to grant such licences;
- not for the purpose of profit or benefit to any proprietor, member, or

For further details please refer to other guidance as published by the Federal Tax Authority.

9 Article 38, VAT Executive Regulations.

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4.4.

What is a relevant charitable activity?

A “relevant charitable activity” is⁹:

- undertaken by the charity in the course or furtherance of its charitable purpose

or objectives to carry out a charitable activity in the UAE, as approved by the Ministry of Community Development, or under the conditions of its establishment as a charity under Federal or Emirate Decree, or as otherwise licensed to operate as a charity by an agency of the Federal or Emirate Governments authorised to grant such licences;

- not for the purpose of profit or benefit to any proprietor, member, or

shareholder of the charity.

For further details please refer to other guidance as published by the Federal Tax Authority.

9 Article 38, VAT Executive Regulations.

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5. Bare land

5.1. Definition

Bare land is land located in the UAE which is not covered by either completed, partially completed buildings or civil engineering works¹⁰. The phrase “land” means any area on the surface of the earth, including any trees, plants or natural objects in, under or on top of it. The ordinary meaning of bare land is vacant i.e. land that has no buildings, whether partial or not, or nothing else on the land. In order for land to be considered “bare land” for UAE VAT purposes, none of the following must be present on top of the land:

- Completed buildings; • Partially completed buildings; or
- Civil engineering works. Where a plot of land is covered only by natural objects such as natural trees and natural plants, this will be considered bare land for VAT purposes.

5.2. VAT liability of bare land

The supply of bare land is exempt from VAT. This includes the supply by either lease or by sale. As a result, any VAT on costs associated with the supply of bare land e.g. legal fees or agent's fees, shall not be recoverable by the supplier.

Where a plot of land is supplied which does not meet the definition of ‘bare land’, it shall be considered to be commercial land and the supply shall be subject to VAT at the standard rate. This will be evaluated on a case by case basis

5.3. When does construction reach a stage where it is considered to be a partially completed building?

Construction would be considered to be sufficient enough to represent a partially completed building when the stage of the construction has progressed beyond foundation level. As a result, the sale of land where a degree of construction has been completed, but the construction has not progressed beyond foundation level shall not be sufficient enough to classify the land as being covered by a partially completed building. Depending on the nature of the construction which has been undertaken in such cases, the construction may nevertheless represent civil engineering works. As a result, the supply of the land may be considered “covered” and therefore subject to VAT at the standard rate.

Where a plot of land has been fenced to allow construction to commence and temporary movable structures were placed on the land, the erection of the fence and

10 Article 44, VAT Executive Regulations. 13

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beyond

foundation level. As a result, the sale of land where a degree of construction has been completed, but the construction has not progressed beyond foundation level shall not be sufficient enough to classify the land as being covered by a partially completed building.

Depending on the nature of the construction which has been undertaken in such cases, the construction may nevertheless represent civil engineering works. As a result, the supply of the land may be considered “covered” and therefore subject to VAT at the standard rate.

Where a plot of land has been fenced to allow construction to commence and temporary movable structures were placed on the land, the erection of the fence and

10 Article 44, VAT Executive Regulations.

movable structures itself will not cause the land to be considered covered by buildings or civil engineering works.

5.4.

When is land covered by civil engineering works?

Examples of civil engineering works include roads, bridges, and pipes used for mains water or power services. Land will not be considered to be “bare land” where it is covered by civil engineering works which are complete, or partially complete. Land will be considered to be bare land where there are civil engineering works which run underneath the land, but which do not break the ground surface of the land and to which the land carries no right of access. For example, an area of land which has water pipes running underneath it, but which do not protrude above the surface of the land and do not offer any water connection to the specific plot of land itself, would be considered to be “bare land” for VAT purposes (provided there are no other buildings or civil engineering works on the land).

Conversely, a plot of land which has pipes which protrude above the surface for the purposes of allowing future developments on the land to be connected to the mains water or power supply would cause the land to be considered “covered” by civil engineering works and therefore would be subject to VAT at the standard rate when supplied.

The civil engineering works would need to be of sufficient substance to represent a fixed and immoveable part of the land itself. For example, where a plot of land is used for farming and is irrigated via hosepipes which are run along the surface of the ground and which could be moved or removed at any time, this would not necessarily be sufficient enough to be classified as civil engineering works covering the land. However, where the farm land has a more substantial irrigation system which is fixed into the land itself and is not moveable, this would be considered a form of civil engineering and would therefore constitute covered land.

Land which has the benefit of civil engineering works in the vicinity of the land, but not directly on the plot of land being supplied, shall also not be considered to be covered by civil engineering works. For example, a master developer may prepare a number of plots of land for sale, which could involve the installation of connections to the water or power mains within the communal infrastructure of the development, including streets and communal areas. Such infrastructure may run up to the edge of the plot of land, but not actually involve the installation of any civil engineering on the plot of land itself. In such cases, the land is still considered bare land as there are no civil engineering works on the land being supplied.

