Université de Paris

École doctorale Sciences juridiques, politiques, économiques et de gestion - ED 262

Laboratoire URP 1515 Centre Maurice Hauriou pour la recherche en droit public (CMH)

The Legislations of Value Added Tax in The United Arab Emirates

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Thèse de doctorat de sciences juridiques

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Présentée et soutenue publiquement le 01/09/2021

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To my parents, my wife and my kids.

Appreciation

At the beginning, I would like to extend my warm respect and appreciation to Professor Xavier Cabannes for his approval to supervise my thesis and his efforts in making my thesis into a success. I believe that words can't describe his efforts to success this thesis.

Secondly, I would like to extend my thanks to the jury members, Mrs. Polina Cazals, Professor at Savoie Mont Blanc University, Mr. Alexandre Guigue Associate Professor at Savoie Mont Blanc University, Mr. Mohamed Shaker Alhammadi, Associate Professor at United Arab Emirates University, faculty of Law and Mr. Fouad Nohra Associate Professor at Universty of Paris for the participation on my jury and for supporting my work on the thesis.

Also, I would like to thank Abu Dhabi Accountability Authority. In addition, with pride, I would like to thank the Cultural Office of the United Arab Emirates Embassy in France for their continued support.

Finally, I would like to thank my family, friends and colleagues who have greatly assisted me into making this achievement.

Table of Abbreviations

UAE	**United Arab Emirates**
KSA	**Kingdome of Saudi Arab**
GCC	**Gulf Cooperation Council**
VAT	**Value Added Tax**
IMF	**International Monetary Fund**
OECD	**Organization for Economic Co-operation and Development**
ECJ	**European Court of Justice**
WTO	**World Trade Organization**
RST	**Retail Sales Tax**
GST	**Good and Services Tax**
CJEU	**Court of Justice of the European Union**
GAAR	**General Anti Avoidance Rules**
MTIC	**Missing Trader Intra-Community**
GDP	**Gross Domestic Product**
FTA	**Federal Taxation Authority**

Abstract

Cette thèse a été élaborée et réalisée durant la période de préparation de lancement initial de la taxe sur la valeur ajoutée aux Émirats arabes unis et dans les pays du Conseil de coopération du Golfe, à savoir le Royaume d'Arabie saoudite, le Sultanat d'Oman, les Émirats arabes unis, le Royaume de Bahreïn, l'État du Koweït et enfin l'État du Qatar.

Les six pays représentent une unité économique commune, de sorte que la plupart des décisions économiques d'importance sont émises de manière unifiée dans le cadre d'un accord du Golfe qui réunit les six parties, ou d'un accord multilatéral international dans un terme plus précis. Il ne faut pas oublier que ces six pays sont liés par l'accord sur le marché douanier commun ou l'union douanière et que l'un de ses principes les plus importants est de ne pas imposer de droits de douane pour le commerce intracommunautaire entre les six pays. Il faut ajouter qu'il existe un chevauchement entre l'application de la taxe sur la valeur ajoutée et ce marché commun du Golfe ou cette union douanière. Notamment en ce qui concerne l'importation et l'exportation entre les six pays ou en dehors du champ d'application de ces six pays. Tout ceci s'ajoute à la réexportation, qui est clairement populaire dans la région du Golfe en raison de la situation géographique qui relie le Levant au Maroc, qui est une artère vitale pour le commerce international, en plus de l'infrastructure et des services distingués. Le pionnier dans ce domaine et le plus grand exemple de ceci est le port de Jebel Ali considéré comme LE centre de réexportation dans la région et le port de Fujairah comme le deuxième plus grand port pour le ravitaillement en carburant dans le monde.

Les concepts de la taxe sur la valeur ajoutée se chevauchent largement avec ces concepts de l'importation et l'exportation, en particulier avec le principe de l'application « pour la première fois ». Cette question nécessite un examen plus approfondi.

Notamment dans les concepts de la double imposition, l'évasion fiscale et la violation de ces principes qui existent, et qui en résulte par des phénomènes qui sont bien connus, tels que la corruption et même plus précisément la corruption circulaire. Cette même question nous ramène un peu en arrière par le passé, lorsque l'introduction de la taxe sur la valeur ajoutée dans un grand nombre de pays dans le monde, où l'occurrence de ces défis ont nécessité le développement de normes unifiées. Afin d'assurer l'application optimale de la taxe sur les exportations et les importations, sans pour autant affecter le commerce international, l'Union européenne peut être le meilleur exemple qui peut être émulé et partiellement emprunté à ses expériences.

Le défi le plus important dans la transposition de la taxe sur la valeur ajoutée dans les Émirats arabes unis est le manque de connaissances et le manque d'expérience suffisante en raison de la non-application de la taxe sur la valeur ajoutée auparavant. Ceci génère ce qui est une nouvelle question, et la présence de nombreux chevauchements entre la loi sur la taxe sur la valeur ajoutée et d'autres lois locales, ainsi qu'avec des accords internationaux, par exemple, les organismes gouvernementaux dans les Émirats arabes unis. Considérée comme une source de ressources financières pour le budget général, en imposant des frais sur tous les services fournis, en plus d'imposer des tarifs douaniers. L'application de la taxe sur la valeur ajoutée, qui est

connue au sens figuré comme étant la « machine à argent », il apparaît que le besoin de ces frais gouvernementaux sera moindre, ce qui nécessite un changement radical de la structure législative. En ce qui concerne ces frais gouvernementaux, s'ajoute encore la question des zones économiques libres et la façon dont l'application de la taxe sur la valeur ajoutée y est traitée.

Par conséquent, cette question appelle à un examen de la législation des zones franches ainsi qu'une modification radicale de la législation et des règlements en place, de sorte que l'objectif de ce document est d'examiner la loi sur la taxe sur la valeur ajoutée et d'autres lois pertinentes et l'analyse de la loi en profondeur liée à son application pratique, car toute loi représente un ensemble de règles visant à réglementer les relations, et la loi n'est pas seulement constituée de textes, mais la loi est un esprit. Par conséquent, cette thèse a examiné de nombreux aspects de la législation des Émirats arabes unis dans le but de mettre en œuvre la loi sur la taxe sur la valeur ajoutée, son application correcte qui atteint l'objectif de son émission et l'esprit lui-même de la loi.

Aussi, la loi ne se laisse pas appliquer seule, car elle doit bénéficier d'interventions de personnes qui apportent leur savoir, leur expérience et leurs connaissances dans la rédaction et l'interprétation des textes de loi, ainsi que des personnes qui contribuent à l'application correcte de la loi. Également des juges et des avocats contribuent à résoudre les litiges fiscaux, et ce, conformément à la loi dans son esprit et sa lettre. Par conséquent, cette thèse se veut être une référence pour les hommes de loi, notamment les législateurs, les professeurs d'université, les juges et les avocats, en plus des conseillers fiscaux et des experts-comptables, car nous sommes convaincus que le succès de toute loi passe par des personnes qui savent la faire appliquer correctement.

En général, la raison pour laquelle la taxe sur la valeur ajoutée n'a pas été appliquée dans les Émirats arabes unis auparavant est qu'elle n'était pas nécessaire au cours de cette période, en raison essentiellement du boom pétrolier et de la hausse des prix au cours des cinquante dernières années. En raison de la baisse des prix du pétrole amorcée depuis plusieurs années et de la transition vers des sources d'énergie propres et renouvelables, ces ressources ont commencé à diminuer.

Il y a toujours un besoin certain de pétrole comme source d'énergie, mais aussi, en raison de l'émergence du pétrole de schiste comme concurrent du pétrole, les prix du pétrole ont varié à la baisse ces dernières années. En conséquence, les pays pétroliers ont cherché à trouver d'autres sources de revenus pour alimenter leurs budgets, et les six pays du Conseil de coopération du Golfe, dont les Émirats arabes unis, sont des pays pétroliers dont l'économie dépend directement et indirectement du pétrole. Il s'est trouvé donc nécessaire de créer d'autres sources de revenus pour alimenter le budget général de l'État, c'est pourquoi la taxe sur la valeur ajoutée a été approuvée.

Il ne fait aucun doute que les principes sur lesquels la loi sur la taxe sur la valeur ajoutée doit se fonder sont les principes de neutralité de cette taxe sur la valeur ajoutée, et puisque les pays du monde sont passés par de multiples étapes, jusqu'à ce que la taxe sur la valeur ajoutée prenne cette forme actuelle, et cette efficacité. Ainsi, les principes fondamentaux de neutralité de la taxe sur la valeur ajoutée sont la base sur laquelle la loi doit s'appuyer. Le système de la taxe

sur la valeur ajoutée se fonde sur ces principes, qui ont pour se faire, été examinés en profondeur, puis répercutés dans la loi des Émirats arabes unis, et la comparaison a été faite sur cette base. Il convient de noter que l'imposition de la taxe sur la valeur ajoutée à chaque étape de toute fourniture constitue le cœur de la taxe sur la valeur ajoutée et en constitue la base.

Le principe de neutralité de la taxe sur la valeur ajoutée, est le critère de la différence entre la taxe sur la valeur ajoutée et la taxe sur les ventes. En effet, ce principe prévoit l'application de la taxe sur la valeur ajoutée à chaque étape de l'application, s'y ajoute l'activation de la fonction de déduction des personnes imposables, tiers ou commerçants. La question exige que chaque partie, à chaque étape de la fourniture, puisse déduire la taxe sur la valeur ajoutée pour en extraire la différence et la fournir au gouvernement afin qu'il soit en mesure de recouvrer ses fonds, ce qui renforce le succès de la taxe sur la valeur ajoutée, autrement dit, le succès de la fourniture. Tout en se chargeant du remboursement et la collecte de l'argent auprès de tiers.

Pour que la taxe sur la valeur ajoutée réussisse, elle doit être basée sur le principe de l'efficacité fiscale, c'est-à-dire que la taxe atteint son objectif en n'affectant ni l'économie ni le consommateur, et d'autre part, atteindre le plus grand rendement financier grâce à une application correcte. Comme nous le savons, la corruption de tous types est ce qui érode l'économie. Cependant, tout système fiscal peut contribuer à l'échec de la mise en place de la taxe sur la valeur ajoutée. Par conséquent, l'éthique de la mise en œuvre de la taxe sur la valeur ajoutée a été examinée à travers la loi des Émirats arabes unis. Bien évidemment, le modèle de la corruption circulaire a également été examiné de près, ainsi que l'observation de nombreux problèmes qui se sont présentés dans ce cas, et l'étude de la probabilité que ce type de corruption se produise dans les Émirats ainsi que les moyens de la traiter avant qu'elle ne se produise.

Si nous supposons que l'application de la taxe sur la valeur ajoutée a été incorrecte ou inférieure à ce qui était prévu, cela entraînera le non-recouvrement des montants que les autorités prévoient de percevoir, ce qui peut entraîner des décisions susceptibles de contribuer à réduire l'efficacité de la taxe sur la valeur ajoutée, par exemple, l'augmentation du taux de celle-ci, ce qui peut avoir un effet négatif sur le consommateur.

Nous croyons que le développement d'un instrument indépendant qui permet de déterminer l'efficacité de la taxe sur la valeur ajoutée et le pourcentage de réalisation du revenu correct, contribue directement au succès de la taxe sur la valeur ajoutée, en plus de l'imposition d'amendes et de sanctions disciplinaires, administratives et pénales aux contrevenants, ainsi que l'élaboration de la description correcte des violations, de tableaux des violations et de leurs sanctions.

La composition politique des Émirats arabes unis en fait un modèle unique en termes de politique, de constitution et de législation. Les Émirats arabes unis sont un État fédéral au sein du Conseil de coopération du Golfe. Il était donc nécessaire, lors de la réalisation de cette thèse, d'examiner la constitution des Émirats arabes unis, ainsi que des trois autorités de l'État représentées par l'autorité législative dans ses deux chambres, le Conseil suprême fédéral et le Conseil national fédéral (Parlement), ainsi que l'autorité exécutive, qui est le Conseil des ministres, et l'autorité judiciaire représentée par le Conseil judiciaire suprême.

Sans oublier la répartition des rôles entre le gouvernement fédéral et les sept gouvernements locaux, qui sont le gouvernement d'Abu Dhabi, le gouvernement de Dubaï, le gouvernement de Sharjah, le gouvernement d'Ajman, le gouvernement d'Umm al-Quwain et le gouvernement de Ras Al-Khaimah. Et enfin, le gouvernement de Fujairah, conformément aux dispositions de la constitution. Depuis l'application de ces principes, l'application de la taxe sur la valeur ajoutée est l'une des tâches du gouvernement fédéral représenté par l'autorité fiscale fédérale, mais la question n'est pas sans nécessiter la participation des gouvernements locaux, par le biais des autorités responsables de la régulation économique et de la réglementation des marchés locaux, et de cette nature.

L'aspect unique est un autre aspect majeur, car l'application de la taxe sur la valeur ajoutée est née de l'accord du Golfe pour l'application de cette même taxe, qui a fixé les principales normes, notamment le taux normal de cette taxe sur la valeur ajoutée et le taux zéro, ainsi que les exemptions. Mais il semble que cet accord soit incomplet sous plusieurs aspects, dont le plus important est qu'il ne mentionne pas plus d'un taux pour l'application de la taxe sur la valeur ajoutée, en plus de ne pas le spécifier quelle serait l'autorité judiciaire en présence d'un désaccord sur l'interprétation de cet accord ou en cas de désaccord.

Sur ce même niveau, qui est le niveau constitutionnel, la loi sur la taxe sur la valeur ajoutée est fondamentalement mise en place au moyen d’un décret de loi, ce qui signifie qu'elle a été émise par le président des Émirats arabes unis durant la période où le Conseil national fédéral, donc le Parlement, n'était pas en session, et cela a été mentionné en détail dans la communication d’alors, en regard des types de lois fédérales, à la lumière de la constitution des Émirats arabes unis.

Il convient de noter que la loi sur la taxe sur la valeur ajoutée ne peut être appliquée seule sans la présence d'autres lois. Par conséquent, le législateur émirati a publié un certain nombre de lois, notamment la loi sur les procédures fiscales, la loi portant la création de l'autorité fiscale fédérale, la loi sur l'impôt sélectif, en plus d'un certain nombre de réglementations et de décisions exécutives, à la suite de la mise en œuvre de la taxe sur la valeur ajoutée.

Il était nécessaire d'apporter certaines modifications au système législatif pour accompagner le développement ou pour combler un vide législatif, par exemple, la décision Expo et la décision Gold, les deux éléments ayant été mentionnés plus en détail dans la thèse.

Dans cet aspect, le législateur émirati a également eu recours, en s'écartant des principes de la taxe sur la valeur ajoutée, au principe du remboursement du montant de la taxe sur la valeur ajoutée, spécifiquement dans le cas de la construction d'une maison pour les citoyens des Émirats arabes unis et exceptionnellement tiré de la loi à des fins sociales. À travers cette question, les aspects juridiques ont été considérés, mais également si cette procédure a approuvé la loi correcte ou non.

Comme nous le savons, les exceptions ou les exemptions dans la loi sur la taxe sur la valeur ajoutée affectent l'application correcte de la loi et occasionnent une rupture dans la chaîne d'approvisionnement, ainsi des textes spéciaux sont promulgués pour ces rares cas afin d'assurer la meilleure application de la taxe sur la valeur ajoutée, non seulement aux Émirats arabes unis,

mais dans le monde en général. Ce système est appliqué dans la plupart des pays du monde, à savoir un système d'exceptions et/ou d'exemptions, et il faut noter que les exemptions sont généralement à trouver dans le secteur de la santé, le secteur de l'éducation, le secteur public, le secteur bancaire, le secteur des services publics et le secteur des services postaux, et à ce niveau une question cruciale apparaît à la surface. Le rapport zéro au sein des exceptions. Ou bien est-ce une catégorie spéciale qui n'est pas considérée comme une exception, donc cette partie a été discutée en profondeur et cette question a été répondu par le biais de la thèse, et d'un point de vue légal.

Par ailleurs, une autre question ou une autre interrogation est apparue à la surface. Dans le cas de l'exportation, comment est calculée la taxe sur la valeur ajoutée et quel pays a le droit d'imposer et de collecter cette taxe ? Ou bien la collecte se fait-elle différemment dans plusieurs pays ? La taxe sur la valeur ajoutée n'est-elle pas passée par plusieurs étapes depuis sa création en France, et pour la première fois après la seconde guerre mondiale ?

L'aspect le plus important du développement est de concrétiser une conception générale de la relation entre la taxe sur la valeur ajoutée et le commerce international... ce qui a contribué à l'application de la taxe sur la valeur ajoutée, tout en essayant de ne pas affecter le commerce international et l'application des principes qui empêchent la double imposition ou l'évasion fiscale.

Ces principes se sont reflétés dans la législation locale des pays pour toutes ces raisons, et compte tenu de l'importance de cette question. La thèse a répondu à cette question d'un point de vue pratique et juridique.

Dans notre conclusion, le défi constitutionnel de la mise en œuvre de la taxe sur la valeur ajoutée dans les Émirats arabes unis a été examiné, et nous avons constaté que la législation des Émirats arabes unis a abordé ce défi sous plusieurs aspects. Mais cela ne signifie pas qu'il n'y a aucune lacune dans cette législation, que cette étude a clarifié dans le détail et mis en évidence, en plus de l'énumération des propositions nécessaires pour modifier, voire éliminer, ces lacunes ou insuffisances.

Quant au défi économique, un certain nombre de solutions appliquées dans d'autres pays ont été proposées pour les appliquer aux Émirats arabes unis. Nous pensons par exemple au fait de ne pas appliquer les mêmes conditions aux grandes entreprises et aux micro-entreprises, car cela requiert des procédures juridiques, administratives et comptables qui pèsent sur ces entreprises, qu'elles ne peuvent pas nécessairement et facilement mettre en œuvre en premier lieu. Par conséquent, la proposition a été d'appliquer le système discrétionnaire, conformément aux meilleures pratiques internationales, car ce système est appliqué dans de nombreux pays et ce types d'expériences ont été couronnés de succès. La législation des Émirats arabes unis n'a pas non plus pris en compte l'application de la taxe sur la valeur ajoutée sur les contrats réguliers et continus, ce qui a entraîné la perte d'un certain nombre d'entreprises et ces entités professionnelles ont été affectées négativement par l'application.

Et puisque cette question aurait pu être facilement traitée, et dans le cas de contrats continus, nous entendons les contrats qui ont été signés et ont commencé à être mis en œuvre avant la

date d'application de la taxe Valeur ajoutée au début de 2018 ou même avant que la loi sur la TVA ait été émise et publiée au Journal officiel, et l'application de ces contrats a continué après l'application de la taxe sur la valeur ajoutée. Tout comme les contrats de construction et les contrats d'assurance automobile, et avec une simple comparaison avec la situation au Royaume d'Arabie saoudite concernant l'application de la taxe sur la valeur ajoutée sur les contrats continus, où ce défi a bien été résolu dans ce Royaume et d'une manière simple et sans heurts.

Et la raison est bien évidente, car le Royaume d'Arabie Saoudite a appliqué l'impôt sur le revenu et la zakat sur les entreprises, depuis plusieurs années, et dispose d'une agence gouvernementale centrale concernée par les impôts. Ce Royaume dispose donc d'un équilibre d'expertise et de compétences, dont la thèse mentionne cette question dans tous les détails. Donc, pour conclure, et afin de réussir à mettre en œuvre correctement la taxe sur la valeur ajoutée entre les pays du Conseil de Coopération du Golfe, il est nécessaire qu'il y ait une Cour Suprême du Golfe pour considérer l'interprétation des textes et aussi pour résoudre les litiges qui pourraient survenir entre les entreprises et les pays, à ce propos.

Il convient de noter que la législation sur la taxe sur la valeur ajoutée aux Émirats arabes unis, sur le plan du principe de la première application, « pour la première fois » est une bonne législation et contribue à l'application correcte de la taxe sur la valeur ajoutée. Effectivement, la question est devenue claire lorsque le législateur a été contraint d'élaborer une législation dans le domaine de l'or et de l’Expo. Il est vrai qu'il existe un certain nombre d'erreurs dont nous avons pu constater l'existence, mais également en ce qui concerne le différend juridique entre la législation des Émirats arabes unis et l'accord du Golfe, ainsi que l'existence d'une contradiction entre la loi sur la taxe sur la valeur ajoutée et les preuves publiées par l'autorité fiscale fédérale pour la mise en œuvre de cette même taxe. Mais cela ne constitue pas un grand dilemme, car celui-ci peut être résolu et, bien évidemment, évité à l'avenir. Sur un aspect général, l'introduction de la taxe sur la valeur ajoutée aux Émirats arabes unis est une bonne décision.

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General Introduction

In February 2016, H.E Obaid Humaid Al Tayer the Minister of State for Financial Affairs of United Arab Emirates, has confirmed during a press conference with Christine Lagarde the Managing Director of International Monetary Fund during her official visit to UAE in February 2016, that the new kind of tax which is Value Added Tax will be applied in the UAE soon.

In addition, he declares that according to expectations the value added tax will start applying in the period between January 2018 to January 2019. Essentially, one hundred of food items will be excluded and the value added tax will apply in all sectors except for education and health sectors. The rate of value added tax will be five per cent, and the expectation that the VAT would generate additional revenue equivalent to approximately 1.5 per cent of the UAE's gross domestic product, which are 12 billion dirhams in first year of implementation the Value Added Tax, so the UAE federal government will have a good and satisfactory return in the revenue from the new yield, which is value added tax.

In fact, the previous announcement pave the way to establish the new era of the United Arab Emirates economic in precise the government budgets yields, that announcement can be consider as a historical decision which will change the shape of UAE economic in near future. Precisely the VAT will impact on the enterprises in state in direct way or indirect way to follow the rules of VAT law also in other side the income from tax is a new type of incomes to the government of UAE and will change the economy of the state, in addition the implementation will create new jobs in the state whereas the demand of the accountants , auditors, tax consultants and taxation lawyers will increase. Also, the ministry of economic and the domestic economic authority will license the new type of enterprises specialized in tax services and tax consultancy.

It's obvious the decision of implementation VAT in UAE are aligned with the trend of federal government of state to diversification of income sources away from oil and oil derivatives. In my opinion the VAT is a corner stone of the new era of Emirati economic, which the era of stop depending on oil income in regards of government income, the new era is based on diversification of income sources by adopting new income sources, VAT is one of that new

sources, as known the other name of VAT is "money machine" because its good source of income and the impact of VAT in economic is less than other type of taxes like income tax.

In this regard its effective way to mention that "*within less than half a century, the value added tax (VAT) has become one of the most dominant revenue instruments across the world. From relatively inauspicious beginnings in the early twentieth century, the VAT has been adopted by more than 150 countries and accounts for approximately 20 per cent of worldwide tax revenue. In population terms, it is estimated that more than 4 billion people, or 70 per cent of the world's population, live in countries with a VAT*"[1].

In Theory, it's easy to say apply VAT in UAE, but in practice the implementation of VAT will face several challenges in several sectors, precisely the challenges will be in political sector, economic sector, social sector.

The issue of political sector in regard of implementation the VAT is the UAE is a federal state, there are seven states unified under one flag, on state and one leadership, that seven states are Abu Dhabi, Dubai, Sharjah, Ajman, Um AlQuwain, Ras AlKhaimh and AlFujairah. In this regard article (1) of the constitution of United Arab Emirates said *"The United Arab Emirates is an independent, sovereign, federal state (and is referred to hereafter in this Constitution as The Union). It shall consist of the following Emirates: Abu Dhabi—Dubai—Sharjah—Ajman—Umm al Qaiwain—Ras al Khaimah— Fujairah Any other independent Arab country may join the Union, provided that the Supreme Council agrees unanimously to this. And upon acceptance of joining new member to the federation, the Federation Supreme Council shall set the number of seats to be allocated to such member in the Federal National Council in addition to the number provided for in Article 68 of this Constitution"*[2].

So, based on that and based on the others articles of UAE constitution, there are eight governments in UAE, the federal government, Abu Dhabi government, Dubai government, Sharjah government, Ajman government, Um AlQuwain government, Ras AlKhaimh government and AlFujairah government.

The political challenge of implementation the VAT to determine Which government is responsible of applying the VAT? Or on other words the VAT will be implement it by federal authorities or domastic authorities. In that regard the UAE Constitution settle that issue by

[1] James, Kathryn, *The Rise of the Value-Added Tax*, Cambridge University Press, p. 1.
[2] United Arab Emirates, The Constitution of UAE, Article 1.

specify the rules of federal government and the role of the domestic governments. Article (120) from UAE Constitution said *"The Union shall have exclusive legislative and executive jurisdiction in the following matters: 1. Foreign affairs 2. Defence and the United Armed Forces 3. Protection of the Union's security against internal or external threat 4. Matters pertaining to security, order and jurisdiction in the permanent capital of the Union 5. Matters relating to Union officials and Union Judges 6. Union finances and Union taxes, duties and fees 7. Union public loans 8. Postal, telegraph, telephone and wireless services 9. The construction, maintenance and improvement of Union roads which the Supreme Council has determined to be trunk roads. The organisation of traffic on such roads. 10. Air Traffic Control and the issue of licences to aircraft and pilots 11. Education 12. Public health and health services 13. Currency notes and coins 14. Weights, measures and standards 15. Electricity services 16. Union nationality, passports, residence and immigration 17. Union property and all matters relating thereto 18. Census matters and statistics relevant to Union purposes 19. Union Information"*[1].

Clause (6) from the previous article specify that the role of the Union tax is one of the federal government roles. In additional article (133) said *"No Union tax may be imposed, varied or abolished except by means of a law. No person may be exempted from liability to pay such taxes except as prescribed by the law. Union taxes, duties and fees may not be levied on any person except within the limits of the law and in accordance with its provisions"*[2]. Based on the previous article its obvious that the issue of federal taxation is a federal issue and any tax must be based on the federal law.

So, based on that there are several federal laws adopted to establish the VAT and the Excise tax (the federal Decree law no (8) 2017 of value added tax, the federal law No. (7) of 2017 on tax procedures and federal Decree-Law No. (7) of 2017 on Excise Tax) although the issue of distribution the income between the governments was settled by the federal legislations which will explained in the part two of the thesis.

Based on the UAE Constitution the VAT will be federal issue and the federal government will apply the VAT. Also, the domestic governments will assist on that regard based on article (125) of the Constitution which said *"The Governments of the Emirates shall undertake to take the appropriate steps to implement the laws promulgated by the Union and the treaties and*

[1] United Arab Emirates, The Constitution of UAE Article 120.
[2] United Arab Emirates, The Constitution of UAE, Article 133.

international agreements concluded by the Union, including the promulgation of the local laws, regulations, decisions, and decrees necessary for such implementation. The Union authorities shall supervise the implementation by the Governments of the Emirates of the Union laws, decisions, treaties, agreements and legal judgements. The competent administrative and judicial authorities in the Emirates shall give the Union authorities all possible help in this matter"[1].

The other challenge of implementation VAT in UAE is the challenge in economic sector, the role of private sector or in other word the role of taxable person (taxable person is "*Any Person registered or obligated to register for Tax purposes under this Decree-Law*"[2]). The system of VAT delegate the private sector or taxable person major role in implement the VAT, because it is kind of indirect taxes which means in sample words the collect of tax is doing by third party not by the government, but the taxable person or the enterprises are responsible to collect that tax and submit it to the goverment, But the challenge is the taxation system is totally new in state, and the implementation of VAT is strange for the taxable person with very important and hard rules, the challenge will start from the registration of taxable person and will not end, also the number of taxable person who are eligible to register is approximately 300 thousands according to government expectations, that issue will discuss with details in the body of the thesis.

In fact that challenge will have more influence on medium and small enterprises, on other hand the huge enterprises with the new responsibility is new for them but they can follow the law because they can corporate with tax consultancy also they can make a major change in the accounting system, but the challenge will be hard on medium and small enterprises because "they collect and pay their own tax liability. They must complete their returns and submit them with their payments to the tax administration. If they do not, the tax administration detects this failure and takes appropriate enforcement actions, including applying the penalties specified in the law. Returns are then subject to the possibility of audit"[3].

Also the major change in my opinion is the system in UAE based on fees and custom fees but after implementation two kinds of taxation which are VAT and Excise tax, the major change

[1] United Arab Emirates, The Constitution of UAE, Article 125.
[2] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 8 of 2017 on Value Added Tax, Official Gazette No. 621 issued on August 23rd, 2017, Article 1.
[3] Ebrill, Liam, Keen, Michael, Bodin, Jean-Paul, and Summers, Victoria, *The Modern VAT*, International Monetary Fund, Washington D.C., 2001, p. 138.

will be happen in the economic of UAE and that will influence on the private sector, in result of that the federal government starts decrease and erase several types of fees, also the other domestic governments follows the federal government in that regard and start decrease the fees to stop impact on the private sector and reduce the financial liability on the private sector, that will encourage to establish a lot of enterprises. If the economic is solid and growing that means the revenue of VAT will grow.

The last challenge is in social sector, this sector is a key player in implementation the VAT, because the customers will bear the burden of payment, in other side the perfect implementation of VAT require several quality judges, lawyers, auditors, accountants, tax consultants, tax agents and solid tax entity. This challenge is because the VAT are new in the region, it's obvious that there is shortage of quality judges, lawyers, auditors, accountants, tax consultants and tax agents with good background of VAT. In my opinion this is the prime challenge of implementation the VAT because it's not easy and not fast to build the suitable number of quality people to assist the implementation of VAT, the issue needs time and hard work. In my opinion the solid system of taxation needs proper legislation and proper people who work on the system.

The evidence of that there are several numbers of the people in UAE which are specialist in Law and finance they don't know the deference between the direct tax and indirect tax, in additional they thought fees is an indirect tax, so in first part the focusing was to explain the direct tax and indirect tax.

Before starting the body of the thesis its necessary to explain the most important four issues which assists to interduce the thesis, the first issue is the political history of UAE, as mention above the UAE is a federal state and the only federal state in the region which is consider as a success unified state in unstable region of Middle East.

In my opinion that will assist the subject of the thesis and will give a good background of the thesis before starting the explanations, it's necessary to be known the political history of the state to establish explanation of the Constitution system in the state, in addition the explanation of constitution system in state will assist to understand how the state prevent the challenges and how the legislation adopts in UAE. In further as mentions the VAT assist to establish the new era of UAE economic so the explanation of economic history of UAE are necessary to enhance that idea. In addition it is good to mention that the economic was key player in political history

of UAE and the history of political in UAE was linked with the economic specially the period of pearling and period of oil.

The second issue is the economy of UAE between the past and now, as mention before the implementation of VAT is a new era of UAE economic and that start of new era of UAE economic and start not depending on oil as a one source of income, so that needs explain of the history of UAE economic from 1971 until now. Its valuable to mention that the indirect tax was implemented in Abu Dhabi in the period of 60s and that will be explained in next paragraphs.

The third issue the presentation of constitutional system in UAE, as mention above the implementation of VAT in UAE will face a challenge in political side, so in further that issue will discuss but before that it's important to explain the constitutional system in UAE in regard of the issue of federal finance and federal taxation.

The last issue is the core of the thesis, the problematic of the thesis. Why this thesis is unique? In my view of point its necessary to focus on the VAT legislations in UAE to see the full picture of the VAT system. Also, it's important to write thesis which focus on the VAT legislation in UAE and to write books which assist to spread the knowledge and to be a reference for the workers in the field of taxation.

I. The political History of United Arab Emirates

The political history of UAE is very rich with facts, events and points of changes, definitely the economic factor was significant and critical in the Arabian Gulf State, the Arabian Gulf was and still the important source of livelihood in the region. The political history of UAE is linked with the economic and the economics of UAE are linked strongly with the Arabian Gulf. In additional it is hard to summarize the rich political history in several pages. In this regard the political history of UAE will be explain it in three period which will assist to serve the subject of thesis.

There are three significant points or periods in UAE political history, the first period is the period of pearling in the Arabian Gulf with the great political events that happened in the Arabian Gulf region and in the UAE region (before the establishment of the state) at that time.

Also, the second period is the period of discovering oil in UAE with significant changes in all sectors (economic, political and social). The last period is the period of establishment the New

state which is after 1966 and before 2th of December 1971, its obvious the last period establish the new state and change the region from the small villages to modern cities, also change the primitive economy to developed economy.

"*The pearling industry, which created a period of wealth for the United Arab Emirates from the late 19th century through the second decade of the 20th century, relied on extensive expertise, from shipbuilding to sailing. But the most complex process of all was the pearl diving voyage, which lasted four months in the midst of summer. The shallow Arabian Gulf waters provided an ideal environment for pearling because oyster beds were shallow enough for divers to reach without modern scuba equipment. While the diver himself was the center of activity, an entire team supported this effort – including crew that managed the ship, fed and entertained sailors and support the diver. The main pearling season, called Ghous Al Kabir (The Big Dive), occurred between June 1 and September 30. The weather, though hot, was generally clear and calm, ideal for diving. Smaller one-month seasons occurred in October and November.*

On the first day, crews would be seen off in a ceremony called Hiraat (Oyster Bed), that took place on the beach. The crews would stand next to their vessels, while their families and others not going to sea would stand at the edge of the beach and bid them farewell. The most senior Sardal – the captain of the entire fleet – would then officially announce the start of the season. On the last day of the season, a cannon would be fired from shore, with preparations for the return of the sailors, houses were festooned with cloth flags, called Al Bayraq or Al Bandira, and special food as prepared, including sweets, juices and nuts. As the pearling vessels beached on the sand, the crews would receive songs of welcome, and reply with their own songs"[1].

Reports and documents maintained by the records of the competent departments in the region indicate that the average annual value of pearls exported from the Arabian Gulf at the beginning of the last century was estimated at about one and a half million pounds, while the total income of the Gulf coast from pearl exports in the year 1925 was ten million Indian rupees at the time. The number of pearl diving ships of the coast of Oman (UAE now) at the beginning of the twentieth century amounted to 1,200 ships carrying each team with an average of 18 men.

In addition, since ancient times, natural Arabian Gulf pearls, which are considered the best quality, serenity and luster in the whole world, became famous and the history of pearl trade

[1] https://abudhabiculture.ae/en/discover/traditions/pearl-diving [consulted in February 15th, 2020].

extends for at least five thousand years. The Arabian Gulf countries were able to benefit from that important natural wealth in that era and were able to lay the first building blocks upon which the modern states are based.

Before the First World War, the pearl industry was the backbone of the national economy in the Emirate of Abu Dhabi. The percentage of the population working in the pearl industry directly or indirectly constituted about 85% of the total population of the Emirate of Abu Dhabi. The pearl industry also contributed 95% of the national income compared to 5% for other sectors such as agriculture, trade, grazing and fishing. The importance of the pearl fishing sector comes due to the long beach overlooking the Arabian Gulf of Abu Dhabi and the many islands and places of diving in searching of pearls, in addition to the experience of Abu Dhabi residents in matters navigation and rides a long time ago. This allowed Abu Dhabi to occupy a prominent position in the field of pearling and trade.

Furthermore, the number of ships used in the search for pearls became about 410 vessels in the early twentieth century. Territorial waters of Abu Dhabi were so rich in pearls that even pearl hunters from the neighboring emirates were visiting them during the summer, which is the season of pearl hunting. Abu Dhabi merchants also concluded trade deals with India and Europe, where they exported pearls[1].

The pearl trade was subject to recession after the Second World War, which negatively affected the economy of Abu Dhabi and the rest of the other Emirates, especially as the pearl industry throughout its long history was subject to fluctuations in relation to supply and demand factors.

Also, their prices did not know stability. It was also subject to fluctuation. At the dawn of the previous century, pearling was at its height, especially after the First World War.

In 1928, when the world was dominated by a global economic crisis that lasted until 1933, the pearl industry was subject to a great depression and then recovered again, even before the Second World War.

After the Second World War, new economic factors emerged, which led to the decline of the pearl industry as a main source of income, and then it deteriorated after the discovery of oil and its production in commercial quantities. The production of industrial pearls in Japan and its

[1] United Arab Emirates, The Statistic Center of Abu Dhabi, *The economic development of Abu Dhabi 1960 -2010 report*, September 2011.

competition with natural pearls contributed to the sharp decline in the pearl industry in the Emirate of Abu Dhabi.

Consequently, it increased the risks faced by pearl fishermen and its lower prices, and consequently the low income of individuals working in this profession. There is no doubt that the trade restrictions imposed by the government of India in the face of pearl exports from the Arabian Gulf at that time led in turn to the decline of the pearl industry in Abu Dhabi.

One of the main reasons for the decline in the pearl industry is the discovery of oil in the region after the major international oil companies obtained concessions to explore for oil. This created new job opportunities for citizens and led to the emergence of new economic activities. The Abu Dhabi government's annual cash payments according to the concession terms created a commercial activity on a large scale.

At that time the star of a great leader shined in the middle of the desert, he was Sheikh Zayed bin Khalifa Al Nahyan the ruler of Abu Dhabi in period 1855 to1909, also known as Zayed the Great or Zayed the First he is the grandfather of Sheikh Zayed bin Sultan, founder of the United Arab Emirates. The great leader contributed to stabilize the region and that assist for growing the economic.

Zayed bin Khalifa is considered the eighth ruler of the Emirate of Abu Dhabi, where Issa bin Nahyan was the first ruler of it, and he moved his seat of rule from Liwa internally to Abu Dhabi Island, and built on the island a fortress called the Qasr Al Hosn, and used this fort as the seat of the ruler and center of governance. This had a major impact on the development of the coastal region, and a new addition to the life of Baniyas (the largest trip) who found an outlet for them on the coasts of the sea, and this led to the revival of their economic lives by working in the sea, fishing, extracting and trading in pearls. This also enabled them to establish a naval force for them after they had previously relied on the land force that they were famous.

The period of Zayed bin Khalifa's rule was marked by the spread of many events, especially the phenomenon of piracy. Studies indicate that the Baniyas tribe was not inclined to this type of income, so it was found in the profession of pearling, ship building and some agricultural work, and also resorted to fishing and expansion in it instead of what was common among the tribes of the Arabian Peninsula from raiding British ships and others Which used the Gulf waters as a main transit point for the passage of supply and cargo ships for its army and nationals.

During his reign, the Emirate of Abu Dhabi witnessed a remarkable development in various fields. On the economic side, trade between the cities and ports of the Emirates and a group of neighboring countries constituted an important recovery for the economic movement. With his experience and experience gained over the years, he played an important role in the development of the Abu Dhabi Emirate and the tranquil coastline, and he has already become a strong coast man until he has been dubbed by everyone in Zaid Al Kabeer (Great Zayed) in appreciation of his prestige and honor for his work and development of various aspects of life and attention to people's affairs and achieving their demands.

During his reign, the Emirate of Abu Dhabi reached its greatest extent and influence thanks on the exceptional wisdom and political skill of this exceptional man[1].

This is due to his success in achieving the political stability that Abu Dhabi has enjoyed through. The economic growth it achieved in record time, as residents were devoted to pearl diving and trafficking. On the other hand, he tried, within a distinguished strategy, to unify all his coastal tribes during his reign, and almost succeeded in that, had it not been for the intervention of the British, citing the maintenance of the balance of power in the Arabian Gulf costal.

But despite that, the sheikhs of the costal (Sahel) were looking at him with a view of appreciation and respect and everyone sought to from friendly relations with him, because the strength of his personality, integrity and love for all made him highly appreciated and respected. The period of Sheikh Zayed bin Khalifa assumed the functions of the rule of Abu Dhabi is considered one of the important historical stages, that resulted in many events that contributed to drawing the political map of the region in general and Abu Dhabi in particular. also during his reign in 1892, when Sheikh Zayed signed with the British government the blocking treaty, which is one of the most important treaties signed in the political history of Abu Dhabi, according to which it became a British protectorate, and the treaty remained in effect until the Labor Party decided to withdraw British forces from the Arab Gulf region in December 1971.

It is worth to mention that the Great Zayed invite to a meeting or conference which called "*Al-Khawaneej meeting*" in 1906. That meeting laid the first building block for the union as it paved the way for that and removed the dispute between the tribes.

[1] https://www.alittihad.ae/article/19675/2009/زايد-الأول--سيرة-الرجل-والشعب-والدولة [consulted in February 15th, 2020].

At the end, the period of pearling in general was politically stable because the economic factor assists to that and the great leadership assist to keep the region stable internally, also the region was under protect of UK that assist to keep the region safe from the external dangers.

At the end of pearling period, the second period started which was the period of discovering Oil in the region and established the new economic era.

The period between 1960 and 1969, which is the period of producing oil in commercial quantities and exporting it abroad, was marked by two important historical events in the field of economics and field of politics. The first event is the export of the first shipment of oil in 1962, and the second event is Sheikh Zayed bin Sultan Al Nahyan taking power in the Emirate of Abu Dhabi in 1966.

With regard to the discovery and export of oil, the eyes of international oil companies began heading towards Abu Dhabi before the Second World War, and then exploration resulted in the discovery of oil in 1959, oil was later discovered in Abu Dhabi Territorial waters by the Abu Dhabi Marine Areas Company (ADMA), and in July 1962. The first tanker moved from Das Island, which is loaded with the first shipment of Abu Dhabi oil to international markets.

Economic development has emerged in Abu Dhabi since the export of oil in 1962, where the oil industry began taking its leadership role in the development process, and this role has grown with the discovery of many oil fields and high production rates. The volume of oil exports amounted to 710 thousand tons, at a value of 705 thousand pounds Sterling in 1962.

Also, the quantities of exports amounted to 23,495 thousand, at a value of 63,860 thousand pounds in 1968, and oil revenues were of the utmost importance in stimulating economic development in the Emirate of Abu Dhabi. Oil revenues in 1962 amounted to about 706,000 pounds and then rose to 69,535 pounds in of year 1969.

Its valuable to mention that the income tax was implemented in Abu Dhabi since 1965, under British pound, and everybody was subject to the income tax according to law No (1) 1965 (that law was not publish in formal gazette). And that law was amended several times, in 1971 and according to decree No (4) 1971, the income tax was changed to be implemented only on the oil sector.

The second important event in that period happened in 1966, Sheikh Zayed bin Sultan Al Nahyan taking power in the Emirate of Abu Dhabi, he played a major role in the establishment

of the United Arab Emirates through holding talks and consultations and removing difficulties and challenges, and indeed he succeeded in establishing the Union.

In 1946, Sheikh Zayed was appointed as representative of his brother, Sheikh Shakhbut Bin Sultan Al-Nahyan, in the Eastern Region. During his twenty years as his brother's representative, Sheikh Zayed gained a reputation as a natural born leader who ruled by example. Sheikh Zayed became not only a well-known, but also a popular and respected leader who was eager to listen to all his subjects and whose decisions were based on the consensus of the various tribes in the region.

He frequently travelled to even the remotest parts of the region in order to consult people regarding their needs. He kept an open majlis, maintained close ties with his people and personally oversaw the implementation of reforms. He was the paragon of generosity and hospitality.

Sir Wilfred the siger, the famous British traveler who documented his famous trips across the Empty Quarter, noted in his book "*Arabian Sands*" that Sheikh Zayed was "*a strongly built man, with a brown beard. He was shrewd and sharp-witted, and his manner was quiet but masterful*". The siger remarked that Sheikh Zayed was a man whom he looked forward to meeting as "*he had a great reputation among the Bedouins*".

They liked him for his easy, informal ways and his friendliness, and they respected his strong character, his shrewdness and his physical strength. They said admiringly "*Zayed is a Bedouin. He knows a lot about camels, can ride them like us, is a sharpshooter and a skillful fight*."

The traveler described the young Sheikh Zayed's governing style by saying "*Zayed as the leader of a large family is always willing to listen to people's problems and then to find the right solution, settling disputes to the satisfaction of all, in a manner characterized by intelligence, wisdom and justice*". The former British Captain of the Trucial Oman Scouts, Anthony Shepherd, recounts in his book "*Arabian Adventure*" his impressions of his meeting with Sheikh Zayed stating "*He was a man who commanded the respect, admiration and loyalty of the Bedouins living in the deserts around Buraimi. He was the most commanding figure in the Trucial States*".

After visiting Sheikh Zayed in Al Ain, Colonel Hugh Boustead, the British Political Agent in Abu Dhabi, wrote: "*I was always astonished at the sheer size of the crowd who gathered around*

him whenever he toured Buraimi, and who treated him with the sort of reverence and attention due to a minor saint. He invariably had a kind word for everybody and was most generous with his money. I was immediately struck by all that had been done in Al Ain, his hometown, and in the Buraimi area, for the benefit of the people. Water ducts had been dug out to increase the water supply to the gardens, water wells were sunk and pumps were supplied and modern baths for men and women had been built in the falajs. Everyone who visited Al Ain noticed the happiness of the people in the area".

The British scholar, Clarence Mann, visited the Eastern Region and attended Sheikh Zayed's majlis. In his book "*Abu Dhabi: Birth of an Oil Sheikhdom"* he noted that :

"*The choice of Sheikh Zayed as a successor to his brother was logical and predictable, and perhaps in the best interests of the Sheikhdom. Next to Sheikh Shakhbut he has always been the most influential person in the Sheikhdom. He controlled directly all villages in the area, with the exception of those under the control of Muscat, and his influence stretched throughout Al-Dhafrah. He is highly respected by the Bedouins because he knows and practices their ways and traditions, He used whatever little money he had to introduce reforms in Buraimi.*

Thanks to him, the Bedouins pledged allegiance to Abu Dhabi. His fairness, reformist attitude and exceptional political skills made him the natural leader of Abu Dhabi". The discovery of oil in the late 1950s transformed the economic landscape of the Abu Dhabi as it ushered the beginning of its development.

In 1962, as the Emirate began exporting oil, it was immediately apparent that an innovative vision of governance was needed to address the new challenges and to optimize the utilization of oil revenues. The Al-Nahyan family unanimously elected Sheikh Zayed as the new Ruler of the Emirate on August 6, 1966. Thus, a new phase of the history of Abu Dhabi started.

Sheikh Zayed carried out major reforms, such as modern education, healthcare, public housing, and general urban development. He drew up a plan for a major development and encouraged his people to participate wholeheartedly in the process, bringing in foreign expertise as appropriate. A few days after assuming office, the establishment of a modern formal government with its ministries and departments was announced and the new government was entrusted with the task of conducting the affairs of the state.

Sheikh Zayed's priorities included building new roads, construction of a bridge to link Abu Dhabi Island to the mainland and the establishment of schools, houses, medical services, a seaport and an airport. Thus, Abu Dhabi was transformed beyond recognition, as it became a huge construction site with the noise of machines and equipment everywhere.

Thousands of local people moved from barasti (palm frond) houses into modern homes. Modern roads were built over the desert sand and fresh water supply and electricity were connected to every house. Education shifted from the religious system of "*Mutawiah*" to a modern educational system and literacy classes were held for those who had not previously benefitted from education. The desert Bedouins began to receive medical services from clinics for the first time. His development venture succeeded in eradicating ages of backwardness.

In 1968, when Britain announced its intention to withdraw its bases from East of Suez, it became imperative for the Emirates to take some steps to change the course of history in the region; especially that the Arabian Gulf region was vulnerable to occupation by expansionist powers. Sheikh Zayed and Sheikh Rashid Bin Saeed Al Maktoum, Ruler of Dubai at that time, undertook an initiative that had a great impact on subsequent events. On February 18, 1968, they signed Al Samih agreement, which resulted in major changes that set the stage for the discussions of the Union of the Nine that took place among the seven Emirates and their sister states Bahrain and Qatar later on.

Finally, this led to the unification of the Emirates under the name the "*United Arab Emirates*" (UAE) after both Bahrain and Qatar announced their independence.

The UAE was founded on December 2, 1971, and Sheikh Zayed was unanimously elected by the rulers of the Emirates as the first president of the new state for five years. The Supreme Council of the Union expressed their confidence in Sheikh Zayed by re-electing him several times. Sheikh Zayed was the president, the builder and the caring father of the nation. Sheikh Rashid Bin Saeed Al Maktoum was elected vice-president.

