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# ZERO-RATING OF EXPORT SERVICES

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**Bizilance**  
Consultants

Office No. 3413, 34th Floor,  
Churchill Tower 1, Business Bay,  
Dubai, UAE

Tel : +971 4 580 8060

Fax : +971 4 580 7912

Cell : +971 52 914 1118

Email : saeed.hasan@bizilance.ae

URL : [www.bizilance.ae](http://www.bizilance.ae)

**HAMDAN ALSHAMSI**  
LAWYERS & LEGAL CONSULTANTS

Office 107, Bay Square. BLD-07,  
Marasi Drive, Business Bay,  
Dubai, UAE

E-mail : [info@alshamsilegal.com](mailto:info@alshamsilegal.com)

URL : [www.alshamsilegal.com](http://www.alshamsilegal.com)

## ZERO-RATING OF EXPORT SERVICES

Federal Tax Authority, United Arab Emirates has issued a Public Clarification No. VATP019 regarding zero-rating of export services. Summary of key deliberations in the subject Public Clarification is discussed hereunder.

Article 31(1)(a)(1) of the Cabinet Decision No. 52 of 2017 on the Executive Regulations of the Federal Decree-Law No. 8 of 2017 on Value Added Tax (the Executive Regulation) prescribes the source rule for zero-rating of export of services.

Zero-rating of export of services is allowed subject to following two conditions:

- The services are supplied to a recipient of services who does not have a place of residence in an implementing state (place of residence of the recipient); and
- The recipient is out the United Arab Emirates as the time the services are performed (location of the recipient).

The subject Public Clarification elaborates both of the above conditions, as discussed hereunder.

### Place of Residence of the Recipient

The subject Public Clarification states that this condition will be satisfied if the recipient does not have a place of residence in the United Arab Emirates.

A recipient may have a place of residence in the United Arab Emirates, if it has either a ‘place of establishment’ or ‘fixed establishment’ in the United Arab Emirates, defined as follows:

**Place of Establishment:** the place where the recipient is legally established pursuant to the decision of its establishment, in which significant management decisions are taken or central management functions are conducted.

**Fixed Establishment:** any fixed place of business in which the recipient conducts business regularly or permanently and where sufficient human and technology resources exist to enable the recipient to supply or acquire goods or services, including the recipient's branches.

Where a recipient has a number of establishments in different countries, the place of residence of that recipient should be considered to be the country in which the recipient's place of establishment or fixed establishment most closely related to the supply of services being made is located.

In some cases, the supply of services made by the supplier may be received, to some degree, by both the place of establishment and the fixed establishment. In such a case, the supplier will need to identify which establishment is most closely related to receiving the supply by considering the facts of each case objectively. The following factors should be taken into consideration:

- which establishment is the contractual recipient of the supply
- which establishment is actually benefiting from the supply
- which establishment will receive the invoice and make payment for the supply
- which establishment provides instructions to the supplier
- whether the services are related to business being carried on by the recipient through an establishment in a particular country

## Location of the Recipient

The requirement that the location of the recipient should be determined “at the time when the services are performed” requires consideration of the nature of the services supplied, and the period or duration during which the services are performed by the supplier and consumed by the recipient. Only the physical presence of the recipient during the period or periods in which the supplier performs services and the recipient consumes them needs to be taken into account; the location of the recipient before or after the services are performed and consumed should not be taken into account for the purposes of this condition.

Where the recipient has multiple establishments, the supplier should only take into account the establishment of the recipient which is most closely related to the supply being made in determining whether the recipient is outside or inside the UAE at the time the services are performed. Therefore, where the recipient has establishments both inside and outside the UAE and the supply is most closely connected with the non-resident establishment of the recipient, then that non-resident establishment of the recipient will be treated as the location of the recipient for the purposes of Article 31(1)(a) of the Executive Regulation. In such circumstances, the condition that the recipient is outside the UAE would be met even if the recipient also has a UAE establishment.

The above principles relate to companies and other entities, which are capable of being established and present in multiple locations simultaneously, and do not apply to natural persons who are incapable of having a simultaneous presence in multiple locations. Therefore, where an individual is physically inside the UAE, he or she cannot be “outside the State”. This presence of the individual in the UAE at the time the services are performed would typically take away the ability of the supplier to zero-rate the supply to the individual.

## Extension to the Term “Outside the UAE”

Article 31(2) of the Executive Regulation provides an exception to the condition that the recipient of the services must be physically outside the UAE for zero-rating to apply. Specifically, a person can still be considered as being outside the UAE where:

- short-term presence in the UAE of less than a month; and
- the presence is not effectively connected with the supply.

The subject Public Clarification concludes that in order to ensure that the zero-rated treatment is not applied incorrectly, the supplier should consider all available facts and seek, if necessary, additional information from the recipient in order to identify the recipient's residency status and location at the time the services are performed. If the supplier is not able to establish the necessary facts to ascertain if the zero-rating conditions are met, the supplier must standard-rate the supply.



Please share your queries & responses

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Email: [saeed.hasan@bizilance.ae](mailto:saeed.hasan@bizilance.ae)

Cell No: +971 52 914 1118

[www.bizilance.ae](http://www.bizilance.ae)