Farm land will normally be considered to be commercial land as it will normally be covered with infrastructure or civil engineering works required to make it operational as a farm e.g. irrigation systems, roads, utility connections etc. It will be necessary, however, to assess each supply of land on a case by case basis to confirm whether it meets the definition of bare land or covered land.

Where a landlord leases a plot of land to a tenant who intends to develop on the land, it is important that the landlord identifies whether he is supplying bare land or covered land to the tenant.

making a supply of bare land | the supply will be exempt from VAT

making a supply of land which is not bare | then supply will be subject to VAT at the standard rate

It may be the case that a landlord supplies land to a tenant which meets the definition of “bare land” at the point it is first leased to the tenant, however once the tenant begins to develop on the land then the nature of the landlord’s supply will change.

As soon as the land becomes covered by completed or partially completed buildings or civil engineering works, the land ceases to be bare land. Where the date of supply has already been triggered for the bare land, no adjustment is required to the VAT treatment at this point. However, if the landlord makes any further supply of the land (for example, if the parties enter into a new lease agreement or if the supply is treated as made periodically under Article 26 of the Decree-Law), the landlord should charge VAT at the standard rate to the tenant since it would not be making a supply of bare land. This is likely to require a degree of commercial cooperation between the landlord and the tenant, in order to identify and communicate on a timely basis the point in time at which the land ceases to be bare.

For example, a tenant may sign a 10-year lease for a bare plot of land in June 2018, with dates of supply being triggered under Article 26 of the Decree-Law on a monthly basis. The tenant then begins preparing the land for construction and then development subsequently commences on the land in September 2018. The tenant must notify the landlord that the land is no longer considered as ‘bare land’ due to the construction and/or civil engineering works. The supply of land, which was previously treated as exempt from VAT, must be treated as standard-rated for the remainder of the lease.

In contrast, if, for example, the parties enter into a one-off 10-year lease with the date of supply triggered under Article 25 of the Decree-Law (e.g. by a full payment prior to the lease commencing), no adjustment of the VAT treatment is required if the land ceases to be bare part-way through the lease.

It is acknowledged that registered Musataha agreements differ from short and medium-term leases. Consequently, in instances where the parties enter into a Musataha agreement which is registered with the appropriate Land Department or Municipality as required under UAE property law, the lease agreement will be treated the same as a contract of sale or one-off lease and no adjustment to the VAT treatment would be required after that date. If the Musataha is not registered, the lease will generally be treated the same as any other lease agreement. If the contracting parties are unable to register the Musataha agreement due to circumstances beyond their control (as evidenced by the relevant Land Department or Municipality), the parties

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may request a clarification to confirm whether the agreement could, for VAT purposes, still be regarded as similar to a sale agreement or whether the normal rules for leasing would apply.

For example, a landlord leases a bare plot of land to a tenant under a 50-year Musataha agreement which is registered with the applicable government authority and consideration is to be settled via the following instalments: 50% of the consideration paid upon the signing of the agreement, 30% paid at the end of the fifth year and the remaining 20% shall be paid at the end of the tenth year. At the end of the fourth year, the tenant started a development project, and changed the bare land to developed land. Although there are three instalments being paid over the first ten years of the lease period, the supply would not qualify as a continuous supply. The VAT treatment shall follow the nature of the land at the time when the date of supply takes place (i.e. supply of bare land which exempt from VAT).

6. Commercial Real Estate

6.1. Definition

Commercial real estate is any land or buildings, which are not one of the following:

- a building designed as a residential building or number of residential buildings; • a building intended for use by a charity for a relevant charitable activity; or
- bare land.

6.2. VAT liability of commercial real estate

The supply of commercial real estate is subject to VAT at the standard rate of 5%. The supply of commercial real estate includes sale or lease. VAT is therefore due on the total consideration received for the supply of commercial real estate. Where the consideration for the supply is payable by instalment, VAT will be due on each instalment paid. As a result of making a taxable supply of commercial real estate, any VAT on costs incurred in relation to the supply shall be recoverable in full.

6.3. Cancelled developments

Where a supplier accepts full or partial payment in relation to a supply of real estate and the supply is subsequently cancelled, for example where the planned development is cancelled and does not take place, the supplier will normally be required to refund the money paid to the customer.

Where this is the case, the supplier should issue a tax credit note to the customer in order to refund the consideration previously paid in respect of the supply. The tax credit note will have the effect of reversing the output tax which the supplier will have originally accounted for on the receipt of the payment. In the event the supplier is not required to refund the amount paid to the customer, it

will be necessary for the supplier to establish the reason he is entitled to retain the money in order to determine the VAT treatment. Where the retained payment is treated as consideration for a supply of services by the supplier, it will remain subject to VAT at the standard rate and there will not be a requirement for the supplier to issue a tax credit note.

6.4. Payment of VAT on sales of commercial real estate

A special payment process exists where sales of commercial real estate are made within the UAE. Detailed guidance on this process can be found in the VAT Payment for Commercial Property Buyers User Guide, however the process is also summarised in this guide below.