Sheikh Zayed followed up the affairs of his newly born developing state and spent the oil revenues on various sectors in the UAE, especially those in need of development. He looked after the economy, education, heritage and culture.

Thanks to Sheikh Zayed's acumen and broad-mindedness, the UAE acquired good reputation among Arab and foreign countries. The security and stability of the UAE strengthened such a reputation further.

"*The Rulers of the Emirates who are the members of the Federal Supreme Council, agreed on drawing up a provisional federal constitution for an effective governance that defines the authorities of the federal institutions in a state adopting modern management methods and seeking at the same time to maintain the traditional form of direct democracy*"[1].

There were doubts among the international community about the success of this union and that this project will not be written, because success will not be because it was a kind of dream, but these doubts quickly ended after the success of the union and the UAE became a modern country.

II. The economy of United Arab Emirates between the past and now

In this part of the introduction will focus on the development of UAE economic and why the leadership of UAE think to change and increase the sources of income and try to keep the economic far from the oil incomes and thinking in new income sources like the source of tax in precise VAT as an income of the budget.

At the beginning of the existing of the UAE in 1971 the economic depend on the oil income from Abu Dhabi in general while the 94% of UAE production of oil is from Abu Dhabi. The income of the federal government comes from the member emirates donations and the federal fees, also recently from Emirates Authority Investment (the Federal Investment Fund). But nowadays after implementation of taxation system there are new income which is VAT income and excise tax income with high expectations of incomes for the domestic governments and federal government, and with increasing of prices in market.

The UAE economic faced major changes from 1971 until nowadays, according to the world bank information in 1975 the GDP[2] was 14.721 Billion US Dollar comparing with 414.179

[1] https://www.zayed.ae/en/sheikh-zayed/?setLang=en [consulted in February 17th, 2020].

[2] "*GDP at purchaser's prices is the sum of gross value added by all resident producers in the economy plus any product taxes and minus any subsidies not included in the value of the products. It is calculated without making deductions for depreciation of fabricated assets or for depletion and degradation of natural resources. Data are in current U.S. dollars. Dollar figures for GDP are converted from domestic currencies using single year official exchange rates. For a few countries where the official exchange rate does not reflect the rate effectively applied*

Billion US Dollar in 2018[1]. That figures show the major change in UAE economic from the establishment of the state until now.

But the oil at the end is a commodity which the price is link to the state of supply and demand in the market. In 2014 the price of oil start collapses from more than 100 $ to approximately 30$. So that lead UAE government to think for other income source, after that the government of UAE declare that it will apply the VAT with other GCC states.

But the UAE government is not stop at that point, the government decide to increase the budget incomes by create income sources, while the economics of UAE at the beginning of the state was depending on sectors like extraction of crude oil and natural gas, wholesale and retail trade, repair services, real estate, business services, construction and manufacturing.

The Economy and Vision 2021 of UAE federal government seeking to creating and maintaining a sustainable and diversified economy is a component of United in Knowledge, a pillar of Vision 2021. Vision 2021 states: "*the UAE will benefit from a sustainable and diversified economy, flexible in adopting new economic models, and capitalizing on global economic partnerships to guarantee long-term prosperity for current and future generations of Emiratis*". Developing a 'competitive knowledge economy' is one of the pillars of National Agenda in line with Vision 2021. The Government is focusing on the UAE becoming the economic, touristic and commercial capital for more than two billion people. To achieve this, the Government has set 12 Key Performance Indicators (KPIs).They are: Non-oil real GDP growth, Gross National, Income (GNI) per capital, Net Inflow of Foreign Direct Investment as a percentage of GDP, Global Competitiveness Index, Share of UAE nationals in the workforce, Ease of Doing Business Index, Emiratization Rate in the private sector, SME's contribution to non-oil GDP, Global, Entrepreneurship and Development Index (GEDI), Global Innovation Index, Share of "*knowledge workers' in the labor force, Research and development expenditure as a percentage of GDP*"[2].

The ministry of Economic in UAE issued the report of UAE economic in 2014 and 2015, in 2014 the percentage of non-oil sectors in UAE economic was 69.2%, in 2015 the percentage of

to actual foreign exchange transactions, an alternative conversion factor is used"; https://data.worldbank.org/country/united-arab-emirates.

[1] https://data.worldbank.org/country/united-arab-emirates [consulted in February 17th, 2020].

[2] https://u.ae/en/about-the-uae/economy#economy-and-vision-2021- [consulted in February 17th, 2020].

non-oil sectors in UAE economic was 68.8%, so the oil sector in UAE economic is around 30%. But still the main element of UAE economic.

The other report from ministry of Economic in UAE was issued in 2019, the report was emphasis on the UAE economic in 2017 and 2018. In 2017 the Gross domestic product (GDP) was 1,387.1 Billion AED. In 2017 the percentage of non-oil sectors in UAE economic was 70.4%. In 2018 the Gross domestic product (GDP) was 1,521.1 Billion AED. in 2018 the percentage of non-oil sectors in UAE economic was 70.0%.[1]

The implementation of VAT in UAE will assist to generate more yields for federal government and domestic government whereas the cabinet of ministers issue the decision that the revenue of VAT will be 30% for the federal government and the 70% will be for the domestic governments. So that is a new era for UAE revenues.

Its valuable to mention the impact of VAT on the UAE federal government budget. The implementation of VAT is on first day of 2018. The federal law No (2) of 2016 for the Federal budget determine the yields from ministry of finance approximately 16 billion AED in expectation of 2015 and approximately same number in expectation of 2016. Also, the federal law No (2) of 2018 for the Federal budget determine the yields from ministry of finance approximately 16 billion AED in expectation of 2017 and approximately 18 billion AED expectation of 2018.

That number was before implementation of VAT in UAE. The federal law No (6) of 2019 for the Federal budget law determine that the yields from ministry of finance from tax according to the expectation of 2019 is approximately 26 billion AED and the total yields from ministry of finance is 40 billion AED. After increasing of budget and increasing of yields because of implementation the VAT. Also, the federal law No (6) of 2019 for the Federal budget law determine that the yields from ministry of finance from tax according to the expectation of 2020 is approximately 33 billion AED and the total yields from ministry of finance is 51 billion AED[2].

[1] Ministry of Economy of United Arab Emirates, Department of Economic Studies, *Annual Statistical Report 2018*, 8th Edition, 2019, p. 16.

[2] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 6 of 2019 Concerning Ownership of Jointly Owned Real Property in the Emirate of Dubai, Official Gazette, issued on September 4th, 2019.

It's obvious the impact of VAT and excise tax in federal budget of UAE government. This is a good impact at the beginning of VAT era and the numbers definitly will increase because of learning curve of implementation and with more experience of implementation.

The ministry of Economic in UAE issued a report of the result of implement VAT on economic. The report mentions that the impact of VAT is positive but limited on the budget whereas the budget achieves surplus 2.2% in 2018 and in other side the budget in 2017, 2016, 2015 was negative. In additional the taxation yields in 2018 was 5.5% from all yields, the yields from the oil 36.1% from all yields.

The result of implement VAT was increasing the prices in market, the percentage of inflation in 2017 was 2%, but in 2018 the inflation was 3.1%, the reason of that is from the implementation of VAT and little increase of oil prices. In general, the inflation from VAT is temporary. In next few years the VAT will help the UAE economic because the inflation from VAT will end, and the yields from VAT will assist the government to expense in the economic. In next part will explain the constitutional system in UAE and the relation of VAT on that.

III. The presentation of constitutional system in UAE

The UAE is a federal state which includes seven emirates which are Abu Dhabi, Dubai, Sharjah, Ajman, Umm AlQaiwain, Ras AlKhaimh and AlFujairh. The system is hereditary in each emirate, but the head of federal state is elected by the Emirates, article (51) from the UAE Constitution organize that issue which said "*The Federal Supreme Council elects from among its members a President and a Vice President. The Vice President exercises all the powers of the President in the event of the President's absence for any reason*"[1].

The Emirate of Abu Dhabi consisting three main areas which are Abu Dhabi region, AlAin region and AlDhafra region. The main cities in the Emirate of Abu Dhabi are Zayed City, AlAin and AlRuwais. The Emirate of Abu Dhabi include Abu Dhabi city which is the capital of the State.

The Emirate of Dubai is one of the main international business centers. Dubai has witnessed an urban development, in which the highest tower in the world was recently build in it and is

[1] United Arab Emirates, The Constitution of UAE, Article 51.

considered the second largest emirate in the state in terms of area and population. Dubai is considered as an economic capital of the UAE, it has border with Abu Dhabi and Sharjah.

The Emirate of Sharjah located on the Arabian Gulf coast with a length of 16 km, and the area of the Emirate of Sharjah is 2590 km and is equivalent to 3% of the country's area and is considered as the cultural capital of the state.

The Emirate of Ras Al-Khaimah is located on the coast of the Arabian Gulf with a length of 64 km and an area of 1,684 sq. km. In the past, there were many wars due to its commercial center and the economics of Ras Al Khaimah depends on trade and agriculture, as well as industry such as ceramics and medicine.

The Emirate of Umm Al Quwain is located between the Emirate of Ajman and Ras Al Khaimah on the western coast of the Arabian Gulf. It is a non-oil emirate that relies on agriculture and fishing and has an area of 300 square miles and contains many archeological sites.

The Emirate of Fujairah is the only emirate that is located on the east coast of the state, the eastern coast of the state on the Gulf of Oman with a length of 71 km, bordered to the north by the Emirate of Ras al-Khaimah and the Sultanate of Oman, and an area of about 1165 km and its geographical location is important in the export of oil without passing through the Strait of Hormuz.

The emirate of Ajman, located on the coast of the Arabian Gulf with a length of 16 km between the emirates of Sharjah and Umm al-Quwain, the emirate has witnessed an increase in industrial and commercial transactions, the area of Ajman is 260 km.

The Arabian Gulf states are very similar in their political system, which is the monarchy or the Emiri system, and most of these countries have adopted, in order to achieve democracy, the systems of multiple institutions within the executive authority and the cabinet, in addition to a legislative apparatus and achieving the supremacy of judicial independence.

The political system in the United Arab Emirates consists of a group of federal institutions, located on the pyramid of that Supreme Council of the Federation, which represents the supreme authority in the state, and is formed by His Highness the rulers of the seven Emirates. Also, the Supreme Council of the Union is responsible for adopting the general policy of the state, and considering every What would achieve the goals of the federation and the common interests of the Emirates, elect a president and vice-president of the federation, ratify federal laws, and other

tasks, and elect the supreme council of the federation from among its members to head the federation and his deputy.

The Federal National Council and the Supreme Council of the Federation approved in 1996 the amendment of the provisional Constitution of the United Arab Emirates, which was formulated with the establishment of the federation in 1971. The Constitution became permanent instead of temporary. The Constitution of the United Arab Emirates stipulates equality, social justice, and equal opportunities for all citizens, and the family is the basis of society and is based on religion, morals, and patriotism, and that the society includes, under the auspices of childhood and motherhood, protect the minors and other persons who are unable to care for themselves, and take care of them and rehabilitate them. These matters are regulated by public aid laws, and the Constitution also affirms the importance of free and compulsory learning at the primary level and free of charge at all levels.

The Cabinet of Ministers shall draft the federal laws and legislations of the state, then submit them to the Federal National Council, who shall refer them to the competent committee. If the competent committee introduces amendments to the proposed project, the amended project shall be referred to the Legal and Legislative Committee for the draft and for the drafting of its clauses before its discussion in the parliament session, and in the end the bill is submitted to the President of the Federation (president of State).

The Supreme Council is also considered as the supreme authority in the United Arab Emirates, and it is formed of His Highness the rulers of the seven Emirates. The council undertakes the adopting of the general policy of the state, looking into everything that would achieve the goals of the union and the common interests of the Emirates, electing the president and deputy of the union, approving federal laws before issuing them, ratifying international treaties and agreements, and agreeing to appoint the president of the Federation Council of Ministers.

The Federal National Council represents the legislative authority in the state, and it consists of forty members with a seat of 8 for each of Abu Dhabi and Dubai, 6 seats for each of Sharjah and Ras Al Khaimah, and 4 seats for each of Ajman, Umm al-Quwain and Fujairah.

Half of members of the council are elected by electoral bodies, after members are nominated by rulers in various emirates of the state while the other half is appointed, and this mechanism was adopted and implemented in 2006, since the beginning of the first phase of the political empowerment program for His Highness Sheikh Khalifa bin Zayed Al Nahyan, President of the

State, followed by the second cauldron to increase the electoral college to reach more than 129,000 voters, according to the decision of His Highness the President of the State No. A of 2011, which recorded an advanced step for the representative and representative role of the Council.

Its valuable to mention that the strategic importance of UAE can be summarized from the political perspective as follows: the Gulf region is a vital area both regionally and globally. The United Arab Emirates forms the basis for the Arab system, and the policies of the United Arab Emirates have achieved an important balance. The presence of strong political relations and cooperation in various fields between the United Arab Emirates and Iran leads, of course, to a state of stability in the Gulf region.

In addition, and with more details the UAE Constitution establish three authorities which are the legislation authority, executive authority and judicial authority according to article (45) of the UAE Constitution which said *"The Union authorities shall consist of: 1. The Supreme Council of the Union 2. The President of the Union and his Deputy 3. The Council of Ministers of the Union 4. The Union National Council 5. The Union Judiciary"*[1].

The Supreme Council of the Union shall be the supreme authority in the federal state according to article (46) of the UAE Constitution, which said *"The Supreme Council of the Union shall be the supreme authority in the Union. It shall consist of the Rulers of all the Emirates making up the Union, or of those who act for the Rulers in their Emirates in the event of their absence or if they have been excused from attending. Each Emirate shall have a single vote in the deliberations of the Council"*[2]. Also, the UAE Constitution determine the responsibilities of Supreme Council of the federal state in article (47). The article said *"the Supreme Council of the Union shall be responsible for the following matters: 1. The formulation of general policy in all matters within the Union's competence according to this Constitution, and the consideration of all matters with which it is concerned, to achieve the aims of the Union and the common interests of the member Emirates. 2. The ratification of the various Union laws before their promulgation, including the Laws of the Annual General Budget and the Final Account. 3. The ratification of decrees connected with matters which by virtue of the provisions of this Constitution are subject to the ratification or agreement of the Supreme Council. Such ratification shall take place before the promulgation of these decrees by the President of the*

[1] United Arab Emirates, The Constitution of UAE, Article 45.
[2] United Arab Emirates, The Constitution of UAE, Article 46.

Union. 4. The ratification of treaties and international agreements. Such ratification shall be accomplished by decree.5. Agreement to the appointment of the Chairman of the Council of Ministers of the Union, acceptance of his resignation and his dismissal from office, following a proposal from the President of the Union. 6. Agreement to the appointment of the President and Judges of the Supreme Union Court, acceptance of their resignations and their dismissal in the circumstances stipulated by this Constitution. These acts shall be accomplished by decrees. 7. Supreme Control over the affairs of the Union generally. 8. Any other matters stipulated in this Constitution or in the Union laws"[1].

In addition, the Constitution determines the responsibility of the president of the state. Article (54) said: *«the President of the Union shall have the following responsibilities: 1. He shall be Chairman of the Supreme Council and direct its debates. 2. He shall call the Supreme Council into session and shall close its sessions according to the rules of procedure upon which the Council shall decide in its internal regulations. 3. He shall call the Supreme Council and the Council of Ministers into joint session whenever necessity demands. 4. He shall sign the Union laws, decrees and decisions which the Supreme Council has ratified and shall promulgate them. 5. He shall appoint the Chairman of the Council of Ministers, receive his resignation and dismiss him from office with the agreement of the Supreme Council. He shall also appoint the Deputy Chairman of the Council of Ministers and the Ministers and shall receive their resignations and dismiss them from office following a proposal from the Chairman of the Council of Ministers of the Union. 6. He shall appoint the diplomatic representative of the Union to foreign states and other senior Union officials both civil and military (with the exception of the President and Judges of the Supreme Union Court) and shall receive their resignations and dismiss them with the agreement of the Council of Ministers of the Union. Such appointments, receipt of resignations and dismissals shall be accomplished by decrees and in accordance with Union laws. 7. He shall sign the documents accrediting diplomatic representatives of the Union to foreign states and organizations and shall accept the accreditation of diplomatic and consular representatives of foreign states to the Union and receive their letters of accreditation. He shall similarly sign letters of appointment and exequators of representatives. 8. He shall supervise the implementation of Union laws, decrees and decisions through the Council of Ministers of the Union and the competent Ministers. 9. He shall represent the Union internally, vis-a-vis other states and in all international relations. 10. He shall exercise the right of pardon and commutation of sentences and confirm*

[1] United Arab Emirates, The Constitution of UAE, Article 47.

capital sentences according to the provisions of this Constitution and Union laws. 11. He shall bestow decorations and medals of honor, both civil and military, in accordance with the laws relating to such decorations and medals. 12. Any other responsibilities vested in him by the Supreme Council or vested in him by the provisions of this Constitution or Union laws"[1].

To continue the roles of legislation authority in the state, the constitution establishes the Union National Council which includes 40 members from all emirates. Article (68) said: *"the Union National Council shall be composed of forty members and seats shall be distributed to member Emirates as follows: — • Abu Dhabi - 8 seats • Dubai - 8 seats • Sharjah - 6 seats • Ras al Khaimah - 6 seats • Ajman - 4 seats • Umm al Qaiwain - 4 seats • Fujairah - 4 seats"*[2].

The main issue of the constitution system in regard of VAT is adopting the federal laws, chapter five from the UAE Constitution organize that matter, there are two kinds of federal law in UAE and according to the Constitution, the first type is the union law or federal law and the second law is the federal decree law. Article (110) adopt the procedures of federal law, which said *"1. Union laws shall be promulgated in accordance with the provisions of this Article and other appropriate provisions of the Constitution. 2. A draft law shall become law after the adoption of the following procedure: a. The Council of Ministers shall prepare a draft law and submit it to the Union National Council. b. The Council of Ministers shall submit the draft law to the President of the Union for his agreement and presentation to the Supreme Council for their ratification. c. The President of the Union shall sign the law after ratification by the Supreme Council and shall promulgate it. 3. a. If the Union National Council inserts any amendment in the draft law and this amendment is not acceptable to the President of the Union or the Supreme Council, or if the Union National Council rejects the draft, the President of the Union or the Supreme Council shall refer it back to the Union National Council. If the Union National Council inserts any amendment on that occasion which is not acceptable to the President of the Union or the Supreme Council, or if the Union National Council deems fit to reject the draft, the President of the Union may promulgate the law after ratification by the Supreme Council. b. The term "the draft law" in this section shall mean the draft which is submitted to the President of the Union by the Council of Ministers including the amendments, if any, made to it by the Union National Council. 4. Notwithstanding the foregoing, if the situation demands the promulgation of Union laws when the Union National Council is not sitting, the Council of*

[1] United Arab Emirates, The Constitution of UAE, Article 45.
[2] United Arab Emirates, The Constitution of UAE, Article 68.

Ministers of the Union may issue them through the Supreme Council and the President of the Union, provided that the Union National Council are advised of them at their next meeting"[1].

In addition, the Constitution organize the issue of adopting the federal decree law in article (113) which said *"if, between meetings of the Supreme Council, the speedy promulgation of Union laws, which cannot be delayed, is required, the President of the Union and the Council of Ministers may together promulgate the necessary laws in the form of decrees which shall have the force of law, provided they are not inconsistent with the Constitution. Such decree laws must be submitted to the Supreme Council within a week at the maximum for assent or rejection. In the case of assent the force of law shall be confirmed and the Union National Council shall be informed accordingly at its next meeting. In the event that the Supreme Council does not assent, such decree laws shall cease to have force of law, except that it may be decided to sanction their effectiveness during the earlier period, or to sanction adjustment of their effects"*[2].

Also, the other subject is to determine the responsible government on the implementation the VAT, the federal government or the domestic governments?

Before starting the explanation that it must clarify the roles of federal government and the role of domestic governments, chapter six from UAE Constitution organize the roles between the federal government and domestic government. Article (116) from the UAE Constitution said *"the Emirates shall exercise all powers not assigned to the Union by this Constitution. The Emirates shall all participate in the setting up of the Union and shall benefit from its existence, its services and its protection"*[3]. In that regard the Constitution determines the roles of Union in article (120). The article said *"the Union shall have exclusive legislative and executive jurisdiction in the following matters: 1. Foreign affairs 2. Defense and the United Armed Forces 3. Protection of the Union's security against internal or external threat 4. Matters pertaining to security, order and jurisdiction in the permanent capital of the Union 5. Matters relating to Union officials and Union Judges 6. Union finances and Union taxes, duties and fees 7. Union public loans 8. Postal, telegraph, telephone and wireless services 9. The construction, maintenance and improvement of Union roads which the Supreme Council has determined to be trunk roads. The organization of traffic on such roads. 10. Air Traffic Control*

[1] United Arab Emirates, The Constitution of UAE, Article 110.
[2] United Arab Emirates, The Constitution of UAE, Article 113.
[3] Ibid., Article 116.

and the issue of licenses to aircraft and pilots 11. Education 12. Public health and health services 13. Currency notes and coins 14. Weights, measures and standards 15. Electricity services 16. Union nationality, passports, residence and immigration 17. Union property and all matters relating thereto 18. Census matters and statistics relevant to Union purposes 19. Union Information"[1].

According to previous article the issue of federal taxation is right of federal authority, and the federal government is responsible to implement the VAT, in that regard the president of UAE adopts the federal taxation legislation based on the Constitution and that mention in part two of this thesis with details.

In addition, the steps of adopting the taxation legislations (laws, executive regulations, decisions, and guidebooks) are mention in the part two of the thesis with details and comparing with the constitutions.

It is important to mention that there are three federal laws to organize the taxation system on UAE which are the Value added tax, the Excise tax and the taxation procedures law.

Its valuable to explain the Constitution statues of UAE in general. The United Arab Emirates is characterized by a special situation that differs from the rest of the other Arab states, because the system of government is federal, so there is the federal government and it has a specific role in the Constitution, and there are other domestic governments that have roles within the borders of its emirate. By giving authority to the federal government specific powers and leaving an unlimited implicitly understood to the individual Emirates or domestic governments. Each emirate maintains control over its oil, mineral resources, and some aspects of its internal security. The federal government has the first word on most issues of law and government. Its primary responsibility is external relations, international politics, and the defense of the nation, among other responsibilities, including health, education, and others. But the Constitution enables the rulers of the Emirates to abdicate to the federal government, if they wish to do so, and for certain powers that are stipulated as a sole responsibility for the ownership of the emirate. An example of this privilege is the decision to unify the UAE Armed Forces under one flag and one command in the mid-1970s.

[1] United Arab Emirates, The Constitution of UAE, Article 120.

On this basis, each emirate has an area of land belonging to it, the largest of which is the Emirate of Abu Dhabi, and each emirate is a major city that is its capital. The capital of the Emirate of Dubai is Dubai, and the ruler's office, the local government, and various government departments, as well as the situation in each emirate. There are also several cities in the United Arab Emirates, each of which follows the government of the emirate, which is in its territory.

In 1971, British Resident Sir Geoffrey Arthur visited the seven Emirates to cancel the previous British agreement and announced the independence of the six Emirates at the end of 1971. The UAE was quick to join the League of Arab States and the United Nations of the same year and announce their protest because of Iran's occupation of the three Emirates islands, and at the beginning of 1971 Ras al-Khaimah joined the union, and announced the signing of the interim Constitution in Dubai after the announcement of the union. On May 20th 1996, it was announced that the interim Constitution would be considered a permanent constitution and that Abu Dhabi was the permanent capital of the union.

The introduction of the Constitution states: *"We, the Rulers of the Emirates of Abu Dhabi, Dubai, Sharjah, Ajman, Umm al Qaiwain, Ras al Khaimah and Fujairah; Whereas it is our desire and the desire of the people of our Emirates to establish a Union between these Emirates, to promote a better life, more enduring stability and a higher international status for the Emirates and their people; Desiring to create closer links between the Arab Emirates in the form of an independent, sovereign, federal state, capable of protecting its existence and the existence of its members, in cooperation with the sister Arab states and with all other friendly states which are members of the United Nations Organization and members of the family of nations in general, on a basis of mutual respect and reciprocal interests and advantage; Desiring also to lay the foundations of Union Law in the coming years on a sound basis, corresponding with the realities and the capacities of the Emirates at the present time, enabling the Union, so far as possible, freely to achieve its goals, sustaining the identity of its members where this is not inconsistent with those goals and preparing the people of the Union at the same time for a noble and free constitutional life, progressing by steps towards a comprehensive, representative, democratic regime in an Islamic and Arab society free from fear and anxiety"*[1].

[1] United Arab Emirates, The Constitution of UAE, Preamble.

In the first chapter of the Constitution, the federation and its main components and objectives are as follows:

Article 1: the United Arab Emirates is an independent, sovereign, federal state consisting of the United Arab Emirates. Any independent Arab country may join the federation, and indeed Ras Al-Khaimah has joined it.

Article 8: union citizens have one nationality defined by law, and they enjoy the protection of the Federation government abroad, and Islamic Sharia is a major source of legislation in it. The official language of the Federation is Arabic.

Article 10: the goals of the federation are to preserve its independence and sovereignty, its security and stability, and to advance all aggression, and to achieve close cooperation between its emirates and their common interest, and for their prosperity and progress, while respecting each member emirate for the independence of other emirates and not to interfere in its internal affairs within the scope of the Constitution.

Article 11: this article contains three paragraphs, the most important of which is the first paragraph, which confirms that the Emirates constitute an economic unit in addition to organizing federal laws, with the identification of appropriate gradual stages to achieve that unity. In the second and third paragraph, it included the freedom to transfer capital, the passage of funds, the passage of goods between the Emirates and the cancellation of all taxes, fees and interest.

According to article 45 of the Constitution, the political system in the UAE consists of the executive authority, the Federal National Council (the legislature) and the federal judiciary (the judiciary).

The executive authority in the state includes all government employees except the employees of the legislature and the judiciary, and this authority has the responsibilities imposes laws on all members of the people, and works to preserve the state's sovereignty and defend it against external dangers, just as the executive authority in the United Arab Emirates is made up of the Supreme Council of the Federation, the President and Vice President of the Federation, and the Supreme Council which meets 4 times a year.

The Supreme Council of the Federation is the highest constitutional authority in the United Arab Emirates as it is the highest legislative and executive body at one time, and it determines

public policies and approves federal legislation, and the rulers of Abu Dhabi and Dubai have the right of veto, the Supreme Council of the Union meets four times a year and usually its meetings are informally. This council consisting of the rulers of all the Emirates or their representatives in the event that their presence cannot be attended, and each emirate has one vote in this council, and if we compare this feature with the constitutions in many countries based on the federal basis, we find them close in content. For example, in a council the American Senate is represented by two members from each of its states, large or small, so in the United Arab Emirates, each state will have one vote in the assembly, regardless of its population or area, and this avoids the tyranny of large states over the small ones. And achieving equality between them.

Article 47 of the UAE Constitution defines the tasks and powers of the Supreme Council of the Union accordingly: *"the Supreme Council of the Union shall be responsible for the following matters: —1. The formulation of general policy in all matters within the Union's competence according to this Constitution, and the consideration of all matters with which it is concerned, to achieve the aims of the Union and the common interests of the member Emirates. 2. The ratification of the various Union laws before their promulgation, including the Laws of the Annual General Budget and the Final Account. 3. The ratification of decrees connected with matters which by virtue of the provisions of this Constitution are subject to the ratification or agreement of the Supreme Council. Such ratification shall take place before the promulgation of these decrees by the President of the Union. 4.The ratification of treaties and international agreements. Such ratification shall be accomplished by decree. 5. Agreement to the appointment of the Chairman of the Council of Ministers of the Union, acceptance of his resignation and his dismissal from office, following a proposal from the President of the Union. 6. Agreement to the appointment of the President and Judges of the Supreme Union Court, acceptance of their resignations and their dismissal in the circumstances stipulated by this Constitution. These acts shall be accomplished by decrees. 7. Supreme Control over the affairs of the Union generally. 8. Any other matters stipulated in this Constitution or in the Union laws."*[1].

The President and Vice-President of the Federation are elected for a period of five years, renewable by the Supreme Council from among its members. The Vice President exercises all

[1] United Arab Emirates, The Constitution of UAE, Article 47.

the powers of the President in his absence (this election requires a majority of five votes, including Abu Dhabi and Dubai).

According to Article 55 of the Constitution. This council is made up of the Prime Minister, his deputy, and several ministers. This council sets the laws and submits them to the Federal National Council, which in turn transmits them to the specialized committee. After agreeing them or making amendments, they are submitted to the president of the Supreme Council of the Union. Also, the deliberations of this council are confidential, and its decisions are passed by a majority of all its members.

According to Article 68 of the first branch of Chapter IV of Chapter Four of the Constitution. The National Council is composed of 40 members and it is distributed as follows: 8 seats for Abu Dhabi, the same for Dubai, 6 seats for Sharjah, the same for Ras Al Khaimah, 4 seats for Ajman, the same for Fujairah and the same as Uum Al Quwain. And it seems that this absolute percentage of the population has been adopted in each emirate.

The UAE has adopted a dual judicial system. The judiciary includes both the federal judiciary and the local judiciary, and the UAE has a federal judiciary that includes all the Emirates with the exception of Abu Dhabi, Dubai, and Ras Al Khaimah, and the responsibility of lower courts civil matters, which are first-degree courts and are found in every emirate According to Article (105) of the Constitution, at the request of the concerned emirate, federal law permits the transfer of all or some of the powers assumed by its local judicial bodies to the federal primary courts, and there are separate criminal and Sharia courts. As for the federal appellate courts, they are in every emirate, and the Abu Dhabi Federal Supreme Court is the highest court in the country.

The members of the Federal Supreme Court shall be composed of a president and several judges whose number does not exceed five with the president. Judges are appointed by the head of state. It is worth noting that the method for appointing judges differs from one country to another. In some countries, the way judges are selected by the Supreme Courts by appointment by the President of the Executive Body is for life with the approval of the Senate. As for the judges of the Supreme Courts in the states, they are chosen by direct election by the people (states United for example).

It is well known that the judiciary is not subject to other authorities, that is, it must be independent in order to be able to apply the law to everyone without exception, and this

independence does not mean its separation from other authorities, but the separation is a functional separation in order for the judiciary to exercise its functions without any pressure or effect.

The French Montesco is considered one of the first to call for the separation of the three powers of the state from each other, who also said not to combine the legislative and executive powers in the hands of one person, because that would lead to tyranny, and if he had the judiciary and implementation, this would affect justice, and accordingly from the principle of the independence of the judges, Article (94) of the Constitution of the Federation stipulates that justice is the basis of the king and the judges are independent and have no authority over them in carrying out their duties other than the law and their consciences.

Also, the Federal Supreme Court has the function of interpreting the Constitution and that this interpretation is binding, just as its function is to monitor the constitutionality of laws and they are related to the trial of ministers, and its rulings are final and binding, and it is worth noting that the political system in the UAE depends on starting the Islamic Shura, and before the existence of the judicial courts were the judicial mission is carried out by the ruler of the emirate, and he relied on tribal custom and the principles of Islamic Sharia in resolving disputes that appear in the territory.

IV. The problematic of the Thesis

As it is mention above, the implementation of VAT is new in UAE and in Gulf states. Also, the tax system in general is new in UAE, whereas in KSA the income tax was implemented from several years and they have existing entity responsible of taxation in KSA, but the situation in UAE is completely different.

In UAE there were not implemented any kind of taxation and there is not any entity responsible on the taxation issue. In addition, drafting the law from the scratch is not an easy job. Its needs experience in the field to draft useful legislation. Also, the knowledge is an important element for perfect implementation of VAT, because the taxation system is new in the state and that will be a huge challenge to success the new tax. The knowledge is important for the judges, lawyers, doctors of universities, accounting, auditor and tax consultancies.

So, the problematic of the thesis is the correct implementation of VAT in UAE, and that needs three main elements in my point of view. The first element is the taxation entity which is the Federal taxation Authority. The responsibility of implementation the VAT is on the FTA and it is not an easy job because the system is totally new in the state and the FTA is also new which establish before several months of implementation of VAT.

The second element is the legislations of taxation. That legislation must be clear, correct and apply. In this regard it is important to mention that the implementation of law is not only by the FTA but will be also by the private sector. The third element is the knowledge of taxation, because the VAT is new in the state the knowledge is less than the other states which implemented the law from many years ago.

So, in this regard the thesis will include two main parts. This first part is regarding the overview of Value Added Tax in general, which will focus on the VAT in general. It will includes the four main issues, which are the definition of VAT, importance of VAT, the most important and influence cases of VAT and the abuse of VAT.

In part two of the thesis the focusing will be on the implementation of VAT in UAE, which will include five main issues which are: UAE VAT legal framework, the national VAT in regional area, the Relation of Value Added Tax with other applied laws in UAE, Distorting the Key feature of Value Added Tax and Ethics of tax administration.

PART ONE

Overview of Value Added Tax

The value added tax (VAT) had become one of the most important and effective government revenues across the world, within less than recent five decades. The VAT has been adopted by more than 150 states which is accounts for almost 20% of global tax revenue[1]. 35 out of 36 states within OECD implement VAT[2].

"*If considered as a variant of a sales tax (or specifically, a turnover tax), the origins of the VAT run deep; however, the VAT is generally perceived as a thoroughly modern fiscal innovation. Attribution is variously to one of two sources. The first suggests that German businessman Dr Wilhelm von Siemens proposed the VAT in 1918 as a 'refinement' or improvement to the German cascading turnover tax. The second suggests that the American economist T.S. Adams, writing between 1910 and 1921, proposed an invoice-credit method VAT as an alternative to business income taxation*"[3].

As the thesis divided two parts, the first part of the thesis will be the brief of VAT across the world, mainly in European Union concertation on European Court of Justice. The second part of the thesis will discuss the implementation VAT in UAE and GCC by focusing on the legislations. It's good to mention that its difficult now to analysis the cases of VAT in UAE because its rare and in this time still there are no case can consider as a case law.

The VAT as mention above start implemented within 50 years ago, and VAT permeate across the world rapidly, one of the reasons of that is the success of VAT. So, the first part of the thesis will focus on VAT in general and the features of VAT. But the issue is how the VAT will have implemented globally among the states, so how the states and international institutions work together to not distortion the international trade and international relations. But some of taxpayers try to evade VAT, which makes the international institutions to spends more effort to help implementation of VAT (domestic and international) and reaches the target.

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[1] OECD, *Consumption Tax Trends 2012: VAT/GST and Excise Rates, Trends and Administration Issues*, OECD Publishing, Paris, 2012; Keen, Michael, and Lockwood, Ben, *The Value Added Tax : Its Causes and Consequences*, Journal of Development Economics, 2010, p. 138.

[2] OECD, *Consumption tax trends 2018: VAT/GST and Excise Rates, Trends and Policy Issues*, OECD Publishing, Paris, 2018, p. 16.

[3] James, Kathryn, *The Rise of the Value-Added Tax*, Cambridge University Press, p. 1.

So, the part one will include two titles which are: the General presentation of VAT for the first one and the second will be the most important and influence cases and abuse of VAT.

TITLE ONE

General presentation of Value Added Tax

According to John Stuart Mill[1], the distinction between indirect and direct taxes is based on the eventual incidence of the tax burden. In another words, "*if a tax is levied upon a taxpayer who subsequently shifts the burden of the tax onto another subject, then we should consider this tax as an indirect tax*" [2]. So, the idea of distinction must be based on "*whether the person who actually pays the money over to the tax collecting authority suffers a corresponding reduction in his income. If he does, then- in the traditional language- impact and incidence are on the same person and the tax is direct; if not and the burden is shifted and the real income of someone else is affected (i.e. impact and incidence are on different people) then the tax is indirect*"[3]. The distinction has legal consequences for states belonging to international institutions like the European union the world trade organization, as the respective provisions in regard the indirect taxes more than the direct taxes. This could be clarified by the fact that at the first phase of the integration operations of universal markets, this integration can be secured by eliminating the obstacles to international trade in goods and services. Indirect taxes, which directly and affect such trade, are thus the first barrier that should be removed on the way toward integration.

This does not mean that direct taxes do not impact universal trade. in fact, we can understand much about their effect on universal flows of goods and services from the WTO experience and cases on direct taxation and from the jurisprudence of the ECJ on direct tax issues[4].

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[1] https://thegreatthinkers.org/mill/biography [consulted in 9th April 2019] : "*John Stuart Mill (1806–1873) was a leading figure in nineteenth-century intellectual life. He contributed to the fields of logic, economics, ethics, and social and political philosophy. Today, he is best known for his related defenses of utilitarianism and liberalism"*

[2] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 155.

[3] Mill, John Stuart, *Principle of political Economy*, Book V, Chapter III, quoted by Shenk, Alan and Oldman, Oliver, *Value Added Tax. A Comparative Approach*, Cambridge, Cambridge University Press, 1ST edition, 2006, p. 5.

[4] Gammie, Malcolm, *The role of the European Court of Justice in the Development of Direct Taxation in the European Union*, Bulletin for International Fiscal Documentation, IBDF, 2003, p. 86.

Given the hardness of drawing a clear-cut common distinction between direct taxes and indirect taxes, a lot of authors simply enumerate what they consider to be direct taxes on the one hand and indirect taxes on another hand.

In regard of that, the agreement on Subsidies and Countervailing Measures, which figures in the World Trade Organization[1] defines direct taxes as "*taxes on wages, profits, interest, rents, royalties, and all other forms of income, and taxes on the ownership of real property*" and define the indirect taxes as "*sales, excise, turnover, value added, franchise, stamp, transfer, inventory and equipment taxes, border taxes and all taxes other than direct taxes and import charges*". According to the WTO principles, the point of view that sales taxes like the VAT are borne by consumers, while income taxes are borne by producers like owners, shareholders and workers[2]. The tax adjustment in border for indirect taxes like the EU VAT, to the disaffection of US firms- are not considered a subsidy, whilst similar adjustments in the field of direct taxation are not allowed[3]. In some states the distinction bears importance for tax function issues among national administrations and subnational administrations[4]. In the USA, for example, direct taxes should be divided among the states according to their population[5].

The second standard for distinguishing between indirect taxes and direct taxes has been mention in the index of ability to pay. The choice of the parameter for applying this standard is obviously discretional, "but convention in the literature is that it should be income or wealth. Thus, irrespective of the taxpayer that is legally bound to face the levy and irrespective of the phenomena of shifting of the burden, a tax is usually considered to be direct if it directly impinges on income or wealth, while it is considered an indirect tax if it impinges on income or wealth only indirectly"[6]. Obviously according to this method, the consumption taxes are always indirect, the reason of that is consumption is deemed to be only an indirect index of the ability to pay.

[1] World Trade Organization, Annex I, Footnote 58.
[2] Shenk, Alan and Oldman, Oliver, *Value Added Tax: A Comparative Approach*, Cambridge, Cambridge University Press, 1ST edition, 2006, p. 18.
[3] See the cases on the DISC, FSC and ETI provisions of the US income tax.
[4] Shenk, Alan and Oldman, Oliver, *Value Added Tax. A Comparative Approach*, Cambridge, Cambridge University Press, 1ST edition, 2006, p. 5.
[5] Art. 1, Sec.2, Clause 3 and Sec.9, Clause 4 of the US Constitution.
[6] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 157.

According to third standard, which is the result of analysis of the GATT (Arts, 1 and 3) also the treaty of Rome, article 90,92 and 93, we can say that while indirect taxes are directly levied on products, direct taxes are imposed on the taxpayer.

"In conclusion, we can state that while the literature has not yet found a final and clear-cut criterion for drawing the distinction between direct and indirect taxes, there are taxes that by definition and under any criterion have always been considered direct levies, such as the income tax and wealth taxes, and other taxes that have always been considered indirect under all the distinguishing criteria we have recalled above. In between, we can find taxes that are hardly to be included under either group"[1]

The Title one of the part one will include two chapters, which are: The first Chapter will be Definition of VAT and the second Chapter will be Distorting the key feature of Value Added Tax.

CHAPTER ONE
Definition of VAT

Before going further to VAT laws and systems, it's important to clarify the situation of VAT among the types of taxes. In more details it's important to clarify the VAT definition from several prospective, before that it's important to explain the VAT and compare the VAT with direct tax.

There are several definitions of VAT, the legal definitions which is adopted by EU directive, the directive definition determine three elements of VAT which are (1) levied on a consumption base (2) collected incrementally through all stages of the production and distribution chain through the invoice credit method and (3) imposed on a destination basis. That directive is the corner stone and the legal basis of VAT in EU. The directive determines the outline of VAT in EU, and the EU states must follow the rules of directive with adopting several types of exemptions and apply the zero rates. Also, in this chapter will explain the most important

[1] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 158.

methods of operating the staged collection process: i) Invoice credit method, ii) Subtraction method, iii) Addition method.

In addition, and according to common VAT agreement of the states of the Gulf Cooperation Council (GCC), the definition of VAT is "Value Added Tax (VAT) imposed on the import and supply of Goods and Services at each stage of production and distribution, including (Deemed supplies)"[1].

The elements of GCC definition are i) imposed on the import and supply of Goods and Services. ii) applied at each stage.

There are several differences between that two definitions (EU definition and GCC definition), in EU definition it's obvious that definition determine the destination basis which helps on international trade as will explain in this chapter, that principle is not mentioned on GCC definition, also the GCC was includes gap on the VAT definition which is not mentions the right to deduction by the business in all stages.

Another inquire appears which is why do I need to compare the VAT with Direct taxes? The answer will give the conception of VAT in general and that will give clear image of VAT and the feature of VAT and advantages of VAT. But there are disadvantages of indirect taxes comparing with direct taxes, the compliance cost or administrative cost is the one of the disadvantages of indirect taxes which includes such as filling the tax returns, submit the tax returns, collecting taxes, deposit the taxes and extra cost of that services.

It's obvious and known that there are two divisions of taxes: the first division which is the direct taxes and second division is the indirect taxes. It's important to clarify some mutual features between the two main divisions. Also, there are some unique features for each type of taxes.

There are unique features for the VAT. It's called the Neutrality of VAT, one of the main principles of Neutrality of VAT its called "*No charge on business*" which means the burden of pay tax on the final consumer not on business, but in practise the business pay tax under VAT umbrella, is it a breach of that principle? These chapter will explain the concept of no charge on business and how the business remedy the input taxes to follow that concept. In addition, the business pays taxes despite no charge on business, either that amount of money is a penalty of

[1] The Common VAT Agreement of the States of the Gulf Cooperation Council (GCC) issued on November 27th, 2016, Article 1.

breach the law or the reason of following the law, sometimes there are expanses on business but are not deductible by the law. Also, the VAT are imposing the international trade, but the international organization offers a lot of affords to make the international trade with VAT are more ease, by adopting guidelines and assist the states to harmonize the domestic law with international trade from VAT aspect, that issue will cover it on the chapter.

What is the deduction or refund mechanism? That is one of important element of VAT, but what is that and how its work? It's a right from the legislator to business (by law) to deduct the taxes payed by business for the business activities. It's a critical right on business hands, that right will assist the business and following to principle of no charge on business, but in other side that risk and may assist to tax evasion, so the legislator gives that right with regulatory conditions, and heavy penalties. ECJ did a good job on that matter, that issue of deduction or refund mechanism with the opinions of ECJ will be covered on this chapter.

In comparing between VAT and Income Tax the issue of Tax fairness will appears on the surface, because it's an important issue for the all related parties. This chapter will cover that issue to clarify that point.

So, the chapter will include two sections which are The Neutrality of VAT for the first section and VAT/GST and Direct taxes: Different Purposes, for the second one.

Section one. Neutrality of Value Added Tax

Nearly most countries in the world have taxation system, including several types of taxes. However, the most popular and efficient one is the Value Added Tax. VAT is the cornerstone of the taxation system.

After World War II, the European governments wanted to rebuild their states after destruction, but the hardest challenge was funding the mega projects. So, the leaders and economists came up with an efficient tax system to collect more yields and reduce the impact on economy.

France succeeds to reach that achievement and avoided the challenge of funding by inventing new type of tax which is Value Added Tax. On April 10th, 1954, the VAT proposal from Maurice Lauré become a Law. At first VAT was rather like the production tax. Some even commented that VAT was merely changing the name of production tax and allowing the

deduction of the tax on investment. Nevertheless, the law of April 10th, 1954 provided a valuable input in terms of neutrality and the subsequent stages of the reform raised the level of neutrality.

"*Initially, VAT at rates of 16.85% and 7.50% was imposed only on large companies. A local tax on final sale at 1.50% plus a cumulative tax on services at 5.80% as well as diverse specific taxes were coexisting with VAT.*

In 1966, VAT was extended to cover the wholesale trade and the tax on services become deductible from VAT. The rates were increased the same year up to 17.35% and 8% in order to maintain the yield.

In 1968, further to the proposal of Valery Giscard d'Estaing, then Minister of Finance, VAT was extended to retail to replace the local tax, the tax on supply of services and all other specific taxes"[1].

Before creating the VAT, the domestic or local indirect taxes were typically limited to defined products like excise sales tax and the sales and turnover taxes was implemented. "*The distortions created by the last kind of tax (such as the encouragement of vertical integration of an industry solely to reduce tax liabilities), combined with rising revenue requirements, provided an incentive to seek alternative less distortionary taxes. Intellectually, the basic idea of the value added tax appears to have originated with a German businessman, von Siemens, writing in the 1920s. There were other developments in the 1920s, including the suggestion of the invoice-credit methods by Adams (1921). Particularly influential contributions were made by "le père de la TVA," Maurice Laurè*"[2].

"*Since the mid-1980s, VAT (also called Goods and Services Tax- GST) has become the main consumption tax both in terms of revenue and geographical coverage. VAT is designed to be a tax on final consumption that a broadly neutral towards the production process and international trade. It is widely seen as a relatively growth-friendly tax*"[3].

[1] Herbain, Charlene Adline, *VAT NEUTRALITY*, Promoculture-Larcier, 1st edition, 2015, p. 29
[2] Ebrill, Liam, Keen, Michael, Bodin, Jean-Paul, and Summers, Victoria, *The Modern VAT*, International Monetary Fund, Washington D.C., 2001, p. 4.
[3] OECD, *Consumption tax trends 2016: VAT/GST and Excise Rates, Trends and Policy Issues*, OECD Publishing, Paris, 2016, p. 14.

Nowadays, VAT is key source of government revenue in over 160 countries around the world. "*about 4 billion people, 70 percent of the world's population, now live in countries with VAT, and it raises about $18 trillion in tax revenue roughly one quarter of all government revenue*"[1].

This section will include the definition of VAT from various aspect. Also, this section will include the mechanism of VAT or how the VAT work with the main approaches for operating the staged collection process (invoice credit method and subtraction method). The last issue will be the neutrality of VAT.

§1. Definition of VAT

Value added tax is type of consumption tax or indirect tax, the consumer bears the burden of pay and the merchants are obliged to collect the VAT from consumer and submit the money of VAT to taxation authority.

The definition of VAT could be as follow "*A broad-based tax levied on commodity sales up and including, at least, the manufacturing stage, with systematic offsetting of tax charged on commodities purchased as inputs – except perhaps on capital goods-against that due on outputs*"[2].

Another definition of VAT which adopted by the European Commission (the legal definition) as follow : the first Council Directive on VAT, issued by the European Commission, includes a detailed definition of a VAT: "*the principle of the common system of value added tax involves the application to goods and services of a general tax on consumption exactly proportional to the price of the goods and services*"[3]. The explanation of that concept which created by the first directive of VAT 2006/112/EC in article one is "*VAT is defined as an indirect tax, payable on the consumption of goods and services, general in nature, neutral and exactly proportional to the price of the goods and services on which it is computed*"[4].

