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Amending the Authority's Policy on Issuing Clarifications and Directives

Federal Tax Authority Decision No. 4 of 2024 – Issued 12 June 2024 – (Effective 1 July 2024)

The Chairman of the Board of Directors of the Federal Tax Authority has decided:

- Having reviewed the Constitution,
- Federal Decree-Law No. 13 of 2016 on the Establishment of the Federal Tax Authority, and its amendments,
- Federal Decree-Law No. 7 of 2017 on Excise Tax, and its amendments,
- Federal Decree-Law No. 8 of 2017 on Value Added Tax, and its amendments,
- Federal Decree-Law No. 28 of 2022 on Tax Procedures,
- Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses, and its amendments,
- Cabinet Decision No. 37 of 2017 on the Executive Regulations of the Federal Decree-Law No. 7 of 2017 on Excise Tax, and its amendments,
- Cabinet Decision No. 52 of 2017 on the Executive Regulations of the Federal Decree-Law No. 8 of 2017 on Value Added Tax, and its amendments,
- Cabinet Decision No. 65 of 2020 on the Fees for the Services Provided by the Federal Tax Authority, and its amendments,
- Federal Tax Authority Decision No. 4 of 2021 on the Disclosure of Information Held by the Authority or its Employees, and its amendments,
- Federal Tax Authority Decision No. 5 of 2021 on the Authority's Policy of Issuance Clarifications and Directives,
- Federal Tax Authority Decision No. 8 of 2022 on the Special Methods of Input Tax Apportionment,



- Decision of the Chairman of the Board of Directors No. 9 of 2021 on the Delegation to the Vice Chairman of the Board of Directors of the Federal Tax Authority, and
- Pursuant to the approval of the Board of Directors on amending the Authority's Policy for Issuance of Clarifications and Directives at its 32nd meeting held on 26/4/2024.

Article 1 – The Authority's Issuance of Clarifications and Directives

The Authority shall issue the clarifications and directives in accordance with the attached policy.

Article 2 – Implementation of the Decision

This Decision shall be published in the Official Gazette and shall come into effect as of 1 July 2024.



Policy on Issuing Clarifications and Directives

I. Background:

Within the framework of the competence of the Federal Tax Authority (“Authority”) in accordance with Article 4 of the Federal Decree-Law No. 13 of 2016 on the Establishment of the Federal Tax Authority and its amendments regarding the issuance of clarifications and directives necessary for taxpayers with regards to the limits of their obligations related to the federal taxes and relevant penalties, subject to the mechanisms decided by the Board, the Authority has, since the inception of implementing the federal taxes in the UAE, issued directives and clarifications. In light of the amendments of legislation and tax laws, the policy shall be amended as below.

II. Legal Reference:

- Article 4 of the Federal Decree-Law No. 13 of 2016 on the Establishment of the Federal Tax Authority and its amendments specifies the powers granted to the Authority. Article 4 states that the Authority shall have jurisdiction over the administration, collection and enforcement of the federal taxes and relevant penalties, to distribute their revenues and to apply the tax procedures applicable in the UAE. For this purpose, a number of tasks including the issuance of directives and clarifications necessary for taxpayers with regard to the limits of their obligations related to the federal taxes and relevant penalties, subject to the mechanisms on which the board issues a decision.
- Federal Decree-Law No. 8 of 2017 on Value Added Tax and its amendments (“Decree Law”) states the referrals to the VAT Executive Regulation.
- Article 48 of the Federal Decree-Law No. 28 of 2022 on Tax Procedures (“Tax Procedures Law”) states the Authority’s power to grant a period of time to fulfil any obligation or procedure.