The special payment process applies only in the case where commercial real estate is sold in the UAE by any supplier other than the developer of that property, and would be subject to VAT at 5%. Therefore, it does not apply to the following:

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The special payment process applies only in the case where commercial real estate is sold in the UAE by any supplier other than the developer of that property, and would be subject to VAT at 5%. Therefore, it does not apply to the following:

- Sales or leases of residential property;
- Leases of commercial property
- Sales of commercial property by the developer of that property; and
- The sale of commercial property with the benefit of existing tenants to a buyer

who is a taxable person which qualifies as the transfer of a business.

In such cases, the seller of the property will issue a tax invoice to the buyer in relation to the sale proceeds of the property as normal. However, before completing the ownership transfer process with the Land Department, the buyer of the commercial property will be required to pay the VAT due on the purchase directly to the FTA. Alternatively, subject to availability in the specific Emirate, the VAT may be paid via a bank nominated by the FTA for such purposes.

Once the payment of the VAT has been made to the FTA, the buyer will receive a Payment Transaction Number or, in the case of a bank payment, the buyer will need to retain proof of payment containing the details of the VAT payment.

The buyer will be required to produce the Payment Transaction Number or proof of payment (if applicable) to the Land Department in order to process the ownership transfer. Without this evidence that the VAT on the purchase has been paid, the purchase of the property cannot proceed and this will lead to delays.

The supplier will declare the output tax due on the property within its VAT return in the normal way, and will then also include the value of the output tax in the adjustments column of the return. This will avoid paying the output tax to the FTA twice.

In all other cases, the normal VAT rules regarding VAT accounting and payment are applicable.

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In all other cases, the normal VAT rules regarding VAT accounting and payment are applicable.

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7. Mixed use developments

7.1. What is a mixed-use development?

A mixed-use development is a building or plot of land which has clear and distinct areas which are put to different uses which would have a different VAT treatment when supplied. For example, a building which has retail units on the ground floor level, office or commercial space on the middle floors of the building and residential units on the top floor would be considered a mixed-use development. Where a distinct part of a mixed-use development is supplied, the VAT liability applicable to the supply shall depend on the use of the part of the building which is being supplied i.e. the supply of a commercial unit shall be taxable at the standard rate, whilst the supply of a residential unit (other than the first supply) shall be exempt from VAT. Where a mixed use-development is sold in its entirety, it shall be necessary to apportion the consideration received between the different parts of the building.

The value of consideration relating to the residential part of the building shall be treated as exempt from VAT (or zero-rated, where the supply is the first supply), and the value of consideration relating to the commercial part of the building shall be treated as standard rated. 7.2. VAT recovery on development costs

Input tax incurred on the development cost of new commercial real estate is recoverable in full, given that supplies of that building shall be taxable. This means that developers will be able to recover VAT over the duration of the development of the building. Where a taxable person incurs the costs of constructing a residential building, all of the VAT incurred on the costs of such development shall be recoverable in full on the basis that the costs relate to the zero-rated first supply. Any future supplies of the building by that taxable person (e.g. a subsequent lease, which would be exempt from VAT after the first supply) shall be ignored for the purposes of input tax recovery. As a result of the above, any VAT incurred on the construction of a mixed-use development should be recoverable in full. 7.3.

VAT recovery on repair & maintenance costs

Input tax incurred on the repair and maintenance costs of a property which is used for wholly commercial purposes is recoverable in full. Input tax incurred on the repairs and maintenance of a property which is used for wholly residential purposes is not recoverable. Where input tax is incurred on a property which is used for both commercial and residential purposes, the taxpayer is required to directly attribute the VAT on costs

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incurred as far as reasonably possible. For example, where a building contains retail shops and residential apartments, any costs incurred which directly relate to the shops can be recovered in full. However, any costs which directly relate to the residential properties are not recoverable.

This then leaves an amount of input tax, often called residual input tax, where the cost is used for both parts of the business e.g. roof repairs. The input tax must be apportioned in accordance with the following method:

a) Input Tax that relates wholly to supplies where input tax is recoverable (e.g. taxable supplies), is recoverable in full; b) Input Tax that relates wholly to supplies where the input tax is non-recoverable

(e.g. exempt and non-business supplies), is blocked in full; c) Input tax that cannot be allocated under (a) or (b) above (e.g. roof repairs) must

be apportioned, and is known as "residual input tax". The residual input tax identified under point c) above should be apportioned using the following method:

1. Recoverable Tax % = supplies falling within paragraph (a) above / supplies

falling within paragraph (a) + supplies falling within paragraph (b);

2. The percentage calculated under paragraph (1) above is then rounded to the

nearest whole number;

3. The percentage calculated under paragraph (2) is to be multiplied by the

amount of input tax referred to in paragraph (c) to establish the recoverable proportion of that input tax; and

The total recoverable input tax is then the sum of supplies falling within paragraph (a) plus the answer under paragraph (3). The standard method of apportionment set out above may not be appropriate in every situation. Each business is different, and the standard method of apportionment may give rise to outcomes which might not be reflective of the actual use of goods or services by the business. As a consequence, the FTA introduced alternative methods of input tax apportionment which may be used where the standard method does not provide an outcome which is reflective of the actual use of the acquired goods or services. A special method may however only be used after written approval was received from the FTA.