"*Whatever the number of transactions which take place in the production and distribution process before the stage at which tax is charged. On each transaction, value added tax,*

[1] Ebrill, Liam, Keen, Michael, Bodin, Jean-Paul, and Summers, Victoria, *The Modern VAT*, International Monetary Fund, Washington D.C., 2001, p. 11.
[2] Ebrill, Liam, Keen, Michael, Bodin, Jean-Paul, and Summers, Victoria, *The Modern VAT*, International Monetary Fund, Washington D.C., 2001, p. 2.
[3] European Union, First Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes, Official Journal No. 71 issued on April 14th 1967, Article 2 § 1.
[4] Calisto Pato, Antonio, *Commented Recast VAT Directive*, CreateSpace Independent Publishing Platform, January 2015, p. 28.

calculated on the price of the goods or services at the rate applicable to such goods or services, shall be chargeable after deduction of the amount of value added tax borne directly by the various cost components"[1].

The broad-based tax is the key features of VAT, the mechanism of broad-based tax is levied at multiple stages in chain of production, tax on input credited against tax on output. That mechanism forced sellers to charge the tax on all their goods, the system of VAT gives the right to merchants to claim for taxes that they have been charged on their inputs. The advantage of that mechanism is that revenue is secured by collected throughout the process of production, which is different than the retail sales tax. In other words, the key points of VAT are taxes levied at all stages of production, taxes on inputs deduct against taxes on output.

That mechanism is wise because it keeps the merchant, collects the taxes from customers to deduct input tax from output tax and return his money tax. Although that mechanism will force the merchants to prepare and keep the accounting books and invoices to help them preparing the tax return. The simplicity of the VAT idea makes it one of the most common taxes in the world.

Suppose for example that. "*A farmer grows cotton which is plucked and sold to a factory, a farmer collects VAT from the factory on behalf of the government. The factory processes the cotton and manufactures clothes which are sold to a retail chain. The factory collects VAT from retail chain on behalf of the government. The factory receives a refund on the VAT paid to the farmer. The clothes are stocked in stores and placed for sale to consumer. The retail outlet collects VAT from the consumer on behalf of the government. The retail outlet receives a refund on the VAT paid to the factory. In the results VAT is collected through the chain and the end consumer bears the cost*"[2].

In the previous example, its observed that the factory deduct the input tax (certain amount of money charged when buying a product or service) from output tax (certain amount of money collected when selling a product or service) and refund factory money. Also, each merchant applies the VAT because they want to refund their money.

[1] Schenk, Alan, Thuronyi, Victor and Cui Wei, *Value Added Tax: A comparative Approach*, Cambridge University Press, 2nd edition, 2015, p. 73.
[2] https://www.mof.gov.ae/En/budget/Pages/VATQuestions.aspx [consulted in 18 February 2018].

The last example was ideal but in practice there are difficulties and challenges. For example, zero-rate tax and exemptions. It will be explained in chapter two.

After years of implementing VAT, with all its advantages and disadvantages, the Council of European Commission adopt new directive belongs VAT.

The European VAT Directive 2006/112/EC provide that: "*entails the application to goods and services of a general tax on consumption exactly proportional to the price of the goods and services, however many transactions take place in the production and distribution process before the stage at which the tax is charged.*

On each transaction, VAT calculated on the price of the goods or services at the rate applicable to such goods or services, shall be chargeable after deduction of the amount of VAT borne directly by the various cost components"[1].

The last definition pinpoint three elements VAT which are "*(1) levied on a consumption base (2) collected incrementally through all stages of the production and distribution chain through the invoice credit method and (3) imposed on a destination basis*"[2].

In the reality as mentioned, the key feature of the VAT that is charged is the difference between purchases and sales. Furthermore, there are three main ways to operating the staged collection process: i) Invoice credit method, ii) Subtraction method, iii) Addition method.

A) Invoice credit method

Each step of sales chain, the merchant must charge output tax with the rate (standard rate) on each sale or services, after that passes to the other merchant which is the purchaser or recipients of the service and the amount of tax charged. The purchaser is in turn able to deduct that input tax against the output tax which charged in its sales or provide services.

Remitting the amount of tax to authority of tax and receiving the refunds when there are access credits. That method was designed to Contribute the fraud.

[1] European Union, Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax, Official Journal No. L 347 issued on December 11th 2006, Article 1 § 2.
[2] Ibidem, p. 20.

B) Subtraction method

The amount of tax is levied by direct way on an accounts-based gauge of value added, which is specified for each firm or business by subtracting or deduct allowable purchases from the amount of tax calculated on taxable.

A notable difference on that method is the "*gross margin*". That method used by some states in the central of Europe and others, this method is the difference between the revenues and costs.

"*Under the Subtraction method, tax is levied directly on an estimate of value added calculated by summing (and adjusting as needed) factor incomes*"[1].

C) Addition method

The third method of operating the staged collection process is the addition method. The amount of tax is collected on an evaluate of value added calculated by summing incomes.

"*Practice and consensus heavily favor the invoice credit method. The only national VAT currently implemented using the subtraction method is that of Japan*"[2].

The method of Invoice credit and the method of subtraction have expressive features in common. Both are having power to prevent inattention from taxation of any middle transactions. In other words, it helps to not broking the taxation chain. In additional, the invoice credit is based on transactions, the other method which is the subtraction method is based on entity. Also, the invoice credit method is the best way or method to deal with mutable rates structures.

Assume the zero rate not standard rate which mean the trader will not charge on output tax, but the input tax for trader is charged which will refund. By using the method of invoice credit, this will have harmonized by authorize sales of the good to be free tax.

[1] Ebrill, Liam, Keen, Michael, Bodin, Jean-Paul, and Summers, Victoria, *The Modern VAT*, International Monetary Fund, Washington D.C., 2001, p. 20.
[2] Ebrill, Liam, Keen, Michael, Bodin, Jean-Paul, and Summers, Victoria, *The Modern VAT*, International Monetary Fund, Washington D.C., 2001, p. 20.

But by using the method of subtraction that transaction needs to delete sales of such goods from taxable revenues. And that mean the traders must distinguish between the diverse kinds of sales on their financial books.

§2. The Core Features of Value Added Taxes

It's natural that any kind of taxes has unique features different than other taxes. This subsection will focus on the core features of VAT which are: the broad-based tax on final consumption, staged collection process and the destination principle.

A) Broad – based tax on final consumption

The overall purpose of VAT is to impose on final consumption who will pay the amount of tax, the principle of VAT is only private individuals is the target of VAT.

In that field the European Court of Justice clarify that the item which used for the purpose of business may deduct from the tax amount which the taxable person liable to pay the VAT in respect of that item[1]. However, many systems of VAT impose tax burden not only on consumption by individuals, but also on other entities which are worked in non-business activities.

The consequence of the purpose of VAT is a tax on final consumption and the burden of the VAT should not rest on businesses. The result of that is there is no burden of paying VAT on business.

In practice, if business acquires goods or receive services which are used in part or whole for private consumption for the owners of business, then to follow the requirements of VAT, the business must determine the extent to which, the purchase should be treated as used for private consumption or for business purposes.

It's important to mention that according to broad-based tax, the VAT are different than the excise tax. The excise tax is targeted at specific types of consumption like tobacco and alcohol.

[1] ECJ, Case C-291/92, ECJ 4 October 1995**.** Finanzamt Uelzen v. Dieter Armbrecht, the second question, p. 27**.**

It's worth it to explain the difference between excise tax and VAT. Excise tax is another type of consumption tax, which is apply on certain product or selective product. The base of excise tax is narrow compared to value added tax.

The excise tax is similar than the retail sales tax in single stage levied and different than the value added tax in that aspect. The states usually use excise tax to impact on the consumption to reduce usege some product like tobacco.

In addition, the "*excise taxes differ from VAT since they are levied on a limited range of products; are not normally liable to tax until the goods enter free circulation and are generally assessed by reference to the weight, volume, strength or quantity of the product, combined in some cases, with ad valorem taxes. As with VAT, excise taxes aim to be neutral internationally since they are normally collected once, in the country of final consumption*"[1].

The value added tax law in UAE defines the excise tax which is tax apply on certain product. In my view of point, the definition is correct, but the definition must be in excise tax law. Where the UAE legislator made a mistake when ignoring the definition to mentions in excise tax law.

In some states the excise tax applies with applying the value added tax at the same time. The question is what is the priority of levied between the two kinds of taxes (VAT and Excise tax)? The answer is there are no priority, both are applying. But the excise applies, and the amount of tax calculate with the price, then the VAT apply on last price after adding the amount of excise tax. Its same concept of accumulation between VAT and custom duty, this topic will explain in another chapter.

Article 35 of Federal Law No 8 of 2017 concerning Value Added Tax in United Arab Emirates VAT mention explicitly that the value of product is the price of product with any custom duty and any excise tax. It's clearly noted that after adding the excise tax on price then the VAT will apply.

Other comparing based on UAE taxation law and system, according to UAE taxation law, the business must register for VAT if the annual revenue exceeds 375,000 AED, in other side which is the excise tax there are no threshold.

[1] OECD, *Consumption tax trends 2010: VAT/GST and Excise Rates, Trends and Administration Issues*, OECD Publishing, Paris, 2011, p. 25.

Also, it's important to mention that the VAT implement in all stages of production and sales, in additional each enterprise must collect the VAT, but in excise tax the collection happened only in one stage, according to UAE "*Tax shall be imposed on the following activities related to Excise goods: a) a production of Excise Goods in the state, where such production was in the course of doing business. b) Import of Excise Goods. c) Release of Excise Goods from a Designated Zone. d) Stockpiling of Excise Goods in the state, where such Stockpiling was in the course of doing Business*"[1].

B) Staged collection process

The most famous feature of VAT and the central design feature is staged collection process, from the title of subsection, it is obvious that the tax collected through a staged process. Each business or part in the supply chain take share in the process of collecting the tax and controlling the tax.

The principle of tax collected at each stage of distribution or production it came from the margin or the difference between input tax and output tax, and the mechanism of that is tax imposed on its taxed inputs, after that tax imposed on its taxed outputs. That principle called value added.

In this regard, VAT differs from a sales tax, both are consumption tax, but the retail sales tax levy it through single-stage and imposed in theory at the point of final sale only. It is worth it to explain the difference between Retail Sales tax (RST) and Value Added Tax.

VAT is not the only possible kind of consumption tax, it is reasonable to compare it, in particular with Sales tax. The RST may rise to be a simpler approach of achieving the same key effects keeping production efficiency and avoiding the concept of cascading, the reason of that is the single stage tax levied in general at the point of sale of final product.

"*In practice, it is hard to ensure that RST does not fall on business inputs. Ring (1989) estimates (for 1989) that in the U.S. states that have a RST about 40 percent of the revenue collected was from business purchases. On the other hand, the alleged "self-enforcing*" *feature of the invoice-credit VAT- the notion that the purchasers will help enforce the VAT as a consequence of their interest in obtaining a proper invoice from their suppliers - is not as important in practice as has sometimes been argued: purchasers do not care, for instance, whether tax has actually been*

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Excise Tax, Official Gazette No. 621 issued on August 17th 2017, Article 2 § 2.

paid by their suppliers, only about the acceptability to the authorities of the invoices they hold. There is evidently a potential problem in the claiming of credits on the basis of fraudulent invoices. What does appear important in securing revenues, however, is the collection of revenue at many points under the VAT rather than simply at the final stage under the RST. This renders the RST much more vulnerable to evasion"[1].

This feature of staged collection process pinpoint that the burden of the tax should not be on businesses, but the businesses suffer from VAT because in the businesses it requires to acquire goods and receive services. There are two approaches to implementing the staged collection process for relieving businesses of the burden of VAT.

The first approach is transaction-based method, which is under the invoice-credit method "*each trader charges VAT at the rate specified for each supply and passes to the purchaser an invoice showing the amount of tax charged. The purchaser is in turn able to credit that input tax against the output tax charged on its sales, remitting the balance to the tax authorities and receiving refunds when there are excess credits*"[2].

The second approach under the subtraction method which is called entity-based method, the amount of tax is directly levied on an account-based by gaged of value added, which is specified for each type of businesses by subtracting the VAT calculated on allowable purchases from the amount of VAT calculated on taxable supplies.

C) The destination principle

Consumption is subject of VAT, and the purpose of VAT is levy and collect money from final consumption not from businesses, and that will implement smoothly in one jurisdiction, but the issue is what will happen if the VAT is subject to several jurisdictions which means several states or the applying VAT in several states with several VAT laws and rates. In other word, the international trades.

There are two principles of levying VAT from international trade, the first principle is the destination principle and the second principle is the origin principle. Using the destination principle, the amount of tax basically levied exclusively on the final consumption that happen

[1] Ebrill, Liam, Keen, Michael, Bodin, Jean-Paul, and Summers, Victoria, *The Modern VAT*, International Monetary Fund, Washington D.C., 2001, p. 23.
[2] OECD, *International VAT/ GST Guidelines*, OECD publishing, Paris, 2017, p. 15.

within the taxing jurisdiction. Using the origin principle, the amount of tax is levied in the multiple jurisdictions where the value was added.

Basically, exports are not subject to tax using the refund of input tax under the destination principle, in other words that could be zero rate or exempt tax which is free of tax. In other side the imports are taxed as domestic supplies. And at the end tax is paid related to a supply which determined by the rules applied in the jurisdiction of its consumption and all the taxes accrues to the jurisdiction in the place of supply on the final consumer.

By contrast, each jurisdiction must levy tax on the value produced within its own borders by using the origin principle, under that principle the exporting jurisdiction would charge tax exports on the same basis and at the same rate as local supplies within borders.

The importing jurisdiction would give a credit against their own VAT according to hypothetical tax[1] that would pay at the importing jurisdictions at same own rate. The tax which paid on a supply would then reflect on the model of its origins and the total revenue will distribute in that model. This would conflict with to the feature of VAT which is the VAT is a consumption tax and the revenue should happen to the jurisdiction where the final consumption happens.

According to origin principle, these revenues must share between the several jurisdictions where the value added. For these reasons the destination principle is more spread, which pinpoint with revenue happen to the jurisdiction of import where final consumption occurs. That principle is preferable to the origin principle. also using the destination principle assist to avoid double taxation or non-taxation.

Also, another benefit of using the destination principle which is assisting to limits distortions in relation to international trade, when a transaction related to goods being moved from one jurisdiction to another jurisdiction, under the destination principle the goods are taxed where they are delivered. However, imports are subject to VAT at same rate of domestic VAT in the purchaser's jurisdiction. Generally, the VAT on imports are collected at the same time of import with custom duties. Also, the collection can have postponed until declared on the importers to

[1] Hypothetical tax is It is a part of a tax equalization strategy, that gives the employee a tax rate that is calculated based on home country tax laws for their income bracket. It is called 'hypothetical' tax because it uses a rate as if the foreign assignment never occurred, and the employee was still working in the home country. The amount of the tax is not actually withheld by tax authorities, but it is an estimate of taxes that is managed by the employer. https://shieldgeo.com/hypothetical-tax/ [consulted in 17 of February 2019].

the next VAT return. That mechanism assists to limits distortions in relation to international trade.

When the destination principle is implementing for international trade in services its more difficult than implementing destination principle for international trade in goods. The mood of services which is intangible its cannot be subject to border controls like the control on the goods. Also making exports free of VAT and taxing imports that assist to violate the principle of staged collection process. So, VAT on cross-border for B2B "*business-to-business*" for providing services are collected by the reverse charge mechanism. The Common VAT Agreement of the States of the Gulf Cooperation Council (GCC) defined the reverse charge mechanism as "*a mechanism by which the Taxable Customer is obligated to pay the Tax due on behalf of the Supplier and is liable for all the obligations provided for in this Agreement and the Local Law*"[1].

The reverse charge mechanism switches the liability to pay the tax from the supplier to the customer. In case of absence such a reverse charge mechanism the international trade will face administrative burden and obstacles.

That burden occurs when a foreign supplier that provide services in other jurisdictions when they are not registered and established, that will encourage the businesses to register for VAT purpose and follow all VAT requirements in these jurisdictions. The reason of that is to avoid such administrative burden on foreign supplies. Also, to confirm that VAT is accounted. Under the reverse charge mechanism allows the VAT registered customer to account amount of tax on supplies received from foreign suppliers.

§3. Neutrality of VAT

The burden of pay tax is on the final consumer, and the final consumers are suffering from VAT, so the Economic efficiency in tax issue prevents society from suffering deadweight losses.

The concept of economic efficiency is "*economic efficiency is fundamentally associated with economic costs and benefits maximizing economic efficiency requires, to the extent possible,*

[1] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 1.

maximizing economic benefits and minimizing economic costs. Maximizing economic efficiency is thought to result in maximum wellbeing in overall terms"[1].

The aim of create VAT in France and in Europe was to establish a system of taxation that would decrease the suffering of society and to evaluate the success of system. It is therefore important to identify the concept of neutrality as implemented to VAT in an economic context. Also, there are link between Economic efficiency and VAT neutrality.

Adam Smith underline the relation between economic efficiency and taxation in 18th century. He was believed that the tax should be maximizing the public income[2]. In 19th century with the economic growth, the relationship of economic efficiency and taxation was at the heart of the debate. The focus on the relationship was ordered by the nature of the time.

In France and after the second world war which was describe by economic growth joint with high productivity consumption and wages. That historical situation explains why neutrality is essential to the nature of VAT. Also, it's obvious that VAT was established with neutrality at its core. "*Neutrality was the fairy godmother at the cradle of VAT*"[3], the purpose was to enhance the concept of economic efficiency in the aspect of taxation. For the first time, tax not only for raising revenue but the tax means of developing the economy.

The most significant issues related to VAT are the first significant is the absence of a charge on businesses, the second significant is the absence of a distortion on cross-border trade and the last significant is the equal treatment.

A) No Charge on business

VAT is not corporate tax to implement on the capital or income of businesses. VAT is a consumption tax that applies without differences to all commercial activities including the provision of services also production and distribution of goods.

[1] Herbain, Charlene Adline, *VAT NEUTRALITY*, Promoculture-Larcier, 1st edition, 2015, p. 49
[2] Smith, Adam, *An Inquiry into the Nature and Cause of the Wealth of Nations*, 31st edition, Encyclopedia Britannica, 1989.
[3] Herbain, Charlene Adline, *VAT NEUTRALITY*, Promoculture-Larcier, 1st edition, 2015, p. 50.

Also, the concept of VAT is to be borne by the end consumer and not on the businesses including the lifecycle of the product or service. The result of that VAT must not be charge on intermediary businesses has been established as a major merit.

The question is what is the definition of the concept of no charge on business? In next pages the discussion will be on the concept of no charge on business and the Implementation of the concept of no charge on businesses.

1) Definition of the concept of no charge on business

The concept of "*no charge*" can be found in various condition like in accounting principles, also guidelines of the OECD, in addition the concept of no charge explain it by the Court of Justice of the European Union.

As it was mentioned before, the most meaning of the concept of neutrality is the VAT must not be a charge on trade and businesses. This definition of VAT neutrality becomes the most important evidence in the reporting of VAT in financial statements. The VAT must not appear in the form of costs or in the form of revenues. VAT must not be included in the profit or loss account.

The income of businesses must be calculated free of VAT also is "*should comprise amounts derived from the sale of products and the provision of services […], after deduction of [...] value added tax and other taxes directly linked to the turnover*"[1]. This mechanism of computation pinpoints the fact that VAT collected by a business because of economic action.

The concept of tax neutrality according to OECD in the VAT/GST guidelines is "*burden of value added taxes themselves should not lie on taxable businesses*"[2].

Also, The European court of justice explain the concept of VAT neutrality and addressed that in the view of deduction system and that system was meant to ensure that trade and businesses would not bear any VAT burden. In this respect many judgments along the years have quoted the following: "*the deduction system established by the directive is meant to relieve the trader entirely of the burden of the VAT payable or paid in the course of all his economic activities.*

[1] European Union, Fourth council directive 78/660/EEC of 25 July 1978 based on Article 54 § 3g of the Treaty on the annual accounts of certains types of companies, Official Journal No. L222/11 issued on August 14th 1978, Article 28.
[2]Herbain, Charlene Adline, *VAT NEUTRALITY*, Promoculture-Larcier, 1st edition, 2015, p. 52.

Thus, the common system of VAT seeks to ensure complete neutrality of taxation of all economic activities, whatever their purpose or results, provided that they are themselves subject, in principle, to VAT"[1].

2) Implementation of the concept of no charge on businesses

After explaining the concept of neutrality of VAT as the no VAT burden on businesses or in other words "*no charge*". The mechanism of VAT is designed to pass the burden of VAT to the next level or stage in the services cycle or production process until the burden has reached to the end consumer, this mechanism called « *passing through* » process, that assist states to raise income on final consumption. The mechanism of passing through process called indirect levying.

The concept of no charge stereophonic in the indirect levying mechanism, the deduction mechanism, no distortion of the internal market and equal treatment.

a- Indirect levying mechanism

Indirect levying means that is not the tax authorities or government itself, which levies or collect the tax from the end consumer or final taxpayer, but that the tax is charged and hold by a third party or intermediary who is legally forced to pay the tax so charged and hold to the tax authority. The burden of indirect levying is imposed on suppling services and businesses producing.

The indirect levying indicate that VAT may only influence the amount paid by the consumers. It should not influence the amount levied by the supplier on sale after it has pay corresponding VAT.

Using indirect levying makes businesses act as collection agents and draws a difference between the economic incidence and legal of the tax. It's obvious that the legal incidence of VAT is the commitment to levy it or collect it. That's supported by businesses which are acting as intermediaries in the supply chain of the services or products. This explained by the Court of Justice of the European Union as follows: "*the sole requirements imposed on [businesses],*

[1]Among others European Court of justice (ECJ), Case C-408/98 Abbey National plc v Commissioners of Customs & Excise [2001] ECR I-1361, § 24 ; ECJ, Case C-435/05 Investrand BV v Staatssecretaris van Financien [2007] ECR I-1315 § 22.

when they take part in the production and distribution process prior to the stage of final taxation […] is that, at each stage of the process, they collect the tax on behalf of the authorities and account for it to them"[1].

The incidence of economic agree to the tax burden and to be borne by the final consumer of goods or final receiver of services. Consequently, the economic incidence is not borne by the intermediaries, as explained by the Court of Justice of the European Union as follow: "*it is not, in fact, the taxable persons who themselves bear the burden of VAT* "[2].

According to the article 73 of Council Directive 2006/112/EC also according to the Court of Justice of the European Union, the base of estimate of VAT corresponds to the « *subjective value* »[3]. It's obvious that the provisions of article 73 of the VAT Directive constitute a direct applying of the neutrality principle. The Court of Justice of the European Union developed a definition of the subjective value from the perspective of legal incidence by declare that the tax pay must not be more than the tax effectively levied "*having regard […] to the machinery of the VAT system, its operation and the role of the intermediaries, the tax authorities may not in any circumstances charge an amount exceeding the tax paid by the final consumer*"[4].

The Court of Justice of the European Union also maximize the scope of the what mention above related to VAT Directive to supplies that have had their consideration decreased indirectly through retailers as follow: "*[…] in order to ensure observance of the principle of naturality, account should be taken, when calculating the taxable amount for VAT, of situation where a taxable person who, having no contractual relationship with the final consumer but being the first link in a chain of transactions which ends with the final consumer, grants the consumer a reduction through retailers or by direct repayment of the value of the coupons. Otherwise, the tax authorities would receive by way of VAT a sum greater then that actually paid by the final consumer, at the expense of the taxable person"*[5].

The indirect levy creates an efficient of no charge concept, also the indirect levying will not be able to do this in absence of help of the deduction mechanism.

[1] ECJ, Case C-317/94 Elida Gibbs Ltd v Commissioners of Customs and Excise [1996] ECR I-5339, § 22.
[2] Ibid.
[3] ECJ, Case C-230/87 Naturality Yours Cosmetics Limited v Commissioners of Customs and Excise [1988] ECR 6365, § 16: "*The consideration […] is a subjective value, since the basis of assessment is the consideration actually received and not a value estimated according to objective criteria*".
[4] ECJ, Case C-317/94 Elida Gibbs Ltd v Commissioners of Customs and Excise [1996] ECR I-5339, § 24.
[5] ECJ, Case C-317/94 Elida Gibbs Ltd v Commissioners of Customs and Excise [1996] ECR I-5339, § 31.

After explaining the indirect levying mechanism and the opinion of ECJ and the council directive No 2006/112/EC, it's the time to analyze that mechanism. In general, the right to levy tax is exclusive for the government but the situation with indirect tax are unique, the government give that right to business. So the business is responsible to levy the tax and deposit that money of tax to government. It's risky to give that right to business, but its butter to levy and for government, but the government give that right to business based on taxation law, according to that the business will gain benefit by collect the taxation money and keep that money with them for a period of time, after that the business are obligate to deposit that money to government at the end of taxation period, maybe one month or two months or three months. In other side that right will create a disadvantage on business as a result of indirect levying mechanism is the administration cost to prepare the tax return and follow the requirements of taxation law on the business.

That compliance cost or administration cost include preparation activities, filing activities and payment activities.

The preparation activities include for example: collecting data from internal sources, more analysis of accounting data, calculation of liabilities of tax, preparing of mandatory tax records and complying with changes in taxation rules and maybe rates.

The filling activities includes completion and submission tax returns. The payment activities include paying tax whatever online or at the tax authority offices which coast time[1].

b- Deduction / refund mechanism

The Organization for Economic Co-operation and Development -OECD confirm the issue that "*the fundamental principles that the burden of the tax should not rest on business, requires a mechanism for relieving businesses of the burden of the VAT they pay when they acquire goods, services, or intangibles*"[2].

In fact, in the normal of their activity's businesses, they are almost bound at same time to be the clients of other businesses, also in this regard, they will be charged VAT. It's obvious in this cases that the deduction and the refund mechanism will appear like a star in a dark night. The principle was set by the first VAT Directive as follow: "*the principle of the common system*

[1] Herbain, Charlene Adline, *VAT NEUTRALITY*, Promoculture-Larcier, 1st edition, 2015, p. 139.
[2] OECD, International VAT/GST Guidelines, OECD publishing, Paris, 2017, § 1.6.

of value added tax involves the application to goods and services of a general tax on consumption exactly proportional to the price of the goods and services, whatever the number of transactions which take place in the production and distribution process before the stage at which tax is charged.

On each transaction, value added tax, calculated on the price of the goods or services at the rate applicable to such goods or services, shall be chargeable after deduction of the amount of value added tax borne directly by the various cost components"[1].

The mechanism of deduction allows business to deduct or withhold from the VAT which collected on their output tax the sums paid to their suppliers in regard of VAT and thus to pass on to their States only the difference. Also, in case the sums of VAT paid to their suppliers more than the amount of VAT which collected on their output tax. The refund mechanism will used to achieve the same neutrality as the deduction mechanism.

The refund or deduction of VAT costs beard by businesses which is output transaction opening such deduction or refund right. In other words, the standard for the deduction of input VAT is the use of the expenditures that confirmed the VAT costs for the realization of transaction opening a refund or deduction right.

The question appears, do the domestic Taxation Authority have a right to refuse the deduction of input tax from business, which constitute a violation of the neutrality of VAT?

In Kittel and Recolta case the ECJ accept the approach of national court to refuse that taxable person entitlement to the right to deduct. The issue was in that case the taxable person "*where it is ascertained, having regard to objective factors, that the supply is to a taxable person who knew or should have known that, by his purchase, he was participating in a transaction connected with fraudulent evasion of value added tax, it is for the national court to refuse that taxable person entitlement to the right to deduct*"[2].

The question of a VAT deduction right is envisaged by the VAT Directive which point that the right of deduction must be granted as follow, "*in so far as the goods and services are used for*

[1] European Union, First Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes, Official Journal No. 1301/67 issued on April 11th 1967, Article 2.
[2] Joint ECJ, cases C-439/04 and C-440/04 Axel Kittel v Etat belge and Etat belge v Recolta Recycling SPRL [2006] ECR I-06161.

the purposes of the taxed transactions"[1]. It has also ruled on some opportunity by the court of justice of the European Union which indicate the principle of neutrality, has stated that the only cases where businesses should suffer the burden of VAT is when the VAT relate to expenditure which the business has used for its private consumption not for taxable businesses activities. In last case the deduction of the related input VAT is clear. Also, in case of businesses can deduct immediately, or be refunded later.

In case the goods and services purchased are used by businesses activity to realize output operation that create a right of deduction and output operations that do not create such a right, honestly, not all the VAT incurred will be deductible as follow: "*only such proportion of the VAT [...] attributable to the [...] Transaction [that generate a right of deduction] shall be deductible*"[2].

Also, the European Court of Justice created a right of deduction. The supposition being that the expenditure must be part of overheads and is still somehow a component of the price of the goods delivered or of the services delivered which gives a right to deduct to the business. It is in this context that the Court of Justice of the European Union ruled as following: *"[...] in view of the fact that, first, a share issue is an operation not falling within the scope of the Sixth Directive and, second, that operation was carried out by [the business] in order to increase its capital for the benefit of its economic activity in general, it must be considered that the cost of the supplies acquired by that [business] in connection with the operation concerned from part of its overheads and are therefore, as such, component parts of the price of its products. Those supplies have a direct and immediate link with the whole economic activity of the [business]*"[3].

There are transaction gives businesses right to deduct or refund the VAT incurred on expenditure must be deductible exclusively for the part that is attributable to the taxable transaction. This distribution is to be carried out by the member state which, within their "*margin of discretion*" have an act in uniformity "*with the principles underlying the common*

[1] European Union, Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, Official Journal No. L347 issued on December 11th 2006, Article 168.
[2] European Union, Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, Official Journal No. L347 issued on December 11th 2006, Article 173.
[3] ECJ, Case C-98/98 commissioners of Customs and Excise v Midland Bank plc [2000] ECR I-4177, § 31; Case C-408/98 Abbey National plc v Commissioners of Customs Excise, n°216, § 35 and 36; ECJ, Case C-16/00 Cibo participations SA v Directeur regional des impots du Nord-Pas-de-Calais [2001] ECR I-6663, § 33 ; ECJ, Case C-4/94 BLP Group plc v Commissioners of Customs Excise [2005] ECR I-983, § 25 ; ECJ, Case C-465/03 Kretz technik AG v Finanzamt Linz [2005] ECR I-4373, § 36.

system of VAT"[1]. Also, particularly by the Advocate General: "*the method and criteria used by the member states for the apportionment must be such as to ensure that the objective pursued by the Sixth Directive are respected. Accordingly, they must not be contrary to the principle of fiscal neutrality on which the common system of VAT established by the Sixth Directive is based, and which precludes economic operators carrying out the same transaction from being treated differently in relation to the levying of VAT*"[2].

If a direct distribution of VAT happens on transaction performed by a business is not possible a so-called prorate of deduction needs to be calculated. Using of a prorate of deduction targets to confirm the desired neutrality in that it particulars in a custom-made way the portion of VAT that can be deducted in each case. This portion of VAT is determined using certain formula.

In addition, it must not forget that the prorating of deductions is a simplification of the rules of deduction. Also, that it may affect the principle of neutrality about which VAT should not be a burden on businesses. It should be applied with strict regard to EU directives. In fact, the use prorate was initially a gauge of simplification, it took in period between 1970 and 1980. "*The CJEU with the EDM case in 2004 put back in its right place the use of prorate of deduction and favored the use of the direct allocation*"[3].

The Court of Justice of the European Union aimed to keep the relation between the naturality of VAT and use of prorate of deduction be careful ruling out of the calculation of the prorate. the Court of Justice of the European Union claimed the article[4]of the VAT Directive which provide different method of calculation, the justification of that is that they will allow the results of the deductible proportion of input VAT to be as precise as possible[5]. This mean that, where appropriate, instead of calculating and implementing a prorate of deduction based on turnover another method of apportionment can use it. It may be a different prorate of deduction for each field of activity of a trade or a direct allocation of expenditure to particular output.

In famous case of BLC Baumarket case, the magnificent question was raised for calculating the proportion of input VAT deductible, could decide to give priority to one of the methods of

[1] ECJ, Case C-437/06 Securenta, No. 236, § 34 and 35.
[2] ECJ, Case C-437/06 Securenta, No. 236, opinion of the AG Mazak, § 47.
[3] Herbain, Charlene Adline, *VAT NEUTRALITY*, Promoculture-Larcier, 1st edition, 2015, p. 62.
[4] European Union, First Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes, Official Journal No 1301/67 issued on April 11th 1967, Article 173.
[5] See ECJ, Case C-488/07 Royal Bank of Scotland plc v The Commissioners of Her Majesty Revenue & Customs [2008] ECR I-10409, § 24 ; ECJ, Case C-511/10 finanzamt Hildesheim v BLC Baumarket GMBH Co. KG [2012], § 18 and 23.

distribution over and above any of those based on turnover. The Court of Justice of the European announced and confirmed that each Member States are free to decide to give priority to a different method of allocation as follow: "*on condition that the method used guarantees a more precise determination of the deductible proportion of the input VAT than that arising from application of the turnover-based method*"[1]. "*It should also be noted that an adjusted turnover can be use as the basis of calculation of the prorate in order to take account of the specific characteristics of some activities of taxable person and to achieve greater accuracy in determining the extent of the right to deduct. The CJEU jurisprudence has extended the scope of what a Member State can take into account. The selection is not limited between different output transaction but also within one output transaction, it is possible to select for the calculation of the prorate not the total consideration of one output transaction made, but just part of it*"[2].

The aim of system of deduction is to confirm the complete neutrality of VAT for businesses. To maximize the fineness of the calculations and confirm the effective neutrality of the taxation system. In some cases, deduction made at time may have to be regularize at time as provided by the VAT Directive as follow:

"*The initial deduction shall be adjusted where it is higher or lower than that to which the taxable person was entitled. 1. Adjustment shall, in particular, be made where, after the VAT return is made, some change occurs in the factors used to determine the amount to be deducted, for example where purchases are cancelled, or price reductions are obtained.*

2. by way of derogation from paragraph 1, no adjustment shall be made in the case of transactions remaining totally or partially unpaid or in the case of destructions remaining totally or partially unpaid or in the case of destruction, loss or theft of property duly proved or confirmed, or in the case of goods reserved for the purpose of making gifts of small value or of giving samples….

However, in the case of transactions remaining totally or partially unpaid or in the case of theft, Member States may require adjustment to be made"[3].

[1] ECJ, Case C-511/10 BLC Baumarket, No. 251, § 24.
[2] Herbain, Charlene Adline, *VAT NEUTRALITY*, Promoculture-Larcier, 1st edition, 2015, p. 63.
[3] European Union, First Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes, Official Journal No. 1301/67 issued on April 11th 1967, Article 184 and 185.

More clarification had provided by the court of justice of the European Union which, in progressing the neutrality principle, has in many cases explained that the adjustment rule offered by the VAT Directive is purposed to covering overtime changes of allocation of expenditure as follow: " *[…] the rules laid down by the [Sixth] Directive in respect of adjustment are intended to enhance the precision of deductions so as to ensure the neutrality of VAT, with the result that transactions effected at an earlier stage continue to give rise to the right to deduct only to the extent that they are used to make supplies subject to VAT*"[1].

In practice there are other concept called capital goods or capital assets, usually not all goods will be used immediately but over a certain period of years. During the period of use, the variation of the deduction right of VAT happen for their acquisition is "*intended to establish a close and direct relationship between the right to deduct input VAT and the use of the goods and services concerned for taxable transaction*"[2]. However, the Member States have a right to specify the amount of the VAT below which no adjustment is required, also the VAT Directive establishes a period of adjustment of five years which mean to reflect the usual service life of the products. In addition, the period of capital assets adjustment starts when the products or goods acquired, manufactured or first used. Also, for the immovable property the adjustment period may be extended to 20 years.

The right to deduct VAT on expenditures must be happen immediately to avert the creation of pre-financing costs for businesses that called Fiscal Neutrality. That right to deduct VAT "*arises at the time the deductible tax becomes chargeable*"[3].

That means the business must deduct from the total amount of VAT to be payed to the taxation authority for a specific tax period. The amount of VAT which have a right to deduction arise during the same tax period. The Court of Justice of the European Union in that regard organize that as follow: "*to limit the right of deduction granted to taxable person [and that] that right must be exercised immediately in respect of all the taxes charged on transaction relating to inputs*"[4].

[1] Among others ECJ, Case C-63/04 Centralan Property Ltd v Commissioners of Customs Excise [2005] ECR I-11087, § 57; ECJ, Case C-234/11 TETS Haskovo AD v Direcktor na Direktsia "Obzhalvane I upravlenie na izpalnenieto" – Varna pri Tsentralno upravlenie na Natsional nata agentsia za prihodite na izpalnenieto" – Varna pri Tsentralno upravlenie na Natsional nata agentsia za prihodite [2012], § 31.
[2] ECJ, Case C-63/04 Centralan Property Ltd v Commissioners of Customs Excise [2005] ECR I-11087, § 57
[3] European Union, First Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes, Official Journal No. 1301/67 issued on April 11th 1967, Article 167.
[4] ECJ, Case C-50/87 Commission of the European Communities v French Republic [1988] ECR 4797, § 16.

It's obvious that the need for immediate input VAT deduction led the French legislature to cancel the one-month delay rule. This rule was exception regarding which business could not immediately deduct the amount of VAT they had paid in during the preceding stage on their input from the VAT collection on their output.

As noticed from general terms by The Court of Justice of the European Union the cancellation of the right to derogate to the immediate right to deduct has assist to keep and sustain the neutrality of VAT as follow: *"[…] In so far as the legislation of a member state reduces the scope of an existing derogation from the principle of immediate deduction provided for by that article, it must be held that the legislation is covered by that provision and does not infringe […] that directive*"[1].

c- No Distortion of the Internal Market

One element of VAT neutrality is relating to cross-border trade, VAT must not impact a decision being made by a business and not impact on international trade or force to avoid an investment or to seek specific markets.

In other words, the flow of goods and services in cross-border trade must not impacting by VAT, if the VAT impact on flow of services and goods that will afford the neutrality of VAT. The price of a foreign business would eventually propose to consumer would be more than of the local competitors and vice versa whenever the discriminatory level of taxation would impact additional costs to domestic business.

In other aspect, which is direct taxation or tax on income, the discriminatory levels of taxation that is double taxation and non-taxation, are addressed by "*bi-and multilateral binding instruments of international coordination, patterned along model tax conventions*"[2]. Without compromise from tax conventions, revenue could be taxed accumulative in different jurisdictions whenever the taxation of worldwide income would prevail. This kind of double taxation could have wrongful impact on businesses leading to uneconomical behavior. In addition, the effects of discriminatory are avoided because of tax conventions, its aims to

[1] ECJ, Case C-368/06 Cwdilac SA v Ministere de l'Economie, des Finances et de l'Industrie [2007] ECR I-12327, § 35.
[2] Pistone, Pasquale, *Soft tax coordination: A Suitable Path for the OECD and the European Union to Address, the Challenges of International Double (Non-) Taxation in VAT/GST System*, in Lang, M. et aa. (eds.), Value Added Tax and Direct Taxatio – Similarities and Differences, IBDF, Amsterdam, 2009, p. 1161.

removing or minimizing the "*harmful effects on the exchange of goods and services and movements of capital, technology and persons*"[1] which is the result of double taxation, also that help to develop of cross-border economic relations. For indirect tax or consumption tax like VAT unfortunately there are no convention available to gage double taxation and non-taxation. VAT is one of most important sources of money for member state in European States, so distribution of the taxable substance among member states is still required. The European legislation organize it by attributing called "*deemed location*" to each transaction. The VAT will have levied exclusively in location of deemed.

The core VAT mechanism is taxation at destination or deemed location. This mechanism was accepted as the international norm[2], which means VAT is implemented by the jurisdiction where the services and goods end-up.

The requirement of no distortion of cross-border trade of VAT neutrality was an old idea and old requirement, after several years the solution arise in 1967 from the first and second VAT Directive to avert the distortion of competition was to implement VAT system with cross-border adjustment. The first mission was complete by adopting of a harmonized VAT system at European system category. The second mission was to agree in removal the control of border with keep border tax adjustment has confirmed to be difficult and took more time.

In 1987 the European Commission adopt the concept of "*origin-based*" related to VAT system. The idea of this system is VAT would be charged adapt to the rules in force where the supplier established also the border tax adjustment wouldn't be necessary. The goods will be able to cross the border with absence of any additional taxation.

This system will allow the business within the market in a single jurisdiction to work effectively. Neutrality will promote as compared to the previous system. In addition, in case of collaboration of the VAT principle of neutrality with the consumption figure of VAT, the origin principle would not offer appropriate response. In fact, it would impact on taxation of value added tax within the boundary and subject to the rate and law of each member state of production

[1] OECD, *Model Tax Convention on Income and on Capital: Condensed Version 2010*, OECD Publishing, Paris, August 17th 2010.

[2] The destination principle was embodied in the 1947 GATT. In its article 3, the GATT forbade discriminatory treatment of imported goods and, in its article XVI, it forbade subsidizing exports by taxation but allowed the refund of those indirect taxes actually charged. Since 1995 and in line with its predecessor, world trade organization embraces the destination principle; Ben Terra, *The place of supply in European VAT*, Kluwer law international, 1998.

regardless of the place of consumption of VAT. The result of that the economic inefficiency created and the competition might have been distorted. The principle of origin could cause business deficits "*whenever imported products would have been coming from a low-rated member state. It could also have created incentive to the reallocation of production in low-rated member states to the extent it could have altered patterns of cross – border shopping and reduced of the tax burden from businesses to consumers could only be partial. To partly counter the inconsistency between the origin principle and the character of VAT as a consumption tax, a clearing system between member states could have reallocated the VAT revenue to the consumption place but at the level of businesses, no solution was proposed*"[1].

In 1989 the economic and financial affairs council pushed away the implementation of origin-based of VAT system. Also, the economic and financial affairs council consider the principle of origin-based as unsuitable and not possible to apply it in due time the harmonization measure is necessary to implement a system of taxation in the state of origin. At that time the destination principle had not yet been established. The economic and financial affairs considered that such transitive measures would "*facilitate the subsequent transition to uniform tax arrangements in the country of origin, which remain the medium-term objective*"[2].

In 1993 the transitional system came into effect and retained the destination-based principle regarding transaction including VAT- registered traders. For the origin-based system to facilitate in using the concept of business-to-consumer transactions "*the interstate commerce by letting goods that have been once subject to VAT being moved between member state without further liability to VAT*"[3].

The mechanism of destination-based system is VAT does not implement in the member state of origin, or a zero rate is applied, and the domestic VAT is implemented by the jurisdiction where the services or goods end up.

The most significant difference between the VAT systems the old and the new, are the terminology used to qualify cross-border transaction. The old one went from direct, "*immediate control at the border to retrospective control with recourse to the VAT returns filed by business*"[4]. The new principle with same results to the impressive range has developed from the

[1] Herbain, Charlene Adline, *VAT NEUTRALITY*, Promoculture-Larcier, 1st edition, 2015, p. 73.
[2] Council of the European Communities – General Secretariat, Press release 9850.89 – G, n°298.
[3] Herbain, Charlene Adline, *VAT NEUTRALITY*, Promoculture-Larcier, 1st edition, 2015, p. 74-75.
[4] Herbain, Charlene Adline, *VAT NEUTRALITY*, Promoculture-Larcier, 1st edition, 2015, p. 76.

concepts of importing and exporting to intra-community acquisition and intra – community supply.

The adjustment system of cross-border used under the post-1992. This system support VAT neutrality by confirming that the services and goods supplied are not double taxed or not taxed at all.

d- Equal Treatment

The equal treatment of similar kinds of goods and services is meanly part of the definition of VAT neutrality according to VAT Directive as follow: "*the common system of VAT should [ensure] that within the territory of each member state similar goods and services bear the same tax burden*"[1].

Theses observation clarify that the principle of neutrality denies similar transactions from being treated differently for VAT purpose. This called horizontal equity. The definition of horizontal equity issued by European legislation, also the Court of Justice of the European Union adopted the definition and developed, also provided solutions to a specific situation as follow "*the common system of VAT[…] ensures complete neutrality of taxation of all economic activities*"[2].

"*The neutrality of VAT is reflected by the general principle of equal treatment*"[3]. The Court of Justice of the European Union clarify that any general classification in domestic laws would not be relevant in locating the similarity of supplies for VAT aims, but that the consumers view would be. Presumably two of supplies are equal for an average consumer, then they are deemed equivalent for VAT purpose as follow: *"[…] The principle of fiscal neutrality must be interpreted as meaning that a difference in treatment for the purposes of VAT of two supplies of service which are identical or similar from the point of view of the consumer and meet the same needs of the consumer is sufficient to establish an infringement of that principle"*[4]. Also, the Court of Justice of the European Union create another recognition of similarity between several supplies which is the existence of a competitive circumstances. In addition, this criterion

[1] European Union, Recital seven of the Preamble of the Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax, Official Journal No. 347, 2006.
[2] ECJ, Case C-435/05, Investrand, No. 216, § 22. & Case C-395/02 Transport Services NY v Belgische Staat [2004] ECR I-1991, § 25.
[3] Herbain, Charlene Adline, *VAT NEUTRALITY*, Promoculture-Larcier, 1st edition, 2015, p. 99.
[4] Joined ECJ, Cases C-259/10 and C-269/10, Commissioners for Her Majesty's Revenue and Customs v the Rank Group plc [2011] ECR I-10947.

adopted as standard as follow: *"[…] the principle of fiscal neutrality […] precludes, in particular, treating similar supplies of [goods/services]. Which are thus in competition with each other, differently for VAT purposes"*[1].

"*The 2011 CJEU Rank case brought the question of competition to the fore but in fact if it specified, even narrowed, the scope of this criterion it did not make it any clearer. In the Rank case it is stated that, in line with longstanding case-law, the existence of a competitive situation can be inferred from goods or services being similar and that such existence of a competitive situation does not have to be separately proven*"[2]. According to previous explanation the definition of "*similar*" came from the definition of "*competitive*" and vice versa.

There is a challenge faced the principle of neutrality regarding the principle of equality of treatment the challenges raised because the VAT concepts on the principle of equality of treatment is depending for its assessment are objective concepts. This concept is not affected by the occurrence of mistakes, even of frauds or unintentional irregularities, that frauds made it by the taxpayers.

In this part will explain the important issue which is the Mistakes and unintentional irregularities.

B) Mistakes and unintentional irregularities

The estimation of similarity between statues is considered is respect of statues which involve mistakes made by taxpayers.

One of the famous cases happens in that regards is the Hungarian case pannon[3]. The core issue of that case is the absence of the number of an invoice. This case was ruled by the Court of Justice of the European Union. With focusing in that case, the mistake was that the date of completion of the certain project which mentioned in invoices was different from the date in completion certificates which was issued by the client. According to that mistake the Hungarian tax authority did not agree the deduction of input VAT paid. The result of this rejection, the

[1] Among other ECJ, Case C-481/98 Commission v France [2001] ECR I-3369, § 22; ECJ, Case C-498/03 Kingscrest Associates Ltd v Montecello Ltd v commissioners of Customs Excise [2005] ECR 1-4427, § 41 ; ECJ, Case C-240/05 Administration de l'enregistrement et des domaines v Eurodental S.a r.l. [2006] ECR I-11479, § 46.

[2] Herbain, Charlene Adline, *VAT NEUTRALITY*, Promoculture-Larcier, 1st edition, 2015, p. 100.

[3] ECJ, Case- C-368/09 pannon Gep Centrum Kft v APEH Kozponti Hivatal Hatosagi Foosztaly Del- dunantuli Kihelyezett Hatosagi Osztaly [2010] ECR I-7467.

taxpayer issue credit notes against the mistakes initial invoices. Also, the Hungarian tax authority rejected the claim because the corrected invoice numbering does not match the credit notes.

Based on that case the VAT Directive allows for invoices to be corrected. Also, the Court of Justice of the European Union refuse the distinction between two similar statues in regard of horizontal equity because of non-material mistake. The last decision is important in regard of the preservation of horizontal equity.