- Article 59 of the Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses and its amendments (“Corporate Tax Law”) states that a Person may make an application to the Authority for a clarification regarding the provisions of the Corporate Tax Law or the conclusion of an advance pricing agreement with respect to a transaction or an arrangement proposed or entered into by the Person.
- Articles 14, 16 and 22 of the Cabinet Decision No. 37 of 2017 on the Executive Regulation of the Federal Decree-Law No. 7 of 2017 on Excise Tax and its amendments (“Excise Tax Executive Regulation”) state that the Authority shall specify alternative forms of evidence according to the nature of the export or nature of the excise goods being exported for purposes of exemption, deduction or refund of the Excise Tax.
- Article 30(6) of Cabinet Decision No. 52 of 2017 on the Executive Regulation of the Federal Decree-Law No. 8 of 2017 on Value Added Tax and its amendments (“VAT Executive Regulation”) states that the Authority may specify alternative forms of evidence according to the nature of the export or the nature of the goods being exported for the purposes of applying the zero-rate on the export of goods.
- Article 30(7) of the VAT Executive Regulation states that the Authority may extend the 90-day period mentioned in Clauses 1 and 2 of the same Article, pursuant to a written request from the supplier in certain cases.
- Articles 55(12) and 55(15) of the VAT Executive Regulation state that the Authority may use an alternative mechanism of apportionment of input tax than that referred to in the Article itself.
- Article 59(7) of the VAT Executive Regulation states that the Authority may determine not to mention any of the particulars that must be contained in the tax invoice or may determine that a tax invoice is not required to be issued in certain cases, subject to specified conditions and controls.



- Article 60(2) of the VAT Executive Regulation states that the Authority may determine not to mention any of the particulars that must be contained in the tax credit note or may determine that there is no need for the taxable person to issue a tax credit note, subject to specified conditions and controls.
- Clauses 16 and 17 of the table of the Fees for the Services Provided by the Federal Tax Authority annexed to Cabinet Decision No. 65 of 2020 on the Fees for the Services Provided by the Federal Tax Authority (“Cabinet Decision No. 65”) provided for the imposition of a service fee for a private clarification request.
- Federal Tax Authority Decision No. 4 of 2021 on the Disclosure of Information Held by the Authority or its employees (“FTA Decision No. 4”) states the Authority’s ability for disclosure under international agreements or treaties.
- Federal Tax Authority Decision No. 8 of 2022 on the Special Methods of Input Tax Apportionment (“FTA Decision No. 8”) states a list of the methods of Input Tax Apportionment.

III. Clarifications:

This section addresses the mechanism for the issuance of private and public clarifications, guides, e-learning programmes and all clarifications issued by the Authority, as follows:

1. Private Clarifications

Private clarifications are clarifications issued by the Authority in the form of a document stamped and signed by the Director General of the Authority or his delegate or his representative, in relation to specific tax technical matters and for a specific taxpayer, according to a private clarification request submitted through the form prepared for that purpose on the Authority's website and the documents attached to that form.



- Authority's Mechanism of Issuing its Decisions in Private Clarifications:

For a clarification to be issued to the taxpayer by the Authority, the following should be met:

1. The Taxpayer (or its authorised signatory, tax agent, legal representative or the representative member of a tax group) should submit an application for a clarification (the "Request"), provided that the following requirements are met:
 - a. The Request relates to federal taxes or relevant penalties.
 - b. A selection is made on whether the Request relates to one tax or more than one tax, in order to determine the fee prescribed by the Cabinet Decision No. 65.
 - c. The Request relates to tax legislation as applied to the facts and circumstances of a taxpayer or taxpayers submitting the Request. This means that the clarification issued by the Authority is not applicable to a third party.
 - d. The Request contains all relevant information for the Authority to determine the response to that Request (Annex (a) – The minimum information required to submit a Request to issue a clarification).
2. If the Request does not meet the above requirements, the Authority may reject the to issue a clarification to the applicant. The Authority may also reject to issue a clarification in cases where it considers it is fair and reasonable to do so, including but not limited to the following:
 - The answer to the Request submitted by the applicant was mentioned in a guide or a public clarification issued by the Authority.
 - The Request is based on a hypothetical scenario that has not been seriously considered by the applicant.



- The subject of the Request is a matter on which a clarification was previously issued or relating to a tax assessment issued by the Authority.
 - The applicant is subject to a tax audit, assessment or inspection by the Authority, and the subject of the Request is related to the matter under tax audit, assessment or inspection.
 - If the Authority has reasonable grounds for suspecting that the Request addresses issues that may constitute tax avoidance or tax evasion, including the application of Article 50 of the Corporate Tax Law regarding the General Anti-abuse Rules or similar provisions under double taxation agreements, where the clarification cannot address the application of that Article.
3. Where the Request includes matters that are not clear in the tax legislation, the Ministry of Finance shall be consulted to clarify the established tax policy, as it is the competent authority to issue tax legislation and develop related policies. Accordingly, the topic of the private clarifications is shared with the Ministry of Finance, taking into account not to share any data disclosing the identity of the applicant as much as possible, through any of the following methods:
- Presentation to a joint committee consisting of representatives of the Authority and the Ministry of Finance to discuss the topics of clarifications that are not clear in the tax legislation to agree on how to deal with these in terms of whether there is a need to issue or amend legislation or determine the policy that the Authority must follow, provided that the meetings and their outcomes are documented.
 - Official correspondence with the Ministry of Finance to clarify the policy to be followed by the Authority.
4. In the case of Requests related to Corporate and Business Tax that are included in the rules of the Organisation for Economic Cooperation and Development (OECD) BEPS Action Five, the Authority shall provide the Ministry of Finance with a summary of