The floorspace method is available to businesses which deal with supplies (sales and rental) of commercial and residential properties, including real estate companies and other businesses which sell or rent out real estate on an ongoing basis, where expenses would be similar for floorspace regardless of whether used for making exempt or taxable supplies. Under the floorspace method, the apportionment percentage for residual input tax is calculated by identifying the portion of the

floorspace used for taxable activity as a percentage of the total floorspace used by the business. 20

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For more information on special apportionment methods, please refer to the Input Tax Apportionment: Special Methods Guide VATGIT1.

7.4.

Can a piece of land be for mixed use?

In some cases, a plot of land may be used for partly commercial purposes and partly residential purposes. For example, this could involve a farm which includes both commercial (covered) land and a farm house for residential use. Where a farm is supplied which is for mixed use, the VAT liability of the supply should be apportioned in the same manner as described above.

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8. Owners' Associations and Management Entities

8.1. What is an Owner's Association or a Management Entity?

Owners' associations ("OA's") or Management Entities ("ME's") are often established to manage and administer the common areas of a building on behalf of all of the owners of a building. They commonly deal with issues such as cleaning, maintenance, security etc. OA's are often comprised of members which are the owners of the individual units themselves, while ME's may include the developer, the management company, or the hotel project management company as the case may be. An OA/ME is normally responsible for the procurement of services required to maintain the upkeep of the property and collects money from all of the owners of the individual units within a property in order to pay the expenses of contractors or fund major refurbishment works. OA's are usually not-for-profit organisations or associations, but they can take many different legal forms. They are not normally incorporated legal entities, but instead they could be:

- A legal partnership between the members;
- An association with legal status, registered under laws concerning joint property

ownership;

or

- An unincorporated group or association with no legal personality/status.
- 8.2. Is an Owner's Association or Management Entity required to be registered for VAT purposes?

An OA/ME is regarded as a 'person' for VAT purposes and required to register for VAT if its supplies exceed the VAT registration threshold. Although OA's and MEs can take many different legal forms and can enter into arrangements with suppliers and tenants, in multiple different ways, they will be making taxable supplies or undertaking an economic activity and the normal VAT rules will apply. An OA/ME will therefore be required to register for VAT where any of the following applies:

- It exercises any form of control, management and administers the common

areas, including dealing with issues such as maintenance, security, rule enforcement, general well-being of tenants, financial management and

engagement with statutory authorities. • It has a legal personality distinct from its members e.g. where it is registered

under laws concerning joint property ownership and is constituted as a formal partnership etc.; • It undertakes an economic activity;

- It makes supplies which would be taxable supplies if the entity were registered

for VAT; • Its taxable turnover exceeds the mandatory registration threshold. 22

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- It has a legal personality distinct from its members e.g. where it is registered

under laws concerning joint property ownership and is constituted as a formal partnership etc.;

- It undertakes an economic activity;
- It makes supplies which would be taxable supplies if the entity were registered

for VAT;

- Its taxable turnover exceeds the mandatory registration threshold.

8.3.

VAT treatment of supplies made by Owners' Associations and Management Entities

The VAT liability of supplies may vary depending on the nature of the supply made by the OA/ME. In cases where the OA/ME is conducting an economic activity and has the ability to register for VAT, any service charges made by the OA/ME should be subject to VAT at 5%.

As a result of charging VAT on the service charges, the OA/ME should therefore have the right to recover any VAT incurred on services it purchases from third parties for the purposes of maintaining the building.

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9. Development infrastructure

9.1. Infrastructure works undertaken by master developers

In many cases in the UAE a master developer will purchase a large plot of land, which it then sub-divides into smaller plots of land for sale. As part of this process, the master developer will add infrastructure to the communal areas of the development, such as roads, power and water and connections to other infrastructure such as internet and phone lines. In some cases, such infrastructure costs may include the development of mosques, parks, utility networks and landscaping etc. This work is often required as a condition of the Urban Planning Authorities in order to approve the master plan and allow the master developer to sell the divided plots. 9.2. VAT recovery on infrastructure costs

Where a master developer incurs VAT in the course of constructing communal infrastructure on a large plot of land, such costs have been incurred in the normal course of the master developer's business. As such, the VAT on such costs should be recoverable as a general overhead cost of the business.

Where the business makes fully taxable supplies, the VAT incurred on the infrastructure costs shall therefore be recoverable in full. However, where the smaller plots of land in the master community are sold as bare land they shall be exempt from VAT, with no right to recover any VAT. This would only apply where the land remained bare land and any plots sold are sold as bare land, but nevertheless, the land had separate infrastructure (e.g. a road) which is not part of the sale of 'bare land'. In the event that a mixture of bare land and commercial real estate is sold from the site, then the VAT incurred on infrastructure costs should be apportioned under the normal input tax apportionment rules. 24

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10. Supplies between landlords & tenants

10.1. Inducements

Where a landlord pays a prospective tenant to enter into a lease, the tenant is considered to be making a supply to the landlord of agreeing to enter into a contract. If the tenant is registered for VAT then their services shall be subject to VAT at 5%, regardless of whether the property is a commercial or residential property. Where the prospective tenant is not VAT registered any inducement paid by the landlord is outside the scope of VAT. In addition, any inducements paid by a tenant to a third party to accept the assignment of a lease is not consideration for the assignment or grant, but is a standard-rated supply of services by the third party. 10.2. Rent-free periods

Where the landlord grants a rent-free period in return for no consideration, the rent-free period does not normally constitute a supply for VAT purposes. This is only the case where the tenant is not obliged or required to provide anything in return, and the tenant is not a related party. However, if a tenant undertakes to provide anything to the landlord in return for the rent-free period, this would represent a barter transaction.