"*It states that the non-material mistakes should not jeopardize the right to deduct the input VAT if all material conditions for reclaiming input VAT are met. Going further, this decision indicates that if A and B are similar supplies that trigger a specific X VAT treatment, then when B is vitiated by a non-material mistake, its similarity for VAT purposes to A is not put at stake and the same applies to the VAT treatment: X still applies*"[1].

In addition, one more rule was taken by the Court of Justice of the European Union in the petroma case[2]. In this case, the mistake was the invoices lacked pertinent information. Also, the invoices did not meet the requirements which were required for Belgian tax authority. Also, that authority did not accept the additional information. The reason was that the information was submitted too late. Furthermore, the Court of Justice of the European Union agreed with that.

§4. Conclusion

In my point of view that the most important issue regarding the naturality of VAT is no charge on business, that stranded are promotes the principle of the burden of paying VAT is on consumer, but in daily practice it considers that some enterprise is paying VAT instead of costumers.

The general principle the costumer pays the VAT, but the business paying the VAT, then the business uses the deduction method to return their money. But the issue is sometimes that the business or enterprise are not collecting the VAT for some reasons (ignorance, neglect, deliberately). So, the legislator is enforcing the business to pay that amount of VAT because of business mistake. Sometimes that amount of tax its payed with the penalties, such as penalty of

[1] Herbain, Charlene Adline, *VAT NEUTRALITY*, Promoculture-Larcier, 1st edition, 2015, p.102.
[2] ECJ, Case C-271/12 petroma Transports SA and others v Belgian state [2013] ECR not yet published.

mistakes in tax return, penalty of not paying on time. At the end, the tax money is a state money, owned by the state, and that money must collect and deposit for governments. Nobody can wavier on the tax money even the government, because the basis legal of that is taxation law which adopted by the legislature.

Section two. VAT/GST and Direct taxes: Different Purposes

The main divisions of taxes in the world are two direct taxes and indirect taxes. The indirect taxes are including three main taxes which are sales tax, excise tax and the last and important kind of indirect taxes is the value added taxes. Because this thesis on the VAT in this section will compare between the VAT and direct taxes in general, the comparison will focus on several aspects such as the tax fairness and the concept in general. We will use, in the comparison, several cases and principles.

§1. The concept of Direct taxes to be comparted with Value Added Tax / Good and Services Tax

This part is dedicated to explanation and discussion of legally pertinent and maybe different aims of VAT/GST, on the one side, and direct taxes, on the other side. In this scope, we should first clarify what types of direct taxes must be compared with VAT/GST. "*Indeed, it would make little sense to base the consumption on the characterization of VAT/GST as a predominantly indirect tax and to look for a possibly different purpose from this angle.*

The characterization as a direct or indirect tax merely relies on different techniques of taxation envisaged by the legislator: Direct taxes are characterized by the presumed coincidence of the taxable person or tax subject ("Steuerschuldner")"[1], on other hand. The indirect taxes are assumed to be moved from the taxable person to a different or another person (or taxable person) in the price of services rendered or goods supplied by the former to latter, who becomes the final taxpayer[2].

[1] Lang, Michael, Melz, Peter and Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 1.

[2] Amatucci, Andrea, L'Ordinamento Giuridico Della Finanza Pubblica, Jovene, 8th edition, 2007, p. 82; Birk, Dieter, *Steuerrecht*, 11th edition, 2008, p.43, § 1; Lang, in Tipke/Lang (eds.), *Steuerrecht*, 19th edition, 2008, p. 20 ; Mill, John Stuart, Principles of political Economy, 1898, book V, chapter III ; Walker, *The Direct-Indirect Tax Problem*, Public Finance, 1955, p. 153-154. See also Opinion of Advocate General Fennelly, 21 September 2000.

Furthermore, it is completely known that this distinction rests mostly on the Imagine of the legislator and the guarantee legal features of the tax, since there is no assurance that indirect taxes will always be moved, also the direct taxes will be borne by the taxable person[1]. In addition, it would thus be more accurate to refer to the legally intended final taxpayer or "*tax destinator*" ("S*teuerdestinatar*") to be distinct, or not, from the topic of a given tax[2].

At most, the description as an indirect tax or direct tax can be regarded as a reflection of a purpose of the tax at issue, because it depends on legislative intentions. As an abstract idea, the difference does not provide any evidence in this field. The Direct taxes may be collected on a broad range of supposed displays of taxpaying capacity refer to the taxable person, like for instance current income, home ownership, capital gains, car registration, the acquisition of a dwelling. More broadly, a direct tax may be related to appearance of income, expenditure or wealth, in fact VAT itself incarnate elements of direct taxation, VAT on imports by the end consumers, also VAT on entrepreneurial self-supply[3].

The same opacity although to a less limit, is also inseparable to the concept of indirect taxes in the above sense. They are not intrinsically belonging to the taxation of expenditure or turnover taxes. Like for instance goods and services tax (GST), or the traditional excise taxes, even though this is their predominant area of application. "*They could, at least theoretically, also be relied on to tax income or wealth. For example, the local German business tax was originally conceived as a tax that would partially be shifted onto the employees by reducing their net income*"[4].

C-113/99, Herta Schmid, acting as insolvency administrator for P.P Handels GmbH, in liquidation v. Finanzlandesdirektion fur Wien, Niederosterreich und Burgenland [2001] ECR I-471, point 16. By contrast, the WTO Agreement on Subsidies and Countervailing Measures (SCM), Annex I, letter (e), note 58, merely provides for a typological enumeration of different kinds of indirect taxes: *"[…] the term 'indirect taxes' shall mean sales. Excise, turnover, value added, franchise, stamp, transfer, inventory and equipment taxes, border taxes and all taxes other than direct taxes and import charges […]":* not all of these taxes will necessarily meet the criteria established above, cf. Shenk, Alan and Oldman, Oliver, *Value Added Tax: A Comparative Approach*, Cambridge, Cambridge University Press, 2nd edition, 2007, p. 16.

[1] Blankart, Charles, *Offentliche finanzen in der Demokratie*, Vahlen, 6th edition, 2006, p. 341; Stiglitz, Jospeh E. and Schonfelder, Bruno, *Finanzwissenschaft*, Oldenbourg, 2nd edition, 1996, p. 430; Thuronyi, Victor, *Comparative Tax Law*, Kluwer Law International, 2003, p. 54. See also ECJ, 25 February 1988, Joined ECJ, Cases 331/85, 376/85 and 378/85, SA Les Files de Jules Bianco and J. Girard Fils SA v. Directeur General des douanes et droits indirects [1998] ECR 1099, § 17.

[2] Tiede, Kai, *Die Holding als umsatzsteuerlicher Unternehmer*, Aufl. Edition, 2001, p. 21; Wernsmann, Rainer, *Verhaltenslenkung in einem rationale Steuersystem*, Mohr Siebeck, 2005, p. 56.

[3] Stadie, in Rau/Durrwachter (eds.), *Umsatzsteuergesetz*, Otto schmidt, 2007, p. 88.

[4] Lang, Michael, Melz, Peter and Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 2.

This part of section will explain several points which are the relevant perspective on the purpose of a tax: the purpose of a direct tax on individual income and the purpose of a direct tax on individual income and the purpose of VAT/GST.

A) The relevant perspective on the purpose of a tax

Before studying the possible difference between the above-mentioned taxes in-depth, the preliminary question should be addressed: on what type of purpose must we base the comparison? One can establish the purpose[1] of the legislator underlying the legislation of a certain tax from a different point of view. Financial impacts should be distinguished from the essential values and guiding basics of a tax, also from specific special aims underlying single norms of the respective tax legislation. All taxes have the aim of increasing income for the treasury. Regarding that, all taxes are alike[2], and there is clearly unnecessity for strong scrutiny of a distinct purpose. Of course, different taxation creditors may occasionally be entitled to the tax income, particularly in federally organized states. As regards Germany, though, both VAT and personal income tax (PIT) are so-called "*joint tax*" the income or revenue form taxes that is shared between the federations. Also, the several states and the municipalities[3]. Anyway, the division of fiscal powers in a federation is generally not reflected in the principles underlying a tax, which is, however the general subject in which the present section is covered.

This part includes several points which are an approach based on legal principles and the key concept underlying the aim of general taxes: Tax fairness.

1) An approach based on legal principles

We must identify the guiding aims that have encouraged the legislature to depend on a certain distribution of the tax burden to fiscal public expenditure. Such guiding aims have become increasingly considerable for the drafting, application and check of taxation legislation. "*First, all mature systems of law now rely- albeit to a greater or lesser extent, depending on legal traditions and the influence of dissenting legal schools of thought-on purposive*

[1] As regards the difference between legislative intent and legislative aim, see Sunstein, Cass R., *Interpreting Statutes in the Regulatory State*, Harvard Law Review, 1989, p. 405.
[2] Tumpel, Michael, Mehrwersteuer *im innergemeinschaftlichen Warenverkehr,* Linde editions, 1997, p. 161.
[3] The federal treasury must forward a portion of the revenue equivalent to 0.5% of the taxable base of VAT to the European Community. Cf. Hidien, Jürgen W., *Im Bonner Kommentar zum* Grundgesetz, C. F. Muller, 2008, Art. 106, §. 1488.

construction to resolve "hard cases" of statutory interpretation"[1]. Particularly, European judges will generally give some regard to the purposes of the pertinent provisions if its wording is not sufficiently obvious with respect to the case at hand[2]. In order to perform this type of "*thoughtful obedience*" ("*denkender Gehorsam*")[3] "*in an attempt of interpretatio secundwm legem, the interpreter must ascertain the ratio legis of the respective tax standard. The latter will be informed by the essential principle underlying the tax and its subordinate specifications. Unless the tax rule at issue patently provides for an exceptional derogation from these rules."*[4]

Furthermore, those guiding rules may be invoked to cover unintended legislative gaps by way of similar reasoning[5], or to abstain from the implementation of a standard despite its seemingly obvious wording if its implementation in the case at hand would run contrary to the *ratio legis*[6]. It is accurately the dependence on the identifiable aim of the tax. It's guiding rule, which distinguish this interpretation *contra legem*[7]. Which will generally hold to be a judicial act *ultra vires*. In taxation legal systems that did not allow such reasoning for real or supposed concerns of legal certainty. Predominantly aim of law becomes pertinent in the context of an "*abuse of law*" doctrine created to address some of the problems belonged to such a more literal interpretation. A clear example for this engagement is submitted by the jurisprudence of the Court of the Justice of the European Communities. The court is resistant to resort to arguments of analogy, contrary to the wording of the norm or purposive construction beyond. But it has alternative developed a "*general principle*" according to which the abuse of law contrary to its purposes is forbidden in the European Community legal system, treatment denying interest in constellations seemingly covered by the pertinent beneficial standard[8].

Finally, the guiding rules of a tax may become pertinent if there is a principle of similar treatment in the respective legal order that is commitment also upon the legislator and subject

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[1] Lang, Michael, Melz, Peter and Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 3.
[2] This development has also become visible in the British legal systems of common law traditions. In 1981, the House of lords finally rejected to the narrow "*Duke of Westminister*" doctrine of statutory construction in the field of tax law, which ignored an eventual legislative aim for the purpose of interpreting tax laws, cf. Opinion of lord Steyn, Commissioners of Inland Revenue v. McGuckian, [1997] 1 W. L. R.991, 12 June 1987.
[3] Barak, Aharon, *Purposive Interpretation in law*, Princeton University press, 2005, p. 52.
[4] Lang Michael, Melz Peter and Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 4.
[5] Van Alstine, Michael, *Dynamic Treaty Interpretation*, University of Pennsylvania Law Review, 1998, p. 687; Larenz, Karl, *Methodenlehre der Rechtswissenschaft*, Springer, 6th edition, 1991, p. 373.
[6] So-called teleological reduction ("teleologische Reduktion"). Cf Rohl, Klaus F., *Allgemeine Rechtslehre*, Vahlen Franz Gmbh, 2nd edition, 2001, p. 602.
[7] Schenke, Ralf P., *Die Rechtsfindung im Steuerrecht*, Mohr Siebeck Gmbh & Co., 2007, p.58.
[8] For a detailed analysis, see De La Feria, *Prohibition of Abuse of (Community) Law*, Common Market Law Review 2008, p. 395.

to some form of judicial check. The essential principles of taxation and their more certain subordinate aims will then become the pertinent yardstick or *tertium comparationis* for estimating the equality of taxation. Since they should be performed in a coherent and consistent method[1]. In this context, it is of special importance that "[*t]he European Community is a community based on the rule of law in which its institutions are subject to judicial review of the compatibility of their acts with the EC Treaty and with the general principles of law which include fundamental rights*"[2]. The principle of equal treatment is one of those essential rights inherent to the Supranational legal order of Community law[3]. Which means that secondary European Community tax law should comply with that quasi-constitutional requirement, too.

The above outline points do not mean that each statutory provision of a VAT/GST law or Income tax law must be traceable to the respective guiding aim or "*fundamental purpose*"[4]. In fact, guiding aims are recognized by their prima facie rather than final nature and may thus be set aside by other basics of political purpose, which the legislature can reasonably deem to be of major weight and significance under circumstances[5]. However, an equality principle will need a legal and proportional justification for any standard inspired by special consideration other than the yardstick for equitable treating. Like a preferential tax treatment since a deviation from the guiding rules of a tax mean unequal treatment of equal situations[6]. Therefore, the aim of a tax should be distinguished from the aim of a tax law provision. An example of that, it is nicely conceivable that both a VAT/GST and a personal income tax include specific tax privileges for farmers whose common aim is to support certain agricultural activities. Such a chance does not permit any conclusions with respect to common aim of the tax as such.

2) The key concept underlying the aim of general taxes: Tax fairness

Following a path based on identifying essential principles underlying the collect of a particular tax to estimate its aim, two kinds of taxes should be distinguished: in one side, there

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[1] Tipke, Klaus, *Steuergerechtigkeit in Theorie und Praxis*, Otto Schmidt, 1981; Ferraz, Roberto, *Principios e Limites da Tributacao*, Quartier Latin, 1st edition, 2005, p. 447.
[2] ECJ, Case C-229/05 P, *Osman Ocalan, on behalf of the Kurdistan Worker's Party (PKK) a.o v. Council of the European Union* [2007] ECR I-439, § 109.
[3] ECJ, Case C-292/97, Kjell Karlsson and Others [2000] ECR I-2737, § 37; ECJ, Case C-442/00, Angel Rodriguez Caballero v. Fondo de Garantia Salarial [2002], ECR I-11915, § 31; ECJ, Case C-81/05 Anacleto Cordero Alonso v. Fondo de Garantia Salarial [2006] ECR I-7569, § 37.
[4] Lang, Michael, Melz, Peter and Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation : Similarities and Differences*, IBFD, 2009, p. 5.
[5] Cf. Alexy, Robert, *Theorie der Grundrechte*, Suhrkamp Verlag, 1994, p. 88.
[6] For a more extensive discussion and further references, see Englisch, Joachim, *Wettbewerbs-gleichheit im grenzuberschreitenden Handel*, Mohr Siebeck, 1st edition, 2008, p. 109.

will be taxes which aim end is to generate revenue, and where the tax policy consideration focus on the "*internal*" social, economic and administrative effects of the envisaged monetary drain afforded by the taxpayer. On the other side, there are types of taxes that follow certain "*external*" policy target which to a certain degree run counter to their financial purpose, such as concerns of, health, environmental or social policy[1]. "*In the last issue, the tax is designed to serve as a disincentive for (potential) taxpayers in order to curb certain behavior deemed harmful or undesirable, and the levy's contribution to public finance can be regarded as only a side effect. Obviously, the distinction depends on the conception of the legislator that enacted the tax, which will be apparent from the legislative history or the designer of the tax. For example, excise duties on alcoholic beverages have historically been considered merely as a source of revenue but are now increasingly viewed as a suitable instrument to discourage excessive drinking, especially among the young*"[2].

If taxes attempt to apply an external policy goal not directly belong to the responsible distribution of the tax burden, the respective target will form the guiding principle or aim of that tax. It cannot be serious interrupt, though, that neither a general VAT/GST collected on all types of goods and/or services. Nor, a comprehensive personal income tax belongs to this category of taxation. Consequently, the above-mentioned internal sides of tax policy will have to be taken into account for locate the aim of each of the taxes to be discussed in this section. These policy sides can be stable in considerations of economic efficiency, on the one side, or in considerations of tax fairness and tax equity, on the other side; compliance costs or deliberations of administrative may do a significant role, too[3].

Sides of efficiency, and in certain the avoidance of distortions and access burdens, are the main notice of the modern optimal taxation theory that control the discussion among scholars of public finance[4].

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[1] Birk, Dieter, *Das Leistungsfahigkeitsprinzip als Mabstab der Steuerrecht*, *Steuer und Wirtschaft,* P. Deubner, 1977, p. 97; Wernsmann, Rainer, *Verhaltenslenkung in einem rationalen Steuersystem*, Mohr Siebeck, 2005, p. 66 and p. 95.

[2]Lang, Michael, Melz, Peter and Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 6.

[3] See Bird, Richard and Gendron, Pierre-Pascal, *The VAT in Developing and Transitional Countries*, Cambridge University Press, 2007, p. 70; Freeland James J., Lathrope Daniel J., Lind and Stephens Richard B., *Fundamentals of Federal Income Taxation*, Foundation Press, 14th edition, 2006, p. 36; Graetz Michael J and Schenk Deborah, *Federal Income Taxation*, Foundation Press, 5th edition, 2005, p.27; Lang Joachim, *Entwurf eines Steuergesetzbuches*, Stollfuss Verlag, 1993, p. 90.

[4] See Auerbach, Alan, *The Theory of Excess Burden and Optimal Taxation*, in Auerbach Alan, Feldstein Martin, *Handbook of public Economics*, Volume I, 1985, p. 69; Mirrlees, James A., *The Theory of Optimal Taxation*, in

However, those sides become legally belong guiding rules for the implementation and interpretation of a tax only if it is obvious that the tax law drafting, and drafting were oriented towards them. Furthermore, they will normally not serve straight as a point of reference for the tax-specific implementation of a final principle of equal treatment. In a legal order established on the judgment of law, a constitutionally guaranteed equality norm is usually regarded as an emanation of justice and therefore closely related to considerations of equity and fairness[1]. A coherent and consistent enforcement of fundamental norm underlying a body of law will therefore only meet the *substantive* requirements of the equality clause if these norms in themselves can be regarded as just and fair[2]. "*Consequently, a principle of equal treatment which is binding upon the legislator will require the orientation of tax laws according to such principles of tax fairness and tax equity. For that reason. The following analysis will concentrate on identifying such principles as the "primary" purpose of VAT/GST and Personal Income Tax*"[3].

The assurance in tax fairness and the related aim of the tax surely does not prevent the consideration of the finding of optimal tax models; just a conversely, tax fairness can be integrated into those models, too[4].

The avoidance of distortive effects is an economic interest and reflected, at least to a certain scope, in legal categories of essential rights. Formal aspects of equality need coherence and consistency and thus minimize distortions, and the same implementing for substantive requirements of taxpayers' economic freedom rights which may forefend. At least in the norm, market interference by the government. This legal criterion will also influence the criterion of tax fairness. repulsions will happen especially with respect to issue social policy, as demonstrated by the "*inverse elasticity- rule*" developed by Ramsey[5], which support higher taxes on necessities than on luxury goods for the sake of economic efficiency, a postulate hard to reconcile with contemporary conceptions of tax equity. As explained by the "*inverse elasticity- rule*" developed by Ramsey, which tends to support higher taxes on requirements

Arrow Kenneth and Inrtiligator Michael, *Handbook of Mathematical Economic*, 2005, p. 1197; Stiglitz, Jospeh E. and Schonfelder, Bruno, *Finanzwissenschaft*, Oldenbourg, 2nd edition, 1996, p. 408.

[1] See Henkel Heinrich, *Einfuhrung in die Rechtsphilosophie*, Munchen Beck, 2nd edition, 1977.

[2] It is noteworthy that similar consideration underlines the development of "*substantive due process*" in US constitutional law, cf. Tribe, Laurence H., *American Constitutional Law I*. Foundation Press, 3rd edition, 2000, p.1332.

[3] Lang, Michael, Melz, Peter and Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 8.

[4] See Stiglitz, Jospeh E. and Schonfelder, Bruno, *Finanzwissenschaft*, Oldenbourg, 2nd edition, 1996.

[5] Ramsay, Franck, *A Contribution to the Theory of Taxation*, The Economic Journal, Volume 37, 1927, p. 47.

than on luxury goods for the an interest of economic efficiency, a postulate hard to reconcile with contemporary idea of tax equity.

Briefly, the present section does not attempt to minimize the importance of the optimal taxation notion nor does it refuse the need of interdisciplinary discussion. However, for the causes put forward above it assumes a mostly legal perspective towards the fundamental purpose of VAT/GST and Personal Income Tax. It is not disputed that reducing administrative costs and compliance burdens can be a substantial purpose affecting both the design of a tax and its individual provisions. While respects may therefore become pertinent in the purposive construction of the respective taxation legislation and may inject some legal pragmatism into the notion of tax fairness[1]. They barely serve by themselves as guiding rules for a fair division of the tax burden.

B) The purpose of a direct tax on individual income

Spread consensus occur among the global community of taxation lawyers and scholars that the essential principle of tax fairness underlying Personal Income Tax is the capability-to-pay principle[2]. "*The purpose of personal income tax is this to tax individuals according to their individual tax paying capacity as indicated by their periodic income*"[3]. Even though there are several various arguments put forward to set up the ethical foundation of this creation as a rule of tax justice[4]. It is proposed that the most pertinent one is rooted in considerations of social policy: by allocating the tax burden according to the part of individual income disposable for taxation rather than established on individual feature, or on basis of individual benefits received

[1] If certain tax claims cannot be enforced in conditions of equality because of insurmountable administrative difficulties in their verification and assessment, such as for instance in the case of "imputed" income from non-cash activities outside the ordinary processes of the market (private production of goods and services for self-supply, cf. Marsh, Donald B., *The taxation of imputed income*, Political Science Quarterly, 1943, p. 514, they would have to be regarded as unfair because they provoke de facto unequal tax treatment, cf. Holmes, Kevin, *The Concept of Income : A multidisciplinary*, IBDF, 2000, p. 575; Lang Joachim, Hey Johanna, Pelka Jurgen, *Kolner Entwurfeines Einkommensteuergesetzes*, Otto Schmidt, 2005, p. 57.

[2] Cf. Tipke, Klaus, Steuerrechtsordnung Volume I, Otto Schmidt, 2nd edition, 2000, p. 479.

[3] Lang, Michael, Melz, Peter and Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 9.

[4] In Germany alone, no less than seven legally relevant arguments are put forward by different schools of thought, df. Englisch, Joachim, *Wettbewerbs-gleichheit im grenzuberschreitenden Handel*, Mohr Siebeck, 1st edition, 2008, p. 572.

in public services, the capability-to-pay norm calls on the solidarity of all citizens and forms one of the columns of the redistribution of the fortune in the modern welfare state[1].

An alternative logic still preferable by several economists to justify taxation according to ability to pay has become known as the "*equal sacrifice theory*"[2]. It rests on the supposition that a person with high revenue or income must give up a major part of it to stick the same victimization as a person with lower revenue or income. This notion like thus a more equal approach than the one advanced here: taxpayers with various income are taxed differently not because they have various tax paying capacity leaving considerable discretion to the legislator as to the scope of taxation of the increased cabapility to pay-but because the individual effect of the several tax burden will-have to- be similar or identical. But the supporter of this notion has never been able to reach at generally agreed conclusions regarding the gauge of an individual's (marginal) victimization. Eventually, the requirement of (exactly) equal victimization unduly restricts the legislator by adopting a formal interpretation of tax equality and wrongly rejects the necessity for political choices.

The capability-to-pay rule or principle appoint both the concept of vertical tax equity and horizontal tax equity[3]. "*The former is concerned with the assignment of the same tax burden to individuals with the same disposable income*[4]" while the last holds that taxpayer with several incomes must accordingly pay lower or higher amounts of tax[5]. "*Even though vertical equity based on considerations of ability to pay is often times regarded as an equivalent to progressive taxation in tax theory and tax politics, such a nexus is not compelling unless explicitly prescribed by constitutional law*"[6]. A proportional tax rate satisfies the requirement that the extra wealthy in terms of periodic revenue or income also contribute to a major degree to public

[1]Jachmann, Monika, *Leistungsfahigkeitsprinzip und Umverteilung*, Steuer und Wirtschaft, 1998, p. 293; Schaumburg, Harald, Das Leistungsfahigkeitsprinzip im Verkeher-und Verbrauchsteuerrecht, in Kirchhof, Paul, and Nieskens Hans, *Festschrift fur Wolfram Reiss*, Otto Schmidt, 2008, p. 25.

[2] Cf. Hinterberger Fiedrich, Muller Klaus, Petersen Hans-Georg, "*Gerechte" Tariftype bei alternativen Opfertheorien und Nutzenfunktionen*, Finanzarchiv, 1987, p. 45.

[3] Amatucci, Andrea, *L'Ordinamento Giuridico Della Finanza Pubblica*, , 8th edition, Jovene, 2007, p.84.

[4] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 10.

[5] See Graetz Michael J and Schenk Deborah, *Federal Income Taxation*, Foundation Press, 5th edition, 2005, p. 27.

[6] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 10.

interest[1]. Consequently, a progressive tax rate does not compose the essence of the capability-to-pay-principle, but only represents a potential and indeed common manifestation[2].

It must be mentioned that several economists have advocated the periodic taxation of income on basis of the interest standard rather than established on the capability-to-pay standard; they have supposed that the individual interest in public services belong to the amount of income gained. In fact, this had already been the conclusion of Adam Smith in his study on the "Wealth of Nations"[3]. This logic has since wasted its temptation, because in a modern welfare country, it appears rather far-fetched to start universally useful function between the beneficial use of government services, on the one side, and income earned by a citizen, on the other side. Public sector activities are no longer restricted to saving the economic benefits of citizens, and the benefits of the taxpaying bourgeoisie, but contain a wide domain of social benefits unrelated to such benefits and often more frequently depend on by low-income gains than by the wealthier.

Does the exchange of the benefit standard by the capability-to-pay principle issue? At the first prospect, the benefit path will lead to the same outcome regarding horizontal tax equity[4]. It might even come to the same reasoning regarding vertical tax equity, relying on the assessment of the relationship between income and interest derived from public services-regressive, proportional, or progressive. However, a closer look reveals an essential difference. However, a closer look appears an essential difference. Regarding the interest principle, personal allowances for the requirement of the taxpayer and his family will have to be considered as tax privileges requiring special justification, because the necessity to provide for a subsistence minimum clearly has no bearing on the beneficial use of public services to gain income. "*By contrast, this aspect must be taken into account as a reduction in the individual taxpayer's ability to pay income tax, since solidarity with others can only expected once the individual has covered his or her own basic needs, and arguably also the ones of economically dependent family members. It can be assumed that such a view fits better with a contemporary conception*

[1] Cf. Steichen, Alain, *Droit Fiscal*, Saint Paul, 4th edition, 2006, p. 233; Tipke, Klaus, *Steuergerechtigkeit in Theorie und Praxis*, Otto Schmidt, 1981, p. 97.
[2] Jachmann, Monika, *Steuer und Wirtschaft*, 1998, p. 295; Tipke, Klaus, *Die Steuerrechts-ordnung* I, Otto Schmidt, p. 403. For different opinion, see the early case law of the German Constitutional Court, cf. BVerfG 24 June 1958, 2 BvF 1 /57, BVerfGE 8, p. 51.
[3] Smith, Adam, *An Inquiry into the Nature and Cause of the Wealth of Nations*, 31st edition, Encyclopedia Britannica, 1989.
[4] Musgrave, Richard, *Horizontal Equity Once More*, National Tax Journal, 1990, p. 113.

of tax fairness, especially if social cohesion and solidarity are values of constitutional rank in the respective legal system"[1].

According to the above, the interest principle has rightfully been over-come as a guiding rule for personal income taxation. Nevertheless, it has still sometimes been questioned whether the nowadays generally accepted aim of Personal Income Tax to distribute the tax burden according to individual capability to pay has any importance at all for the interpretation and final judicial review of the laws enacting this tax[2]. "*Admittedly, due to the fundamental nature of this principle it is also a very abstract one that needs further elaboration, in particular with respect to the notion of income as the relevant indicator of ability to pay in the context of PIT. The ensuing subordinate principles will be influenced by constitutional requirements, in particular by fundamental rights and the "principle" of proportionality, and/or by general consideration of fairness, reasonableness and practicability. Due of their grater proximity to the definite provisions of tax law, these sub-principles will usually also be more elucidating in the context of the respective norm's purposive construction*"[3].

However, there are several essential reasoning that can be drawn from the very norm itself, at least in jurisdictions where it informs a constitutional principle of equal treatment: apart from the above-mentioned consideration of the individual and family lower subsistence standard, taxation according to capability to pay needs that the concept of taxable income should be defined broadly. It must contain, in standard, any net increase in economic interest, or consumption opportunities, gained by an individual. "*Unless the inclusion of certain forms of income cannot reasonably be enforced in an equable manner, it constitutes a tax privilege in need of special jurisdiction to spare certain types of earned increases in wealth from taxation. In the same vein, the ability -to-pay principle requires, as a general rule, the application of a uniform tax rate on a comprehensive tax base, since each portion of income indicates the same taxpaying capacity. Finally, every individual who can reasonably be regarded as having*

[1] Lang, Michael, Melz, Peter and Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation : Similarities and Differences*, IBFD, 2009, p. 11.
[2] Cf. Gassner, Wolfgang and Lang, Michael, *Das Leistungsfahigkeitsprinzip im Einkommen – und Korper-schaftsteuerrecht*, Gutachten fur den 14 OJT, 2000 ; Littmann, Ein Valet dem Leis-tungsfahigkeitsprinzip, in Haller a.o (eds.*) Festschrift Fur Fritz Neumark*, 1970, p. 113 ; Schmidt, Die Besteuerung nach der Leistungsfahigkeit, *Jahrbuch der Fachan-walte fur Steuerrecht* 1995/1996, Koln, 2000, p. 31.
[3] Lang, Michael, Melz, Peter and Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation : Similarities and Differences*, IBFD, 2009, p. 11 and 12.

sufficient ties to society in order to make a demand to his or her solidarity must, in principle, be subject to income taxation"[1].

C) The purpose of VAT/GST

The aim or purpose of VAT/GST among the taxation system is less obvious. True, for almost some century economists have thinking the feature and drawbacks of VAT and have promptly established the figure of a European type VAT as a tax on expenditure or consumption[2]. Furthermore, as early as 350 years ago, Thomas Hobbes justified impose on expenses as superior and equitable to the imposition of taxes on income: "*[...] the Equality of Imposition consisteth rather in the Equality of that which is consumed, than of the riches of the persons that consume the same [...] for what reason is there, that he which laboureth much, and sparing the fruits of his labour, consumeth little, should be more charged, than he that living idlely getteth little, and spendeth all he gets; seeing the one hath no more protection from the Commonwealth than the other?"*[3]. But legal scholarship in the domain of taxation law has kept silent about the guiding rules of tax fairness underlying VAT- or its predecessor in most states, a general multi-stage turnover tax- until a few years ago. In Germany, the relevance or existence of such rules was even mainly disputed by the German federal taxation court.

This nihilistic behavior was perhaps owed to the impact of the 19th century socialist movement that has imposed indirect taxes on consumption as anti-social and unfair[4]. They had been identified a "*necessary evil*" and described as "*brutal and crude*"[5]. "This shift from the above-mentioned economic analysis of earlier centuries was mainly due to a strong emphasis on the redistributive effects of taxation and the ensuring perception that only a distribution of tax burdens in proportion to an individual's disposable income met the requirements of tax justice. Rather than discuss the fundamentals of turnover taxes or VAT/GST and their implications for the interpretation and critical evaluation of the tax, most tax law scholars therefore preferred a "*technical*" or literal approach towards executing VAT/GST, which lagged behind the

[1] Lang, Michael, Melz, Peter and Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 12.
[2] For an overview of the discussion until WWII, see Studenski, Paul, *Toward a Theory of Business Taxation*, Journal of political Economy, 1940, p. 621; for references to subsequent articles, consult Bouckaert, Boudewijn and De Geest, Charles, Encyclopedia of law and economics, Volume 4, 2000, p. 129; See also Musgrave Richard and Musgrave Peggy, *Public Finance in Theory and Practice*, McGraw-Hill College, 5th edition, 1989, p. 401.
[3] Hobbes, Thomas, *Leviathan*, Oakeshott edition, 1960, p. 226.
[4] For an overview, see Mann, Firtz, Steuerpolitische Ideale, 1978, p.300; Tipke, Klaus, *Uber Umsatzsteuer-Gerechtigkeit, Steuer und Wirtschaft*, Koln, 1992, p. 103.
[5] Popitz, Johannes, *Handbuch der Finanzwissenschaft*, volume II, Aufl., 1st edition, 1972, p. 195.

development in other areas of law. However, development of modern constitutions after WWII with more effective and more concrete specifications and constraints for the design of tax laws, and the increasing awareness of tax scholars and tax courts regarding the constitutional requirements of fair taxation, eventually sparked debate about the fundamental principles underlying VAT[1]. Since VAT be a widely harmonized tax among the European Community, tax doctrine in the European Community member states now confront the challenge of making sensitivity to this essential question also at the level of European Community. As it will be discussed later, the European legislator entity and the ECJ have arguably not yet given full respect to all pertinent aspects.

1) A tax on transactions

Until a few years ago, particularly in Germany, comprehensive scholarly and judicial debate happen whether turnover tax, and VAT as its successor, had to be describe as a tax on consumption[2] or as a tax on transactions[3]. Only few supporters of each statues denied that VAT was a tax typically due on transactions, "*on the one side, and usually borne by the final consumer, on the other side, and hence had a hybrid nature*"[4]. It was argued through, which part must be critical for the purposive construction of VAT. Those who provide the concept that the transactional character mattered held influential statues in the Federal Taxation Court[5]. That people brought forward two concerning arguments to defend their statues: some held that a tax on transactions would be justified by the "*economic power*" presented in the meeting of supply and demand[6]. The others took a more complex approach and concluded that a legal transaction between two parties commonly generates welfare earning for both parties, since the marginal

[1] Lang, Michael, Melz, Peter and Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation : Similarities and Differences*, IBFD, 2009, p. 13.
[2] See Pohmer, Dieter, Allgemeine Umsatzsteuern, in Neumark Fritz, Andel Norbert and Haller Heinz, Handbuch der Finanzwissenschaft 2, Mohr Siebeck GmbH & Co, 1980, p. 651; ReiB, Zur umsatzsteuerlichen Behandlung von unentgeltlichen Sachzuwendungen an Arbeitnehmer nach dem Umsatzsteuergesetz 1980, Betribes-Berater 1983, p.188; Selmer, Die Umsatzbesteuerung von Lebensmittellieferungen zum Verzehr an Ort und Stelle, § 12 II Nr. 1 S. 2 UStG, Steuer und Wirtschaft 1978, p. 321; Sohn, Steuer und Wirtschaftsguts an einen anderen Unternehmer im Umsatzsteuerrecht, Steuer und Wirtschaft 1987, p. 273; Tipke, Klaus, *Umsatzsteuer-Verkehrsteuer und/oder Verbrauchsteuer*, Deutsches Steuerrecht, 1983, p. 595.
[3] Cf. Herting, *Gedanken zur Optimalen Umsatzsteuer*, Betriebs-Berater, 1955, p. 389; Hubner, *Kleine Ursache-groBe Wirkung oder Wehret den Anfangen*, Umsatzsteuer-Rundschau, 1985, p. 6.
[4] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 14.
[5] Cf. BFH 13 December 1962, V 87/60 S, BStBI. III 1963, p. 72; BFH 27 June 1986, V R 128/66, BStB1. II 1968, p. 488. This stance also had its repercussions in the early jurisprudence of the Constitutional Court, cf. BVerfG 5March 1974, 1 BVR 712/68, BVerfGE 36, p. 321; whereas now, the emphasis is put on the characterization of VAT as a tax on consumption, cf. BVerfG29 October 1999, 2 BvR 1264/90, BVerfGE 101, p.132; BVerfG 10 November 1999, 2 BvR 2861/93, BVerfGE 101, p. 151.
[6] Cf. Herting, Zur Wiedereinfuhrung der umsatzsteuerlichen Organschaft, *Umsatzsteuer-Rundschau*, 1958, p. 25.

cost for the supplier head for be less than the marginal interests of the demand side. Hence, the appearance of taxpaying capacity was assumed to be this- impersonal- welfare earning, which provided justification for the legislature to burden taxable transaction as the taxation target[1]. Due to strong criticism, and a lack of approval by a younger generation of scholars, this opinion has been all but marginalized by now or ignore it. Interestingly enough, its reduce is often credited to the increasing body of European Court of Justice case law established on preliminary rulings on the harmonized VAT order, because the European court of justice had confirmed that VAT was a tax on consumption, as mentioned Art. 1 para. 2 of the European community VAT Directive. This is not completely convincing, though, because the European Court of Justice more focus on the transactional parts of the tax than on its character as a consumption tax on its jurisprudence, as will be shown latter[2]. "*Moreover, the supporters of the "transaction theory" did not question the characterization of VAT as a tax borne by the consumer, but they rather doubted the relevance of this aspect for the interpretation of the tax law*"[3]. Nevertheless, their status was ignored for appropriate reasons.

If transactions as such were to be considered as a reflect of tax paying capacity. In addition, the aim of VAT was to impose a tax for this reason, business-to-business transactions must be subject to taxation, as well[4]. "*The availability of an input tax credit, which is a hallmark of VAT vitiates the"*[5] *"transactional theory*""[6]. The same idea is true for a GST goods and services tax that is levied at the retail level exclusively. "*But even under the aegis of the historical turnover tax model with cascading tax burdens, the above-mentioned position was not convincing*"[7]: it could not demonstrate the reasons why the amount of tax was collected on imports even though the importation as such did not consider a transaction between two teams. Also, why the self-

[1] Cf. Mirre, *in Strutz Handbuch des Reichssteuerrechts*, 1924, p. 698. It should be noted, though, that Mirre distinguished between "genuine" and "improper" transactional taxes, and considered the latter to be taxes on consumption. Rather than on the transaction as such, if and because the recipient of a supply was typically in a closer position to a final consumer than the supplier. Hence while Mirre considered a capital duty as a genuine transactional tax, he would probably have characterized VAT as a tax on consumption.

[2] Admittedly, there are a few rulings that interpreted the Sixth EC VAT Directive based on the characterization of VAT as a tax on consumption, the most notable of which is ECJ, 24 October 1996. ECJ, Case C-317/94 *Elida Gibbs Ltd v. Commissioners of Customs and Excise* [1996] ECR I-5339 §19.

[3] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 15.

[4] See ReiB, Wolfram, *Der Belastungsgrund der Umsatzsteuer und seine Bedeutung fur die Auslegung des Umsatzsteuergesetzes*, in Woerber, Lothar, *Umsatzsteuer in nationaler und europaisscher Sicht*, DStJG, 1990, p. 18.

[5] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 15.

[6] Kanzlsperger, Sandro, *Der Aufwendungseigenverbauch im System der Umsatzsteuer*, Peter Lang GmbH, Internationaler Verlag der Wissenchaften, 1st edition, 2000, p. 37.

[7] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 15.

supply of businessmen was deal as a deemed taxable supply of services and goods[1]. "*Moreover, the extent of a welfare gain incidental to a certain transaction cannot be inferred from the amount of consideration paid, which is, however, the basis of assessment for VAT*"[2].

2) A consumption tax based on the benefit principle

One of the German scholars holds that the fundamental aim of VAT is to tax consumption established on the benefit rule. In his point of view, the interest of state services indirectly or directly enjoyed by consumers justifies the implementation of taxes on their expenditure[3]. An in-depth look, the causes that by buying goods and provide services, the consumer interests from the "*contribution of the legal community*"[4] to the realization of the transaction. "*The state as the representative of this community provides for a legal system to enter into a contract; it also provides for a judicial system to enforce it. Its protects the acquired property in the case of a supply of goods, it guarantees a proper training of suppliers and services providers, it maintains quality controls, etc. Hence, one could argue that it is only fair that the state reclaims its share in the satisfaction of consumer demands by way of a tax borne by the consumer. And even though the individual benefit cannot be determined on a case-by-case basis, it might be responsible to assume that it is roughly propositional to the consideration paid by the consumer*"[5].

At the beginning, it seems attractive to link the aim of VAT/GST to the benefit principle, the reason of that is that it would make it unneeded to justify the implementation tax of expenditure for a least subsistence. As is common known, it is hard to integrate an allowance or relief or exemption for costs concerning to the requirements of living into the structure of an indirect taxation. However, if the tax were justified as a reflected charge for state services, it would seem sensible to extract it whenever those services are used to the interest of the consumer[6].

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[1] Kanzlsperger, Sandro, *Der Aufwendungseigenverbauch im System der Umsatzsteuer*, Peter Lang GmbH, Internationaler Verlag der Wissenchaften, 1st edition, 2000, p.40; Tipke, Steuer und Wirtschaft, 1992, p. 107 et seq.

[2] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 15-16.

[3] Cf. Kirchhof, Paul, *Der verfassungsrechtliche Auftrag zur Besteuerung nach der finanziellen Leistungsfahigkeit*, Steuer und Wirtschaft, 1985, p. 319 to 324; Kirchhof, Paul, *Entwicklungsmoglichkkeiten der Umsatzsteuer im Rahman von Verfassungs- und Europarecht*, Umsatzsteuer-Rundschau 2002, p.541-542.

[4] Cf. Kirchhof, Paul, *Umsatzsteuer-Rundschau*, 2002, p. 542 et seq.; Kirchhof, Paul, *Reform der Umsatzsteuer im Rahman von Europarecht und Verfassungsrecht,* in Nieskens (ed.) Deutsche Umsatzsteuer im europaischen Kontext, 2008, p.55-56.

[5] Lang Michael, Melz Peter, Kristoffersson Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 16.

[6] It should be noted, though, that Kirchhof, Paul, *Umsatzsteuer-Rundschau*, 2002, p. 543, does not came to this conclusion, since he believes that only a *voluntary* demand for goods or services should be charged with VAT,

"*However, there are three major objections: first, this reasoning would have to apply for business-to-business transaction as well, so that it cannot account for an input tax credit. Second, it would seem inconsistent to tax the demand side – consumption – according to the benefit principle, whereas the income-generation supply side is taxed according to the capability – to – pay principle under an income tax. After all, whosoever offers commodities or services in the marketplace as a trader or professional makes no less use of the legal and social framework provided for by the state than a consumer; his income flows from the very transactions that are also taxed under VAT*"[1].

Eventually, the essential question remains whether it could be considered as fair to collect a tax that makes up nearly 20% of total amount of tax revenue at an OECD average[2], also, which by contrast to an income tax influence every citizen, on basis of the benefit principle which disregard people's ability to pay. Admittedly, ideation of tax fairness differs over time[3]. "*But it is suggested here that at present, there is a broad consensus at least in democratic societies that a VAT/GST should refrain, as far as technically possible, from taxing expenditure for the basic necessities of life. Therefore, it does not seem convincing to establish an ethically acceptable purpose of VAT/GST by referring to distribution of the tax burden according to the benefit principle*"[4]. This adage will only become pertinent regarding the allocation of revenue performing from the taxation of cross-border supplies of commodities or services. In this consideration, it can reasonably be argued that revenue from a taxation on consumption must be assign to the jurisdiction that smooth use and enjoyment of such consumption[5]. In the light

which in his view cannot be assumed in the case of a purchase of necessities of daily life. This seems inconsistent, though. At least because both voluntary and "involuntary" supplies benefit from the "*contribution of the legal community*".

[1]Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 17.

[2] Cf. OECD, *Consumption Tax Trends* 2008; VAT/GST and excise Rates, Trends and Administration Issues, OECD publishing, Paris, p. 46: the total tax revenue as defined for the purpose of this statistic includes social security contributions.

[3] Steichen, Alain, Droit fiscal, Legitech, 4th edition, p. 107; Sullivan, Clara, The *Tax on Value Added*, Columbia University Press, 1965, p. 151.

[4] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 17.

[5] See Opinion of Advocate General Kokott, 11 january 2007. C-146/05 *Albert* Collee v. Finanzamt Lomburg an der Lahn [2007] ECR I-7861, point 19; Van, Hilton, *The Legal Character of VAT*, in Albergts, KogeIs, *Selected Issues in European Tax Law*, 1999, p. 3.

of the above, the benefit principle can also be respected as one of the main columns of the destination principle, which must perfectly determine the place of supply[1].

3) A consumption tax chiefly concerned with neutrality

The jurisprudence of the European Court of Justice in the field of VAT is of special significance for the discussion of essential matter regarding this taxation issue, because the court now practices ultimate judicial authority over 28 national VAT jurisdictions according to the European Court of Justice Role. In addition, it was the European-type VAT that later wide spread across the global, so that the ECJ judgments are also taken many states outside the European Community that are non-member states. If one were to focus the core of the case law of the European court of justice that has develop over the last decades, one should have to conclude that the harmonized system of VAT is overall involved with fiscal neutrality. Its main aim seems to Compose in guaranteeing an equal tax burden for competing supplies of commodities or provide services, and therefore, for competing suppliers or market operators, as mention in recital 7 of the preamble to the EC VAT Directive. The aim of fiscal neutrality has inspired useful construction on part of the European Court of Justice concerning a wide scope of issues, such as the taxable subject[2]. **"***The notion of taxable transaction, the calculation of the taxable base, the scope of tax exemption, the input tax credit, and the reduced tax rate*"[3]. In a few recent years, the European Court of Justice has declared that in the matter of VAT, the aim of fiscal neutrality reflects the essential principle of equal treatment [4].

It is correct that the European Court of Justice has also decide and announced that VAT is a tax on consumption according to Case C-317/94, Elida Gibbas and Case C-427/98, Commission of the European Communities v. Federal Republic of Germany.[5] However, the court has only

[1] See, in this regard, the broad consensus of the global tax community reflected in the statement in the preface to the OECD *International VAT/GST Guidelines* 2006 § 4:*"[...]the destination principle [...] is the international norm*".

[2] Cf. ECJ, Case C-400/98, Finanzamt Goslar v. Brigitte Breitsohl [2000] ECR I-4321, § 34 et seq.; ECJ, Case C-430004, Finanzamt Eisleben v. Feuerbestattungsverein Halle eV [2006] ECR I-4999, § 24; ECJ, 13 December 2007, ECJ, Case C-408/06, Landesanstalt fur Landwirstschaft v. Franz Gotz [2007] ECR I-11295, § 41 et seq.

[3] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 18-19.

[4] ECJ, Case C-498/03, Kingscrest Associates Ltd and Montecello Ltd v. Commissioners of Customs and Excise [2005] ECR I-4427, § 54 et seq.

[5] ECJ, Case C-317/94, Elida Gibbas [1996] ECR I-5339, § 19 and 22 ; ECJ, Case C-427/98, Commission of the European Communities v. Federal Republic of Germany [2002] ECR I-8315, § 29 ; ECJ, Case C-475/03, Banca popolare di Cremona Soc. Coop. Arl v. Agenzia Entrate Ufficio Cremona [2006] ECR I-9373, § 31 et seq.; ECJ, Case C-409/04, The Queen, on the application of Teleos plc and Other's v. Commissioners of Customs & Excise [2007] ECR I-7797, § 60.

occasionally depended on this description for a purposive construction of the EC VAT Directive[1]. It has not yet established any link between the taxes on consumption as an aim of VAT, on the other side. In addition, the essential right of equal treatment, on the other side. For this reason, the European Court of Justice has also never addressed, why a taxation on consumption could be considered as fair and equitable. As one notable scholar has put it, the European Court of Justice is mainly concentrated on the integrationist aim of European Community tax harmonization, which is to decline distortions of competition among the internal market contained by all Member States.[2] However, must the emphasis really be on fiscal neutrality? At first view, good causes could be put forward for this sight: Neutrality is a controlling topic in the introductions of all European Community VAT Directives. "*A purposive construction based on this principle yields coherent results in all aspects of VAT. And it also seems to adequately reflect the character of VAT as a consumption tax, for a violation of the Neutrality principle will usually lead to either an unequal burden for the consumers of similar goods or services, or to a partial or total failure to shift the tax, and hence to an unintended tax burden for the supplier*"[3].