these clarifications every two months, according to a specific form to be sent to the Ministry of Finance being the competent authority for the purposes of exchanging Tax information, including the data of the taxable person in accordance with case 4 “disclosure under international agreements or treaties” of the table annexed to the FTA Decision No. 4 of 2021.

- Framework of Implementing the Clarification:

If the Authority has issued a clarification for the taxpayer, the taxpayer shall have the right to rely on this clarification to ascertain his tax obligation or penalty, and the Authority shall be administratively bound to implement the clarification. However, it should be noted that:

- The clarification is limited only to the concerned taxpayer or taxpayers who have requested for the clarification to be issued. If the clarification relates to a tax group, the clarification shall be limited only to the concerned group members. This means that the clarification issued by the Authority shall not be applicable to third parties. However, an exception is made for specific cases in which the Authority may issue a clarification for a specific category of taxpayers based on the same facts provided all the members of the category are parties to the same transaction.
- The Authority shall be administratively obligated to follow this position in circumstances where such clarification is relied upon and where the factual circumstances are the same as contained in the clarification form provided in the clarification Request.
- The validity of the clarification shall be open-ended unless otherwise specified therein. The Authority may determine a period so that the clarification expires after the lapse of that specified period. In any event, a clarification shall cease to have effect if the relevant legislation on which it is based is amended.



In all cases, the Authority shall be able to withdraw the clarification if it is considered incorrect, and in that case the person may act as indicated in the clarification until the date of being notified of the withdrawal by the Authority.

If the Authority issues a subsequent clarification to the taxpayer on the subject issued earlier, the subsequent decision shall have priority of application to the previous decision. The previous clarification must also cease to have effect from the date of issuance of the subsequent clarification.

- Procedures of issuing clarifications:

- The Authority shall specify the timeline within which clarification is expected to be issued, from the date of receipt of the clarification application or after receiving all relevant information from the applicant. If further information is needed to respond to the Request, the Authority may communicate with the applicant to request such information to be provided in accordance with the procedures specified by the Authority, and a new timeline shall begin from the date of receipt of the required information. If the issuance of the clarification is likely to take more than the period determined by the Authority, the Authority shall inform the applicant of the possible time frame within which the clarification will be issued.
- If the Authority requests further information from the applicant, the applicant shall be informed that the response to the Request has to be provided by the applicant to the Authority within 40 business days. If the applicant does not respond to the request for further information within the specified timeline, the Authority shall have the right to close the Request in the system.
- If the applicant initiates the application in the Authority's system but it is not submitted to the Authority, the Authority will send an automated email to remind the



applicant to complete the draft application within 20 business days to finalise the application within 40 business days from the date of starting the application. If the application is not submitted within 40 business days from the date of starting the application, the Authority shall close the application.

2. Public clarifications, guides e-learning programmes and all clarifications issued by the Authority

The Authority is mandated to determine the mechanisms and procedures to issue the public clarifications, e-learning programmes and guides, provided that the public clarifications and guides related to tax policy are sent to the Ministry of Finance before being issued by the Authority in order for the Ministry to provide its views or observations in terms of the consistency of public clarifications or guides with the prescribed tax policies.

IV. Directives:

This section deals with the mechanism for issuing directives through administrative exception decisions, input tax apportionment decisions, and advance pricing agreements, as follows:

1. Administrative exceptions:

In light of the tax legislation, the Authority may grant administrative exceptions in certain situations whenever the conditions and controls stipulated in the tax legislation are met. The nature of these exceptions varies and falls under both the value added tax and the excise tax. Those related to the value added tax are as follows:



- tax invoices,
- tax credit notes,
- evidence proving the export of goods, and
- the period required to the export goods.