For example, a landlord may grant a rent-free period to a tenant in return for the tenant agreeing to refurbish the property. In such cases, both supplies will be of equal value, but will not necessarily have the same VAT liability (for example, where the landlord is supplying residential property). Where VAT is charged on the value of the barter transaction this would be recoverable subject to the normal rules. In some cases, a landlord may advertise to a tenant that he is providing a rent-free period, when in fact he is simply agreeing to collect the rent over a shorter period than the lease term. For example, the landlord may grant a 12-month lease stating that the first month is rent-free, with the rent payable over the remaining 11 months of the lease term. The VAT liability of the rent received is the total consideration received and remains the same, whether or not a rent-free period is offered. 10.3. Lease surrender

If a landlord pays a tenant or licensee to surrender any interest in, right over or licence to occupy land, then that is a supply to the landlord by the tenant.

The tenant is considered to be making a supply of agreeing to exit the lease early and if the tenant is registered for VAT then their services shall be subject to VAT at 5%. This is regardless of whether the property is a commercial or residential property

10.4. Lease variation

Variations to leases may simply alter one or more of the terms, such as permitting the building to be used for a purpose that was originally prohibited. 25

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bility of the rent received is the total consideration received and remains the same, whether or not a rent-free period is offered.

If a landlord pays a tenant or licensee to surrender any interest in, right over or licence to occupy land, then that is a supply to the landlord by the tenant. The tenant is considered to be making a supply of agreeing to exit the lease early and if the tenant is registered for VAT then their services shall be subject to VAT at 5%. This is regardless of whether the property is a commercial or residential property

Variations to leases may simply alter one or more of the terms, such as permitting the building to be used for a purpose that was originally prohibited.

However, other variations to a lease can be more fundamental, such as an extension to the length of the tenancy or an alteration to a demised area. Where there is a more fundamental change to the lease, the old lease is treated as surrendered and a new lease granted in its place. Any consideration the landlord receives for any type of lease variation is taxable at 5% on the basis that the landlord is making a supply of agreeing to vary the lease terms.

However, where there is no monetary consideration, no supply is seen as taking place if the variation merely extends the term and/or extends the right of occupation to a larger part of the same building.

10.5. Landlord contributions towards tenants' costs

Simple contributions to tenants' costs do not constitute a supply by the tenant to the landlord unless there is a contractual obligation for the tenant to do something in return for the contribution received.

The terms of a lease may provide for the landlord to recover from tenants, at or near the termination of the lease, an amount to cover the cost of restoring the property to its original condition. The amount is often agreed between the parties and may be based on a surveyor or contractor's estimate.

Depending on the terms of the contract, dilapidation payments which are paid as damages or for breach of contract relating to a requirement to properly maintain the property may be considered to be outside the scope of VAT.

However, if the dilapidation payment represents consideration for repairs and maintenance works which should have been undertaken over the life of the lease by the tenant and which will be undertaken by the landlord, the payment involved is the consideration for a supply for VAT purposes and is subject to VAT at 5%.

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11. Place of supply

11.1. Place of supply of real estate

It is important to establish the place of supply of goods or services in order that the supplier can confirm whether or not UAE VAT will be applicable to the transaction. The supply of real estate including sale and tenancy contracts is a supply of goods. The place of supply of goods is the UAE, where the goods are located in the UAE when sold and the supply does not involve the export of goods from the UAE. Therefore, any real estate located in the UAE (except property located in a Designated Zone) is supplied in the UAE. As a result, the supply of any property located in the UAE will be subject to UAE VAT legislation. 11.2. Place of supply of real estate related services

Where a supply of services is considered to be related to real estate, the place of supply of the services is where the real estate is located. Therefore, any services which are related to real estate located in the UAE shall also be treated as supplied in the UAE and UAE VAT will be applicable on the supply.

A supply of services is deemed to relate to real estate where the supply of services is directly connected with the real estate, or where it is the grant of a right to use the real estate. A supply of services directly connected with real estate includes¹¹:

- The grant, assignment or surrender of any interest in or right over real estate; • The grant, assignment or surrender of a personal right to be granted any

interest in or right over real estate; • The grant, assignment or surrender of a licence to occupy land or any other

contractual right exercisable over or in relation to real estate, including the provision, lease and rental of sleeping accommodation in a hotel or similar establishment; • A supply of Services by real estate experts or estate agents; and • A supply of Services involving the preparation, coordination and performance

of construction, destruction, maintenance, conversion and similar work. Services which are not considered to be directly related to real estate shall be subject to the normal place of supply rules. Some examples of services that are not considered to directly relate to real estate include:

- Secondment of staff to a building site;

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contractual right exercisable over or in relation to real estate, including the provision, lease and rental of sleeping accommodation in a hotel or similar establishment;

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of construction, destruction, maintenance, conversion and similar work.