In addition, it is respectfully present fiscal neutrality is neither the final nor the major aim of VAT/GST, in either the European Community or elsewhere. As the European Court of Justice itself has noted[4], a supplier of goods or provide services acts as a "*mere tax collector for the State and in the interest of the public exchequer"*, if assumed that VAT is a tax eventually to be borne by the end or final consumer. Hence, the guiding rules of VAT and the major aim that must inspire its plan and interpretation cannot be derived from an analysis of its competitive effects on business.

Simply as a tax cannot be considered as fair because it is easy to administer for taxation authorities, in addition it is also cannot be described as fair only because it does not affect the

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[1] See, for instance, ECJ, Case C-317/94 Elida Gibbs [1996] ECR I-5339, § 19 et seq.; ECJ, Case C-427/98, Commission of the European Communities v. Federal Republic of Germany [2002] ECR I-8315,§ 22et seq.; ECJ, Case C-72/05, Hausgemeinschaft Jorg und Stefanie Wollny v. Finanzamt Landshut [2006] ECR I-8297, § 32 et seq.; ECJ, Case C-371/07, Dansfoss A/S and AstraZeneca A/S v. Skatteministeriet [2008]. Not yet reported, § 46 et seq.

[2] Schon, *Umsatzsteuer zwischen Binnenmarkt unf Steuerstaat*, in: Nieskens (ed.) Umsatzsteuer-Kongress-Bericht 2001/2002, p. 17; for a critical appraisal, see Fantozzi, *A Force of the European Constitution beyond its Formal Adoption: From Non-Discrimination Towards a Tax Equality Principle*, in Hinnekens and Hinnekens (eds.) *Festschrift in honor of Frans Vanistendael*, 2008, p. 387-388.

[3] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 17.

[4] ECJ, Case C-10/92, Maurizio Balocchi v. Ministreo delle Finanze dello Stato [1993] ECR I-5105, § 25; ECJ, Case C-271/06, Netto Supermarket GmbH & Co. OHG v. Finanzamt Malchin not yet reported, § 21; see also Tumpel, Mehrwertseuer, *in innergemeinschaftlichen Warenverkehr*, 1994, p. 164.

competitive status of private agents forced to act as tax collectors. Tax fairness is of worry to the end or final taxpayer, not only to the taxation collector[1]. Since consideration of tax fairness and locate the tax-specific concept of tax equality. In addition, one will have to focus on the end or final consumer rather than on the supplier to recognize the enough specification of the essential right of equal treatment in field of VAT/GST[2]. Eventually, the same implements for purposive construction of the European Community VAT Directive and applying laws of the Member States, because the tax should be follow concerning to the guiding rule underlying the equality rule, unless there is enough justification for a deviation from them.

"*But do these objections really matter? Or is fiscal neutrality perhaps still the preferable concept for establishing the purpose of VAT as an indirect tax, because it permits taking into consideration its important reverberations for the taxable subject, and at the same time fully takes into account its character as*"[3] "*a general tax on consumption exactly proportional to the price of goods and services*"[4]. Well, it is advices that the shift in vision advocated here makes a difference. It is financial neutrality for suppliers that must be consider as a reflex of a more essential aim of VAT/GST concerning to the equitable taxation of end or final consumers.[5] "*[U]nless one were to risk serious shortcomings in a coherent interpretation of VAT/GST, and regarding its reconciliation with the imperative requirements of tax fairness: an equal taxation (only) of final consumers presupposes legal precaution for a full shifting of the tax burden from the supplier to his customer, and hence fiscal and competitive neutrality. Otherwise, the equality standard to be aspired to by the law would be missed from the start*"[6]. However, the neutrality principle does not cover all aspects of the equal taxation of final consumers[7]. For establish the legally pertinent main aim of VAT. We should look for a more comprehensive principle directly concerning to the end or final taxpayer.

[1] Tipke, Klaus, Steuer und Wirtschaft, 1992, p.105.
[2] Likewise, Lohr, Das umsatzsteuerrechtliche Optionsrecht fur Verminetungsumsatze, 2003, p. 242; Tipke, Steuer und Wirstschaft, 1992, p 105. See also BVerfG 21 June 2006, 2 BVL 2/99, BVerfGH 116, p. 164. For a possibly different opinion, see Hoffsummer, Phlipp, *Steuerbefreiungen fur Inlandsumsatze*, Peter Lang GmbH, Internationaler Verlag der Wissenschaften, 2008, p. 54 et seq.
[3] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 21.
[4] European Union, Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax, Official Journal No. L 347 issued on December 11th 2006, Article 1 § 2.
[5] Cf. ReiB, Der Verbraucher als Steuertrager der Umsatzsteuer im Europaischen Binnenmarket, in Lang (ed.) Festschrift fur Klaus Tipke, p.440.
[6] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 21.
[7] See also ECJ, Case C-460/07, puffer [2009], not yet reported, § 55 et seq.

The examples of the last issue: financial neutrality will not be damage by tax exemptions for luxury commodity of all competing commodity are privileged, but taxation fairness probably will. Or useful construction of the exceptional margin platform for used or second-hand commodity[1]. Will exempt issues of important reprocessing of the respective goods for example cars from its substantive scope, if such construction is established on the neutrality principle[2]. When a used commodity is reprocessed, a professional reseller will not suffer competitive disadvantages when compared with private provider of used commodity. "*Because there usually are no competing private suppliers for reprocessed merchandise. But still, the question remains why the final consumer of such goods should bear a tax burden that is comparatively higher than the one he would have to bear upon the purchase of other -new- goods, or services of equal (net) price, In the framework of a general and proportional tax on consumption, this seems unfair. And finally, the taxation of expenditure incurred for the subsistence minimum does not seem equitable, even though it can be perfectly compatible with fiscal neutrality*"[3].

4) Taxation according to capability to pay as indicted by expenditure

In the light of all the above, the only standard that seems suitable as a general rule for both useful construction *secundum* or *paceter legem* and constitutional review is the capability-to-pay principle. In the contemporary setting of a modern state, it is thus the aim of VAT/GST to distribute side of the tax burden regarding to the ability of individual people to pay as specified by expenditure for consumption. "*Obviously, such a thesis implies a radical break with early socialist disapproval of the tax, and it contradicts a traditional view of VAT/GST as an impersonal tax. But this viewpoint is now the clearly prevailing opinion among German scholars*"[4]. The German Constitutional Court has implicitly accepted it[5], also it has been accepted and adopted by scholars across the world. In fact, in states where the constitution orders that taxes levied regarding to capability of individuals to pay[6].

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[1] European Union, Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax, Official Journal No. L 347 issued on December 11th 2006, Article 312.
[2] Cf. Stadie, Holger, *Umsatzsteuerrecht*, 2005, § 17.
[3] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 22.
[4] Ibid.
[5] Cf. BVerfG 7 May 1998, 2 BvR 1991/95, BVerfGE 98, p. 106. See also BVerfGE 20April 204, 1 BVR 905/00, BVerfGE 110, p. 274 to 297. This decision dealt with exemptions in the context of energy taxes, but the court employed a broad formula and referred to all "*taxes on consumption*". See also BFH 12 January 2006, V R 3/04, BStBI. II, 2006, p. 479.
[6] For an overview of European and some other constitutions, consult Tipke, Klaus, *Die Steuerrechtsordnung I*, Otto Schmidt, p. 488.

No other guiding rule is acceptable for VAT a priori. in additional in the most of VAT jurisdictions without such constitutional specifications, it appears logical to suppose that expenditure for consumption is a complementary signal of ability to pay in addition to income. Expenses or costs that are neither needful to finance the subsistence minimum nor for the generation of revenue display that the consumer has means for consumption at his free disposal and thus show taxpaying ability.

"*A proportional taxation of such expenditure also respects the requirements of horizontal and, in particular, vertical tax equity: if a person spends more and thereby demonstrates a higher taxpaying capacity, he or she will also be burdened with a higher amount of VAT/GST shifted in the price of the consumed goods or services. For this reason, there is also a certain element of social solidarity present in the taxation of expenditure for consumption. It is therefore justified to rely on this manifestation of ability to pay to fund the production of public goods, social welfare programs or other government activities*"[1]. The consumption tax fixes factual deficits and structural of an income tax, the income created in the informal sector of the economy will escape the latest, but will not escape from VAT/GST[2]. In addition, while taxation of specific kind of income may not be practical, such income will finally be subject of tax when it is spent[3]. Surely, it cannot be argued that VAT/GST has a laser redistributive impact than an income taxation, because the frugal may delay taxation. In the ultimate until the heirs, expend his or her wealth.

Different an income tax, a VAT/GST will also not minimize the amount of income that can be (re) invested - or, as some prefer to paraphrase this impact, a tax on expense for consumption does not "*discriminate*" versus savings[4]. "*Therefore, tax systems that rely heavily on consumption taxes rather than income taxes will ceteris paribus tolerate a comparatively higher degree of social inequality. But it's important to stress that the difference in purpose between VAT/GST, on the one hand, and PIT, on the other hand, is gradual rather than fundamental*"[5]. The taxes differ only with respect to the relevant indicator of ability to pay, or,

[1] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 24.
[2] Cf. Bird, Richard and Gendron, Pierre-Pascal, *The VAT in Developing and Transitional Countries*, Cambridge University Press, 2009, p. 74; Lang, Joachim, Der Entwurf eines Steuergesetzbuches, 1962, p.110; Tipke, Klaus, Die Steuerrechtsordnung II, Otto Schmidt, 2003, p. 987.
[3] Tipke, Klaus, Steuer und Wirtschaft, 1992, p.111.
[4] It thus better respects the taxpayer's freedom of choice; cf. Birk, Dieter, *Umsatzsteuer aus juristischer Sicht*, in Kirchhof, Paul and Neumann, Manfred, *Freiheit, Gleichheit, Effizienz,* Stitfung Markwirstschaft, 2001, p. 68.
[5] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 24.

finally, with regard to the point in time when a raise in the potential for private consumption is taxed[1], "*upon accrual or upon transformation into actual consumption. This close relationship is also demonstrated by the suggestions of some economists and tax scholars to transform the traditional income tax into a direct personal expenditure tax by exempting savings from the taxable base*"[2].

As mentioned aim of VAT/GST will not inform every provision of the laws and regulations that perform the tax, since there may be other sides impact the scope and design of VAT/GST such as administrative constants or the desire to enhance certain policy targets."*However, the fundamental purpose of taxation according to individual ability to pay as manifested in expenditure for consumption requires aligning the tax as far as possible with this ideal and accepting any short comings or deviations only for legitimate reasons and under the provison of their proportionality*". Specially, expense for basic necessities of life must be spared from implement taxation as far as technically possible, for example exempting or zero-rating supplies of goods or provide services typically purchased for such reasons, like essential foodstuff, medical care and housing[3]. Only to the scope that this turns out to be impossible in the case of an indirect tax, particularly with a view to commodity that will serve fundamental needs only in some, but not in the majority of issues, may - and must- the legislator uses to alternatives like compensatory welfare payments for the indigent[4]. "*By contrast, an allowance for the minimum subsistence in the income tax is in itself insufficient, because it does not provide relief for low income earners who will not pay income tax but who will nevertheless be burdened with VAT/GST on their expenditure for necessities*"[5].

This part will include several points which are Expenditure v. Consumption, Expenditure as an original indicator of Capability to pay and Expenditure for private consumption only.

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[1] See also Graetz Michael J and Schenk Deborah, *Federal Income Taxation*, Foundation Press, 5th edition, 2005, p. 38; Shenk, Alan and Oldman, Oliver, *Value Added Tax. A Comparative Approach*, Cambridge, Cambridge University Press, 1ST edition, 2006, p. 8.

[2] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 24-25.

[3] Birk, Dieter, *Umsatzsteuer aus juristischer Sicht*, in Kirchhof, Paul and Neumann, Manfred, *Freiheit, Gleichheit, Effizienz*, Stitfung Markwirstschaft, 2001, p. 68; Tipke, Klaus, Steuer und Wirstschaft, 1992, p. 114.

[4] See, in this regard, ReiB, Der Belastungsgrund der Umsatzsteuer und seine Bedeutung fur die Auslegung des Umsatzsteuergesetzes, in Woerner (ed.) *Umsatzsteuer in nationaler und europaischer Sicht*, p. 6; Also, Shenk, Alan and Oldman, Oliver, *Value Added Tax. A Comparative Approach*, Cambridge, Cambridge University Press, 1ST edition, 2006, p. 10.

[5] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 25.

a- Expenditure v. Consumption

Another opinion from a few numbers of a legal scholars supposed that VAT/GST taxes existing consumption rather than expenditure for consumption. The pertinent signal of capability to pay is the specified as use and enjoyment of commodities or services[1]. But with more details and still confirmed the theory which based on this supposition holds that the aim of VAT/GST is to implement tax the " *acquisition of the potential inherent the goods or services to be used for private needs*"[2]. "*The proponents of this opinion reject the predominant view that VAT/GST is really a tax on expenditure incurred for final consumption, rather than a tax on consumption itself, for two reasons: first, they point out that self-supply is a taxable transaction even though the taxable event as such does not trigger any payment obligations –except for the tax liability– for the final taxpayer. Second, a similar assertion is made with respect to VAT on imports, which is not directly related to any purchase on behalf of the taxable person*"[3].

The dispute is not an academic aspect. It has implications for the truth of the argument that the taxation law or regulation must prohibit any untaxed final or end consumption and thus for the estimate of certain taxable events at the limit of VAT/GST. An example of that, the European Court of Justice has explained and interpreted article 16 of the European Commission VAT Directive to require the taxation of Donations distribute as promotional gifts to potential clients or customers to enhance the taxable activities of the donor[4]. "*In these constellations, the recipient does not incur any expenses for the good supplied to him, nor does the donation constitute an act of private consumption on behalf of the taxable person because it is made exclusively for business purposes. Taxation could therefore be justified only under the premise that the possible use and enjoyment of the gift by the recipient must be taxed*"[5].

That view of point should be reject. VAT/GST must be interpreting as a tax the aim of which is to tax expenditure for consumption as an indicator of tax paying ability. "*If consumption itself were to constitute the relevant manifestation of taxpaying capacity, taxation at the time of the*

[1] Cf. Krautwald, Hans, *Ungeloste Problem der Umsatzbesteuerung,* Peter Lang GmbH, Internationaler Verlag der Wissenschaften, 1981, p. 10; Sohn, Der Leistungsaustausch im Umsatzsteuerrecht, in Klein, Vogel, *Festschrift fur Hugo von Wallis,* 1985, p. 439.
[2] Cf. Hofmann, Gunter, *Der Vorsteuerabzug bei gemischt genutzten Leistungsgegenstanden*, Peter Lang GmbH, Internationaler Verlag der Wissenschaften, 1990, p. 34.
[3] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 26.
[4] ECJ, Case C-48/97, *Kuwait Petroleum (GB) Ltd v. Commissioners of Customs & Excise* [1999] ECR I-2323, § 20 et seq.
[5] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 26.

purchase of the consumed goods or services would be premature in many cases"[1]. The legislation should provide for a tax reimbursement if goods gained or acquired by the final taxpayer for aim of consumption were lost or demolished before they were used, which is, *however*, not consider in any VAT/GST jurisdiction[2]. "*The more refined theory, which holds that the acquisition of the potential for private use and enjoyment gives rise to taxation, is not very convincing even from a legalistic perspective*"[3]. Any producer of consumer goods would have to be refuse an input tax credit established on such logic, because the commodity acquired or produced by him maybe used for private consumption.

It is important to declare that there are essential objections and arguments: like an income tax purposes at taxing individual people revenue or income rather than the economic activities that generate it, VAT/GST as a tax on consumption depend on an individualized monetary indicator of capability to pay to warrant a fair distribution of the tax burden. By contrast, if the claiming that individual consumption as such comprise the pertinent indicator were to be taken in a serious approach, the items used would have to be estimated objectively with their equitable market value, rather than with the individual price accepted upon by the parties of a transaction. "*For example, there would not seem to be any good reason to tax A higher than B if both acquired and consumed identical foodstuffs at the same time and in the same local market, but at different grocery stores and therefore at a different price: their consumption as putative indicator of taxpaying capacity would be exactly the same. Certainly, the inclusion of cash flows such as gratuities or inadvertent double payments in the taxable base*"[4]. Could not be justified according to such a theory, even though there can be no doubt that such expenditure signal ability to pay concerning to the satisfaction of consumer necessity.

Regarding the taxation of entrepreneurial self-supply or implement VAT on importations, the legislation clearly presupposes before expenditure for the consumed commodity or services. In particular, the taxable basis for VAT on imports is generally equal to the invoiced cost of gain plus insurance and certain costs of shipping and other related services, hence to individual expenditure of the importing person. The fair market price is only depending on as a subsidiary standard, and the same must apply for the taxation of self-supplies as well[5]. "*The only reason*

[1] Ibid, p. 27.
[2] See also Tumpel Michael. *Mehrwertsteuer im innergemeinschaftlichen Warenverkehr*, Linde Verlag, 1997, p. 163, note 1037.
[3] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 27.
[4] Ibid.
[5] Cf. Stadie, Holger, *Umsatzsteuerrecht*, Otto Schmidt, 2005, § 11.45.

that the tax liability is not directly related to the arising of an individual payment obligation is the lack of certain elements of the taxable event at that time: the jurisdiction to tax in the case of imports and the designation for the purpose of private consumption in the case of supplies produced or acquired by an entrepreneur. In a similar vein, there are some anti-abuse rule in most VAT/GST statues which provide for an objectively estimated minimum taxable base in order to avoid for an objectively estimated minimum taxable base in order to avoid the circumvention of the tax on self-supply in the form of gifts to related persons, or in order to tax the consensual conversion of salaries into remuneration in kind that can be regarded as an abbreviated way of spending wage income for private consumption"[1]. These special rules must not distract notice from the reality, though that VAT/GST is and must be guide at taxing individual people expenditure for private consumption.

b- Expenditure as an original indicator of Capability to pay

A huge number of scholars have accepted the opinion of VAT/GST is a charge that seeks to distribute the tax burden depending to capability to pay, in other hand many of scholars will still accept wealth or income as the only enough standard or indicator for the specification of this essential aim. In result of that, they declare that expense or expenditure for end or final consumption is only an indirect or signal of capability to pay, a mere approximation of the wealth or income that must constitute the taxable basis[2]. "*It is this perspective that supports the conclusion that VAT/GST is a regressive tax, since the law-wage earner will typically-have to-spend a comparatively higher portion of his income for consumer goods and services than a high-income individual*"[3].

The other view from scholars that expense for consumption is an original signal or indicator of capability to pay, not just a reflection of some other aspect of tax paying capacity. That true taxes should finally be paid out of the property holdings of the taxpayer and that will minimize his wealth[4]. "*That is, the "stored potential" for final consumption. Hence, individual wealth*

[1] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 28.
[2] Abella Poblet, Enrique, *Manual del IVA*, El Consultor de los Ayuntamientos, 1st edition, 2006, p. 112; Amatucci, Andrea, L'Ordinamento Giuridico Della Finanza Pubblica, Jovene, 8th edition, 2007, p. 82.
[3] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 28.
[4] Schaumburg, Harald, *Das Leistungsfahigkeitsprinzip im Verkehr- und Verbrauchsteuerrecht*, in Kirchhof Paul, and Nieskens Hans, *Festschrift fur Wolfram Reiss,* Otto Schmidt, 2008, p. 25.

could be viewed as constituting the "primordial" indicator of ability to pay"[1]. However, the reduction of wealth ensuing from tax can affected at several points in time: upon its accrual, periodically as long as fortune can be referring to the individual people, or upon its use for end consumption[2]. "*This spectrum of possibilities corresponds to the three basic types of tax: taxes on income, taxes on wealth and taxes on expenditure, which can each be more or less comprehensive depending on the maturity and consistency of the tax system*"[3].

It is advised that individual taxpaying capacity be reflected in each of the concerning taxation objects. As a consequence, the reconciliation among a national taxation system between taxes on income, on the one side, and VAT/GST, on the other side, is firstly a query of socio-political preferences, and is also affected by exogenous elements like international taxation competition, which can make a limitation of the nation state's factual possibilities to perform its model of tax fairness or equitable. Hence, expenditure and income, as well as treasure, are a priori signal or indicator of capability to pay with equal rank and validity, even though they may be depend on to a different scope in the distribution of the overall taxation burden. In other words, perfect reasons in terms of tax fairness can be put forward for the tax of each of the above-mentioned appearance of taxpaying capacity, and the legislator therefore has a broad margin of freehand concerning their specific related within the national taxation system. Subsequently, the regressive or progressive design of any types of the taxes based on the legal indicator of capability to pay should be judged by its essential standard of tax fairness[4]. "*From such a perspective, VAT/GST will usually not be regressive but rather slightly progressive, considering that basic commodities and services are often taxed at a lower rate even if expenditure for them exceeds the minimum subsistence level, whereas luxury goods predominantly consumed by those who are better off are usually taxed at least at standard rate*"[5].

The opposite view, which deemed income-or wealth- as the only aspect of capability to pay and assumes that it is indirectly taxed by a VAT/GST, would have to arise an explanation why an individual people may altogether escape from taxation despite his capability to pay, in so far as

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[1] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 29.
[2] Birk, Dieter, *DAS Leistungsfahigkeitsprinzip als Mabstab der Steuernormen*, P. Deubner, 1983, p.167.
[3] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 29.
[4] ReiB, Wolfram, *Der Belastungsgrund der Umsatzsteuer und seine Bedeutung fur die Auslegung des Umsatzsteuergesetzes*, in Woerber, Lothar, *Umsatzsteuer in nationaler und europaisscher Sicht*, DStJG, 1990, p. 20.
[5] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 30.

said individual saves and invests important portions of the personal revenue over his whole lifetime without ever spending it. "*Moreover, the revenue raised by VAT/GST would have to be allocated between the different national tax jurisdictions based on the same principles that apply for income tax receipts. For example, foreign tourists would have to receive VAT/GST reimbursements for any kind of goods and services consumed domestically, since the income used for their consumption was typically earned without any nexus to the national territory. Alternatively, the place of taxation for all B2C (business to consumer) transactions would always have to be the residence of the final consumer. It is obvious that such a concept is not compatible with current VAT/GST practice*"[1].

c- Expenditure for private consumption only

The European VAT hint a final tax burden on expense for any type of use or enjoyment of commodity also use the services other than their use for the realization of taxable transactions. The result of that, the range of taxation is not limited to expense for private consumption. It also includes the burdens payment made for fiscal services or goods that used in the context of fiscal investments, as far as these investments do not comprise taxable transactions, whether the investor is a holding company or individual[2]. Employees who bear input VAT on the purchase of commodity or services used for the generation of revenue will not receive an input VAT credit, either. The same implements for public sector entities that do not buy commodities or services for the aim of any taxable transactions, but rather in order to supply public commodities like national defense or to achieve social transfers. Not surprisingly, some of scholars or intellectual thinks that the aim of VAT is to tax expense generally, as an expressing of capability to pay. With the notable exemption of expenses endured in the course of a business performing the taxable transactions[3]. However, is this condition in conformity with aim of VAT, an aim that cannot just be removed from the law as it situation[4]. However, can expense for commodities and services used for aim other than private expense really

[1] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 30.
[2] ECJ, Case C-155/94, Wellcome Trust Ltd v. Commissioners of Customs and Excise [1996] ECR I-3013, § 21 et seq.; ECJ, Case C-102/00, Welthgrove BV v. staatssercretaris van Financien [2001] ECR I-5679, § 13 et seq.
[3] Abella Poblet, Enrique, *Manual del IVA*, El Consultor de los Ayuntamientos, 1st edition, 2006, p. 113; ReiB, Wolfram, *Der Belastungsgrund der Umsatzsteuer und seine Bedeutung fur die Auslegung des Umsatzsteuergesetzes*, in Woerber, Lothar, *Umsatzsteuer in nationaler und europaisscher Sicht*, DStJG, 1990, p. 24 et seq.
[4] For a possibly different view, see Henkow, Oskar, *Financial Activities in European VAT*, Kluwer Law International, 2007, p. 75 et seq.

indicate capability to pay? The answer will rely on an analysis of each particular group; but generally, it will be passive. "*First of all, expenditure for consumption must be distinguished from the alternative concept of expenses incurred in connection with activities undertaken in order to increase individual wealth and thus creating income. VAT/GST as a tax on consumption should only impinge on expenses caused by the purchase of goods and services the use and enjoyment of which yields direct utility in terms of satisfaction of private needs, as opposed to expenses related to the (intended) generation of increases in personal wealth potentially taxable under an income tax. Any overlap would render contradictory results, since the same expenditure would then diminish the individual's ability to pay for income tax purposes- and simultaneously indicate his or her ability to pay- for the purpose of VAT/GST*"[1].

Subsequently, fiscal investments that do not revenue any immediate private interest for the investor, such as shares, bonds and other securities, and all intermediary services concerning to investments, must be outside of the scope of VAT. The investment as such comprises a just transformation of money into another format of monetary asset exemplifying the potential for future expenses. Regarding the return on investment or any capital earning, they will be subject to an income tax a capital revenue. "*For that reason, any expenditure related to the acquisition, asset management or sale of a financial investment is relevant for income tax purposes only*"[2]. Unheeding of any "*value added*" by another supplier of commodities or services or financial intermediary used in this context[3]. Despite its category, VAT is not in essential a tax on the value added. The same enforces for expense in regards with the generation of wages income[4]. In both cases, an input VAT credit must be granted, at least if technically practical[5].

Second point, in regard of government services that do not consider as taxable transactions because they do not transfer individual interest in exchange for an individual consideration, they must not be burdened with VAT/GST, nevertheless their non-economic nature or activate. Since no particular fees are charged, the tax cannot directly be moved to the person or citizen

[1] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 31.
[2] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 31.
[3] For a different view, see Henkow, Oskar, *Financial Activities in European VAT*, Kluwer Law International, 2007, p. 79 et seq.
[4] Birk, Dieter, *Die Umsatzsteuer aus juristischer Sicht,* in Kirchhof, Paul and Neumann, Manfred, *Freiheit, Gleichheit, Effizienz,* Stitfung Markwirstschaft, 2001, p. 65; Ruppe, Hans Geoge and Achatz, Markus, *Umsatzsteuergesetz*, Facultas, 5th edition, p. 35.
[5] See also Shenk, Alan and Oldman, Oliver, Analysis of Tax Treatment pf Financial Services under a Consumption-Style VAT, Tax Lawyer, 1990, p.181 and p.193.

as the end or final consumer, nor is there any expense on his or her behalf mark capability to pay that could be refer to the government services. "*Finally, it cannot be argued that the beneficiaries of public goods finance them by paying taxes and therefore incur a certain kind of expenditure. That would mean imposing VAT/GST as a tax on other taxes that are by definition unrelated to any funding of specific government activities, and which moreover do not indicate but rather presuppose ability to pay. In as far as a supply of goods or services to public entities is linked to the administration of social welfare payments; the government does not even provide any consumable utility that could give rise to a VAT/GST liability in the first place*"[1].

§2. Conclusion

This section has tried to explain that the difference in legal aspect the aim between VAT/GST, one the one side, and Personal Income Tax as the archetype of a direct tax, on the other side. Both VAT/GST and Personal Income Tax planned to distribute the tax burden between individuals based on considerations of financial solidarity, hence according to individual capability to pay, as evidenced either by expenditure or by expenditure. For this reason, both taxes must share the key features: the necessity to spare from taxation, as far as possible, expenditures afford for a lower subsistence, a comprehensive or overall tax basis, and a uniformly applicable tax scale or tax rate.

"*One main difference is that VAT/GST has a significant lesser redistributive effect, because it will not- at least not directly-burden savings and investment. Moreover, it is inherent to the design of VAT/GST as an indirect tax that it is harder to measure a (final) taxpayer's overall ability to pay - in terms of both progressive and expenditure for necessities.*

Apart from these structural differences, there are also some factual ones: while PIT is often plagued by the existence of countless tax incentives that blur its guiding principles, VAT/GST still suffers from a lack of awareness on behalf of scholars, courts, and the legislator, regarding its underlying concept of tax fairness. In particular, the exact scope of the relevant indicator of ability to pay still needs to be better explored and respected. It is suggested here that in principle, VAT must be construed as a tax on expenditure for private consumption. It is

[1] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 32.

therefore not a tax on consumption itself, or a tax on presumed income-related taxpaying capacity, or a tax on expenditure in general"[1].

CHAPTER TWO

Distorting the key feature of Value Added Tax

After explanation the definition, features and the mechanism of VAT from theory side in last chapter, but in practical there are exemptions on that, in additional that exempt is legally under the legislation, so in these chapter will focus on that issue. The most important of that is there are several rates of VAT, one of them is zero-rate, also there are goods and services are exempt from are not subject to VAT and there is consequences on Business which make business same consumers and the burden of pay will be on trader not on consumer which is breach of Neutrality of VAT. Also, in international trade there are exempt on export and the mechanism of reverse charge will implement, which is the new way to avoid distortion the international trade, at that is results of VAT developments.

The exemptions are between two sides, in one side the consequences of exemptions which is break the supply chain, on other side the real reasons of adopting the exemptions on specific goods and services.

In this chapter will describe the common exemptions like Public sector, Education, Health, Real Estate, Constriction and Postal services. Also, will explain the different between exemption and zero-rate, it's obvious that there is good impact of zero-rate on business and bad impact of exemption on business, that issue will describe in the chapter.

The most important exempt issue is the export, in practical export is one of the elements of international trade, if the VAT apply without that exemptions on exports, that will impact on international business and will encourage the double taxation and inflations on prices.

[1] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 33.

In that regards will focus on exempt on international trade in term of VAT and will compare VAT with income tax regarding the international trade to observe the domicile principle and other main principle in that regards.

To solve the issue of double taxation and distorting the key feature of value added tax also distorting the international trade, the international organizations and states was working together to adopt treaties and standards to organize that relation, and to avoid distortion of international trade.

This Chapter will include two sections which are named "Exemptions" for the first section and "The relationship between international trade and VAT" for the second one.

Section one. Exemptions

An exemption happens when the output is untaxed, in additional the input tax[1] can't receivable or refund. It is thus a deflection in part of the basic logic of VAT. However, the issue of exemptions is the major practical importance issue relating to VAT, raising issues that affect considerable and maybe increasing difficulty for policy formulation.

The common practice in the states show that there are a few specific exemptions, meanly those exemptions in relation to education, health and financial services such as France, New Zeeland UK, Denmark and South Africa, on which there are a broad consensus. Is that consensus well founded?

Exemption beyond these essence items are common, almost all states exempt more than items belonging to health, education and financial services. For example: legal services, Agriculture, fishery products, gas, petroleum, basic goods and passenger transport[2].While practice differ, there are also some commonalities or similarities in field of items exempted. In general, seven categories can be recognizing, which are: fuels, passenger transport, cement, agriculture products, capital goods, aid-financed activities and cultural items (books and newspapers).

[1] European Union, Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax, Official Journal No. L 347 issued on December 11th 2006, Article 295 § 6: "*input VAT charged means the amount of the total VAT attaching to the goods and services*".
[2] IMF compilation.

The logical reason for exempting the first four previous categories seems to be some notion that doing so will improve the distributional consequences of the tax, through the influence on prices that consumers face and, especially in relation to agriculture, through the influence on incomes. In all categories, the question arises as to why these objectives are not preferable pursued by adopting a lower rate comparing than exemption. "*The same question also arises even more powerfully in relation to the exemption of capital goods, since exemption leads to unrecovered tax that is likely to be reflected in the final price of items produced from those capital inputs*"[1].

The key feature of VAT is obviously mention in International Tax Dialogue which is "*the key features of the VAT are that it's a broad-based tax levied at multiple stages of production, with – crucially- taxes on inputs credited against taxes on output. That is, while sellers are required to charge the tax on all their sales, they can also claim a credit for taxes that they have been charged on their inputs. The advantages of this is that revenue is secured be being collected throughout the process of production (unlike a retail sales tax) but without distorting production decisions (as a turnover tax does)*"[2].

In addition, the European Council Directive 2006/112/EC provide other definition for VAT, also highlight the key feature of VAT which is collected incrementally through all stages of the production and distribution chain[3].

The exemption on VAT is broken the chain of VAT which is emphasis distorting the key feature of value added tax by not taxed VAT on supply goods or provide services.

This part will include several points which are the reasons of exempt, Consequences of Exemption, Commonplace Exemptions and Zero-Rate is not exemption.

§1. Reasons of Exempt

Exemption is partly between, on the one side, leaving a positive VAT rate in the regular approach (differing from exemption in charging tax on output) and on the other side, zero rating

[1]Ebrill, Liam, Keen, Michael, Bodin, Jean-Paul, and Summers, Victoria, *The Modern VAT*, International Monetary Fund, Washington D.C., 2001, p. 85.
[2] International Tax Dialogue (ITD), *The value added tax : Experience and Issues*, Background Paper Prepared for the International Tax Dialogue Conference on the VAT, Rome, March 15-16, 2005 ; www.itdweb.org/VATConference/Documents/VAT.
[3] European Union, Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax, Official Journal No. L 347 issued on December 11th 2006, Article 1 § 2.

(differing in allowing input taxes to be credit). There are consequently two potential broad classes of reason for exempting.

This part will include several points which are output is hard to tax, Exemption as a less Costly and Administratively Convenient Substitute for a Reduced Rate.

A) Output Is Hard to Tax

In some cases, it may seem impractical to enforce the VAT to output; either revenue needs or practicalities make exemption chosen to the alternative of zero-rating.

A prime issue concerns the treatment of small merchants, where administrative and compliance costs can effectively prevent their inclusion in the VAT system. In this issue zero-rating is for the same purpose not a realistic chosen.

Standard exercise is thus to exempt merchant below a certain size of business. Quite where that line must be drawn is a significant issue. For the present, the important issue is that exemption- in effect, excluding from tax the value added by such merchants - may be an acceptable compromise between the desire to save enforcement costs and the desires not to unduly jeopardize revenue or income and/ or favor small merchants in competing with large merchants.

The second key issue is that in which output is sold at prices under correct market value. The most notable examples appear in connection with outputs sold by public sector in competition with private enterprises. Government financed educational entities, for example, may provide output at low values, and in contest with private enterprises subject to VAT. Complete parity between the two sectors could be achieved by enforce zero-rating on these services, but could existing opportunities for abuse. Though still placing the public sector at an advantage, exemption may be preferable.

There are also sector-specific issues in which difficulties recognize the appropriate output to tax have been used to excuse exemption as a means of guarantee that taxation is not avoided altogether. The leading example of this is issue is obvious in the taxation of intermediation services, most prominently in regard of financial services. The obstacle here is that the taxable output is in standard the intermediation services. While the aggregate value of this can be, infer from the difference between buying and selling values, the distribution between buyer and

seller-which will matter for the appropriate crediting of the tax, is not immediately by the market.

B) Exemption as a less Costly and Administratively Convenient Substitute for a Reduced Rate

When both outputs and inputs can note, the alternative to exemption is to subject the goods to the VAT at a decreased or even zero-rate. If that is possible, and given that exemptions are linked with production inefficiencies, can it ever be the issue that granting an exemption would be the preferred course of action? In general, this is not clear, even though exemptions do avoid some problems. From the positive side, exemption avoids the administrative hardness or challenges related with the payment of refunds as the consequence of applying zero or reduced rating. from the negative side, exemption does not avoid the two problems which noted with rate differentiation namely, that such differentiation can support definitional struggle and set the step for further base erosion. There is a significant sense in which exemption is simpler than rate differentiation, in that it is not needful to observe either output tax or the recovery of input tax. This, however, afford on the risk that exemption is used exactly as an opaque device to favor certain goods or interest groups multiple nominal rates are in a significant sense more obvious than multiple effective rates induced by exemptions.

§2. Consequences of Exemption

Exemption has many influence and effects needs to explain, some of them are complex, the most important issue in that matter is the exemption are breaking the chain of collecting VAT which will discussed below. The other think that exempt is impact on business by paying the input tax but not collecting the output tax because its exempt, that prevent the business from deduction mechanism which is one element of neutrality principle. But the issue of what mention above must segregate to two issue one if the taxable person is trade with mixed goods and services which are exempt and the other are subject to VAT, so the solving of that issue will be easy by deduct the output tax from the goods and services which are subject to VAT. The second issue whereas the business is dealing with exempt goods or services, in result of that the business are not required to register so the business will pay the VAT like a customer and will not collect the tax and will not use deduction mechanism.

This part will include several points which are the revenues fall or increase, distorted input choices, incentive to Self-Supply and Compromising the Destination Principle.

A) Revenues Fall or Increase

It is obvious that the exemption breaks the VAT chain. Whether this decrease or increase the net revenue raised by the VAT relies on where in the chain of supply the break happens. If the exemption happens immediately before final sale, the consequence is a wastage of income or revenue since value added at the final stage escapes tax. If exemption happens in intermediate step, on the other hand, the consequence is indeed an increase in net revenues. "*The cascading of tax on inputs means that, as the price charged by downstream firms using the exempt item rises in order to cover their increased costs, so the tax on output downstream increase. Thus, value added prior to the exempt stage is effectively*"[1].

B) Distorted Input Choices

The exemption of material used us inputs into production removes the key feature of the VAT of maintain undistorted the production options that companies make. The unrecovered VAT of several intermediate inputs that implied by exemption will encourage producers to replace away from those inputs.

The distortionary consequences of the exemption, it must be emphasizing, can extend far beyond the sectors most directly influenced. For example, the exemption in production of steel will not only distort the production decisions of machine tool manufacturers that using steel products as an input or raw material. The consequence effect on the price for machine tool services will influence and distort the prices of tooled products.

Exemption may this render the influence of the VAT system far more ambiguous. With effective rates of VAT in the sense of the diversity between the price at which commodity finally sell and the price of the underlying resources used in their producing - potentially varying greatly, and in nontransparent approaches, from the statutory rates of VAT applicable to final output.

[1] Ebrill, Liam, Keen, Michael, Bodin, Jean-Paul, and Summers, Victoria, *The Modern VAT*, International Monetary Fund, Washington D.C., 2001, p. 85.

C) Incentive to Self-Supply

"*By introducing cascading, exemption creates incentives for the avoidance of tax by vertical integration, commonly referred to by VAT practitioners as "self-supply" to elaborate; exempt traders have an incentive to supply taxable items to themselves rather than purchasing them and incurring irrecoverable VAT*"[1], for many exempt materials, economies of scale or the specialized nature of the activity may be such that self-supply is strongly feasible; it is services served by relatively unskilled labor and relatively suitable to small scale production that seem ultimate susceptible to self-supply. Banks providing exempt financial services, for example, may find providing security services in-house rather than purchasing them from outside firms that should charge VAT. Which that the bank cannot recover. While such self-supply relieves the production efficiency issue associated with exemption, it clearly does so only at some revenue price.

Final customers indeed are important group of exempt persons. Their incentive is to avoid paying tax on final point of sales by supplying themselves with some of the value added embodied in end sales: "*they may escape tax on the value added by painters touching up their woodwork, for example, by doing the work themselves. (By the same token, of course, painter and consumer together have an incentive simply to conceal the transaction, with the painter charging no output tax and refraining from reclaiming input tax.) The essential effect here is the bias that any indirect tax creates for consumers to enjoy their purchasing power in the form of untaxed leisure-broadly interpreted-rather than as paid work*"[2]. The incentive to self-supply may more than that implied by the legal VAT rate on final output in the existence of rate differentiation. For example, as applicable in United Kingdom, food is zero-rated however; the restaurant products, which is meals, taxed at 10 percent. Assume that a preparing meal uses £0.2 of raw materials which is foods and sells at £1 (both of the amounts without of tax), while food is zero rated, the full tax of 10 cents is attributable to the value added in the restaurant (a stage of production); a tax rate on valued added in that section is obviously not 10 percent but 10/80 = 12.5 percent. While the net influence is to tax greater heavily than might a first seem, the value added in sectors whose output is comparatively heavily taxed, the incentive for self-supply of such goods is more than might at first seem. The reverse would also be correct. The

[1] Ebrill, Liam, Keen, Michael, Bodin, Jean-Paul, and Summers, Victoria, *The Modern VAT*, International Monetary Fund, Washington D.C., 2001, p. 86.
[2] Ebrill, Liam, Keen, Michael, Bodin, Jean-Paul, and Summers, Victoria, *The Modern VAT*, International Monetary Fund, Washington D.C., 2001, p. 87.

suitable policy response to self-supply is not clear-cut. The artificial grouping of activities that consequence implies that organizational forms are in section being dictated by other than purely commercial sight, and to that, extent is undesirable. Self-supply can itself, however, be a response to the distortion related with unrecovered input tax, and so may help a socially useful aims in relieve the distortion input-choices that might otherwise arise.

"*Perhaps in part as reflection of this ambiguity, policy responses to the self-supply issue vary. Some revenue authorities reserve powers enabling them to charge tax (and deny credit) on self-supply to avoid nonrecoverable input tax.*

One test, for example, may be whether the services in question are also available for hire outside the firm. More widely, the question arises to how firms are to be grouped for VAT purposes. The United Kingdom, for example, has recently proposed that companies not eligible to reclaim input VAT is not allowed to join VAT groupings; and grouping rules are under consideration more widely in the EU"[1].

D) Compromising the Destination Principle

Exemption compromises the destination principle for taxation in regard of international trading. While exported goods that would be exempted are in practice zero-rated, it is impossible to delete the results of exemption at an earlier step in the production chain. For example, European context, precisely the Sixth Directive[2] the banks are eligible to sell financial services in direct way to states outside the EU to have a right to reclaim VAT levied on their inputs tax. But the exports of firms that make use of financial services provided by financial entity like banks in their own jurisdiction, which are exempt rather than zero-rated, bear, indirectly, unrecovered input tax. It considered that the exemption thus undoes what has oftentimes been seen as an aim or principle merit of the VAT. By the same approach, companies using input tax that are exempt have an incentive to import those inputs-which will be zero-rated rather than exempted in the state of export-instead of purchasing tax-laden goods from exempt domestic producers. In practice, there is an incentive for exempt producers to artificially

[1] Ebrill, Liam, Keen, Michael, Bodin, Jean-Paul, and Summers, Victoria, *The Modern VAT*, International Monetary Fund, Washington D.C., 2001, p. 88.
[2] European Union, Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax, Official Journal No. L 347 issued on December 11th 2006, Article 135 and 151 § 2.

export their output in order that local or domestic producers can evade or escape indirect taxation through the input into exempted sector.

These difficulties encourage a several states to consider introduction-countervailing tariffs to eliminate the advantage of imports of exempted goods over domestically produced substitutes.

This part will include several points which are partially exempt traders, exemption creep and avoidance.

1) Partially Exempt Traders

Complexity happen in regard of merchants who sell both taxable and exempt outputs. For recovery or reclaim purposes, their input tax payments must be allocated between the two types of sales (taxable and exempt). This is typically in proportion to the price of the two kinds of sales, which obviously hold the potential to do rough justice in the presumed allocation of inputs to outputs, and to distort merchants' decisions as to the composition of their sales relying on how such treatment vary from the underlying reality.

2) Exemption Creep

One of the key features of exemptions is the approach in which they feed on one another, giving rise to an operation of what might be called "*exemption creep*" the issue here is distinct from the attention that each exemption provides a general precedent for others. Rather, it is that each exemption creates direct pressures for further exemption, both downstream and upstream.

a- Adopting one exemption in regard to lighten the tax burden on a particular item or group creates pressure for exemption or zero-rate of goods used to produce that exempted item. If the government wants to take off the burden on that item, lobbyists for upstream suppliers might argue, surely it must remove the tax on its inputs that would otherwise be unrelieved.

b- Adopting an exemption at an intermediate stage in the chain rise the potential return to downstream users of that input from lobbying to secure their own exemption.

An example of that, assume that company B purchase some input from company A. If A is taxable, then the gain to B from becoming exempt is that B's own value-added escapes tax. If A is exempt, however, then since output tax collect on B captures value added by both firms, the gain to B from becoming exempt would be that both companies value added scape tax.

The first type of creep has been especially obvious in practice, a prime instance being in the agricultural sector: the exemption of basic foodstuffs has in a several states bolstered pressure for the exemption of agricultural inputs tax.

3) Avoidance

The distortions that can be induced by exemptions are, in a sense, types of avoidance but on response to exemptions may be avoidance of a more transparent type.

§3. Commonplace Exemptions

As observed, there is consensus to exempt some particular goods or services, all these standard exemptions, for example, are in the sixth directive[1], which is the template of the VATs of the EU. The base for that consensus of exempt some particular goods, however, merits consideration. The key questions to ask in estimating an exemption are: Why not zero-rate. Why not instead tax at some lower rate, maybe lower than that enforced to other goods?

This part will include several points which are public sector, education, health, Real Estate and Contraction and Postal Services.

A) Public Sector

Standard advice and exercise are for goods provided by publicly owned bodies in competition with private enterprise to be taxable, except for items, especially those listed below, which are in general exempted. More contentious is the suitable treatment of services provided by the public sector either free of charge to the final user or more in general a not for profit base. These services are the focus here. The same issues also appear in the treatment of nonprofit entities and fraternal organizations more generally.

Policy toward the public sector adopted in the EU rise to be representative of exercise in most developed states. The sixth Directive exempts noncommercial services provide by public entities[2]. This in fact is a prominent example of the first rationale for exemption observed above,

[1] European Union, Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax, Official Journal No. L 347 issued on December 11th 2006.
[2] European Union, Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax, Official Journal No. L 347 issued on December 11th 2006, Article 132 and 133.

namely, it is not easy to tax outputs that is given away other than by taxing inputs into its production. In practice, the public sector is considering as the final consumer of the inputs used to produce services because it provides on a noncommercial base.

Exercise appears to vary: in some issues, for example, sales to public entities seem to have been exempted.

Does it make any difference whether the public sector is exempt or totally taxable? Absent a clear charge on output, about commodities and services provided for a fee to members of the public, output tax revenue will be zero even if in standard taxable, also any income that the government levy by refusing the recovery of input tax on purchase by public entities is exactly offset by an increased cost to the government of financing those entities exercises. Nearest inspection expose, however, that exempting the public sector can have the same opposite effects that are connected with exemption of private activities. Precisely:

1- Insofar as the agency does not expect that it will be reimbursed for the inputs tax that it bars, the impact of exemption on the input values that it faces will distort production decisions just as it does for profit-maximizing private companies. Public agencies are perhaps required, among other things, to decrease the costs connected with their activities: and it is this cost increasing, rather than profit maximization, which generates a production inefficiency when input values are distorted.

2- For public entities engaged in both noncommercial and commercial activities, the difficulties of partial exemption appear.

3- Self-supply biases also appear: for exercise that can be contracted out to the private enterprise, exemption of the public sector will relieve in favor of retaining production in the public sector.

4- Classification struggle may appear, for example, the requirements that public entities be taxable on exercise that do, or might, compete with the private enterprise.

The hardness has given increase to different ad hoc responses. One strategy adopted by Canada and number of European Union states. Is to rebate VAT payments to public entities in respect of their exempt practice. In impact, this transforms the exemption into a zero-rating. This removes both the potential distortion of input choices and the bias against outside contracting.

It also easiness the issue of distinguishing commercial and other activities: in either case, input tax is recovered, albeit by various administrative means.

A more systematic response is simply to treat public sector entities as taxable in regard of all their practice. This option has attracted growing attention in recent years. Notably, it has been adopted by New Zealand, and has been suggest in the context of the European Union by Aujean, Jenkins, and poddar (1999). While raising no new issues of standard in relation to the crediting of input taxes, there is the issue of recognize the taxable sale. This is simple in respect of fees charged to users of goods.