As for excise tax, an administrative exception is granted in relation to the evidence proving the export of goods.

- Authority's Mechanism of Issuing Administrative Exception Decisions:

The following conditions must be met for the Authority to be able to objectively review the administrative exception request:

1. The request must be submitted by any of the following persons:
 - a. the authorised signatory or the registrant himself in the case of a natural person,
 - b. the tax agent appointed by the registrant,
 - c. the legal representative appointed by the court, or
 - d. the non-taxable person conducting business for the purposes of excise tax.

Where the registrant is a member of a tax group, the request must be submitted by the representative member of the tax group.

2. The following data must be provided in the request:
 - a. the category of administrative exception which the applicant is seeking,
 - b. a detailed explanation of the reasons for submitting an administrative exception request, and



c. supporting documentary evidence.

3. The Authority may reject the request if the above conditions are not met. The Authority must also reject the request for any administrative exception that are outside the scope of the jurisdictions granted to the Authority under the tax legislation.
4. The Authority shall consider each category of administrative exception, exercise its discretion in accordance with the controls stipulated in the tax legislation and operational policies, and evaluate the request, taking into account audit requirements.

- Framework of Implementing the Administrative Exception Decisions:

The Authority is committed to applying the administrative exception decision issued to the applicant in cases where the facts and information provided match those contained in the exception request, according to the following controls:

- The decision shall be effective from the date of its issuance unless otherwise stated.
- If an exception is granted, the decision will be valid for a period of 3 years from the date of its issuance unless the provisions of the tax legislation that is the subject of the decision are repealed or amended. In the event that the provisions of the legislation subject of the decision are repealed or amended, the decision shall cease on the effective date of the repeal or amendment made to the provisions of the relevant tax legislation.
- The administrative exception decision does not aim to provide any explicit or implicit ruling regarding the correct tax treatment.



- Procedures of Issuing Administrative Exceptions:
 - The Authority shall specify the allowed timeline within which the administrative exception decision must be issued, from the date of receipt of the administrative exception request or after receiving all relevant information from the applicant, taking into account the nature of each category of administrative exceptions. Thus, the Authority has the right to specify different time periods for issuing administrative exception decisions according to the category. If further information is needed to respond to the administrative exception request, the Authority shall communicate with the applicant to request such information to be provided in accordance with the procedures established by the Authority during a specified period, and a new timeline shall begin from the date of receipt of the required information. If issuance of the administrative exception decision is likely to take more than the period determined by the Authority, the Authority shall inform the applicant of the potential time frame during which the administrative exception shall be issued.
 - If the Authority requests further information from the applicant, the applicant shall be informed that the response to the request has to be provided by the applicant to the Authority within 40 business days. If the applicant does not respond to the request further information within the specified timeline, the Authority shall have the right to close the request in the system.
 - If the applicant initiates an administrative exception request in the Authority's system but it is not submitted to the Authority, the Authority will send an automated email to remind the applicant to complete the draft request within 20 business days to finalise the request within 40 business days from the date of starting the request. If the request is not submitted within 40 business days from the date of starting the request, the Authority shall close the request.



2. Input Tax Apportionment:

Input tax incurred on taxable supplies that meet the requirements may be recovered. However, input tax incurred on supplies that do not meet the requirements, are exempt, or are not in the course of business shall not be recovered.

In some cases, the taxable person must account for recoverable input tax relating to goods or services used partly in the course of making supplies that allow for the recovery of input tax and partly for other purposes that do not allow input tax recovery.

Article 55 of the VAT Executive Regulation provides a Standard mechanism for input tax apportionment, but in some cases the Standard mechanism is not appropriate in accordance with the controls stipulated in tax legislation. The Authority allows the use of alternative mechanisms depending on the case. These mechanisms are determined according to a specific list (in accordance with the provisions of the tax legislation).

- The Authority's Mechanism of Issuing Input Tax Apportionment Decisions:

The following conditions must be met for the Authority to objectively review the request to specify an alternative method for input tax apportionment:

1. The request must be submitted by any of the following persons:
 - a. the authorised signatory or the registrant himself in the case of a natural person,
 - b. the tax agent appointed by the registrant, or
 - c. the legal representative appointed by the court.

Where the registrant is a member of a tax group, the request must be submitted by the representative member of the tax group.