Services which are not considered to be directly related to real estate shall be subject to the normal place of supply rules.

Some examples of services that are not considered to directly relate to real estate include:

- Secondment of staff to a building site;

11 Article 21(3), VAT Executive Regulations

- Advice or information relating to land or property markets generally;
- Drawing up plans for a building that does not relate to a specific site;
- Management of a property investment portfolio;
- The supply of storage of goods in a property without a right to a specific area for the exclusive use of that customer;
- Advertising services, including those that involve the use of a billboard;
- General legal advice on real estate related contracts.

If a land related service is provided alongside other services that don't relate to land it will be necessary to consider whether there are separate supplies being made or a single composite supply to which other services are ancillary. If there is a single composite supply directly related to land, this treatment covers all the elements that make up the supply. If there are multiple supplies each will need to be considered on its own.

The VAT registration threshold for non-residents who make taxable supplies in the UAE is nil.

As noted above, supplies of real estate are considered to be supplies of goods. Real estate located within the UAE is therefore subject to VAT in the UAE where applicable. Where a non-resident landlord makes any taxable supplies related to any real estate located in the UAE, they will be required to register, charge and account for VAT. It is not possible for non-resident landlords to make use of the reverse charge mechanism where their tenant is already VAT registered in the UAE, on the basis that the reverse charge mechanism is applicable only in respect of the import of concerned goods and on services received from non-resident suppliers. Given that real estate is a supply of goods, and is already located within the UAE so cannot be imported, the reverse charge mechanism is not applicable.

Where the real estate itself is sufficient enough to create a fixed establishment for the non-resident landlord, it shall be considered resident in the UAE and therefore subject to the mandatory registration threshold and eligible to be a member of a VAT group. In order for the real estate to create a fixed establishment for the landlord, there would normally need to be sufficient human and technical resource located within the UAE in order for the landlord to make the supply of the real estate.

11.4. Real estate within a Designated Zone

As mentioned above, supplies of real estate, which include sale and lease of real estate, are treated as supplies of goods and the place of supply of such supplies is where the real estate is located.

VATG203 confirms that these supplies of real estate made within Designated Zones

will be outside the scope of VAT, subject to the conditions attaching to supplies of goods within Designated Zones. It should be noted real estate will not be treated as being “consumed” when sold or leased within a Designated Zone to another business

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to be used by that business – and therefore such supply of real estate is eligible to be treated as outside the scope of UAE VAT.

All other supplies of real estate are deemed to be supplies of services related to real estate. This includes, but is not limited to licences to occupy, and other contractual rights which are exercisable over or in relation to real estate¹².

The supply of services also includes the provision, lease and rental of sleeping accommodation in a hotel or similar establishment, services of real estate experts or estate agents¹³, and construction and similar services¹⁴.

As a result, supplies of services related to real estate which are outlined above and performed in the Designated Zone will be liable to VAT at the standard rate.

12 Article 21(1)-(3), VAT Executive Regulations

13 Article 21(3)(d), VAT Executive Regulations

14 Article 21(3)(e), VAT Executive Regulations

Real estate are deemed to be supplies of services related to real estate. This includes, but is not limited to licences to occupy, and other contractual rights which are exercisable over or in relation to real estate¹².

The supply of services also includes the provision, lease and rental of sleeping accommodation in a hotel or similar establishment, services of real estate experts or estate agents¹³, and construction and similar services¹⁴.

As a result, supplies of services related to real estate which are outlined above and performed in the Designated Zone will be liable to VAT at the standard rate.

¹² Article 21(1)-(3), VAT Executive Regulations

¹³ Article 21(3)(d), VAT Executive Regulations

¹⁴ Article 21(3)(e), VAT Executive Regulations

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12. Construction industry

12.1. VAT liability of construction services

Construction services which are supplied in the UAE are subject to VAT at 5%. This VAT treatment will apply regardless of the type of building which is being constructed. 12.2. Date of supply in the construction industry

The normal date of supply rules apply to construction services in the same way as they apply to any other service i.e. the date of supply will generally be the earlier date of the following:

- Receipt of payment; • Completion of the services; or
- A tax invoice is issued in respect of the supply. However, in practice the construction industry involves supplies which take place over a significant period of time and are therefore subject to stage of completion payments/advance payments/retentions etc and other performance-related events during the course of the overall supply.

As a result, applying the above date of supply rules may not always be straightforward for supplies within the construction industry and therefore special rules apply for the services which are supplied on a continuous or on-going basis over a period of time – these are often known as continuous supplies of services and apply to construction services where there are periodic payments or consecutive invoices. The rules for this are found in Article 26 of the Decree-Law. A supply is considered to fall under these rules where both factually and contractually there are multiple payments to be made under the contract – so for example, provisions for an advance payment and/or a stage of completion payment(s) and retentions would mean a supply was considered to fall under these rules. In such cases where a contract includes periodic payments or consecutive invoices, the date of supply shall be the earliest of the following:

- The date of issuance of any tax invoice; • The date payment is due as shown on the tax invoice; • The date of receipt of payment.