Generally, the reason of this way is to regard all sums received by the producer that are attached to production, whether as user charges or as aid payments, as, in impact, taxable sales. The net income raised by collecting output tax in this way on aid payments received from other section of government is of course zero: the income collected by the supplier precisely matches the increased cost to deemed purchasing agency. The merit is that the VAT chain is kept through the public sector and its interface with the private enterprise.

The further question is what tax rate should be enforced. This takes us back to the argumentation on rate differentiation. Interestingly, Auean, Jenkins, and Podder argue that the sensitivity of the commodities in question warrant a decrease rate: they mention a rate in the order of 3-5 percent for the EU.

Turning back to the exercise, the concept that basic services traditionally provided by the public sector on a not-for-profit base must be exempt from VAT arise to underlie two of the exemptions found in both IMF advice and practice; those for health and education.

B) Education

The standard advice and practice or exercise is to exempt the basic education services, and tax at some "*normal*" rate more specialist training provided on a commercial ground. The suitable taxation of education is a complex issue. External benefits connected with education mean that it might even be optimal to subsidize some types of training. Leaving these arguments aside, but the focus is on why it might be suitable to exempt basis education provision. There are two features of the education sector are significant to this query: it is a considerable component of national revenue: and basic educational services are usually delivered at

subsidized values or zero, in competition, to some degree, with private sector. The last feature reveal that to subject education to a VAT in the normal approach would exacerbate the competitive distortion between private sector and public sector provided forms. One approach of leveling the playing scope between public and private suppliers, at least to some degree, would be by zero-rating. This however increase the difficulties associated with refunds. While manageable in a lot of developed countries, making the mechanism of zero-rating an option there, for example, does zero-rate education refunds continue to be doubtful in developing countries. Moreover, the first feature -which is the considerable size of the education sector-, makes the income cost of zero-rating basis education expenditure significant.

However, publicly provided education at cost of it, for example, may increasingly come to be the issue in the tertiary sector, the issue for subjecting education to VAT in the regular approach, maybe at a reduced rate to reflect the growth externalities that increasingly seem to be connected with education expenditure, becomes stronger.

Article 132 (i) and (j) of European Council Directive provided the rules of exempt the education sector which said " *the provision of children's or young people's education, school or university education, vocational training or retraining, including the supply of services and of goods closely related thereto, by bodies governed by public law having such as their aim or by other organisations recognised by the Member State concerned as having similar objects*"[1] also " *tuition given privately by teachers and covering school or university education*"[2].

The question is what is the statues of the activities of an individual acting in a private capacity? Is it exempt or subject to VAT? " *The activities of an individual acting in a freelance capacity, consisting of providing assistance with schoolwork and also running ceramics and pottery courses in adult education centers, can benefit from the VAT exemption under article 13 a(1)(j) of the sixth directive 77/388 on the harmonization of the laws of the member states relating to turnover taxes in respect of tuition given privately by teachers and covering school or university education only where such activities consist of tuition given by a teacher on his own account and at his own risk, and covering school or university education. It is for the referring court to verify whether that is the case in the main proceedings*"[3].

[1] European Union, Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax, Official Journal No. L 347 issued on December 11th 2006, Article 132 (i).
[2] European Union, Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax, Official Journal No. L 347 issued on December 11th 2006, Article 132 (j).
[3] ECJ, Case C-445/05, Werner Haderer v Finanzamt Wilmersdorf, I-4842.

The situation in UAE is the education is subject to zero-rate in general with several rules according to article 45 from UAE VAT law which said "*the supply of educational services and related Goods and Services for nurseries, preschool, school education, and higher educational institutions owned or funded by Federal or local Government, as specified in the Executive Regulation of this Decree-Law*"[1]. The law considers the educational as a zero-rate, but the higher education must be owned or funded by government to be subject to zero-rate. According to that the UAE legislator impact on the private higher education by keeping that private higher education subject to standard rate and the public higher education subject to zero-rate, that issue consider as a bad impact and distortion of competitive between private and public sectors.

C) Health

The Health care sector are the same with education sector, it is only the basic services that, typically, are exempt from VAT: professional services of registered doctors, supply of specific medicines, and the like[2].

The arguments in this issue are very similar to those for education. There may again be externalities from some type of health that warrant some degree of subsidization. Again, there would be some logical reason to zero-rating basic health services: Australia does this, for example, while the state of Uganda apparently zero-rating some medical supplies also the United Kingdome zero-rates aids or the disabled. Income cost and administrative hardness, however, weigh against wide-ranging zero-rating the essence supplies of the sector.

As private provision increases relative to public, and the last moves closer to market pricing, so the extent of properly taxable that is not basic health services can be expected to increase, although this is probable to be some way off in many developing states.

D) Real Estate and Contraction

Real estate sector is the durable good. It yields services over more than one period. In addition, one of the key merits is resold as a common practice. Thus, the matters that appear in its VAT treatment are simply those that enforce to all such goods, but writ large.

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 8 of 2017 on Value Added Tax, Official Gazette No. 621 issued on August 23rd, 2017, Article 45 § 13.
[2] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 8 of 2017 on Value Added Tax, Official Gazette No. 621 issued on August 23rd, 2017, Article 132 (b), (c) and (e).

The perfect treatment of durable goods would be to tax the flow of services in every period, with a corresponding credit in case the services are used as a business input.

This is not hard to do when the services are transacting in the marketplace and hence easily valued. Although the leasing of real estate for commercial purposes is usually subject to VAT, also the sixth directive[1] is not exempt it from VAT, which is part of supply chain of the business products, with a credit to the lessee in case the activity is not an exempted. So that a risk of cascading appears as the lessee is a taxpayer and that is contrary the principle of burden of pay on consumer, provision is mostly made to allow the lessor to select for registration and pay of the tax after that recovery of inputs tax in regard to follow the principle of burden of pay.

In many situations, the sector of real estate services is self-supplied, also have no observable market price. For services exercised as business inputs this, poses no specific obstacle, as the tax that the trader must charge itself on those services would in any case carry an exactly offsetting credit. The issue of owner-occupied housing is composing a problematic, the reason of that is this participates final consumption on which one would like the tax to "*stick*". However, attempts have been made in former to impute price to services enjoyed from owner-occupation for the purposes of income tax, the experience from former practice has not been a success and is now rarely made. Thus, services used from owner occupation are with no exception that known of exempt from VAT. To avoid distorting the option between house ownership and renting, the commercial leasing of residential property is generally exempt.

There is another approach in which services from owner occupation can be charged tax. This is by the "*prepayment*"[2] method, which means collecting VAT on owner-occupied properties at the period of purchase. Since the price of the property capitalizes the price of future services, the influence of this is to collect tax in advance of the used of those services. This, implicitly, is the common method applied to durable goods under the VAT. It is now also the usually recommended approach for taxing residential properties. Also, that mention in sixth directive "*Member States may apply criteria other than that of first occupation, such as the period elapsing between the date of completion of the building and the date of first supply, or the period*

[1] European Union, Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax, Official Journal No. L 347 issued on December 11th 2006.
[2] Ebrill, Liam, Keen, Michael, Bodin, Jean-Paul, and Summers, Victoria, *The Modern VAT*, International Monetary Fund, Washington D.C., 2001, p. 98.

elapsing between the date of first occupation and the date of subsequent supply, provided that those periods do not exceed five years and two years respectively"[1].

The issue that then appears is how to tax resale of property under the prepayment approach. In standard, resales must be fully taxed to the purchaser and fully refunded to the seller. Net income would be zero. This treatment is mostly practical, and must be adopted, for commercial properties. Given a possible ownership period of some decades, however, this far to be practicable for owner occupation; it is simpler and obviously global practice to exempt resale of owner-occupied housing.

Contraction services and inputs must mostly be totally taxed, and creditable only for those undertaking contraction as a business exercise or activity. Enact tax such inputs gained by owner-occupiers is a rough and ready approach of taxing the enhanced consumption services to which they perhaps lead.

Enact tax on the sale of new residential properties does appears transitional cases at the time the provision is introduced. Unless also enforced to first sales of preexisting properties which, though practical, obviously has never been done it confers some windfall earn on owners of that primary stock, who will now be eligible to sell their properties at values reflecting the increment VAT inclusive price of new ownership.

This measure will also be seen as disadvantaging first owner house-buyers, a politically sensitive issue in many states. Thus Australia, for example, provided some support for such buyers at the time of introducing its GST. In general, exemption from VAT for housing services is repeatedly cited as necessary to reduce regressively. It is not obvious, however, why housing must be favored over other forms of "*necessary*" consumption. Further, and particularly in developing countries, the wealthy are repeatedly heavy consumers of housing comparative to their incomes, as contrasted to the poor people. In any case, if the influence of the VAT were to rise costs of housing for the poor people, it would be far more efficient to give them direct relief.

In UAE the legislator provide very useful solution to exempt the real estate and construction, the UAE VAT law mention in article (46) that the supply of residential buildings through sale or lease are exempt, but in that matters the business will suffer from the VAT because the

[1] European Union, Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax, Official Journal No. L 347 issued on December 11th 2006, Article 12.

contractor will pay tax as a input but in other side the contractor can't deduct from output tax because its exempt and can't collect tax, so the impact will be on contractor, to solve that issue the legislator provide other rule in that matter which said in article (46/2) " *supply of residential buildings through sale or lease, other than that which is zero-rated according to Clauses (9) and (11) of article (45) of this decree-law*"[1].

That two clauses organize the residential buildings under zero-rated mechanism, clause 9 of article 45 of UAE VAT law said, "*the first supply of residential buildings within (3) years of its completions, either through sale or lease in whole or part, according to the controls specified in the Executive Regulation of this decree-law*"[2]. Also, the clause 11 of article 45 of UAE VAT law said "*the first supply of buildings converted from non-residential to residential through sale or lease according to the conditions specified in the Executive Regulation of this decree-law*"[3].

According to what mention above, in UAE the residential buildings are subject to exempt rules but only to situations are subject to zero-rated. But the commercial buildings are subject to VAT rules and not exempt or subject to zero-rated.

E) Postal Services

According to the EU VAT directive, that specific service and their related goods supplied by public postal services are VAT exempt[4]. The exemption of public postal services has existed since the beginning of the VAT system and aimed at decreasing the value of public postal services. It was justified, at the time, by the reality that the postal sector, as a provider of state-funded services in the public interest, was not subject to any competition.

Also, a public monopoly[5]. With time, postal services have been progressively liberalized under EU law, authorizing private suppliers to compete with public companies in that field. The consequence of this liberalization, varying interpretations of the scope of the VAT exemption have happen in matter of the supply of public postal services within the European Member

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 8 of 2017 on Value Added Tax, Official Gazette No. 621 issued on August 23rd, 2017, Article 46 § 2.
[2] Ibid., Article 45 § 9.
[3] Ibid., Article 45 § 11.
[4] European Union, Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax, Official Journal No. L 347 issued on December 11th 2006, Article 132 § 1 (a).
[5] European Commission, *VAT : Commission proposes application of VAT to postal services*, European Commission Press Releases IP/03/633, 2003 ; http://europa.eu/rapid/press-reales_IP-03-633_en.htm [accessed 13 June 2014].

States, that assist leading to obstacles to horizontal equity at both the national level and European level.[1] A public postal supplier working in a Member State other than the one in which it is founded or established is not entitled to a VAT exemption[2].

The consequences of that is, no direct distortion of competition is possible between suppliers established in different Member State, but other types of obstacles to horizontal equity nevertheless exist. Caused by different interpretations of the scope of the exemption of VAT, these obstacles are leading to the same services and commodities to be treated differently from one Member State to another, while in a local context they create " *a distortion between similar services supplied by the public operator and the private operator*"[3] in certain issues, the varying interpretations give an advantage to domestic incumbents over other operators[4] and in the end, this has finally resulted in " *the principle of neutrality, which is at the heart of the common VAT system, [to be] no longer […] observed in this sector*"[5].

According to these observations, precisely in 2003 the European Commission released a draft directive, which was amended in 2004, to terminate the exemption on VAT for public postal services so that all postal services and related goods are subject to VAT, irrespective of the supplier, would be subject to VAT at a standard rate or reduced rate[6].

After that, the argumentation concerning the taxation of such services was prolonged and the draft directive was finally withdrawn as a result of certain Member State objections and in general as a result of the unreached a final agreement[7]. A solution happened at 2009 when the ECJ produced a definition of the concept of "public postal services" for the purposes of the VAT exemption[8]. These services, according to the CJEU also to the guidelines issued by the

[1] See Terra, Ben and Wattel, Peter, *European Tax Law*, Kluwer Law International, 4th Edition, 2005, p. 233.
[2] VAT Committee, *Guidelines Resulting from the 52nd Meeting*, 1997.
[3] European Parliament, Committee on Economic and Monetary Affairs, *Proposal for a council directive amending directive 77/388/EEC as regards value added tax on services provided in the postal sector*, 2003.
[4] Free fair post initiative "*contribution to the consultation paper – review of the legislation on VAT reduced rates",* 2013.
[5] Euopean Parliament, Committee on Economic and Monetary Affairs, *A strategy to improve the operation of the VAT system within the context of the internal market*, 2000.
[6] Euopean Parliament, Committee on Economic and Monetary Affairs, *Proposal for a Council Directive amending Directive 77/388/EEC as regards value added tax on services provided in the postal sector*", 2003; European Parliament, Committee on Economic and Monetary Affairs, *Amended proposal for a Council Directive amending Directive 77/388/EEC as regards value added tax on services provided in the postal sector*", 2004.
[7] European Commission, *Withdrawal of obsolete Commission proposals*, Official Journal No C109/8, 2013.
[8] ECJ, Case C-357/07 The Queen, on the application of TNT post UK Ltd v The Commissioners for Her Majesty's Revenue and Customs [2009] ECR I-03025.

VAT committee,[1] are defined as those supplied immediately and directly[2] by private or public operators who conduct to provide the universal postal services in a Member State. "*Consequently, exemption from VAT extends to those services, and to the supply of goods incidental thereto, provided by operators acting in their capacity as universal postal service operators. The exemption does not necessarily apply to all activities carried out by universal services providers and especially not to those, which are not associated with the public interest. Notably, it does not apply where the terms of the services have been individually negotiated*"[3]. Regardless the 2009 CJEU judgment providing for a definition and the guidelines of the VAT committee, several interpretations of the exemption available, as well as several scopes to global services, exist across member states. An example. While state of Sweden heads for apply VAT to all postal services, state of Malta applies, as equally, the VAT exemption[4]. To the scope that the same supply performed by a global service provider is regarded as VAT exempt in single Member State but contradictory in other member state, which is, is taxable in other European Member State, horizontal equity is violated between postal service suppliers established in different Member State. These services (basic letter post, basic parcel post, bulk letters, direct mail, periodicals, non-priority letters and bulk parcels) reflected to be within the scope of exempt global services across varies jurisdictions or states, and thus underlines the conflict that exist across the European Community.

"*In addition to the inequalities created by differing interpretations of the VAT exemption as applied to postal services across Member States, the exemption also compromises equality at a local level. Poland provides an example of two such local breaches of equality, the first example being that which affects bulk senders. Under polish law, a sender becomes a bulk sender when the number of mailed items it handles (in a particular category) exceeds 100.000 in a single calendar year. Bulk senders are not considered to meet universal service obligations and consequently the postal service they provide may not benefit from the VAT exemption for "public postal services*"[5].

[1] VAT Committee, *Guidelines Resulting from the 90th Meeting*, 2009.
[2] The delegation of services prevents the services from being VAT exempt. ECJ, Case C-107/84 commission of the European Communities v. Federal Republic of Germany [1985] ECR 2655, § 12.
[3]Herbain, Charlene Adline, *VAT NEUTRALITY*, Promoculture-Larcier, 1st edition, 2015, P. 224.
[4] Copenhagen Economics, *VAT in the public sector and Exemption in the Public Interest*, Final Report for TAXUD/2001/DE/334, 10 January 2013 ; http://ec.europa.eu/taxation_customs/resources/documents/common/publications/studies/vat_public_sector_exemptions_en.pdf [accessed 13 June2014].
[5] Herbain, Charlene Adline, *VAT NEUTRALITY*, Promoculture-Larcier, 1st edition, 2015, p. 225.

At the end its obvious that VAT exemption in regard public postal services therefore consequences in both local and cross-border obstacles to horizontal equity.

§4. Zero-Rate is not exemption

Zero rated supplies are considered as taxable supplies subject to tax at 0%. A taxable person charge zero-rated supplies is authorized to claim input VAT on the commodities or goods and services used to make these zero-rated supplies subject to satisfying other conditions. Because zero-rated supplies are taxable supplies, it is important to know the value of zero-rated supplies of goods and services to decide whether the registration threshold has been exceeded for the purpose of VAT registration.

Its obvious that the taxable person in regard of exemption treats as consumer which is violate of principle of burden of pay on consumer not business. In addition, the key feature of Value Added Tax was distorting by exemption. In case of zero-rate the business is get the benefit from that by dedication method and have a right to reclaim the credit amount of tax from authority of taxation. The zero-rate method is totally following the key feature of Value Added Tax. Also, business will not suffer from the burden of pay.

In that matters, there are two arguments, the first argument is the zero-rate consider as an exemption, while the others insists that the zero-rate is part of rates and its not an exemption.

In my opinion the zero-rate its part of rates and defiantly its not an exemptions, because the exemption is to exempt a good or service from the rules of VAT, but in case of zero-rate the principles of VAT are applied such as the deductions mechanism, with zero -rated the taxable person are obliged to not collect the output tax but in other side the taxable person has a right to deduct his input tax by using the deduction mechanism, the result of that in some time. The taxable person will have a credit with the taxation authority. So, the using of deduction mechanism which is an element of VAT is an evidence that the zero-rated is part of VAT rules and not an exempt.

In addition, if we suppose the zero-rated as an exempt also according to that, the reduced rate must consider as an exempt because the general principle is the standard rate. In my opinion the zero-rated is an exempt of standard rate but not exempt from VAT like the normal exemptions.

The second arguments in that matter is the exemptions are leading to cascading tax, because the tax will apply in all stage of supply without deductions, at the end of supply chain the consumer will not pay a tax but will pay the price of goods or services with higher cost because of implement tax in all stages. So, the exempt is good at the beginning or in first look, but with the deep looking it is not good with bad effect because the taxable person or business will suffer of tax without the right of deduction, and the tax will be part of cost, so the business will increase the prices.

At the end Exemptions are distasteful to the logic and mechanism of the VAT. Policy toward exemptions is thus a serious element of both advice and practice with respect to the VAT. Various conclusions arise from the present discussion. The first point is the Exemptions have the possibility to undermine a VAT. Prohibiting their spread is a main interest in many states, and this is probably be the issue for many years. The second point is the rationale for several principal exemptions is increasingly being hesitated. A main clause on the VAT reform agenda in several developed countries over the next years is probably to be a shift from exemption to full taxation in a number of these areas, such as the treatment of the public sector. The last point is developing countries reviewing such shifts to full taxation may face a trade-off. To some degree, though not probably in connecting to suggest cash flow VAT on financial service, these shifts to full taxation hold the probably go administrative facilitation. They may also, however, create stress for the introduction of reduced rates of taxation that could create their own and more than offsetting hardness.

Section two. The relation between international trade and VAT

When the governments of countries designing the Value Added Tax or income tax, the country generally should design the geographically scope of implementations. The countries may choose to impose its VAT or income tax under territorial principle or worldwide principle. In addition, there are many countries with territorial and worldwide income taxes in use today. Most worldwide income tax systems have several elements of a territorial income tax. Also, most territorial income tax systems have also some elements of worldwide tax. But the most countries impose territorial VAT systems.

In this section will include general description of the differences between the territorial and worldwide income tax systems, also this section will focus on territorial and worldwide VAT systems. The section will describe the South Africa and New Zealand VATs as worldwide VATs, also compare these systems with territorial VATs.

"*One of the reasons that worldwide VAT systems have received scant attention in the literature is that some VATs in use today, notably the New Zealand GST and South Africa VAT. Have not been recognized as worldwide tax systems. In form, when a person (a resident or vendor) is subject to one of these VATs, the person must report worldwide supplies, as adjusted. The initial tax base, before adjustments, does not depend on the location of the person's supplies under place of supply rules, as it generally does not under a "territorial" VAT*"[1].

Rebecca Millar recognizes the unique nature of the South Africa and New Zealand VAT systems, without characterize them as worldwide VAT systems.

"*What South Africa has in common with New Zealand is that once an entity carries on a sufficient level of activity to be considered to be carrying on an enterprise in South Africa, all supplies made by that entity are considered to be made in South Africa, irrespective of their actual location (i.e., without regard to the place of performance of the supply)*"[2].

Both state the South Africa and New Zealand obtain personal jurisdiction to tax a person under their VATs in case the person meets two conditions: 1- the person is a resident or manage an enterprise in the state. 2- the person do a taxable supplies more than the threshold amount. when personal jurisdiction is obtained, the state has power and authority to impose tax on all of the person's taxable supplies, without respect to the place where the supplies happen. "*New Zealand and South Africa significantly narrow this broad taxing authority, but those base-reducing measures do not alter the fact that their VAT acts initially, in defining the jurisdictional reach of their taxes, impose VAT on worldwide supplies of residents (or vendors)*"[3].

This part will include several points which are worldwide and territorial income tax systems, Worldwide and territorial VAT systems and Analysis of multi-country transactions under

[1] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 258.
[2] Millar, Rebecca, *Cross-Border Services: A Survey of the Issues*, in *GST in Retrospect and Prospect*, Krever & White editions, 2007, p. 317.
[3] Lang, Michael, Melz, Peter and Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 258.

worldwide, territorial VAT systems and Need for VAT Treaties and International Taxation Organization.

§1. Worldwide and territorial income tax systems

"*The United States is the only industrialized country in the world that taxes are citizens in their worldwide income, even if they reside outside the country*"[1]. A state first acquires personal jurisdiction to apply its income tax, and then determine the jurisdictional scope of the tax. In some states, personal jurisdiction is based on residence or in other word domicile. In others, income tax on business is imposed on firms incorporated, managed, conducted or with a business location in the country.[2] Still other state imposes tax of a person's business or a business income only in case the person is engaged in a business or a business activity in the state. If the "*nexus*" standard is meet and a person is subject to income tax activity in the state, then the legislation determines the jurisdictional scope of the tax, usually a modified territorial or worldwide tax principle. The law may: 1- apply tax on income earned in the taxing state. 2- apply tax on income of persons subject to tax.

Since states vary in the geographic scope of their income taxes, with some applying a modified version of a territorial income tax under (a) and some states applying a modified worldwide income tax under (b), any one person's business profits, interest, wages or dividends may be taxed in several states or several jurisdictions. To prevent the double taxation states usually rely on domestic income tax principles and/or apply bilateral income tax treaties.

A worldwide income tax is said to promote "*capital export neutrality*" because "*it does not distort the decision of whether to locate investment at home or abroad*"[3]. "*It also promotes horizontal and vertical equity. It promotes horizontal equity to the extent that it treats taxpayers earning comparable incomes (whether some or all is in the taxing country) similarity, and it promotes vertical equity by considering, in imposing progressive taxes on the ability to pay principle, the total income earned by taxpayers, wherever earned. Under a pure worldwide*

[1] Staff of the Joint Committee on Taxation, U.S Congress, *Background Materials on Business Tax Issues*, prepared for the House Committee on Ways and Means, Tax Policy Discussion Series 54, 2002.
[2] See. Cooper Graeme, Ault Hugh and Arnold Brian, *Comparative Income Taxation: A structural Analysis*, Kluwer Law International, 2nd edition, 2004, p. 349.
[3] Staff of the Joint Committee on Taxation, U.S Congress, *Background Materials on Business Tax Issues*, prepared for the House Committee on Ways and Means, Tax Policy Discussion Series 54, 2002, p. 53.

income tax system, the taxing country avoids double tax by granting a credit against tax on worldwide income for foreign tax paid on foreign-source income (income earned abroad)"[1].

A territorial income tax is said to promote "*capital import neutrality*"; the income tax system "*treats all investment within a particular source country the same, regardless of the residence of the investor*."[2] It "taxes *only income derived within its borders, irrespective of the residence of the taxpayer*"[3]. "*Thus, foreign-source income is not included in the income tax base, and there is no credit for foreign tax paid on income earned abroad. In form, a pure territorial-based income tax is simpler to administer and comply with. The major disadvantage of the territorial system, and the reason why countries with territorial systems incorporate some worldwide elements, is that it encourages the shifting of investments and activates to low-tax or tax haven[4] countries and requires anti-deferral rules to prevent residents from engaging in these activities*"[5].

§2. Worldwide and territorial VAT systems

There are several types of indirect tax on the supply of goods and provide services applied at a single or multiple stage of production or distribution. The indirect tax includes single-stage manufacturing, wholesale, sales tax, excise tax. The multi-stage transactional type of value added tax (VAT) Is the one applied at a national level across the world. The term VAT will used in this section to include any credit-invoice, consumption-style, broad-based, transactional form of tax on consumption, the New Zealand goods and services tax (GST), and the VAT in South Africa.

A registered person subject to a country's VAT should charge, levy and remit VAT on each taxable supply. The tax may be applied on supplies by the registered person within the territory of the taxing state which is territorial system, or on all supplies by the registered person without respect to territorial of the taxing state which is worldwide system.

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[1] Lang, Michael, Melz, Peter and Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation : Similarities and Differences*, IBFD, 2009, p. 259.
[2] Staff of the joint Committee on Taxation, U.S. Congress, *Background Materials on Business Tax Issues*, prepared for the House Committee on Ways and Means, Tax Policy Discussion Series 54, 2002, p. 55.
[3] Ibid., p. 53.
[4] A tax haven is a country or place which has a low rate of tax so that people choose to live there or register companies there in order to avoid paying higher tax in their own countries : https://www.collinsdictionary.com/dictionary/english/tax-haven [consulted in 21/2/2019].
[5] Lang, Michael, Melz, Peter and Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 260.

State with a "*territorial*" VAT apply tax on a registered person's supplies in the taxing jurisdiction. The place of supply principles is used to determine if a supply happen within the territorial of the state. Each supply outside the state, under the place of supply, the rules are not within the jurisdictional scope of the tax, which is outside the scope and the registered person not authorized to levy tax on that supplies.

States with "*worldwide*" VAT applied tax on all supplies by a registered person. With a worldwide scope. The legislation does not required place of supply rules to recognize the supplies that happen within the scope of the tax.

"*Whether a country asserts its authority to impose a territorial or worldwide VAT, it will independently decide whether it will tax international transactions (imports and exports) on the origin or destination principle. For example, China's territorial VAT has been moving from an origin to a destination-principle tax*"[1].

In this regard there are two principles, origin principle and destination principle. "*An origin-principle VAT taxes domestic supplies of goods and services. it is in the nature of a production tax. Imports are not taxed, but exports are taxed. No country employs a pure origin-principle VAT. A pure destination-principle VAT imposes tax on supplies of goods and services for domestic consumption. Tax is imposed on imports of goods and services because they are expected to be consumed domestically. Exports of goods and services will not be consumed domestically, so tax is rebated (zero-rated) on exports. Most territorial VATs, and the New Zealand and South Africa VATs, rely on a modified destination principle with respect to imports and exports. Imports of goods and some related services are taxed at the border. Some imported services are taxed to the recipient under a reverse charge rule. Exports of goods and the exports of specified services are zero-rated*"[2].

A) Territorial VAT systems

It is obvious that most states follow the territorial VAT system and impose it. That states impose value added tax on each taxable supply occur in the taxing states by registered person. The amount of tax should collect and remitted by registered persons or businesses that have

[1] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 261.
[2] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 261.

yearly or periodic taxable supplies in relative with a business activity in the certain taxing jurisdiction more than a threshold amount[1]. Suppose that the threshold is 100,000 euro, the business shall keep accounting records and commercial books of his business activity also any Tax-related information, if the business makes taxable supplies in the country that exceed 100,000 euro the business should register with the taxation authority, then charge and submit the return tax includes all taxable supplies. In addition, the registered business authorized to claim credit for tax on business inputs used in making taxable supplies.

"*Under a territorial approach, a VAT- registered company is not subject to tax on a supply of goods that takes place outside the country and is made to a buyer who is outside the country. That supply is beyond the scope of the VAT*"[2].

As mention above, these states almost universally tax international transaction following the destination principle[3]. Which is, tax applied on imported goods and some imported services. To follow the destination principle there is unique mechanism to zero rate on exports. According a territorial VAT. This accomplished by treating exports as supplies in the exporting state and including exports.

"*Under a destination principle VAT, imports of goods and some related services are taxed by Customs when they "enter" the country for customs purposes. No place of supply rules are needed for Customs to tax them. If particular imported services are to be taxed to the recipient under a reverse-charge rule, the services may be treated as rendered in the country under the place-of-supply rules*"[4].

[1] For example, the threshold in EU may not be less than EUR 10 000 or the equivalent in national currency according to European Union, Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax, Official Journal No. L 347 issued on December 11th 2006.

[2] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 262.

[3] Some countries have relied on an origin principle or modified destination principle, at least during an initial transition period. For a number of years, the CIS countries applied an origin principle to some trade within the confederation. For example, export of oil from Russia to the Ukraine were taxed in Russia. Over the years, under the Chinese VAT. Exports were denied credit for input VAT or granted credit for varying percentages of input VAT on exported products. See, for example, China's Ministry of Finance and State Administration of Tax joint announcement of a charge in export refund rates: Cai Shui [2008] No. 111 on 30 July 2008, Reported by Lu Shan, IBFD Tax News Service, 7 August 2008.

[4] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 262.

While a territorial VAT approach determine its geographic scope to taxable supplies within the taxing jurisdiction. The place of supply happen becomes important. Also, the place of supply rules takes a serious role in the taxation system.

In general, according to place of supply rules adopted under territorial VATs, goods are supplied in a place of located when they are shipped, or where risk of loss or passes[1]. "*When the supply of services represented a much smaller percentage of consumer purchases. The place of supply rules governing services were simpler. They tended to locate the supply of most services where the supplier of the services was located*"[2]. As services become more significant and the "location of the supplier" principle did not reach a reasonable effect for many services, states started re-examining these principle or rules[3] and changing the rules or principle of place of supply for particular services. "*The recent trend is to treat internationally-traded services as rendered in the country where the customers use or enjoy the services. In the EU. Effective in 2010, if the recipient of the service is a taxable person, the place of supply generally is where the person has established his business. Problems remain where a supply not covered by specific place of supply rule has contacts with several countries. These problems cannot all be resolved through the definitions of imports and exports*"[4].

B) Worldwide VAT system

In case a person is subject to tax under worldwide VAT approach, the state Supposedly can charge tax all person's supplies, regardless made. A state that start by applying tax on a registered person's worldwide taxable supplies may adjust that VAT basis. So that the person subject to VAT should report below all worldwide supplies.

The states that described having worldwide VATs approach and charge tax international transaction in bases of the destination principle. The nature of worldwide of a VAT means that "*a registered person must report worldwide supplies, unless the statues removes some supplies from the tax base. Exports are zero-rated under the destination principle. The "worldwide" reach of the tax on supplies does not address the taxation of imports. "Customs" taxes imports*

[1] See, for example, UK, Value added tax Act 1994, Chapter 23, Sec 7 § 2. If the supplier must install or assembly the goods, the place of supply is where the goods are installed or assembled, Sec. 7 § 3.
[2] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 263.
[3] See for example, Commission, *Consultation paper: VAT – the place of supply of services to Non-taxable Persons*, 2005; www.ec.europa.eu/taxatin_customs.
[4] Lang, Michael, Melz, Peter and Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 263.

of goods at the border when they "enter" the country for customs purposes. Imports of services also are handled under the destination principle, independent of the worldwide or territorial reach of the taxation of supplies. Some imported services may be taxed at the border, if associated with imported goods, and other imported services may be taxed under a reverse-charge rule"[1].

A VAT practitioner from a state applying territorial VAT approach. Scanning the VAT law in South Africa (and to a lesser scope New Zealand), would be struck by the shortage of place of supply rules.

It's obvious that New Zealand was the pioneer in collecting and levying a VAT on a tax basis that begins with worldwide taxable supplies. When South Africa adopted a New Zealand-style tax, it adopted and enacted its own version of a VAT collected on tax basis that start with worldwide taxable supplies[2]. This section discusses the wide outlines of the adjusted worldwide VAT approach in New Zealand and South Africa, and how the legally structures of those VATs vary from territorial VAT regimes. It's also describes, but does not discuss further, the Australian GST. The Singapore GST, a difference of the New Zealand style, is not discussed in this section.

1) New Zealand's pioneering worldwide GST

The New Zealand GST system requires registered persons to report supplies of goods and services in New Zealand of a taxable activity conducted by that registered person[3]. The "*charging*" language applying tax same the "*charging*" language in regard of a territorial VAT approach. On the surface, the New Zealand appears to depend on place of supply rules because it tax supplies, in the New Zealand the difference is that under the New Zealand GST. The tax is applied on all supplies by a resident (that mean a person with particular statues in other word the domicile). All supplies are made in New Zealand, and the result of that the supplies it comes within the scope of the tax, in case the supplier is a resident in New Zealand[4]. They are special

[1] Lang, Michael, Melz, Peter and Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 264.
[2] Value – Added Tax Act, Official Journal No. 89, South Africa, 1991. When South Africa's neighbors, Namibia and Botswana, enacted VATs, they adopted the South African version of a worldwide VAT. Value Added Tax Act, Cap. 50: 03, Botswana, 2002 ; Value Added Tax Act, Namibia, 2000.
[3] New Zealand Goods and Services Tax Act 1995, Bulletin No 141, sec. 8 § 1.
[4] New Zealand Goods and Services Tax Act 1995, Bulletin No 141, sec. 8 § 2.

rules and condition govern supplies by a non-resident. [1] The supplies occur by non-resident and made it outside the New Zealand are not subject to the New Zealand GST, but there are some exceptions.[2] The New Zealand GST starts with a worldwide tax basis with respect to the New Zealand residents. New Zealand does not apply its GST on a worldwide basis with respect to the non-resident's persons.

As just discuss issue in New Zealand, "*at the outset, the "residence" of the supplier, not the location of the supply, defines the legal reach of the worldwide GST. In contrast under a territorial VAT, the place of the supply within the taxing country defines the legal reach of the tax on a registered person's supplies*"[3].

The definition of a resident in regard the New Zealand GST was taken in large part from the Income Tax Act[4]. Although full dependence on that definition was not suitable for GST purposes. A company's residence may be specified by its place of incorporation. The site of its head office, its station of administrative management, or the place where is directors practice control of the company's operations[5]. An unincorporated body is a resident in the New Zealand in case the unincorporated body has its center of management in the state of New Zealand[6].

The GST apply concept of resident on a person "*to extent that that person carries on, in New Zealand, any taxable activity or any other activity, while having any fixed or permanent place in New Zealand relating to that taxable activity or other activity*"[7]. For a non-resident who manages several businesses through a fixed place in New Zealand also several businesses

[1] The Act provides that certain supplies are treated as made in New Zealand and some are treated as made outside New Zealand. New Zealand goods and Services Tax Act 1995, Bulletin No 141, sec. 8 § 3 and 4.
[2] For example, a supply by a non-resident generally is made in New Zealand if the goods are in New Zealand at the time of the sale, or if services are rendered in New Zealand. Under an exception to this exception, if the sale is to a registered person for use in a taxable activity, the sale is made outside New Zealand unless the supplier and the recipient agree to the contrary. See New Zealand Goods and Services Tax Act 1985, Official Journal No 141, sec. 8 § 8. Most countries with a modified destination principle do not tax the imports of all services. As a result, consumers and businesses that cannot recover GST on services purchased domestically may import services from non-resident suppliers free of GST. To counter the competitive disadvantage to local businesses, New Zealand amended its GST. It treats some services supplied by non-residents as supplies in New Zealand (a place of supply rules). Maori Organizations, *Taxpayer Compliance and Miscellaneous Provisions*, Act 2003, amending New Zealand GST. Sec's 8, 8A, 11A, 11B, and 51.
[3] Lang, Michael, Melz, Peter and Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation : Similarities and Differences*, IBFD, 2009, p. 265.
[4] New Zealand, Goods and Services Tax Act 1995, No 141, sec 2 definition of resident.
[5] See New Zealand Tax Information, Bulletin No 9, March 1990.
[6] GST amendment Act 1986, sec 2 § 6 amended the definition of resident in the New Zealand GST, sec. 2, to include an unincorporated body of persons that has its center of administrative management in New Zealand.
[7] New Zealand, Goods and services Tax Act 1985, No 141, provision (a) of sec. 2 definition of resident.

without such place, for the purpose of GST the person is resident only with respect to the activities belonged to the fixed place in the state of New Zealand[1].

a- Worldwide supplies of resident, registered persons

"*The New Zealand GST is initially imposed on a resident, registered person's worldwide supplies, but a series of rules substantially narrow that tax base. In addition, as noted above, non-residents, doing business in New Zealand, even initially are not taxed on worldwide supplies.*

New Zealand removes some of the worldwide supplies of resident, registered persons from GST base. These base-reducing measures reduce many, but may not remove all of, the supplies that are beyond the scope of a "territorial" VAT. Is there a difference?

As base-reducing measures, the New Zealand GST applies the destination principle to international transactions, and it removes certain supplies connected with foreign activities from the tax base"[2].

b- Destination principles removes some supplies

The state of New Zealand harmonious with international exercise, they apply zero rates on the exports of goods also some services, even if the exports are supplied by a person resident in New Zealand.

c- Supplies linked to certain foreign activities not taxed

According to the New Zealand GST system, the concept of resident, registered person is not required to report, as taxable, a supply that is concerning to foreign activity branches. The New Zealand GST system treats a branch of a New Zealand company (branch of a New Zealand company considered as a resident) operating outside the New Zealand territorial as a non-resident. Non-resident are usually subject to GST only with regard to activities in New Zealand.

[1] New Zealand tax Information, Bulletin No 12, May 1994.
[2] Lang, Michael, Melz, Peter and Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation : Similarities and Differences*, IBFD, 2009, p. 266.

Consequently, the supplies by that branch outside New Zealand are outside the scope of the GST[1].

2) South Africa's worldwide VAT

The South Africa VAT is following the legal form a worldwide tax system, by applying on worldwide supplies of persons subject to VAT, which is different than the territorial VAT that only applying on supplies in the taxing state, a vender[2] or registered person should report all supplies happens with his business activity wherever that happens[3]. "*Indeed, the VAT Act does not even use New Zealand's languages that imposes tax on supplies "in" the country. "Enterprise" is an activity conducting continuously or regularly by a person in the Republic or partly in the Republic, and in the course of that activity goods or services are supplied to another person for a consideration*"[4]. Rebecca Millar idea is the term of enterprise equivalent to place of supply rules[5]. There are claims from Cecil Modern that " *[t]he absence of explicit place of supply rules in the VAT Act leads to many frustrations in trying to establish exactly where consumption of goods or services take place*"[6].

"*The VAT Act, whether internationally or inadvertently, imposes tax on a vendor's worldwide supplies and then narrows the scope of the tax without reliance on the place of supply rules familiar to practitioners in "territorial" countries, Like the New Zealand GST, the South Africa VAT includes two base-reducing measures that narrows the gap between a worldwide and*

[1] A supply by a non-resident may be treated as a supply in New Zealand and therefore taxable. New Zealand Value Added Tax Act of New 1991, Bulletin No. 89, sec. 8 § 3. It usually is treated as a supply outside New Zealand unless both parties agree that this rule will not apply to the supply Sec. 8 § 4. There is special rules for imported services, especially telecommunication services.

[2] A vendor is a person who is registered or is required to register. New Zealand Value-Added Tax Act 1991, Bulletin No. 89, sec.1 definition of vendor. Registration is required if a person conducts an enterprise and, in connection with that enterprise, makes taxable supplies exceeding a threshold amount.

[3] South Africa Value-Added Tax Act 1991, Bulletin No. 89, sec. 7 § 1. The tax also is imposed on imports of goods by anyone, and on imports of services only by certain persons. The VAT Act specifically provides that certain transactions are part of an enterprise and some are not part of an enterprise. While not "*place of supply*" rules, these rules affect the scope of the tax.

[4] Lang, Michael, Melz, Peter and Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 267-268.

[5] Millar, Rebecca, *Cross-border Services: A Survey of the Issues* in Krever & White (eds.) GST in Retrospect and Prospect, p. 335.

[6] Standing committee on finance, *Fifteen Years of Value Added Tax in South Africa (1991 to 2006)*, in Krever & White (eds.) GST in Retrospect and prospect, 2007, p. 543. He expressed hope that OECD will assist in developing place of supply rules governing the treatment of internationally traded telecommunications services.

territorial VAT. South Africa taxes international transactions under the destination principle, and it removes supplies from certain foreign operations conducted by South African vendors"[1].

a- Destination principle removes some supplies

South Africa, harmonious with international practice, they apply zero rates on the exports of goods and some exports services, by a vendor in relevance with the vendor's business[2]. Exports reduce the tax base, and the definition of exports is important[3].

b- Supplies linked to certain foreign activities not taxed

"*South Africa reduces the disparity between its modified worldwide VAT base and territorial VATs used elsewhere by providing that a vendor does not reported certain supplies connected with some of its foreign activities*"[4]. Any vendor registered for VAT in South Africa's is not required to report supplies which made in relation with his company to the scope that the supplies are made through the company's branch or main business. "*The activities of such a branch or main business are "deemed to be carried on by a person separate from the vendor*,"[5] but only in two cases if (1) the branch of the company or central business can be separately specified, and (2) the concern preserves a separate system of accounting for that branch or main business.[6]

3) Australia's mixed worldwide-territorial GST

"*Australia has a unique GST that is difficult to classify as either a modified worldwide or a modified territorial system. Australia borrowed concepts from New Zealand and several other systems. It is not surprising that the resulting systems is more territorial than the New Zealand and South Africa VATs, and more worldwide than the EU, Canada, and other territorial VATs.*

[1] Lang, Michael, Melz, Peter and Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 268.
[2] See Value-Added Tax Act No. 89 of 1991, sec. 11 § 1 (a).
[3] South Africa, Value Added Tax Act No. 89 of 1991, sec. 54. The sec. 11 rules on zero-rated exports may be viewed a rule serving the same purpose as place of supply rules, since some of them specify if goods are treated as exported.
[4] Lang, Michael, Melz, Peter and Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 268.
[5] Value-Added Tax Act No. 89 of 1991, provison (ii) of the definition of enterprise in sec.1.
[6] Value-Added Tax Act No. 89 of 1991, paragraph (ii) of the provison of the sec. 1 definition of enterprise.

As discussed above, a territorial VAT is imposed on a registered person's taxable supplies made in the taxing country. A worldwide VAT (subject to modification) is imposed on all supplies made by a person subject to the country's tax jurisdiction (e.g., a resident or a person engaged in an enterprise), without regard to the location of the supply. The Australian GST mixes the two"[1].

Australian applies GST on taxable supplies by using registered persons in the case of a company managed by the person but only in case the supplies are "*connected with Australia*"[2] to gain personal jurisdiction over a person on the ground of the person's running of an enterprise or company, the GST system adopted the concept of a permanent establishment for income tax purposes[3]. "*The GST includes rules that specify when goods and real property are treated as connected with Australia, and rules that specify how "anything else" (such as services) is treated as connected with Australia. Some of those rules link taxation to supplies through an enterprise (like a worldwide system). While others link taxation to "use or enjoyment" – the language common under place of supply rules. The Australian GST is not included in the following analysis as either a worldwide or a territorial system*"[4].

§3. Analysis of multi-country transactions under worldwide and territorial VAT systems

The pure territorial VAT's system is considered as broad-based taxes on the supply or consumption services and goods, in other side the worldwide VAT's system could be considered a tax on the business practice or activity, both systems worldwide and territorial are considered methods of defining the jurisdictional scope of a broad-based tax applied on the supply of goods and services.

"*As an exaggerated illustration, NetTel, a VAT-registered telecom company in Vatwick, provides domestic and international phone service for its mobile phone customers. Most live in Vatwick, but some live elsewhere (mainly in neighboring Gatopia) and pay their bills online.*

[1] Lang, Michael, Melz, Peter and Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 269.
[2] Millar, Rebecca, *Cross-border Services: A Survey of the Issues*, in Krever & White (eds.) GST in Retrospect and Prospect, p. 328. See, A New Tax System (Goods and Services Tax) Act 1999, ch. 2, pt. 2-2, sec. 9-5. "*Connected with Australia*" is defined by secs. 9-25 & 85-5; enterprise is defined by sec. 9-20; and required to be registered is defined by secs. 23-5, 57-20, 144-5, & 147-5.
[3] See, A New Tax System (Goods and Services Tax) Act 1999, Ch. 2, pt. 2-2, Sec. 9-25 (6).
[4] Lang, Michael, Melz, Peter and Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 269-270.

The bulk of the phones calls that it places originate in Vatwick. Some international calls that culminate in Vatwick and Gatopia originate outside Vatwick. NetTel is beginning to offer non-telecom services to its mobile customers from their mobile phones, and these services are charged to their phone accounts.

In one month, NetTel charged its customers 100,000 for calls placed to Gatopia from customers physically located in a few countries. Of that amount, NetTel charged 10,000 for calls that originated outside Vatwick.

NetTel paid G-Tel (a Vat-registered taxpayer in Gatopia) 6,000 for the use of G-Tel's network in Gatopia to complete these calls. NetTel also paid 8,000 to another firm (in a third country) to transmit calls from the NetTel to the G-Tel network. Independent of any international agreement that may limit a country's ability to tax international telephone calls, how should the jurisdiction to tax these calls allocated?"[1].

When a supply of goods or services happens with multiple countries, in VAT regimes like OECD, European Commission and the others. Heads to opinion the issue of allocating tax jurisdiction as one belongs to the territorial of supply following a territorial VAT approach or system. That approach of territorial worked well in a world controlled by international trade in goods, the place where goods were shipped from the exporting to the importing state. But nowadays the routing trade has complex. Also, the supply of services has developed exponentially.

The legal ways to specify if a supply is taxable are different under a worldwide and territorial VAT approaches. If NetTel and G-Tel are VAT-registered persons in a state that start applying worldwide tax base, what supplies must they report to the taxation authority? "*Unless their services are specifically removed from the Vatwick or Gatopia VAT base (exports or foreign operations), NetTel and G-Tel must report worldwide supplies. In essence, there is a presumption that all supplies are included in the VAT base. The worldwide base can be reduced and, as discussed above, New Zealand and South Africa have base reducing measures.*

If Vatwick and Gatopia have territorial VATs, NetTel and G-Tel must report, in the country where registered, only supplies that occur in the country under the place-of-supply rules. Some

[1] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 270.

of the supplies discussed above likely would be defined under destination-principle VATs as zero-rated exports"[1].

As mention in this section, the main difference between the two approaches, territorial approach and worldwide approach relates to the underlying presumption about which supplies are inside or outside the scope of tax. According to territorial system, its required to the registration person to reports just supplies happens in the taxing state. With the place or location relies on the place of supply rules. In case the supply of goods or services happens outside the taxing jurisdiction. It is outside the scope of tax. According to worldwide system its required to the registration person to reports all supplies regardless the place of supply, it doesn't matter if a supply occurs outside the taxing jurisdiction. It remains taxable except if there is legal barrier or other authority to remove it from the scope of the tax.

"*Under a "worldwide" system like the South Africa VAT, for example, the vendor generally must take significant and possibly costly action to remove supplies made outside the country (under traditional place-of-supply rules) from the scope of the VAT. The vendor must establish that:*

(a) The supplies are made through an operation abroad that qualifies as a "branch or main business"
(b) There is an independent accounting system maintained for that foreign branch oe main business.

