

VAT and Carrying out Projects without a Corporate Set-up in the UAE

The introduction of VAT in the United Arab Emirates (“UAE”) on 1 January 2018 has certainly added complexity to carrying out business as a foreign investor in the UAE. In the past, depending on the volume and duration of a project, foreign investors may have decided to implement such projects without a corporate set-up (e.g. subsidiary or branch office) in the UAE. This briefing addresses the question how such structures should now be treated from a VAT perspective.

1. What is the issue?

Experience shows that foreign investors may decide against the cost of setting-up a corporate vehicle in the UAE to implement such projects without a set-up in the UAE.

Example:

A foreign company (“FCO”), having its seat in Europe, has been awarded a project that includes the delivery of special machinery and after sales-services in the UAE. Instead of setting-up a limited liability company (“LLC”) with an Emirati partner or registering a branch office to carry out after sales-services (onshore activities), FCO chooses to carry out the delivery of goods Ex-Works and sends its after sales-services staff to a hosting company (service provider) in the UAE, who applied for respective visa and work permits for FCO’s employees and hosts such staff.

While such structures may be cost efficient they may come along with a number of tax and legal risks.

2. Which impact does VAT have on such structures?

Before the introduction of VAT, foreign investors were only issuing so-called commercial invoices. Now, with the introduction of VAT, depending on the nature of the supply, for such transaction a tax invoice may have to be issued. Such tax invoice must contain a certain minimum number of information.

In the example, the following would apply:

In order to render tax invoices, FCO would need to register with the Federal Tax Authority (“FTA”) to obtain a Tax Registration Number (“TRN”).

The question, however, is, whether FCO can tax register as a company having its seat outside of the UAE. As FCO has its seat outside of the UAE, FCO’s tax registration is not mandatory even if FCO is above the statutory revenue thresholds.

If FCO does not register as a non-resident company, FCO’s customer would need to apply the so-called reverse charge mechanism on the import of goods and services so that the FTA would have a taxable person

to turn to. FCO's customer would then be paying VAT on behalf of FCO.

Based on that, such supplies of goods and services by FCO into the UAE mainland do not necessarily require FCO to obtain a tax registration and to issue tax invoices.

3. What are the (non-tax-related) consequences of the introduction of VAT in such cases?

While foreign investors may not be required to issue tax invoices, as laid out above, the application of the reverse charge-mechanism will document that the foreign investor has carried out business (onshore activities) in the UAE, without having a corporate structure (e.g. subsidiary or branch office) and relevant licenses. In the absence of any corporate income taxation in the UAE, there are no permanent establishment risks ("PE") attributed to such investment structures. However, under the foreign investment laws of the UAE such onshore activities that have been carried out under the "umbrella" of a service provider, granting visa and working permits against payment of a service fee, could be problematic.

As discussed, in another [legal briefing](#), it should be noted that if the relevant authorities notice that a foreign investor is acting without a license, the investor may be fined, and/or the investor may be banned from applying for such a license (black list). Such processes are rather informal, and the determination of any measures is up to the sole discretion of the respective authority.

Details depend on each case and not all scenarios are in violation of the UAE's licensing requirements.

4. What is the solution, what are the obstacles?

Taking into consideration the above, foreign investors should review the actual tax and legal implications of their project implementation structure. While hosting structures (i.e. obtaining visa and work permits from a non-related service provider) may have not been in the focus of the authorities in the past, this may change in light of the new documentation function of tax invoices.

Foreign investors would need to review the hosting structure (e.g.: Is FCO's staff fully integrated into the hosting company? Does the hosting company have any instruction rights towards the FCO's staff? etc.) and the project duration. If subsequent business is in the pipeline, which would allow for a corporate set-up in the UAE, this should be taken into consideration, as well.

Foreign investors opting to implement their projects in the UAE through a hosting structure would need to ensure that by having their employees hosted by a third-party service provider or subcontractor, such parties are duly licensed and approved to carry out the full scope of the engagement. Foreign investors should, therefore, carry out a full compliance check of the commercial license in order to assure that all business activities are covered and the contracts with the customers should be drafted

accordingly to include the right for the foreign investors to use (nominated) subcontractors.

The employees would need to receive minimum salaries in the UAE which would need to be paid out in the UAE in accordance with the Wages Protection System (“WPS”). Tax implications in the respective home countries of the employees would need be checked. While the UAE do not levy any personal income tax, depending on the tax system / tax residency (if any) in the employee’s home country and on a potentially applicable double taxation agreement between the UAE and the home countries of the employees, a detailed legal review may become necessary.

5. Conclusion

As outlined above, VAT is adding complexity for foreign investors carrying out projects without a set-up in the UAE. While im-

plementing projects without a set-up certainly lowers operating costs compared to incorporating a limited liability company and/or registering a branch office, such structures would need to be checked carefully against local investment and licensing requirements.

Based on that, foreign investors should keep in mind the following:

- They should be aware of the documentation implication of issuing commercial invoices in light of tax audits at their customer premises in the UAE;
- Foreign investors should review their project implementation standards against the applicable foreign investment and licensing law; and
- in case of any non-compliance make a risk assessment, taking into consideration the remaining project duration, subsequent business etc.

Yulia Kasiyanova

Attorney-at-Law (Germany)
Senior Associate (UAE)

yulia.kasiyanova@schlueter-graf.com

Dr. Constantin Frank-Fahle, LL.M.

Attorney-at-Law (Germany)
Legal Consultant (UAE)

frank-fahle@schlueter-graf.com

Andrés Ring

Attorney-at-Law (Germany)
Legal Consultant (UAE)

andres.ring@schlueter-graf.com

SCHLÜTER GRAF Legal Consultants

The Citadel Tower | Offices 2001-2005 | Business Bay
P.O. Box 29337 | Dubai | United Arab Emirates
Tel.: +971 4431 3060 | Fax: +971 4431 3050
dubai@schlueter-graf.com

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