In the event that 12 months has passed from the date of provision of the goods or services and none of the above events has occurred, a date of supply will be triggered at the 12-month point. The certification of a construction project at a particular point in time will not trigger the date of supply for VAT purposes. However, certification of a project is often linked to other obligations such as a due date for payment, which may itself trigger the date of supply. 30

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In such cases where a contract includes periodic payments or consecutive invoices, the date of supply shall be the earliest of the following:

- The date of issuance of any tax invoice;
- The date payment is due as shown on the tax invoice;
- The date of receipt of payment.

In the event that 12 months has passed from the date of provision of the goods or services and none of the above events has occurred, a date of supply will be triggered at the 12-month point.

The certification of a construction project at a particular point in time will not trigger the date of supply for VAT purposes. However, certification of a project is often linked to other obligations such as a due date for payment, which may itself trigger the date of supply.

It is often the case where large construction projects are concerned that a retention clause will be included within the contract. A retention clause allows the customer to hold back a proportion of the contract price once the work has been completed, pending confirmation that the supplier has done the work properly and has rectified any immediate faults that might be found.

Often the retention amount is not payable by the customer until an agreed period of time has passed, and in some cases where the customer is not satisfied with the quality of the work, the retention payment will be retained by the customer.

There are no special rules for determining the date of supply in relation to retention payments, therefore the normal relevant date of supply rules must apply – in other words those applying to continuous supplies under Article 26 of the Decree-Law.

Under Article 26 of the Decree Law, the date of supply shall therefore be triggered at the earliest of:

- The time the retention payment has been made;
- The issuance of a tax invoice in relation to the retention; or
- 12 months from the date the work has been signed off as complete (e.g.

If, however, the services are considered to be a single supply subject to the tax point rules under Article 25 of the Decree-Law, and the services are considered to have already been completed by the supplier (e.g. they have been certified), the date of supply for the retention will be triggered on the date the services were completed (or on the date of issue of the tax invoice or receipt of payment if earlier). However, if the services are not contractually treated as completed until such time that the sign off is given by the recipient, then the date of supply will be delayed until the earlier of:

- The time the retention payment has been made;
- The work has been signed off as complete; or
- The tax invoice has been issued.

This means that where the construction services are not considered to be contractually complete, VAT is only due to the extent of any payments received or invoices issued during delivery of the services. Under Article 26, even where the services are contractually complete, there is no tax point until an invoice is issued or payment is received or 12 months has passed – whichever is earlier. The VAT applicable on the retention payment would not be due to be accounted for by the supplier until the time the retention payment is received by the supplier, or an invoice in respect of the retention payment is issued, whichever is earlier.

ion payment has been made;

- The work has been signed off as complete; or
- The tax invoice has been issued.

This means that where the construction services are not considered to be contractually complete, VAT is only due to the extent of any payments received or invoices issued during delivery of the services. Under Article 26, even where the services are contractually complete, there is no tax point until an invoice is issued or payment is received or 12 months has passed – whichever is earlier. The VAT applicable on the retention payment would not be due to be accounted for by the supplier until the time the retention payment is received by the supplier, or an invoice in respect of the retention payment is issued, whichever is earlier.

Where retention payments become due for payment to the supplier after 1 January 2018 which relate to supplies of services which were completed prior to 1 January 2018, the payment received by the supplier should be outside the scope of VAT.

Where a retention payment becomes due for payment to the supplier after 1 January 2018 and the supply is not considered to be completed until the retention is signed off, then VAT shall be applicable on the value of the retention payment received.

Snagging generally occurs where the customer is not happy with the standard of work provided by the builder. In many cases the customer will have held a retention payment in respect of the possible snags that may be identified in the course of construction.

In most cases the builder will be asked to rectify the snag usually at their cost. Alternatively, the developer may invite a different builder to resolve the snags. Where the original builder corrects the snags at his cost he will not receive any further consideration. Therefore, there is no further supply being made by the builder and the snagging works are considered to be part of the original supply. The builder will not be required to account for VAT on the liability of the works undertaken.

Where the customer uses a second supplier to correct the snags, or where the original supplier corrects the snags for an additional fee, there is an additional supply of services to the customer and VAT will be due on that supply. However, in these cases the customer may withhold the retention permanently – and therefore VAT is not due on that element. If VAT has already been accounted for (because a tax invoice was issued or the 12-months rule had applied), then the supplier may consider using the bad debt relief provisions (if he considers the payment is still due) or a credit note (if he accepts the payment is not due at all) to credit VAT overpaid.

A building is normally considered complete on the date the building is certified as being complete by an appropriately qualified party. However, if the building is occupied before this date, the date on which the building is occupied shall be taken to be the date of completion.

If you sell a partly completed commercial building prior to its completion, your supply will be standard-rated unless it qualifies to be treated as part of a transfer of a going concern.