Under a VAT that imposes tax on a registered person's worldwide supplies and applies at least a modified destination principle with respect to international transactions, the burden presumably is on that person to prove that supplies made outside the taxing jurisdiction are either zero-rated exports or are otherwise specified by law as beyond the scope of the tax. Otherwise, they are taxable. That presumption does not exist under a territorial VAT"[2].

[1] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 271.
[2] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 272.

§4. Need for VAT Treaties and International Taxation Organization

Such an income tax with an approach of worldwide tax base, supplies covered by a worldwide VAT approach are more probable to result in double taxation than supplies covered by a territorial VAT. Any double tax could be solved by adopting double tax treaties. However, there are no bilateral or multilateral treaties in regard worldwide or territorial VAT systems. There is a increasing need for bilateral or multilateral VAT treaties to address the distribution of the authority to tax transactions with dealings to more than one state in order to deny unfair competition. double tax, or the avoidance of tax.

In that regards the treaties to be effect must prepare and adopt by specialized organization, so if there are an international taxation organization in that field, that organization will do good job to improve and harmonization the VAT in the world by adopt the international treaties or standers. In addition, its notice that most of states in the world implement VAT and other types of tax such as excise tax and income tax. I believe if there are an international taxation organization that will assist to integrate and develop all taxation in one content.

TITLE TWO

The most important and influence issues and abuse of VAT

In the last title l described and explained the VAT concept with the most important features and the distorting the key features of VAT. In title two we will go further and deeply in the international relation in VAT field, how the international institution collects the efforts to develop VAT and assist the governments to harmonies the VAT legislation to avoid the bad practices and to reach successful implementation of VAT. However, I will describe that success of implementation of VAT cross the world and how the governments turned to implement VAT instate of other types of VAT, why that governments preface the VAT.

The success of VAT is important for states in general and for people precisely, if the VAT is failed the impact of that is very high on economic and social life of people, nobody want unsuccess for VAT. So, the government spend many efforts in that regard. However, the success of VAT is success of economic, the efficiency tax is target for all types of tax, in chapter one will describe the efforts of states and international organizations efforts to success the VAT. That efforts and assist are consider under the good impact and influence on success the VAT.

However, in other side, the bad impact and influence to abuse the VAT, the taxpayers as much they can to avoid the instructors of VAT, such as not paying the amount of tax, giving not real information's, delay on payments, collecting VAT without registration, provide not real contracts and invoices and not register, etc. That called tax evasion or fraud in general, but in legal way that violation are divided to two types, the first type is the tax evasion, which have heavier penalties than the other type of VAT law violation, the tax evasion happen when the taxpayers deliberately did the violation with wide impact such as the taxable person who deliberately fails pay the tax amount or administrative penalties, a person who collects amounts under the name of VAT from his clients without registration, taxable person who deliberately provides not correct information and incorrect documents to the Authority. The second type of violation is the administrative penalties, such as failed the person who conducting the business to keep the record and information related to tax, failed the person who conducting the business to submit the data and information to authority.[1]

[1] The Federal Law No. 7 of 2017 on Tax procedures, Official Gazette No. 616 issued on June 11th 2017.

We will see how the international institution try to decree the fraud on VAT. Also, the ECJ cases assets to adopt the bases of anti-fraud systems. Also, will describe the Carousel Fraud which the kind of international tax fraud arias after the eliminate the border between European estates. To focus on that I will analyze the domestic law and the ECJ cases.

In general, the title two will focuses on the influence on the VAT by develop the VAT by the international organization and the practice of states, and the second influence on VAT by the taxable person to avoid following the VAT law.

So, the title two will include two chapters. The first one is about the good impact of the VAT, and more precisely the most important issues promote developing VAT (Chapter one), while the second chapter is about the bad impact and especially the Abuse of VAT (Chapter two).

CHAPTER ONE

The most important issues promote developing VAT

It's obvious that within less than half a century, the new tax which is the Value Added Tax has become one of the most efficient and dominant revenue across the planet. From relatively inauspicious starting in the early twentieth century, the VAT has been adopted by more than 150 states and accounts for approximately 20% of worldwide tax income[1]. In other side the population matter, it is estimated that more than four billion of people or in other worlds 70 % of the world's population, live in states which are applied the VAT which means the 70 % of people in the world are subject to VAT laws[2].

If considered as a different of a sales tax or specifically, a turnover tax, the origins of the VAT; however, the VAT is generally perceived as a thoroughly modern financial innovation. According to variously to one of two sources of VAT, the first one is the suggestion from the German Businessman his name Dr Wilhelm von Siemens, his proposal was in 1918 to

[1] OECD, *Consumption Tax Trends 2012: VAT/GST and Excise Rates, Trends and Administration Issues*, OECD Publishing, Paris, 2012 ; Keen, Micheal, and Lockwood, Ben, *The Value Added Tax : Its Causes and Consequences*, Journal of Development Economics, 2010, p. 138.
[2] Ebrill, Liam, Keen, Michael, Bodin, Jean-Paul, and Summers, Victoria, *The Modern VAT*, International Monetary Fund, Washington D.C., 2001.

improvement to the German cascading turnover tax. The second suggestion is from the American economist T.S. Adams, the suggestion was writing in the period between 1910 and 1921, he proposed the invoice-credit method VAT as an alternative to another tax which is the business income tax.[1]

Regardless of the last attributions, the speed of the VAT's ascendancy is remarkable. Before the 1967 decision to adopt the VAT as a common type of sales tax in European Economic Community (EEC). Less than a several of states had experimented with the tax, and almost none in the type or form by which the VAT is common or known today.

In matter of income collection, the VAT ranks among the social security and income tax in 32 of the 33 members countries of the Organization of Economic Cooperation and Development (OECD) that have adopted and issued the laws of VATs. From 1965 to 2009, vat income as a share of total tax revenue from an unweighted average of 1.8 % to 19.2% across the OECD[2]. "*However, it is among developing and transitional economies that the growth of the VAT has been truly ascendant. Approximately three-quarters of countries with VAT are low-to middle-income countries, and two-thirds of the developed countries in the world have VATs*"[3].

Now there are small much less states in the world are not applied VAT comparing with the states are applied VAT. The most prominent exception in the developed states is the United States (US).

After short briefing regarding the beginning of VAT and after that the speared of VAT across the world, the success of VAT is a result of efforts from many relatives' parties such as OECD, IMF and states, in chapter one will focus on the efforts of international organization and the best practice. Which includes EU, Singapore, New Zealand and Australia. Also, the issue of VAT rates will be cover in that chapter. in addition, the second section of chapter will cover the issue of shifting to consumption taxes.

[1]Kathryn, James, *The Rise of the Value-Added Tax*, Cambridge University Press, p. 1.
[2] OECD, *Consumption Tax Trends 2012 : VAT/GST and Excise Rates, Trends and Administration Issues*, OECD Publishing, Paris, 2012, p. 65.
[3] Kathryn James, *The Rise of the Value-Added Tax*, Cambridge University Press, p. 3.

Section one. International organization and best practices

Before starting the section, I believe it's important to refer that the USA is the only state in OECD is not applying the VAT in federal level, if the VAT is so good, why doesn't the USA, the biggest economy, apply the VAT? The USA is the intellectual and physical home to much of the conventional approach. "*US experts pioneered the initial development of the VAT; US aid and development organizations have fostered the uptake of the VAT across the developing world, and the US is the home of the Washington consensus. Yet, despite this, the US has not adopted a VAT. This remains the case despite a growing belief among US tax policy experts that the introduction of a VAT is inevitable or, at least a possibility, in light of burgeoning federal government debt and growing spending commitments*"[1].

The question is the VAT is the most appropriate consumption tax for the federal level? The treasury did not recommend on VAT repair because of the context of the review. "*Context in this sense was revenue neutrality, meaning that because the introduction of a VAT would be only to reduce reliance on the income tax, the cost and complexity of introducing a new tax would not justify the benefits. Nevertheless, the Treasury comprehensively considered the design of a VAT for use at the federal level*"[2].

It seems like the USA leaders don't want to change or reform the taxation system of USA.

In this section will describe the rule of international organizations and the best practice of states to develop the VAT, of course the best practice states will not include the USA because they are not applying the VAT.

This part will include several points which are International References and VAT Best Practice.

§1. International References

Nowadays VAT is an important and increasingly widespread form of tax on consumption taxes, representing a prime source of yields for governments cross the world. The contribution of VAT in regard of total government yields is also growing and the rise of VAT has assisted to

[1] Kathryn James, *The Rise of the Value-Added Tax*, Cambridge University Press, 2015, p. 338.
[2] Kathryn James, *The Rise of the Value-Added Tax*, Cambridge University Press, 2015, p. 356.

increased assurance on the design of the VAT model and learning from and adopting of universal best practice.

The design of a VAT system must head the issues of policy to check the VAT system efficiency and how can achieve that efficacy and how the jurisdiction can stay or become competitive nowadays in global business environment.

"*Some principles have been defined by the OECD and the IMF that are commonly drawn upon and referred to in the good tax system design. The use of those agreed principles helped achieve harmonized solution and contribute to coherent VAT systems*"[1].

This section will focus on the best practice of implementing VAT designing from experience built up over the last years, the network of PricewaterhouseCoopers has been involved in the design of VAT systems over the world and has shared in several projects beside governments. The total of thirty-seven states out of 71 states that required external support with their VAT system and mechanism, or enforcement were assisted by PWC, even e.g. EU Members state, India, Lebanon, Singapore and New Zealand[2].

This part ill includes several issues which are OECD and IMF.

A) OECD

Nowadays all OECD Member States except United States have adopted the VAT as a consumption tax as it considered as a good policy gauge to raise revenue in a normal and transparent method.

Even though VAT systems and mechanism over the world are designed and enforced in different ways to address policy objectives, there are core merits that all ensure the neutrality of the VAT system. Those merits can be summarized as follows[3]. VAT is a kind of taxes levied in a all staged process, with giving right for taxpayers to deduct input tax on purchases and account for output tax on sales, it is finally paid by final consumers which called the mechanism of deduction, the VAT is collected on a broad base on supplies or deemed supplies of goods and services. In general, the business must not bear the burden of the tax while the mechanism

[1]Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 74.
[2] PricewaterhouseCoopers, *Shifting the balance – the evolution of indirect taxes*, 2007, p. 7.
[3] OECD, *International VAT/GST Guidelines*, OECD publishing, 2006.

is to allow for a business to refund or offset of the tax collected on intermediate transaction between businesses, VAT is collected on a destination based on standard according to which exports are zero rated and imports are taxed at the same rate and considered as the local production.

Generally, OECD states impose VAT at all stages of the production and destination chain and usually allow immediate deduction of VAT paid on purchases from by all except the final consumer[1]. In addition, this matter of collecting the tax in all stages is the main different between VAT and sales tax. That different and mechanism of deduction is the unique merit of VAT and the reason of spared of VAT across the world, also the success of VAT was the result of mechanism of deduction. As mention before the VAT is a result of develop other type of tax.

The OECD guide the states to implement the best rules and principle of VAT, that rules and principle are published throw the guidelines, which the OECD publish it from time to time. In November 2015 the OECD publish the International VAT/GST Guidelines.

That guidelines are not legally binding for the states, but its worth and assist to develop VAT cross the world, the last guidelines refer to Ottawa taxation framework conditions.

They were said in the context of taxation of electronic commerce, in general the accepted principle of tax policy which applicable on consumption tax that were welcomed by the ministers from across the globe in 1998[2]are applicable to VATs in both international and domestic trade. The Ottawa condition derived from the "*same principles that governments apply to taxation of conventional commerce*"[3], in general the principles of tax policy was accepted by the condition such as the neutrality of VAT which means the tax must seek to be neutral between forms of electronic commerce and between electronic forms of trade and conventional. Also, the principle of efficiency which means the administrative costs for following the requirements of taxation authorities and compliance costs for business must be reduced as far as possible. Also, the principle of simplicity which means and enhance the taxation rules must be simple to understand and to apply so that will assist the taxable person to following the rules, at the end of the day the true applying of VAT by taxable person is the key of success. Also, the principle of fairness and effectiveness which means the tax should be

[1] Except for exempt supplies and specifically non-deduction items, e.g. entertainment.
[2] The Ottawa taxation framework conditions were welcomed by ministers at the ministerial conference on electronic commerce held in Ottawa on 7-9 October 1998.
[3] OECD, *Taxation and Electronic Commerce – Implementing the Ottawa Taxation Framework Conditions: A Progress,* OECD publishing, Paris, 2001.

produce the correct amount of tax at the correct time. And the potential for tax evasion must be reduced while keeping counteracting measures consistent to risks engaged. Also, the principle of flexibility which means the systems of tax must be flexible to ensure that they keep speed with trade developments and technological.

So from what is mention above that principle which mention in one of the OECD guidelines are created to develop the systems of VAT to follow the development of trade and technological and that is an evidence of the role of OECD to develop the VAT, but my issue is that guidelines are not legally binding. So, my suggestion is to adopt the international taxation organization working on that and one of that organization role is to prepare the international VAT convention, also that convention must refer for the guidelines which will make that guidelines is legally binding and that will assist to develop the VAT and harmonize the system.

Table 1 shows the principles of OECD which are adopted to check the VAT system about:

"Criterion	**Description**	**Key results**
Simplicity and certainty	Taxation should be clear and simple to understand so that taxpayers can anticipate the tax consequences of a transaction, including knowing when, where and how the tax is to be accounted	Easy to implement and to apply Limited need for litigation High voluntary compliance
Efficiency	Compliance costs for taxpayers and administrative costs for the tax authorities should be minimized as far as possible	Low compliance costs High collections

Neutrality	Taxation should seek to be neutral and equitable between forms of commerce Business decisions should be motivated by economic, rather than tax considerations Taxpayers in similar situations carrying transactions should be subject to similar levels of taxation	Neutrality in competition between the States and between Industries Appropriate exemptions and limited special schemes
Effectiveness and fairness	Taxation should produce the right amount of tax at the right time The potential for tax evasion and avoidance should be minimized while keeping anti-avoidance and compliance measures proportionate to risks involved	Taxable amount not to exceed consideration actually paid Coherent and proportionate penalty structure imposed on non-compliant taxpayers Voluntary compliance programs
Flexibility	The systems for taxation should be flexible and dynamic to ensure that they keep pace with technological and commercial developments	On-line and off-line trade is treated similar. Electronic invoicing, electronic archiving, electronic filing, and payment allowed"[1].

[1] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation : Similarities and Differences*, IBFD, 2009, p. 76.

Source: Michael Lang and others, Value Added Tax and Direct Taxation Similarities and Differences, IBFD, page 76.

B) International Monetary Fund

According to the lessons earned from the technical assistance provided across some states in relation to VAT policy. The IMF[1] has issued some recommended best practices to be addressed in Value Added Tax design[2]:

The first recommendation is single rate rather than multiple rates. The second recommendation is high and single threshold specified in terms of turnover.

These recommendations is not mention in OECD guidelines which published in November 2015, in my opinion the high threshold is better for the beginning because the following of VAT laws after registration is costly and hard, the small business will suffer from the low threshold, on the other hand the small business will suffer from the high threshold because the small business will not register and will not use the deduction mechanism and the amount of input tax will be part of the cost, so in my opinion the high threshold is good for beginning just to set the new systems then the state must lower the threshold. The other recommendation is broad based with minimal exemptions to avoid distortions of input decisions and transparency of the tax system because the exemptions is leading for cut the chain of collection the tax. Also, they recommend that VAT must levied on the destinations principle whereby exports are zero rated and imports are taxed, the other recommendation is VAT liability determined under the method of invoice credit, the last recommendation is timely provision of input credits for capital purchases[3].

[1] International Monetary Fund.
[2] Ebrill, Keen, Bobbin and Summers, The Allure of the Value -Added Tax, Finance & Development, in IMF Quarterly Magazine edition, 2002, Volume39, Number 2.
[3] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation : Similarities and Differences*, IBFD, 2009, p. 77.

From an administrative view, the experience of the IMF[1] explains that VAT enforcement must also be an opportunity to introduce important improvements in overall tax administration, such as:

"– to introduce a function-based organization and integrated tax administration starting with the integration of VAT and income tax;

- *To ensure coordination is in place between VAT, income tax and Customs agencies with unique taxpayer identification numbers;*
- *To interduce modern procedures based on voluntary compliance;*
- *To implement self-assessment, under which taxpayers declare and pay taxes based on their own calculations, subject to the possibility of later audit by the tax authorities.*
- *To implement effective audit programs based on risk-based analysis selection methods; and*
- *To implement prompt refunds of excess input VAT to taxpayers*"[2].

At the end from what mention above the international organization are issuing the recommendation for states to improve the taxation system and to develop the VAT, my issue is that only recommendation not legally binding for the states, the question arise There are any benefit if that recommendation become a legally binding? From my view of points that international organization working with their mandate and the VAT is not a core business of them, it's obvious that international organization did good job in that regards but in my view of point that good recommendations is not legally binding. So, it must be legally binding to enhance the VAT in regard of international trade specially the issue of double taxation and non-taxation, and to avoid that all states must adopt same principle which is in my opinion the destination principle so the trade will be ease without obstacle. So, to be the legally binding all states must sign an international treaty of VAT, and one organization must adopt that treaty which is the international organization of taxation.

[1] Ebrill, Liam, Keen, Michael, Bodin, Jean-Paul, and Summers, Victoria, *The Modern VAT*, International Monetary Fund, Washington D.C., 2001.
[2] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 77.

§2. VAT Best Practice

It's the practice of states which consider a best state practice and implement VAT which can be the bench mark for the other states regardless states implement VAT or on process to implement the VAT. Its logic matter to compare and copy the system of VAT from other states to establish the VAT in other state, the smart who complete where another stop.

So, these subsections will include the experience of other states in regard of VAT in specific issue such us the standard rate, zero-rate, exemptions, real estate and administration.

This part will include several points which are the scope of VAT-Tax base, VAT Rate, Inter-jurisdictional issues, Key industry Sectors, VAT treatment of real estate and VAT administration.

A) Scope of VAT – Tax base

In general, the VAT system is broad based and collected on goods and services with less exemptions are the preferred model as it is related with simplicity of the tax system**.**

VAT covers most economic activities in a state would result in:

" - *Lower tax rates to meet revenue targets;*

- *A simplified system with a reduction in the compliance burden and hence higher voluntary compliance; and*
- *Fewer opportunities for tax avoidance and fraud*"[1].

Most VAT jurisdictions implement exemptions to address economic and social concerns. It must be noted, however, that the usage of exemptions provide complexity into the VAT system because it helps to break the chain of supply goods. Best practices suggest that its use must be restricted wherever possible.

The Exemptions potentially lead to:

[1] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 78.

- income implications: revenue decreases or increases relying at which stage the exemption is enforced.

- distorted input options: the exemption of specific items used as inputs into production means that VAT will be built in the cost of those specific items and would have an effect on the production options made by the business who may change away from those inputs.

- incentive to self-supply: due to the non-refundable input VAT. exempt businesses would want to avoidance tax by vertical integration, for example by supplying materials to themselves rather than purchasing them; and

- complication of partial exemption: the partially exempt businesses would require determining input VAT between exempt sales and taxable sales rising the complexity and cost of VAT compliance and influencing their competitiveness in a universal economy[1].

An overview of the VAT tax principles in some reference states is displayed in the table 2 below. The universal trend in newer VAT field has in general been to adopt the best practices standered and shift from the less efficient and more complex models used in Western Europe.

“

	Standard Rate **[with input VAT deductions]**	**Reduced Rate** **[with input VAT deduction]**	**Zero Rated** **[with input VAT deduction]**	**Exempt** **[no input VAT deduction]**
EU	Most goods and services supplied in the EU Member States or imported into the EU	Certain food: supply of water; pharmaceutical products; medical equipment’s; transport of passengers; books,	Conceptually the notion of zero rates goods and services are not described in the EU VAT Directives as the prescribed minimum VAT rate to be	Certain activities in the public interest as specified; exportations; certain transport services; certain international transport; services

[1] PricewaterCoopers, Study performed for the European Commission, Tender No TAXUD/2005/AO-006, *Study to Increase the Understanding of the Economic Effects of the VAT Exemption for the Financial and Insurance Services*, Tender No TAXUD/2005/AO-006, 2006 available from http://globalvatonline.pwc.com/uk/tls/govol2/gvol2.nsf/AllByCode/RJAI-6XLJXR?opendocument.

		newspapers, periodicals; admission to social and cultures events; radio and television services; writers, composers and artists; certain housing; agricultural products; sporting events; social institutions; cremations; street cleaning, waste treatment	adopted by the EU Member States would be the minimum standard rate of 15% and in event of reduced rate, at minimum rate of 5%. However, the application in practice of such a regime is based on the EU VAT directive principles including some granted derogations to the Member States.	by intermediaries, certain international trade transactions; tax free shops; insurance and reinsurance; certain credit and financial activities; special investment funds; postal stamps; certain gambling activities; land and building as specified; leasing or letting of immovable property.
Belgium	Most goods and services supplied in Belgium, Acquired in Belgium (intra-community acquisitions-supplies of goods dispatched from other EU Member States) or imported into Belgium (non-EU)	Live animals; vegetables; certain food; water supply; medicines and medical appliances; books and certain periodicals; works od art; collectors' works and antiques; vehicles for invalids; coffins; goods for social promotion; plant-protection products; margarine; tyres and tubes for agriculture use	Exports (outside EU); certain intra-EU supplies and new means of transport; international passenger transportation by air or sea; certain international transportation of goods; certain deliveries of sea-going ships and vessels; certain deliveries and importations for diplomatic and consular missions; deliveries of gold to central banks; newspapers; journals	Certain services of notaries, public attorneys, bailiffs, medical and paramedical professions; hospitals; social and sports establishments; educational, social and cultural;

		solid fuels; pay television; social housing.	and magazines of general interest (issued at least 48 times a year); recovered goods or products	
UK	Most goods and services supplied in the UK or imported into the UK (EU and non-EU)	Fuel and power; certain energy saving materials; certain heating equipment; sanitary products; children's car seats; residential renovations; contraceptives; welfare advice; mobility aids for elderly, smoking cessation products.	Exports; children's clothing; food; passenger transport; books; newspapers; sewerage and water; prescribed drugs; medicine certain aids for disabled; new housing; residential and certain charity buildings; repairs to listed buildings; certain services and goods for charities	Certain postal services; transport of sick and injured; hospital and medical care; human blood and organ; dental care; education; certain activities of non-profit organizations; sporting services; cultural services; insurance and reinsurance; leasing immovable property; financial services; land and buildings; certain fund-raising events; burial and cremations; investment gold; sports competitions; works of art; certain gambling activities.
Singapore	Most goods and services supplied in Singapore or imported into Singapore	NA	Goods that are exported; services that are classified as "international services"	Sale and lease of unfurnished residential property; financial services.

New Zealand	Most goods and services supplied in New Zealand or imported into New Zealand.	NA	Exports; goods located outside New Zealand when supplied by New Zealand residents; certain supplies of financial services; supply of going concern; supply of new fine metal to a dealer for the on-supply as an investment item; international transport services and certain ancillary services; services connected with land of moveable personal property outside New Zealand; services supplied by a New Zealand resident performed outside New Zealand; services supplied to a non-resident who is located outside New Zealand provided that are not connected with land or moveable personal property in New Zealand.	Certain supplies of financial services supply by a non-profit body of donated goods and services; rental of residential accommodation; supply of fine metal.
Australia	Most goods and services supplied in Australia or imported into Australia	NA	Exports; some food products; most medical and health services, drugs, medical aids and	Financial supplies; residential rent; residential premises; fund raising events

			appliances; most educations courses; child care; religious services; water sewerage, and drainage services; international transport.	conducted by charitable institutions

"[1].

B) VAT Rate

The determination of the adopted rate in the VAT design is a result of various considerations according social and economic factors. the most common factors are related to the effect of VAT introduction on inflation and to the measures to be taken to decrease the perceived regressive effect of the VAT and facilitate the tax burden on low-income earners.

A lot of jurisdictions implement a multiple rate structure, which on equity basis, may be eligible. the multiple rate structure allows addressing economic and social factors, in the other side, in general single rate structure does not allow regard for equity and revenue distribution factors.

Multiple rates structures may be a useful tool to apply tax on unessential goods or more heavily tax on luxurious goods and services, also implement lower tax on necessity goods and services for social reasons regarding avoid tax burden on the low-income groups.

From an efficiency view, it can be eligible to enforce higher rates on goods and services whose demand is not flexible in regard to increase more revenues however, it is agreed that there are several downsides to the multiple rate structure, like which the burden that the rate differentiation effect on both tax administration and taxpayers:

"– requires a classification of supplies of goods and/or services subject to the different rates, which can lead to divergences and potential disputes over which rate should be applied on some transactions; and

[1] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 79-83.

- *Complicates the taxpayers' requirements in terms of compliance cost*"[1].

These is the reason of standard advice in VAT system design has been for applying a single rate VAT, also applying the zero-rate for exports.[2]

It obvious that most states that have applied VAT over the past ten to fifteen years have select for a single rate. The most of single VAT rate jurisdictions have a less standard rate than those applied the multiple rates are continuing to use exemptions or the zero rate.

"*The level of the rate should be decided according to economic studies; taking into considerations the following parameters:*

- *Exempted sectors;*
- *Level of registration threshold;*
- *Potential abolition of some other taxes such as customs duties;*
- *Revenue expectations; and*
- *Effect of the VAT on the price level and economic growth*"[3].

There is other idea which is from the economic efficiency perspective, the moderate VAT rate with a broad consumption ground also several exemptions are preferred to a high rate with many exemptions.

Moreover, a moderate rate assists to reduce the need for multiple rates, which can be hard to fulfill and decrease the regressive and inflationary impact of the VAT.

Table No.3 give an overview of VAT rates in several states.

Table No.3 VAT rates.

"

	Standard Rate	Reduced Rates	Additional Notes

[1] Lang, Michael, Melz, Peter and Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 84.
[2] International Tax Dialogue, Background paper, *The value added tax – Experiences and Issues*, 2005, p. 14
[3] Lang, Michael, Melz, Peter and Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation : Similarities and Differences*, IBFD, 2009, p. 84-85.

EU	15% (min)	5 % (min)	Allowed up to 2 reduced rates
Belgium	21%	12%;6%	12% applies to special products 6% applies mainly to basic necessities
UK	15%*	5%	5% applies to demostic fuel and power and other specific products
Singapore	7%	NA	
New Zealand	12.5%	NA	
Australia	10%	NA	

***the UK standard rate has been decreased to 15% and this is applicable from 1/1/2008 until 31/12/2009. From 1/1/2010 it will revert to 17.5%.**

"[1].

C) Inter-jurisdictional issues

The majority of the rules enforced in OECD states are regarding the tax consumption inside the jurisdiction place where the consumption happens.

There is a common agreement that VAT must be charged on domestic consumption, also that it should be collected under the destination principle umbrella. Regarding that principle, the export must be under the mechanism of zero-rate and VAT must be charged at import in the state of destination.

The destination principle is easy applying for international trade in goods where export of goods is subject to VAT at a zero rate to promote the international competitiveness of exporters

[1] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 85.

however imported goods are subject to VAT at the point of import at the standard rate to balance the VAT treatment with that applicable to local supplies.

As a reference, the European Union provides in the preamble to the legislation in Art (7). "*The common system of the VAT should, even if rates and exemptions are not fully harmonized, result in neutrality in competition, such that within the territory of each Member State similar goods and services bear the same tax burden, whatever the length of the production and distribution chain*"[1].

Another issue of international trade which is the supply of services, the application of the destination principle for international trade in services vary over jurisdictions and can in some issues lead to another barrier on international trade which is double taxation or non-double taxation.[2]

The place of supply rules is designed and adopted to address those issues and confirm that VAT is not collected to distort economic activity.

"*As noted in most jurisdictions, the taxation at the place where the supplier is established leads in most cases to taxing the supply at the place of actual consumption. This is not true, though, for all kinds of services and more specifically for services that are tradable on distance and notably for e-commerce*"[3].

In this regard, the OECD has designed a collection of framework principles on the implementation of consumptions taxes to the international trade of services and intangibles: OECD VAT principles. The recommended program considered two main principles that must guide the VAT treatment of cross-border trade issue in services and intangibles[4]. In regard of consumption tax purposes universal traded services and intangibles must be taxed under the rule of the jurisdiction of consumption, and the burden of value added taxes must not be on taxable businesses except where directly provided for in legislation.

"*Reference should also be made to the VAT package adopted by the European Union introducing new place of supply rules for services from 1 January 2010. The key changes*

[1] European Union, Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax, Official Journal No. L 347 issued on December 11th 2006, Preambule § 7.
[2] OECD, *International VAT/GST guidelines*, OECD publishing, 2006.
[3] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 86.
[4] OECD, *International VAT/GST guidelines*, OECD publishing, 2006, Sec. I. B. 1.

introduced in the VAT package are in line with the OCED guidelines for cross-border supplies of services and for electronically provided services"[1].

The implementation of the destination principle is obviously not questioned and must always be the ground for VAT design in regard to take out trade distortions.

"*Nevertheless, some issues are raised with regards to its application:*

- *As analysed above, the increased cross-border trade in services and the difficulty in monitoring taxation of international flows of services has required new solutions;*
- *Given that VAT rates are not aligned in all jurisdictions; this induces consumers to arbitrage international price differences. This is a major issue in the light of the difficulty to control the cross-border movement of goods as part of global economic integration;*
- *The zero rate of exports and the VAT refund associated with it may create risks for fraud and criminal organizations may take advantage of the system in getting refund of unpaid VAT (carousel fraud, missing trader fraud). The commission has been trying to address this issue and recently adopted proposals for the amendment of the VAT Directive and the VAT Administrative Cooperation Regulation to enhance the collection and exchange of information on intra-Community transaction from 1 January 2010. The amendments aim at helping VAT authorities to detect carousel fraud more quickly and efficiently. They are part of a wide range of measures adopted or to be adopted by the Council to combat VAT fraud more effectively. It is important to note that the proposed actions that need to be taken to combat fraud should not generate disproportionate administrative burden for both businesses and authorities*"[2].

In this regard, there is a raising need for universal cooperation to address the issues increased and to find new efficient designs to apply the destination basis of taxation.

D) Key industry Sectors

Financial services are very difficult issue to tax under VAT. The reason of that is because VAT is an indirect tax and tax on consumption of goods and services, while returns on savings, or

[1] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 87.
[2] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 87.

interest are to recompense for the time value of money and therefore must theoretically not be included in the VAT basis.[1]

There is also a practical issue in taxing much financial services, which is the hardness of determining the value of the financial intermediation, prices for those services are usually taxed implicitly.

General charges that are linked, ancillary and recognized inseparable from the primary financial activities are in general treated in the same approach as the essential transaction for VAT purposes. In contrast, activities and services that are fee based to the business of the financial establishment like brokering services may be subject to VAT.

"*The traditional approach in most VAT jurisdictions is to exempt financial transactions. This treatment rises issues in relation to the complexity the exemption creates, for example:*

- *The difficulty in determine the scope of the exemption and the scoop of taxable transactions;*
- *The additional cost of doing business created by the non-deductible input VAT paid by financial and insurance services-providers; and*
- *The additional administrative burden in controlling the apportionment method used by most financial (and insurance) services-providers which provide taxed services and are thus 'mixed taxable entities' with a partial right to deduct input VAT*"[2].

It's obvious that these issues have led several financial services-providers to increasingly use outsourcing and collecting of activities in regard to improve competitiveness by decrees labor cost and administrative.

The treatment of VAT in regard of financial services continues to be a felid that calls for study in jurisdictions seeking to promote the efficiency and effectiveness of their VAT system, and to decrees the costs of financial services that are unable to reclaim VAT credits attributable to their activities if they are treated as doing kind of exempt supplies.

[1] Government of Hong Kong, Consultations Paper, Goods and Services Tax in Hong Kong, 2006.
[2] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 90.

The proposal of the commission has published to repair the implementations of the VAT system to the both sectors the financial services and the insurance sectors. This modernization has been pursued since 2006, when the Commission involved PricewaterhouseCoopers to study the economic impacts of the VAT system used to financial services and insurance.

Table 4. explain the treatment of VAT in financial and insurance services in some jurisdictions.

“

	EU	Belgium	UK	Singapore	New Zealand	Australia
Financial services (as prescribed)	Exempt with option granted to Member States to tax specific transa-ctions (Article 137 (1) (a) of EU Directive 2006/112/EC)	Exempt with option for taxpayers to tax handling of payments and receipts (Article 44 (3) 8 of the VAT Code)	Exempt	Exempt and businesses making such financial services receive a refund of input tax based on a fixed percentage	Exempt with B2B transactions zero rated to the extent that the recipient is registered for VAT and more than 75% of its total supplies are taxable	exempt
Intermediary Services (as prescribed)	Exempt with option granted to Member States to tax intermediary services connected to transactions subject to VAT (Article 137 (1) (a) of EU Directive 2006/112/EC)	Exempt with intermediary services connected to taxable handling payments and receipts subject to VAT (Article 44 (3) 8 of the VAT Code)	Exempt	Subject to normal VAT regime	Exempt with B2B transactions zero rated to the extent that the recipient is registered for VAT and more than 75% of its total supplies are taxable	Taxable

General Insurance	Exempt	Exempt	Exempt	Exempt	Taxable	Taxable
Life insurance	Exempt	Exempt	Exempt	Exempt	Exempt	Exempt

"[1]

Source: Michael Lang and others, Value Added Tax and Direct Taxation Similarities and Differences, IBFD, page92.

As indicated in previous table, there are differing VAT treatments for financial and intermediary services. Notwithstanding the traditional way to exempt a wide group of financial products even services, few states have introduced special rules allowing financial and insurance services-supplier to deduct a fixed part of their input taxes or exempt cost-sharing transactions in regard certain conditions.

"*An emerging international approach is to adopt a zero rating especially for business-to-business financial services (for example, New Zealand). Zero rating allows the financial institutions to recover VAT paid on inputs and remove the cascade from business transactions*"[2].

E) VAT treatment of real estate

The sector of real estate is a difficult and complex scope to address when designing or adopting a VAT system. Logically, the issues appear of real estate being regarded as a long-term asset for example is the residential property where the subject include a mix of current consumption also an investment component, which explain the future value of the continuous and future usage of the asset. If this investment component is subject to VAT, it would give increase to the issue of double taxation, unless VAT credits are provided.

The transactions of real estate for business or commercial purposes are often subject to VAT, allowing inputs tax to be credited.

[1] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 92.
[2] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 91.

Usually in most jurisdictions lands is not subject to VAT. There is an argument that lands must not be subject to VAT and the reason of that is the land is not consumed, and its traded as a form of investment. In some jurisdictions there are distinction between bare land and building land and subject the latter to the VAT to avoid any type of tax cascading.

The residential property is a complex field. The international practice has been to exempt the sale of residential property from VAT. The feature of the exemption is that it is simple. "*There are arguments, however, that since VAT is a tax on consumption, when immovable property is transferred from the construction cycle to the consumer cycle, it should be taxed. In this regard, a number of countries tax the sale of new residential property allowing the developer to recover VAT on the costs incurred during the construction. Subsequent sales of residential properties are traditionally exempt from VAT*"[1].

Usually the letting or leasing of residential properties is exempt, the reason of that is to avoid distorting the choice between property ownership and renting. with the exemption, the risk of a cascading impact is addressed by allowing the supplier to select to tax. The option to tax is applied in some jurisdictions in the issue where the lessee is a taxable person and not a final consumer.

It's important to mention that all construction activities are subject to VAT, also the complexity arises where the real property has mixed use for commercial and residential purposes. According to the circumstance of mixed use, the practical implementation is challenged with the requirement to distinction the usage of the property to determine the VAT implications and corresponding credits that would be allowed for business usage.

F) VAT Administration

In most jurisdiction the introduction of the VAT has simplified the elaboration and modernization of the total tax administration. The large administrative design matter raised with the VAT introduction connected to the kind of organization. there is a required to decide who is going to manage the VAT. The option is the tax authorities or the custom authorities or separate department.

[1] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 93.

According to the IMF knowledge and experience in several VAT jurisdictions, a large trend on the last 15 years has been the development of compliance strategies based on taxpayer segment way,[1] which is seen as an efficient matter in the view of achieving improvements in tax payer's compliance.

This is established on the reality that the payment of taxes is generally concentrated among a relatively a few of taxpayers.

Typically, many large taxpayers faced complex tax affairs, and the result of that is these taxpayers also present the risk to effective tax administration[2].

In many countries, tax administrations tend to organize their structures, systems and processes must individual groupings of taxpayers. this evolution reflects a move away from the "*type of tax*" and, in recent times, the *'function-based'* way to tax administration to a group of arrangements that targets to bring a *'whole of customer'* view to most sides of tax administration[3].

In stage of designing the administrative aspects of the VAT system, the most important issues are as follows: (a) self-assessment of the tax which means that taxpayers taxed VAT and pay the correct amount of tax to the VAT administration with a minimum interference of the VAT administration. (b) the objective of all VAT administrations and more revenue entities must be to improve the level of voluntary compliance and depend less on performed compliance[4], which results in minimum administration cost and maximum revenues. (c) self-assessment allows the tax officials to focus on the minority of "*at risk*" taxpayers who do not follow with their tax obligations instead of systematically evaluation each taxpayer's liability and reporting them to it[5].

To achieve the main objective there must be:

(a) efficient taxpayer's services which the focus must be serve the taxpayers to help them to compliant with the VAT rules. This really true in the first stages of the VAT application and in

[1] Ebrill, Liam, Keen, Michael, Bodin, Jean-Paul, and Summers, Victoria, *The Modern VAT*, International Monetary Fund, Washington D.C., 2001, p. 135.
[2] OECD, *Tax Administration in OECD Countries: Comparative Information Series*, 2004.
[3] OECD Information Note, *Programs to Reduce the Administrative Burden of Tax Regulations in Selected Countries*, 2008.
[4] OECD, *Report on Monitoring Taxpayers' Compliance: A Practical Guide Based on Revenue Body Experience*, 2008.
[5] International Tax Dialogue, Background paper, *the value added tax – Experience and Issues*, 2005, p. 23.

the place where no tax collected and its obvious that the knowledge and education is the main element of success.

(b) Simplify and clear VAT rules which mean the VAT law and regulations of VAT must be simplify and clear. It's important that VAT authorities or administration must issue guides to explain how the VAT legislations implement. This would help potential disputes and minimize the risk of implement high penalties and sanctions.

(c) Effective audit programs, audit is a tool to ensure credibility of the VAT authorities or administrative. The Taxpayers should know that there is a risk of being detected and punished in the case of violate the VAT legislations or evasion. an effective audit program is important to reduce the fraud and evasion on VAT. There are number of OECD states use random audit program to measure taxpayer's compliance[1]. The oriented audits are more selective and targeted methods for audit, e.g. limited to particular tax periods, to specific issues and collaboration with other tax audits, will assist to confirm a high level of effective and efficiency. In this regard, we refer to the OECD guidance on the issue of tax compliance[2], "*which describes the processes needed for reliable electronic records that would allow electronic filing and automated audits. this aims at simplifying tax compliance and tax audit requirements and should encourage voluntary compliance by businesses. A number of jurisdictions have started to intensify efforts to have an efficient strategy for voluntary compliance and some countries already introduced voluntary compliance programmers in partnership with the taxpayers (e.g. Australia, Netherlands, UK and Canada)*"[3].

(d) Timely refunds, the refunds of excess input VAT as a key merit on VAT mechanism and it must be managed in smooth way to avoid cash-flow matters to the taxpayers. This target can be reached and achieved by a VAT compliance strategy in basis on risk management principles. This matter is important to the success of VAT application, and it shows that fail to refund excess credits undermines the probity of the VAT and the integrity of the VAT Administration[4];

(e) Technology, the analysis of consumption tax cross the world reflects that technology and efficient tax systems that interest both tax authorities and taxpayers. The issues of payments

[1] OECD, *Report on Monitoring Taxpayers'Compliance: A Practical Guide Based on Revenue Body Experience*, 2008.
[2] OECD, *Guidance on tax compliance for business and accounting software*, 2005.
[3] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 98.
[4] International Tax Dialogue, Background paper, *the value added tax – Experience and Issues*, 2005, p. 27.

and electronic filing are major tool for minimizing the compliance burden on private sector. The OECD since 2004 has been examining data collection and electronic auditing with prospective creating a standard audit file that would assist businesses to provide data from within different ERP systems without required for extra expense and disruption that would be needed to follow tax authorities or administrative to meet tax authorities asked for electronic information[1]. We can add with best practice E-invoicing and e-archiving. The key is global adopting. The benefits of that will reach the tax authorities and taxpayers, and the need have been confirmed in a PricewaterhouseCoopers study on the directive of invoicing (2001/115/EC) now incorporated in the other directive which is VAT Directive (2006/112/EC)[2].

The objective of reducing costs for the taxpayer and the administrative is important. E-auditing can deliver both lower administrative costs and lower compliance costs[3].

"*In designing the VAT system and the VAT administration, there should always be a balance between the revenue concerns of government with the need to ensure businesses are not overwhelmed with the burden, costs and risks of tax collection.*

In their desire to optimize tax efficiency, governments need to continue their efforts to cooperate with taxpayers so as to ensure that VAT systems are a true win-win model for both VAT Authorities and businesses.

Governments also need to pursue dialogue amongst themselves to share experience and draw up standard approaches and methodologies that will help them achieve efficiency"[4].

[1] See OECD, *Guidance for the Standard Audit File- Tax*, 2005.

[2] For more details please refer to the following links : http://ec.europa.eu/taxation-_customs/taxation/vat/traders/ivoicing_rules/index_en.htm.

[3] PricewaterhouseCoopers, *Shifting the balance – the evolution of indirect taxes*, the OECD's view of the shift from direct to indirect taxation, Jeffrey Owens, 2007.

[4] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 99-100.

Section two. The balance has shifted to Consumption Taxes

The universal shift to use consumption taxes has been happening over the world for several years. It's difficult to eliminate the exact date or exact country, but it was notable, and we can say from the early 1990s that the balance has shifted.

This shift or move has taken place of the desire by many states to maximize universal economic competitiveness. Which has raised several governments to require to lower corporate income taxes; universal efforts to get butter air quality, carbon emissions and concerning environmental objectives have guide to popular support for the introduction of environmental taxes; and at a domestic level, cities desiring to minimize traffic crowding and elevate funds for additional transport infrastructure have introduced crowding charges. That principle in France faced a huge straggle in November and December 2018 because the lower and middle class refuse the environmental taxes on fuel. And the French government faced challenge to implement Paris agreement, The Paris Agreement is an agreement within the United Nations Framework Convention on Climate Change (UNFCCC), dealing with mitigations, greenhouse-gas-emissions, the implementation will start in 2020. The long-term goal of Paris Agreement's is to keep the maximize in global average temperature to well below 2°C above pre-industrial levels; and to limit the raise to 1.5°C, since this would substantially minimize the effects of climate change[1]. In my point of view, the environment taxes must implement on new cars which depends on fuel to encourage people to buy and use electronic cars, that will increase the number of electronic cars and minimize the numbers of fuels cars day after day. In my opinion this is perfect approach to implement the environment taxes.

The most important shift in the tax mix has been the maximize spread of value added tax / goods and services tax cross the world, and its growing significant as a source of tax income. "*In revenue terms, VAT is now the single most important source of tax revenue in some countries, and one of the most important sources in many more*."[2] The trend is obviously visible in a number of areas: the maximize in tax income; geography; and in terms of financial dependence. All available proof points to the trend keep going in the future.

[1] Paris environments, *United Nations Framework Convention on Climate Change (UNFCCC*), December 12th 2015.
[2] Bird, Richard and Gendron, Pierre-Pascal, *VAT Revisited – A New Look at the Value Added Tax in Developing and Transitional Countries*, 2005, p. 13.

The recant survey provide it by PricewaterhouseCoopers which did by tax managers within multinational corporations,[1] more than three-quarters of the respondents indicated their indirect tax burden had raised over the last three years, also the two-thirds of the respondents expected this to maximize over the next two years. Engaging to the indirect tax "*burden*" are changes to legislation, cross-border indirect tax management matters and finally, the introduction of new forms of indirect taxation due to financial, economic, and political elements at a local, regional and global level. This section seeks to explain the ongoing shift, its context and the reasons governments and commerce have driven and adopted the shift to VAT as the most common form taxation, future directions for VAT and best practice lessons across the world.

This part will include several issues which are first principle and Switch to consumption taxes.

§1. First Principles

The move or shifting to taxes on consumptions is the novel of a steady increase in the significance of VAT for national budgets across the world, combined with quick increases in one side the revenue and in other side the number of countries which have enforced VAT of several sort.

The increase of VAT has taken area amongst the changing sands of taxation commonly, with type of taxes on personal income, corporate income each playing their part in meeting the financial needs of most states at a particular stage in time.

Each form of taxation has much variants in each state, and more broadly its own aim, income and economic impacts, and area within the national financial agenda. however, universal commerce reform and a general wish to increase universal competitiveness have guide to decrease commerce barriers in the type of customs, excise and corporate tax rates.

Indeed, income corporate taxation causes major capital distortions and minimize competitiveness to a greater range than VAT and ensuring a succeed move or shift from the former to the latter underlies political purpose in many states, if not always action exercise.

[1] PricewaterhouseCoopers, *Shifting the balance from direct to indirect taxes- How is it managed by multinational Companies?* 2008, available from https://globalvatonline.pwc.com.

Beside the transfer in commerce and income corporate taxation, a universal trend away from labor taxation is being driven by the wish to re-incentivize, the private sector to take on new staff, and decrease unemployment overall.

Inside the European Union, public argumentation has been directed toward cancel or at least minimizing the 'tax wedge' of high labor taxes and social security contributions through a rising dependence on VAT incomes - seen as rebalancing Europe to be more competitive internationally.

In case of global economic downturn, drop corporate profits, rising the numbers of unemployment, increasing personal and corporate bankruptcies and rationally pessimistic future economic outlook over the short term to medium term. "*A gaze into the crystal ball of future taxation indicates that while both consumption and consumption tax revenue will fall, they will fall less dramatically than revenues from other forms of taxation, reinforcing the shift to consumption taxes in years to come*"[1].

§2. Switch to consumption taxes

This subtitle is the most important part in the subject which is the heart of section, the issue of this part is the trend of states to switch from the indirect taxes to direct taxes or consumption tax such as VAT, the evident of that the numbers which mention below with the types of indirect taxes and nation which did the switch.

This part will include several issues which are the rise of VAT- shifting to VAT in numbers, the shift in nation and Need economic policy and politics – The Shift in context.

A) The rise of VAT - the shifting to VAT in numbers

The teeming mass of new and changing the indirect taxes principles underlies the wide move from direct taxes to indirect taxes, also, in specific, to consumption taxes such as VAT. "*The continuing reduction in rates of corporate income tax suggests a shift from taxes on profit to taxes on consumption around the world and Value Added Tax (VAT) is the most common form of consumption tax that economies are implementing […] VAT is now the most dominant form*

[1] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009.

of consumption tax around the world – in some form or other it is used in 79 percent of economies"[1].

Table 1 explain the shift in the percentage of total tax income raised by differ types of taxation over each ten-year period since 1975. The total direct taxation has stayed totally fixed, with a drop share of total tax incomes from personal income tax being hugely offset by a raise in the share of corporate taxes.

Table 1: shift in tax structures in the OECD states[2].

"

	1975-85	**1985-95**	**1995-2006**	**Total**
Personal income tax	(0.07)	(2.69)	(2.26)	(5.01)
Corporate income tax	0.37	0.08	2.70	3.15
Social security contributions	(0.75)	2.58	0.59	2.42
Payroll taxes	(0.12)	(0.24)	(0.03)	(0.40)
Property taxes	(1.00)	0.16	0.20	(0.64)
General consumption taxes	1.93	1.28	1.21	4.41
Specific consumption taxes	(1.55)	(3.18)	(2.16)	(6.89)
Other	1.19	2.02	(0.24)	2.97

"[3]

[1] PricewaterhouseCoopers & World Bank – International Finance Corporation, *Paying Taxes 2009, The Global Pictur*, 2008, p.34.
[2] Change in percentage share of major tax categories in total tax revenue, adopted from Table C. Tax structures in the OECD-area OECD, Revenue Statistics 1965-2007-2008 Editio, 2008, p. 22.
[3] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 61.