2. The applicant is a VAT registered person for at least 6 months.



3. The applicant is making taxable supplies and non-taxable supplies.
4. The application of the standard method for input tax apportionment does not lead to achieving fair and reasonable results with regard to the recovery of input tax.
5. The registrant specifies the method for which the request to the Authority is submitted.
6. The applicant provides evidence that the alternative apportionment method will be more appropriate than the Standard mechanism.

- Framework of Implementing Input Tax Apportionment Decisions:

The Authority is committed to applying the input tax apportionment decision issued to the applicant in instances where the facts and information provided match those contained in the request, according to the following controls:

- The decision to approve requests shall be effective from the first tax period beginning after the issuance of the decision, taking into account applying such decision for the period specified in Federal Tax Authority Decision No. 8.
- If the approval to use an alternative method is granted, the registrant must use the alternative method that was approved for a period of two or four years, depending on the approved method.

Such alternative method represents the taxable person's actual use, which does not change for a number of years unless the taxable person's business changes. Accordingly, the Authority must direct the taxable person to recalculate the adjustments related to the actual use for a number of previous years.

Since the Decree-Law and the VAT Executive Regulation do not specify a period for the recalculation whereas Article 55(15) of the VAT Executive Regulation states that the Authority shall set out the conditions for using the alternative method, the



period shall be specified at only three tax years as it will be administratively difficult for the taxable person to make recalculations for a period exceeding three tax years. As for the tax years preceding those three tax years, the method used by the taxable person is acceptable provided that it is fair and reasonable.

- The Authority has the right to reject the request or request further information if it is found that the request does not include all the relevant information or contains incorrect information.

The process of reviewing and evaluating the request is not a process of auditing or verifying the validity of the applied tax treatment.

- Procedures of issuing input tax apportionment decisions:

- The Authority shall specify the allowed timeline within which the input tax apportionment decision or the further information request must be issued from the date of receipt of the input tax apportionment request or after receiving all the relevant information from the applicant, taking into account the nature of each category of input tax apportionment. Thus, the Authority has the right to specify different time periods for issuing the decision of input tax apportionment according to the category. If more information is needed to respond to the input tax apportionment request, the Authority shall communicate with the applicant to request further information in accordance with the procedures established by the Authority during a specified period, and a new timeline shall begin from the date of receipt of the required information. If the issuance of the input tax apportionment decision is likely to take more than the period determined by the Authority, the Authority must inform the applicant of the potential time frame during which the input tax apportionment decision or the further information request decision shall be issued.



- If the Authority requests further information from the applicant, the applicant shall be informed that the response to the request shall be provided by the applicant to the Authority within 40 business days. If the applicant does not respond to the request for additional information within the specified timeline, the Authority shall have the right to close the request in the system.
- If the applicant initiates the request for an alternative input tax apportionment method in the Authority's system and it is not submitted to the Authority, the Authority will send an automated email to remind the applicant to complete the draft request after 20 business days to finalise the request within a deadline of 40 business days from the date of starting the request. If the request is not submitted within 40 business days from the date of starting the request, the Authority shall close the request.

3. Advance Pricing Agreements

Based on the Corporate Tax Law, a person may make an application to the Authority in relation to the conclusion of an advance pricing agreement with respect to a transaction or an arrangement proposed or entered into by the person.

The start date for receiving applications for advance pricing agreements and procedures related to the submission of applications and the issuance of agreements will be announced in the fourth quarter of 2024.

This policy outlines the general framework for procedures of clarifications and directives, while the processes and details shall be specified by the Authority.



Annex (A): The minimum information required to submit a Request to issue a clarification

- Name, address and tax registration number (if applicable) of the applicant
- Name and address of the tax agent or legal representative, if the request is submitted by either of them on behalf of the applicant
- An estimation of the tax or penalty amount that may be affected as a result of the clarification
- Subject matter of the clarification
- Details of the facts and circumstances related to the clarification request, with the provision of any documents, contracts or any other instruments related to the subject matter of the request
- Specify the tax legislation Articles relevant to the clarification request
- Name and information of the authorised signatory, and
- Acknowledgement that:
 - All the questions have been correctly answered, according to knowledge.
 - All the required information has been submitted.
 - Prior to submitting the request, all tax laws and regulations related to the subject of the request as well as previous clarifications issued by the Authority have been reviewed.
 - Acceptance to submit any further information required by the Authority after its review of the clarification request.