If a building does not exist at the time of the entry into the contract for sale, the position will depend on the terms of the contract. However, Article 26(1) of the VAT Decree-Law provides that the date of supply for any contract that includes periodic payments or consecutive invoices should be the earliest of the date of issuance of tax invoice, the date payment is due or the date of receipt of payment.

Furthermore, Article 5(2) of the VAT Decree-Law provides that the entry into a contract between two parties which entails the transfer of goods at a later time is also treated

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as a supply of goods. Article 2(3) of the VAT Executive Regulations states that a contract should be treated as a supply of goods where the agreement stipulates a transfer or intention to transfer the ownership of goods or a future transfer of ownership of goods. Furthermore, depending on the facts, in any situation where there is a combination of a supply of goods and services, any service element is likely to be treated as part of a composite supply in which case the VAT treatment of the predominant supply of goods would apply.

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13. VAT Refund for New Residences

13.1. When is the VAT refund available?

Where a UAE citizen owns or acquires land in the UAE on which the person builds or commissions the construction of his own residence, he shall be entitled to make a claim to the FTA to repay the VAT on the expenses of constructing the residence. The claim may only be made by a natural person who is a UAE national. 13.2. Conditions for the special VAT refund

In order to claim a refund of the VAT incurred on the construction of a residence, the following conditions must be met¹⁵:

- The claim may only be made by a natural person who is a UAE national; • The claim must relate to a newly constructed building to be used solely as the

residence of the person or the person's family; and

- The claim may not be made in connection with a building that will not be used

solely as a residence by the person or the person's family, for example if it is to be used as a hotel, guest house, hospital or for any other purpose not consistent with it being used as a residence. The refund claim must be lodged with the FTA within 12 months from the date of

completion of the newly built residence. 13.3.

Costs which are eligible to be refunded under the scheme

Where a person is eligible to submit a refund claim under the scheme, VAT may be reclaimed on the following categories of expenses¹⁶:

- Services provided by contractors, including the services of builders, architects,

engineers and other similar services necessary for the successful construction of the residence; • Building materials, being goods of a type normally incorporated by builders in

a residential building or its site, but not including furniture or electrical appliances. Goods are normally considered to be incorporated into a building when they are fixed in such a way that the fixing or removal of those goods would either require the use of tools, or result in the need for remedial work to the fabric of the building, or substantial damage to the goods themselves. Examples of goods which are not considered to be incorporated into the building include:

- Appliances; ¹⁵ Article 66(2), VAT Executive Regulations

16 Article 66(6), VAT Executive Regulations

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ther similar services necessary for the successful construction of the residence;

- Building materials, being goods of a type normally incorporated by builders in

a residential building or its site, but not including furniture or electrical appliances.

Goods are normally considered to be incorporated into a building when they are fixed in such a way that the fixing or removal of those goods would either require the use of tools, or result in the need for remedial work to the fabric of the building, or substantial damage to the goods themselves.

Examples of goods which are not considered to be incorporated into the building include:

15 Article 66(2), VAT Executive Regulations

16 Article 66(6), VAT Executive Regulations

- Furniture which is not fixed into the building such as sofas, tables, chairs etc.;
- Landscaping, such as trees, grass and plants.

Examples of goods which are considered to be incorporated into the building and would be eligible for a refund of VAT include:

- Central Air conditioning;
- Doors;
- Fire alarms and smoke detectors;
- Flooring (excluding carpets);
- Kitchen sinks, work surfaces and fitted cupboards;
- Sanitary ware;
- Shower units;
- Window frames and glazing;
- Wiring when embedded inside the structure of the building.

All applications for New Residence VAT Refunds must be submitted via the FTA e-Services Portal.

For further details please refer to the VAT Guide on VAT Refund for UAE Nationals Building New Residences.

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13.4. How to submit refund claim

All applications for New Residence VAT Refunds must be submitted via the FTA e-Services Portal.

For further details please refer to the VAT Guide on VAT Refund for UAE Nationals Building New Residences.

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14. Transitional Provisions

Article 80 of the VAT Decree-Law defines where VAT applies in respect of agreements entered into before 1 January 2018.

In cases where periodic payments are made in respect of a transfer of ownership of a real estate before and after the implementation date of VAT in the UAE, and the transfer of ownership has occurred prior to 1 January 2018, the transfer will not be subject to VAT. Alternatively, in cases where a transfer of ownership in real estate has occurred after 1 January 2018, the supply will be considered as subject to VAT under the normal rules.

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15. Updates and Amendments

Date of amendment: April 2020 | Amendments made: • Added detail to Section 3.6 on supply of accommodation in labour camps

- Added detail to Section 5.3 on stage where it is considered to be a partially completed building.
- Added detail to Section 5.6 on development of leased bare land.
- Added detail to Section 7.3 on VAT recovery of repair and maintenance costs.
- Amended Section 8 to include Management Entities.

- Revised Section 13.4 based on new process for submission of New Residence Refund Requests.

Date of amendment: April 2021 | Amendments made: • Amended Section 13.2 to update time-limit before which a refund claim needs to be lodged with the FTA.

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