Source: Michael Lang and others, Value Added Tax and Direct Taxation Similarities and Differences, IBFD, page61.

"*The global free trade movement and World Trade Organization (and previously the General Agreement on Tariffs and Trade) initiatives have led to dramatic fall in specific consumption taxes. in particular, customs duties and international trade-related taxes. However, there has been a noticeable shift towards VAT and sales taxes (general consumption taxes), increasing steadily over time, as shown in Table1. Together these consumption taxes now represent just over 30 percent of total tax revenues in OECD countries*"[1].

B) The shift in nation

The shift is also obviously present in the spread of VAT or equivalent across the global. Table 2 clarify the adoption of VAT by region over various decades. As a very public conductor, the 144 states using VAT system explain in Table 2 perform over 75% of all states across the world.[2] "*No previous fiscal innovation has been adopted in such a wide variety of countries so rapidly*".[3]

"*The adoption of VAT as a requirement for entry to the European Union [...] promoted the expansion of the VAT [...]"*[4]. In EU and neighboring states. This enhanced two areas waves states moving or shifting to VAT as shown in Table 2. The original members states implementing VAT in the 1960s to 1970s, also more recent EU members States/ applicants in Central and Eastern Europe enforcing VAT in the 1990s.

Table 2 Spread of the VAT[5]

Sub-Saharah Africa	Asia & pacific	EU 15 + Norway & Switzerland	Central Europe & FSU	MENA Region	Americas

[1] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 62.
[2] Calculated using the UN Membership of 192 as a proxy for countries of the world, from http://www.un.org/members/growth.shtml, [accessed on 6 January 2009].
[3] Bird, Richard, *Value-Added Taxes in Developing and transitional Countries: Lessons and Questions*, Cambridge University Press, 2005, p. 4
[4] IMF, OECD and World Bank, *The Value Added Tax – Experience and Issues*, 2005, p .8
[5] Updated to date by the authors from IMF, OECD and World Bank, The Value Added Tax- Experience and Issues, 2005, p. 9.

States in region	43	24	17	28	21	26
1996-present	19	8	0	6	3	3
1986-95	13	9	5	21	5	6
1976-85	1	2		0	2	6
1966-75	0	0	11	0	0	10
Pre 1965	1	0	1	0	0	0
Total	34	19	17	27	10	25

" *[T]he 1990s witnessed a particularly spectacular increase in the take-up of the VAT, with the adoption by almost all of the transition economies […], by a large number of developing countries […] and by the small island economies, almost none of which had a VAT a decade ago*."[1]"*Indeed, following Australia's introduction of VAT in 2000, the only large economy /OECD country without a VAT is the US, which maintains state and local sales taxes at present, however even then, there are serious efforts to assess the implementation of VAT in the context of border tax reform*"[2].

Moreover, the measure of the success of VAT is explain it by the reality that only five states that have introduced a VAT have ever removed it, and of these countries, four states finally reintroduced a VAT: Ghana, Malta, Belize and Vietnam[3]. Grenada is in the way and processes of reintroducing a VAT[4].

More of the increase of VAT outside the OECD can be attributed to the World Bank and International Monetary Fund (IMF), both of whom have been strong supports of VAT

[1] IMF, OECD and World Bank, *The Value Added Tax – Experience and Issues*, 2005, p. 8 &10.
[2] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 64.
[3] IMF, OECD and World Bank, *The Value Added Tax – Experience and Issues*, 2005, p. 10.
[4] Government of Grenada, Proposal for value added tax 2007; http://www.gov.gd/downloads/VAT-white-paper.pdf

introduction in the developing states as a main component of sustainable financial and trade repair, as well as international advisor more generally in regard with the IMF[1].

Bird and Gendron advice assistance with tax repair which has played a huge role in the take-up and design of VAT, though *"[e]ven more important, during both the early phase of VAT adoption in Latin America and the later spread of VAT around the world, has been the role of the Fiscal Affairs Department (FAD) of the International Monetary Fund (IMF), the leading "change agent" in tax policy in much of the world in recent decades*"[2].

"*The shift is likely to continue, with the Gulf Cooperation Council nations, following IMF advice, having reached broad agreement to introduce a VAT in each country by 2012. The remaining "blank spots" in the Middle East, Asia and Africa are likely to adopt VAT in the near future: in response to international trade reform measures; and as a natural conclusion to the ongoing modification and increasing sophistication of their excise, general sales and related tax regimes, which will eventually evolve to 'fully fledged' VAT systems*"[3].

C) Need economic policy and politics – The Shift in context

This move and trend to consumption taxes shown above has taken place in the context of a several number of tax developments and for several economic and political reasons.

The wish to increase revenue efficiently, and in several issues, change and happening of consumption taxes. within this wide context, there is also a shift in the use and makeup of indirect taxes.

This part of the section will include two points which are the changing indirect taxes mix and macro economics impact.

1) The changing indirect taxes mix

The financial balancing act faced by governments is in side caused by the pursuit of the maximum efficient form of taxation to meet income requirements, intersecting with the way of

[1] Bird, Raichard, *Value-Added Taxes in Developing and Transitional Countries: Lessons and Questions*, Cambridge University Press, 2005, p. 3.
[2] Bird, Richard and Gendron, Pierre-Pascal, *VAT Revisited – A New Look at the Value Added Tax in Developing and Transitional Countries*, 2005, p. 12.
[3] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 64.

political minimum resistance. these two, objectives have caused changes to the direct and indirect tax income mix, also a change within the indirect tax mix.

Within indirect taxes, international trade remedy has been accompanied by a significant decrease in specific consumption taxes on trade, income requirements have not fallen, no immediate dynamic impact has increased government incomes, and to recover for the loss of income, governments have moved to a more neutral VAT which enforced equally to imported and domestic produced goods. This variation in the indirect tax mix has, as much as any other measure, led to the increase and increase of VAT[1].

In general, the convention to take action on environmental concerns which including for example air pollution and recently the issue of climate change, through initiatives like the Kyoto protocol, which has led to a increase in the usage of environmental taxes.[2] The European Union has create initiatives on energy and environmental taxation, one of them efforts to harmonize taxation on energy through the Energy Taxation Directive[3].

"*Compliance with existing international agreements will almost certainly lead to an increase in revenues from environmental taxes and other forms of indirect taxation, where reforms leading to increased taxation are motivated by environmental concerns (e.g. fuel excise)"*[4].

2) Macro-economic impacts

"*All OECD countries rely on a mix of consumption, property, personal income, and corporate income tax. The evidence [...] indicate[s] that setting the right mix is important, because the distortionary effects of collecting revenue from different source can be very different and there could be efficiency gains from replacing part of the revenues from income taxes with revenues from less distortionary taxes such as consumption or property taxes[...]*"[5].

"*Macroeconomic analysis of the benefits and impairments of tax reform are useful in terms of analysis of economic tax theory; however, in practice it is often difficult to obtain precise*

Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 68.
[2] PricewaterhouseCoopers, *The Global Picture 2008*, Paying Taxes 2009, p. 61 and canvassed more generally in PricewaterhouseCoopers, *Saving the planet – can tax and regulation help*, 2007.
[3] European Union, Council Directive 2003/96/EC of 27 October 2003 restructuring the Community framework for the taxation of energy products and electricity, Official Journal, L 283 issued on October 31st 2003.
[4] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 68.
[5] Johansson Bsa, Heady Christopher, Arnold Jens, Brys Bert and Vartia Laura, *Taxation and Economic Growth*, OECD Economics Department Working Papers No. 620, 2008, p. 42.

conclusions without extensive caveats or severely restricting inputs. In large part this is due to wide variety of tax structures, rules, exemptions and actual practices adopted in each country, on top of more general issues of causation and relevance when it comes to border economic analysis"[1].

Table 3 shown the changing tax rates in number of states. several tax rates for different taxes are one of the much elements that differentiate one "*tax structure*" from another, making general comparisons between various taxes harder.

Table 3 Tax Rates[2].

Country	VAT/GST	Corporate Income Tax	Individual Income Tax
Austria	10%	30%	23.4%
France	19.6%-5.5%-2.1%	33.33%	27.8%
U. K	15%-5%	30%	27%
Poland	22%-7%	19%	31.1%

Regardless the difficulties faced, an analysis of the macroeconomic effects of the move from labor taxes, and the move from corporate and personal income taxes supply several ideas into the realized benefits of the move overall, revealing much of the impetus behind the changes.

This part of section will include three main points which are a shift from labor taxes, A shift to personal income taxes from corporate and Europe, the world and future.

[1] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 69.

[2] Compiled from OECD data tables at http://www.oecd.org/dataoecd/44/1/1942490.xls;http://www.oecd.org/dataoecd/26/56/33717459.xls;http://www.oecd.org/dataoecd/12/13/34674429.xls;http://www.oecd.org/dataoecd/43/63/1942474.xls.

a- A shift from labor taxes

The idea of moving from social security and labor taxes towards taxes on consumption for example VATs is probably to have a positive effect on employment, tax structure efficiency and economic growth.

The best practice is VAT broadens the tax base contrast to labor taxation, rising the base of taxation from the working population to cover all consumers, from the domestic production to include external or foreign trade, also from labor to capital inputs. However, this modification and the nature of VAT itself may be regressive, the broader tax base must develop the economic efficiency of taxation when such a movement happens. In addition, the taxation on labor distort the market for labor, effecting both labor supply and demand.

While the effect of move from labor taxes to value added tax is very dependent on the type of both taxes, the nature of repair and external elements for example the function of labor market institutions[1]. In general, there is moderate positive impact of the move in terms of employment and output effects[2].

The outcome of the European Commission modelling explain that " *if the recipients of transfers and benefits are not compensated for the price increases that follow the increase in VAT, the GDP and employment gains are substantial : every cut by 1 percent point in the tax rate on labour, offset by a corresponding increase in consumption taxes (e.g. VAT) would yield an increase of 0.54% in employment in the long run and of 0.30% in GDP*"[3]. The positive growth and employment gains are preserved even where transfer beneficiary including pensioners and the section of unemployed are compensated for the raise in the Consumer Price Index[4].

b- A shift to personal income taxes from corporate

As explained in Table 1, the most notable moves in taxation has been the decreasing in personal income taxes in the OECD states over time. "*In many OECD countries a change towards flatter personal income tax schedules has occurred, with one of the most pronounced changes in*

[1] Johansson Asa, Heady Christopher, Arnold Jens, Brys Bert and Vartia Laura, *Taxation and Economic Growth*, OECD Economics Department Working Papers No. 620, 2008, p. 8.
[2] Roeger, Shifting the burden of taxation from labour taxes to indirect taxes, www.cepii.fr/anglaisgraph/communications/pdf/2006/190106/inveld.ppt, [accessed on December 27th 2008].
[3] European Commission (DG TAXUD), *Macroeconomic effects of a shift a shift from direct to indirect taxation: a simulation for 15 EU Member States*, 2006, p. 6.
[4] Ibid.

personal income taxation being the reduction in the top statutory income tax rates […]. The reduction in the personal income tax rates has been accompanied by cuts in the corporate income tax rate, partly financed by base broadening in many countries"[1].

The value added tax led the growth of economic by encourages savings and capital collection both, unlike taxes on income. Indeed, impact taxes on corporate profits effect the effective cost of capital rising the cost of local production comparing to imports, but in case of VAT, the VAT is levied at import and is neutral to imports against local production. This difference causes commerce distortions and provides an argument for a move to consumption taxes at the expenses of corporate taxation.

In case of labour taxes, the movement or shift to VAT from personal income tax must increase work incentives, "*particularly where the incidence of VAT falls across the entire consumer population without full compensation to transfer payment recipients*"[2]. Johanson et al. (2008) reviewed and studied the economic effect on GDP or several taxes within the context of possible repair to the overall structure, and they conclude: "*Taxing consumption and property appears to have significantly less adverse effects on GDP than taxing income. Corporate income taxes appear to have a particularly negative impact on GDP per capita […] Reducing the corporate tax rate also appears to be particularly beneficial for [total factor productivity] TFP growth of the most dynamic and innovative firms. Thus, it seems that corporate taxation affects performance particularly in industries and firms that are likely to add to growth*"[3].

c- Europe, the world and future

Generally, the first organized of VAT was in Germany and the first implementation was in France[4]. As expected, that VAT must play a significant role in both the national incomes of European states also supranational politics of the European Union.

"*As the 'cradle' of VAT, Europe, through the European Union, has VAT at its cornerstone: as a requirement for membership; to contribute to a non-distortive trade policy; and as a policy*

[1] Johansson Asa, Heady Christopher, Arnold Jens, Brys Bert and Vartia Laura, *Taxation and Economic Growth*, OECD Economics Department Working Papers No. 620, 2008, p. 7.
[2] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 71.
[3] Johansson Asa, Heady Christopher, Arnold Jens, Brys Bert and Vartia Laura, *Taxation and Economic Growth*, OECD Economics Department Working Papers No. 620, 2008, p. 42 et 43.
[4] Ebrill, Liam, Keen, Michael, Bodin, Jean-Paul, and Summers, Victoria, *The Modern VAT*, International Monetary Fund, Washington D.C., 2001, p. 4.

solution driving future European development"[1]. In recent, a move to VAT has been suggested as a solution to meet the Lisbon objective of increasing the average labour participation rate. Both Verhofstadt's European Pentathlon[2]. Also, Nicolas Srkozy's Presidential campaign proposals for TVA sociale[3]. Represent important proposals to move to consumption taxes from labour taxes. In particular I mean VAT. "*While the former has not been strongly pursued and the latter was soon downplayed for political reasons, it is likely that such reforms will arise in the future. Indeed, in early 2007, Germany rebalanced its tax system in a revenue-neutral way, increasing its VAT rate from 16% to 19% while reducing social security contributions and direct taxation*"[4].

The states with "*best practice*" VAT systems are reforming and integration, then adopting the best practices from each other states to create efficiency, the threats of defeat emerging for example missing trader fraud, and finally develop the VAT systems and its interaction with other taxation.

These reforms contain harmonization, adoption of anti-avoidance elements for example the reverse charge mechanism, rising use of technology in VAT management, compliance and auditing. In addition, lessons learned are going towards addressing VAT challenges, in particular in the fields of e-commerce, international double or non-taxation and financial services.

In future, it's expected that more countries will adopt VAT, in particular in Middle East, also those states will adopt with less sophisticated VAT systems will likely draw on best practice to develop their VAT models which is part of the evaluation process that describe above.

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[1] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 73.
[2] Verhofstadt's, Guy, A *European 'Pentathlon', A Community growth strategy for the European economy*, 2005.
[3] In English, a "*social VAT'*. "We must not go on overtaxing labour. If the social VAT […] is good for employment[…] we will introduce the social VAT." Translated from campaign speech in French by Nicolas Sarkozy on 20th June 2007.
[4] Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 73.

CHAPTER TWO

The Abuse of VAT

Title two of part one is focused on the most important and influence issues and abuse of law, either good impact which is development of value added tax by practice of states or by the international organization guidelines, or in other hand the bad impact or influence by abuse of law or the fraud of applying VAT.

So, in chapter two the abuse of law and the fraud will be considerate, but the question is what is the fraud?

In general, the concept of fraud is very wide and its rare practice to codify the fraud in law. Because is there are no common concept and there is no specific describe of fraud, there are several types of fraud, which are financial fraud, political fraud, ethics fraud, economic fraud and the list is too long.

The important kind of fraud for VAT is the financial fraud, which is the legal concept of it is financial and administrative irregularities. In this chapter will discuss the fraud in regard of VAT. And the scenarios of fraud also will explain how the fraud happens.

At the same aspect the United Nations Convention against Corruption which was the effective date for it is on 14 of December 2005 not mention the definition of fraud or corruption. That convention the only legally binding universal anti-corruption instrument. "*The Convention covers five main areas: preventive measures, criminalization and law enforcement, international cooperation, asset recovery, and technical assistance and information exchange. The Convention covers many different forms of corruption, such as bribery, trading in influence, abuse of functions, and various acts of corruption in the private sector. A highlight of the Convention is the inclusion of a specific chapter on asset recovery, aimed at returning assets to their rightful owners, including countries from which they had been taken illicitly. The vast majority of United Nations Member States are parties to the Convention*"[1].

In section one of the chapter will focus on the abuse of the law, law means the value added tax law and another related law in general. The abuse of the law as a concept will focus on it and

[1] https://www.unodc.org/unodc/en/treaties/CAC/index.html [consulted in 5th November 2019].

the judicial development of a principle of abuse of tax law. Also, will explain cases such as Halifax, weald leasing, ocean finance, Paul Newey, 3M Italian and Greek case. In addition, there are some subjects which will supports my ideas in that regards such as the aggressive tax planning, Double Taxation to Double Non-Taxation and GAAR.

In section two will explain the fraud on the value added tax, as I mention above there are no concept of fraud even from the international convention, in section two will give an example of fraud and the scenarios of fraud. Will use cases of fraud and how the European Court of Justice deal with that and what does value add from the ECJ, the ECJ adopt several principles in that matter.

The Carousel Fraud is one of the common frauds between the European States, in section two will discuss that kind of fraud with the mechanism of it and how the ECJ deal with that fraud with the principles of the court. Also, will discuss the attempts of states to minimize the tax evasion in general.

It's important to focus on the EU efforts to elimination the impact of taxation fraud and fill the gap which raised because of fraud. In my opinion it's impossible to eliminate the fraud, but probably reduce the fraud by making fraud hard to happens and easy to notice it.

Section one. The Concept of Abuse of Law in Regards of value added tax

The legislator's tendency was increasing to focus on the phenomenon of international tax evasion and avoidance. That phenomenon happens because the practice of part from taxpayers try to reduce their payments of tax. From other side the governments have been forced to return missing tax revenue by fight against evasion. The effect of that is avert increasing tax burden and upsetting national budgetary policies. In addition, the tax evasion, tax avoidance and fraud are part of Abuse of Tax Law. The serious question is what is the Abuse of Taxation Law?

It is necessary to consider the background against which some of the relevant initiatives disclosed. There was not much of official policies on issue of tax avoidance. In reality, most of the case-law from the Court of Justice of the European Union appeared to be devoted to the

unravelling of domestic anti-abuse rules on the basis of incompatibility with the various fundamental freedoms under EU Law[1].

At the beginning will considers the judicial response to the concept of tax abuse, the main issue by the Court of Justice of the European Union. Then will consider the action plan to strengthen the fight against tax evasion and tax fraud.

This part od section will include several important issues which are the judicial development of a principle of abuse of tax law and what is GAAR?

§1. The judicial development of a principle of abuse of tax law

In the current status of the court jurisprudence, it's hard to conclude that the concept or definition of tax abuse has been de-nationalized and that there is now an EU principle of tax abuse[2] not only the concept inconsistent, with the Court of Justice of the European Union using the terms '*abuse'*, '*avoidance'*, '*evasion'* and '*fraud'* in the tax case law. These terms may have different meanings is various jurisdictions.

"*Overall, recent case law suggests that EU law does not provide a general principle of abuse of rights in the field of direct taxation. Whilst a principle of abuse of rights may be deducted from some cases in the area of VAT it does not apply in a non-harmonized area*"[3].

In one of the most important cases, which is the case of *Halifax*[4], the Court of Justice of the European Union showed signals of approving a free-standing principle of abuse of law in the VAT context[5]. This case was deal with complex and aggressive VAT planning scheme proposed to determine the place of supply the services outside the European Union scope. The authority of tax in United Kingdom resists this scheme. At the end, a reference was made to the Court of Justice of the European Union to interpret the principles and rules of the Sixth VAT Directive

[1] Panayi, Christiana HJI, *Advanced Issues in International and European Tax Law*, Hart publishing, 2018, p. 162.
[2] See chapter 8 in Panayi, christiana HJI, *European Union Corporate Tax Law*, Cambridge University Press, 2013. Contrast with the position of Piantavigna, Paolo, *Tax Abuse in European Union Law: A Theory,* Tax Review No. 134, 2011; Jimenez, *Adolfo Martin, Towards a Homogeneus Theory of Abuse in EU (Direct) Tax Law,* Bulletin for International Taxation No.270, 2012.
[3] Panayi, Christiana HJI, *Advanced Issues in International and European Tax Law*, Hart publishing, 2018, p. 163.
[4] ECJ, Case C-255/02 *Halifax* plc, Leeds Permanent Development Services Ltd and County Wide Property Investments Ltd v Commissioners of Customs & Excise [2006] ECR I-1609.
[5] In the non-tax context, the origins of such a principle are traced back to earlier cases and mainly ECJ, Case C-110/99 Emsland-Starke GmbH v Hauptzollamt Hamburg-Jonas [2000] ECR I-1569. See Rita de la Feria, *Prohibition of Abuse of (community) Law, The Creation of a New General Principle of EC law through Tax, C*ommon Market Law Review No. 395, 2008.

in regard of the place of supply of services. The most critical issue is the Court of Justice of the European Union was asked to allocate the principle of abuse of rights disallowing such schemes. The Court of Justice of the European Union decided that the transaction encompassed the issue of supplies of services for the objectives of the VAT legislation and therefore were subject to it[1].

Also, the application of community legislation could not be assisting to cover the abusive activities by economic operators, operation or transaction done not in the context of normal commercial operations, but only for wrongfully obtaining advantages provided for by community law[2].

"*An abusive practice occurs where first, the transaction results in a tax advantage which would be contrary to the purpose of the provisions formally applied, and secondly, the essential aim of the transaction was to obtain a tax advantage. To the Court of Justice of the European Union, objective criteria and respect of legal certainty were essential*"[3]. The Court of Justice of the European Union mention that, in determining the real substance and significance of the operations or transactions, the national courts could consider elements such as the artificial nature of those operations or transactions and the economic and legal or even personal links among factors involved in the tax avoidance scheme[4]. If a practice which we can called the abusive practice was found to exist, then the operations or transactions involved had to be re-defined to re-establish the statue that "*would have prevailed in the absence of transactions constituting that abusive practice*"[5].

Also, the case of Halifax was a ground-breaking decision for the purposes of VAT legislation, in additional it was not clear whether guidance could be derived from it for other aspects like direct tax law. It should be noted that the Later cases seems to emphasize that concept that the principle would just be relevant to VAT cases.

[1] Panayi, Christiana HJI, *Advanced Issues in International and European Tax Law*, Hart publishing, 2018, p. 163.
[2] ECJ, Case C-255/02 Halifax plc, Leeds Permanent Development Services Ltd and County Wide Property Investments Ltd v Commissioners of Customs & Excise [2006] ECR I-1609, § 69.
[3] Panayi, Christiana HJI, *Advanced Issues in International and European Tax Law*, Hart publishing, 2018, p. 163.
[4] ECJ, Case C-255/02 Halifax plc, Leeds Permanent Development Services Ltd and County Wide Property Investments Ltd v Commissioners of Customs & Excise [2006] ECR I-1609, § 81.
[5] Ibid., p. 94.

Another case related to VAT[1] in part of service, the Halifax case was a two-tiered test was applied and refined. The court of Justice of the European Union clarified that to find an abusive practice for the purposes of the Sixth VAT Directive it was sufficient when the accrual of a tax advantage was the principle aim "*of the transaction or the transactions in question, and not the sole aim pursued, to the exclusion of other economic objectives. This was for the national court to assess*[2]".

Similarly, in *Weald Leasing*[3], the Court of Justice of the European Union dealt with a leasing of asset transaction, the purpose was the delay of VAT liability through its Divide it on rental payments. Also, the tax advantage was not enough. "*It had to be shown that this advantage was contrary to the purposes of the VAT legislation*"[4]. The Court of Justice of the European Union confirmed that a taxable person could not be criticized because of choosing a leasing transaction which procured him the advantage of divided the payment of his tax liability[5]. A discovering that there was an abusive practice was derived from the effects and object of the impugned transactions, as well as their purpose[6]. "*The fact that undertaking did not usually engage in such transactions was irrelevant. If the transaction was abusive, then it had to be redefined to re-establish the situation that would have prevailed in the absence of the elements of those contractual terms which were abusive. Weald Leasing case is important as the Court of Justice openly embraced the arm's length principle as a means of delineating elements that could go towards establishing the abusive nature of a transaction. It also clarified that a finding of abuse does not nullify the transaction but paves the way for its re-characterization*"[7].

Recently, in the other case which called the Ocean Finance case[8], the Court of Justice of the European Union appear to have moved away from the more objective element of the *Halifax* test, by using the focus on the artificiality or non-normal of the transaction. It gives assurance to the more subjective second test. In that case, it was announced that the consideration of

[1] ECJ, Case C-425/06 *Ministro dell'Economia e delle Finanze, formerly Ministero delle Finanze v Part Service Srl, company in Liquidation, formerly Italservice Srl* [2008] ECR I-897.
[2] Panayi, Christiana HJI, *Advanced Issues in International and European Tax Law*, Hart publishing, 2018, p. 164.
[3] ECJ, Case C-103/09 The Commissioners for Her Majesty's Revenue and Customs v Weald Leasing Ltd [2010] ECR I-13589.li
[4] Panayi, Christiana HJI, *Advanced Issues in International and European Tax Law*, Hart publishing, 2018, p. 164
[5] ECJ, Case C-103/09 The Commissioners for Her Majesty's Revenue and Customs v Weald Leasing Ltd [2010] ECR I-13589 § 34.
[6] Ibid, § 44.
[7] Panayi, Christiana HJI, *Advanced Issues in International and European Tax Law*, Hart publishing, 2018, p. 164.
[8] ECJ, Case C-653/11 HM Revenue & Customs v Paul Newey, trading under the business name Ocean Finance [2013] ECR I-409.

commercial and economic realities was a fundamental criterion for the application of the common system of VAT. These may be more crucial than the contractual conditions for identifying the receive of a supply of services.

In case of Paul Newey, which happen in UK, the details of the case are a UK loan broker and his business is supplied VAT-exempt broking services, also at the same time, the broker received advertising services for the promotion of his business. Also, the advertising services which were subject to VAT in the UK. The consequence of that is the VAT which pay it for the advertising services was not recoverable. Mr. Newey engaged into complex arrangements[1] with a company which is an offshore subsidiary to reduce a substantial amount of irrecoverable input VAT. The UK authority of tax challenged that transaction, the argument of that is the purpose of going offshore was to avoid paying VAT on taxable advertising services.

"*The essence of the questions referred was whether the contractual terms were to be considered as decisive in determining the supplier and recipient in a supply of services for VAT purpose*"[2]. The opinion of Court of Justice of the European Union is that the contractual terms is an essential element to be taken into consideration, were not decisive, sometimes the contractual condition did not reflect the commercial and economic reality of the transactions[3]. According to previous case law and to the Sixth VAT Directive, the Court of Justice of the European Union recalled that "*the effect of the principle that the abuse of rights is prohibited is to bar wholly artificial arrangements which do not reflect economic reality and are set up with the sole aim of obtaining a tax advantage*"[4].

Contractual conditions could be neglected if it became apparent that they did not reflect commercial and economic reality. Actually, this was the case, then "*those contractual terms would have to be redefined so as to re-establish the situation that would have prevailed in the absence of the transaction constituting that abusive practice*"[5]. "*In this case, the commissioners could legitimately regard Mr. Newey as actually being the supplier of the loan broking services and the recipient of the supplies of advertising services at issue*"[6].

[1] ECJ, Case C-653/11 HM Revenue & Customs v Paul Newey, trading under the business name Ocean Finance [2013] ECR I-409, § 17-28.
[2] Panayi, Christiana HJI, *Advanced Issues in International and European Tax Law*, Hart publishing, 2018, p. 165.
[3] Paul Newey, No. 21 above, § 43-44.
[4] Ibid, § 46.
[5] ECJ, Case C-653/11 HM Revenue & Customs v Paul Newey, trading under the business name Ocean Finance [2013] ECR I-409, § 50.
[6] Ibid., § 166.

The previous case appears strengthen position of the tax authorities in their challenge against tax fraud and abusive practices. Also, for businesses side, it makes it imperious to have comprehensive and well-keeping documentation to reflect the economic reality and insure not submitting incorrect information's. "*Substance over form has become crucial. To an extent, the Court's judgment seems to be aligned with recent trends whereby artificiality and other objective factors are the main ingredients of proposed anti-abuse rules, thus also catching unintentional mismatches and double non-taxation. However, it is not certain whether the Court is reverting to the Halifax sole purpose test, in which case, the onus of proof for the tax authorities would seem to be higher than the one of the principle purpose tests of later case law. If that is the case, then arguably, the amendment to the Parent-Subsidiary Directive discussed below, which relies on one of the principle purposes test is more empowering for tax authorities as an abuse of tax law test then what seems to be provided for in the area of VAT*"[1].

The concept of a general principle of abuse of law was founded in several cases under the Merger Directive. Also, the court declarations in these cases recommend a free-standing principle of abuse of rights. In other case which is *3M Italia* [2] the Court of Justice of the European Union unaccepted this view, deducing that a general principle of abuse of right did not implement to unharmonized taxes. For the court of Justice of the European Union it was obvious that no general principle existed in EU law which might require an obligation on the Member State to fight abusive practices in direct taxation[3].

"*To an extent, the Court's judgment put to the rest arguments that there is a general anti-avoidance rule- is a GAAR- for the purposes of EU tax law; which renders the insertion of a GAAR in the Parent Subsidiary Directive even more perplexing*".[4]

This part of section will include several points which are the EU policy on Tax abuse and aggressive tax planning, from Double Taxation to Double Non-Taxation, The EU Pre-Action Plan Communication and Action Plan to Strengthen the Fight Against Tax Fraud and Tax Evasion.

[1] Panayi, Christiana HJI, *Advanced Issues in International and European Tax Law*, Hart publishing, 2018, p. 166.
[2] ECJ, Case C-417/10 *Ministero dell'Economia e delle Finanze Agenzia delle Entrate v 3M Italia SPA* [2012] ECR I-184.
[3] Ibid., § 32.
[4] Panayi, Christiana HJI, *Advanced Issues in International and European Tax Law*, Hart publishing, 2018, p. 166.

A) The EU policy on Tax Abuse and Aggressive Tax Planning

There is difficulty to determine the European Union policy in this area, as mentioned at the beginning the emphasis was not so much on the prevention of international tax avoidance but rather on the prevention of limit domestic anti abuse rules which inhibit the single market. There was no discussion on aggressive tax planning or non-taxation[1].

Commission communication on Anti- Abuse Measures : in 2007 the commission of anti-abuse communication[2] on the application of anti-abuse measures set assertion on international tax abuse, although there was mention of adopting coordinating settlings in close collaboration with Member States to decrease possible mismatches resulting in inadvertent non-taxation. In this communication, it was declared the concept of 'anti-abuse regulations' covered many laws, practices and measures in Member States. This communication called for a more targeted and better harmonious application of these principles. There had to be only balance between the need to avoid restrictions on cross-border activities and the public interest in tackling abuse within the European Union. The Commission went to repeat the principles under the case law which was appeared. The need to prevent tax abuse or tax avoidance could constitute a control reason in public interest eligible justifying a restriction on fundamental freedoms. The Commission say that the concept of tax avoidance is limited to "*wholly artificial arrangements aimed at circumventing the application of the legislation of the [Member State] concerned*"[3]. In regard to be lawful, the domestic tax rules should be symmetric and try to serve the particular purpose of preventing artificial arrangements.

As in the case law, the commission confirm that just fact that a subsidiary was established in other Member State could not be processed as tax avoidance[4]. Similarly, the fact that the businesses carried out by another establishment in other Member State could just as well be follow up by taxpayer from within the territory of its home Member State did not note the conclusion that there was a artificial arrangement[5]. "*The objective of minimizing one's tax*

[1] See for example the IFA 2004 conference topic on double non-taxation for which there was no EU report. Similarly, there sere very few references to EU law in the General Report. Double non-taxation was not an issue for the European Community at the time; rather measures to curb it was.
[2] Commission Communication of 10 December 2007 to the council, the European Parliament and the European Economic and Social Committee entitled "*the application of anti-abuse measures in the area of direct taxation-within the EU and in relation to third countries"* COM, 2007, 785 final.
[3] Commission Anti-Abuse Communication, No. 37 above.
[4] Ibid., p 3.
[5] Ibid.

burden was in itself a valid commercial consideration as long as the arrangements entered into with a view to achieving it did not amount to artificial transfers of profits"[1]. In so far as taxpayers had not involve into abusive practices, the Member States could not prevent the exercise of their freedoms simply, the reason of that is lower levels of taxation in another Member States[2].

The commission noted that to ensure that real establishments, activities and transactions were not accepted it was urgent that where the existence of an artificial arrangement was claimed, the taxpayer was given the opportunity, without being subject excessive administrative Limitations, to provide evidence of any justification of commercial. That would be specified on basis of case by case[3] and would by function to an independent judicial review. The commission Anti-Abuse Communication provided some guidance related adjustments; these should be limited to the range that was attributable to the artificial arrangement. "*With regard to intra-group transactions that means adherence to the arm's length principle, i.e. the commercial terms as would have been agreed upon between unrelated parties*"[4]. Member States which not prevented from applying penalties on taxpayers. Who violate and had use of abusive schemes to avoid tax? Later the commission implement these results in context of CFC.

The same results implemented about EEA states. Excepting from that the situation where there was not enough information exchange relationship with the pertinent EEA States[5].

The unintentional non-taxation was mention in the commission Anti-Abuse Communication, also it was obvious that Member States "*to be able to operate effective tax systems and prevent their tax bases from being unduly eroded because of inadvertent non-taxation*"[6]. Also, on details, lack of planned interaction between Member States tax systems could result in

[1] Panayi, Christiana HJI, *Advanced Issues in International and European Tax Law*, Hart publishing, 2018, p. 168.
[2] ECJ, Case C-294/97 *Eurowings Luftverkehrs AG v Finanzamat Dortmund*-Unna [1999] ECR I-7447, § 44. Interestingly, at p. 3-4, the Commission stated that distortions to the location of business activities due to state aid that was incompatible with the EC Treaty and to harmful tax competition did not entitle Member States to take unilateral measures intended to counter their effects by limiting freedom of movement. Rather they need to be resolved at source through the appropriate judicial or political procedures. Citing Advocate General Leger in ECJ, Case C-196/04 *Cadbury Schweppes plc and Cadbury Schweppes Overseas Ltd v Commissioners of Inland Revenue* [2006] ECR I-7995, § 55-60.
[3] Commission Anti-Abuse Communication, No. 37 above. In additional, the commission considered that the burden of proof should not lie solely on the side of the taxpayer and that account should be taken of the general compliance capacity of the taxpayer and of the type of arrangements in question.
[4] Ibid.
[5] Ibid, p. 5-6.
[6] Ibid, p. 5.

unintended non-taxation and offer scope for the abusing, thus limiting the fairness and balance of these systems[1].

B) from Double Taxation to Double Non-Taxation

On 11 November 2011 the communication on double taxation was published, in this communication the commission focus on determination to treat double taxation problems. It was noted that the current statues of the law in the absence of European Union action. According to the statues the member states not obliged to prohibit juridical double taxation. It was repeated that EU taxpayers remained significantly concerned by double taxation problem and issue was significant. The average of that is more than 20% of the reported cases which more than one million Euro for corporate taxpayers. Also, more than 35% above 100,000 Euro for individuals[2].

Unfortunately, the tax treaties did not cover all taxes relevant from domestic market perspective; neither did they offer for the eliminate double taxation, particularly in multilateral or triangular cases. In addition, the provision of tax treaty not interpreted and applied consistently by all Member States. The time needed to provide agreements or tax treaties was long and these procedures often failed in providing the solves for problems.

The commission referred to its proposal for a (CCCTB)[3] the Common Consolidated Corporate Tax Base. Also, this proposal for a modify and recast of the Interest and Royalty Directive.[4] Also, the Commission expresses its readiness to adopt further measures, such as solutions to treat cross-border inheritance tax obstacles[5]. Another recommendation was a creation of a forum on double taxation for European Union tax matters, it was a proposal for a code of conduct regarding double taxation also the feasibility for mechanism of efficient dispute resolution.

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[1] Ibid, p. 6.
[2] See Commission Double Taxation Communication, No. 53 above, p. 6.
[3] Brussels, COM 2011 121/4, 2011/0058 (CNS); SEC, 2011. This was accompanied by detailed impact assessment. See Commission Staff Working Document Impact Assessment Accompanying document to the Proposal for a Council Directive on a Common Consolidated Corporate Tax Base (CCCTB), Brussels, 16 March 2011, SEC 2011. Also see Commission Staff Working Paper, *Summary of the impact assessment-Accompanying document to proposal for a Council Directive on a Common Consolidation Corporate Tax Base (CCCTB*), SEC, 2011.
[4] Proposal for a Council Directive on a common system of taxation applicable to interest and royalty payments made between associated companies of different Member States, COM, 2011.
[5] Commission Double Taxation Communication, No. 53 above.

Later, the Commission adopt a public consultation document regarding double non-taxation.[1] The scope of double non-taxation consultation (which was issued by the commission include cases of cross-border double non-taxation) for example cases where the tax condition of more than one country jointed led to non-taxation and its limited to direct taxes such as inheritance taxes, gift taxes, withholding taxes, capital gains taxes, non-resident income taxes and corporate income taxes. it was mentioned that double non-taxation had harmful effects in regard of fairness of the taxation systems. Also, distortion of the internal market.[2] The commission of anti-abuse communication refer that avoidance of double non-taxation had "*an enhanced importance in the present Economic Crisis context*"[3]. The commission explore consultation on a several numbers of statues leading to double non-taxation, it was obvious the list was not exhaustive. The interested parties were called to submit their contributions at 30 May 2012. Based on that the commission published a brief of the received responses. The Commission repeated the necessity to issue more coherence between Member States of European Union for individual situation in the international tax filed "*this requires a greater degree of coordination at EU level so as to ensure that the momentum towards a more open and constructive tax co-operation continues at a global level*"[4].

After the reviewing the scope of the consultation from the business community, it was obvious that the business community expressed concerns regarding the scope of consultation. "*In fact, many of the contributors did not provide answers to the specific questions of the consultation document, instead they provided border and more general comments on the issues raised. One general criticism was that the consultation was vague. There was no clear distinction between actual double non-taxation (eg due to mismatched of hybrid entities and hybrid instruments) and tax competition (low taxation). A definition of 'double non-taxation' was needed*"[5].

It was exhausting that the direct taxation unsuccess within the specialization and competence of the Member State sovereignty. Several parties whose contribute explored that any procedures against double non-taxation must be handled at Member State level. Also, others explored some of coordination appropriate to assist avoiding mismatches. On other side with other argued

[1] Staff working paper, The internal market: factual examples of double non-taxation cases: Consultation document (Brussels, TAXUD D1 D (2012)).
[2] Ibid, p. 4.
[3] Ibid.
[4] Commissions, Summary report of the responses received on the public consultation on factual examples and possible ways to tackle double non-taxation cases, Brussels, July 5th 2012, p. 2.
[5] Panayi, Christiana HJI, *Advanced Issues in International and European Tax Law*, Hart publishing, 2018, p. 172.

regarding the issue of double non-taxation, must not be addressed on separate way from that of double taxation, as the two concepts were considered as two sides of the same coin[1].

The issue of double non-taxation which most parties whose contribute explored least acceptable was double non-taxation due to mismatches of states, qualification of hybrid financial instruments and hybrid entities. In addition, other several contributors also argued that implementation of tax treaties which sometimes led to double non-taxation. It was exhausted that double non-taxation and double taxation were two sides of the same coin and must both be dealt by the Commission. Moreover, it was obvious that procedures against double non-taxation had a reverse impact on competitiveness of the European economic. "*Therefore, it was preferable to coordinate the EU's initiatives with other initiatives at EU and international level that addressed similar aspects of double (non-) taxation*"[2].

Furthermore, establishing on the experiences of the Joint Transfer Pricing Forum (JTPF) "*it was suggested to set up a Forum on double taxation for purely EU tax matters and perhaps to cover double non-taxation. The Commission revealed its intention to publish a Communication on good governance in the tax area in relation to tax havens and aggressive tax planning before the end of 2012. There were indeed published, under slightly different titles, in the context of a wider Action Plan to reinforce the fight against tax fraud and tax evasion*"[3].

C) The EU Pre-Action Plan Communication

From 2012, according the fight against tax evasion and tax fraud, the EU institutions are talking more active function in that fight. On March 2012, the European Council asked the Commission to develop some of concrete ways to treat this issue. On April 2012, a resolution echoing the necessity for the action in this field was adopted by the European Parliament[4].

On June 2012, according the fight against tax fraud and tax evasion, the commission adopted a communication on concrete ways to reinforce, that communication was include in relation to third countries[5]. The communication included a suggestion that the problems of tax evasion and

[1] Staff working paper, The internal market: factual examples of double non-taxation cases: Consultation document, Brussels, TAXUD D1 D, 2012, p. 3.
[2] Panayi, Christiana HJI, *Advanced Issues in International and European Tax Law*, Hart publishing, 2018, p. 173.
[3] Ibid.
[4] European Parliament resolution of 19 April 2012 on the call for concrete ways to combat tax fraud and tax evasion (2012/2599 (RSP)).
[5] Communication form the Commission to the European Parliament and the Council on concrete ways to reinforce the fight against tax fraud and tax evasion including in relation to third countries, COM 351 final of June 27th 2012.

tax fraud must be treated at three levels. The first level is the tax collection must be improved within each Member State. The second level, there was a necessity to promote cross-border collaboration between Member States. Finally, the European Union must have a policy vis-à-vis third states to enhance its standards at international level.

The Communication summarized how tax compliance could be improved and reduced fraud and tax evasion by issuing of pending Commission proposal and better use of existing tools. In addition, its also specified the legislative action or coordination would avail the Member states and the European Union. Also, it was recommended that any action must not only target tax evasion and fraudulent activity but also the aggressive tax planning[1]. The concept of aggressive tax planning was described as follows. "*Aggressive tax planning includes the use of artificial operations or structures and the exploitation of mismatches between tax systems with the effect of undermining Member States tax rules and exacerbating the loss of tax revenues*"[2].

"*The importance of tax policy for fiscal consolidation and growth was noted, as well as the fact that fair and ambitious fiscal consolidation was impaired by inefficient and ineffective tax collection mechanisms. For many Member States there were substantial problems of tax evasion often linked to poor administrative capacity*"[3].

The commission recommend strengthening existing instruments and amending the communication[4]. Also, in the same time it had to be ensured that implemented good governance principles in the tax field, such as fair tax competition, exchange of information and transparency. Were enhanced in a more consistent manner, it's not only within the European Union but also with a third state as well[5]. "*Coherence between EU policies was essential. Good governance principles in the tax area should continue to be included in all relevant EU-level agreements with third countries as well as promoted through development cooperation incentives as outlined in previous Communications. Furthermore, it was suggested that cooperation with other international organizations should be improved and synergies should*

[1] Ibid, p. 3.
[2] Communication form the Commission to the European Parliament and the Council on concrete ways to reinforce the fight against tax fraud and tax evasion including in relation to third countries, COM 351 final of June 27th 2012.
[3] Panayi, Christiana HJI, Advanced Issues in International and European Tax Law, p. 174.
[4] Eg the Saving Directive, the Mutual Assistance Directive on exchange of information. There was also discussion of the possible use of the Tax Identification Number, the Quick Reaction Mechanism on VAT fraud.
[5] Ibid., p. 9.

be explored"[1]. The Commission reviewed the work of the OECD[2] which was ongoing work. It was known that the progress was made through the nearly intranational adopting of strong rules on "*information exchange and transparency following the successful re-launching of the OECD's Global Forum on Transparency and Exchange of Information for Tax Purposes*"[3]. The criticism on that Forum was raised, which is the Forum ignore the question of the fair tax competition, the fair tax competition is a principle supported internally by European Union via the Code of Conduct for business taxation[4]. "*Promoting such a concept to third countries is relevant both for the OECD and EU*"[5]. According to the Action Plan, the Commissions discussed the possible policy responses, the purpose of Action Plan is strengthening the fight against tax evasion and tax fraud. This Action Plan seek to start concrete steps to promote administrative cooperation and to support the developing of the existing governance policy.

"*The action plan, accompanied by two recommendations, was released in December 2012. By that time, the concept of aggressive tax planning was beginning to be firmly established and concerns about it widely shared in the international tax community*"[6] .

D) Action Plan to Strengthen the Fight Against Tax Fraud and Tax Evasion

Before start in sub-section the question arises, what is the different between tax fraud and tax evasion?

As mention at the beginning of this chapter, there are no definition of tax fraud or fraud or corruption, but the tax fraud can be a violation of taxation law to gain a benefit of that. The tax fraud is very wide range and include many violations, one of that violations is tax evasion which is a criminal violation. Also, the tax fraud it could be administration violations.

The Commission Communication set out the instructors of the scope of action to be taken on an Action Plan to Strengthen the Fight Against Tax Fraud and Tax Evasion. This Communication offered the initiatives which already discussed in its previous Communication,

[1] Panayi, Christiana HJI, Advanced Issues in International and European Tax Law, p. 174.
[2] Commission Communication on concrete ways to reinforce the fight against tax fraud and tax evasion, No. 72 above, p. 11, -12.
[3] Panayi, Christiana HJI, Advanced Issues in International and European Tax Law, p. 175.
[4] Conclusion of the ECOFIN Council meeting on 1 December 1997 concerning taxation policy 1997, Official Journal No. C2/1, issued on January 6th 1998.
[5] Commission Communication on concrete ways to reinforce the fight against tax fraud and tax evasion, No. 72 above, p. 12.
[6] Panayi, Christiana HJI, Advanced Issues in International and European Tax Law, p. 175.

also included some new initiatives[1]. The Action Plan included practical activities which could carry concrete results to all Member State[2]. Its notes that a different tone than earlier communications raised. "*Taking into account the freedoms awarded to Member States when operating in the internal market, businesses may structure arrangements with such jurisdictions via the Member State with the weakest response to these issues*"[3]. "*This does not only erode Member States tax bases but also endangers fair competitive conditions for business and, ultimately, distorts the operation of the internal market*"[4].

The Communication includes two recommendations, the first recommendation is to encourage third countries to apply minimum standards of good governance in tax issues. The second recommendation on Aggressive tax planning[5]. In addition, that recommendations were published at the same time separately as the communication.

The first recommendation which is on Good Governance seek to provide Member States with a collection of standards to identify third states that did not meet minimum criteria of good governance in tax issue, also a toolbox of procedures to third countries "*according to whether they comply with those standards or are committed to complying with them*"[6]. In addition, the Commission indicated to artificial tax planning leading to the move to the tax base to other jurisdictions outside or within European Union, as well as mismatches in domestic law leading to double non-taxation and utilization of tax rates. Also, the commission pointed that the aggressive tax planning could be considered reverse to the principles of Corporate Social Responsibility[7]. Subsequently, concrete steps were necessary to address the problem.[8]

The Commission announced its readiness to contribute to the work of universal tax forums like the OECD. *"Initiatives mentioned were, inter alia: the development of international standards to address the complexities of taxing electronic commerce; the creation of a Platform for Tax Good Governance; improvements in the area of harmful business taxation; promoting the Code of Conduct for business taxation in selected third countries; ensuring the Directives do not lead*

[1] Commission Communication on concrete ways to reinforce the fight against tax fraud and tax evasion, No. 72.
[2] Action Plan, No. 85 above.
[3] Panayi, Christiana HJI, Advanced Issues in International and European Tax Law, p. 176.
[4] Action Plan, No. 85 above.
[5] Commission Recommendation of 6 December 2012 on Aggressive Tax Planning.
[6] Panayi, Christiana HJI, Advanced Issues in International and European Tax Law, p. 176.
[7] Communication on a renewed EU strategy 2011-14 for Corporate Social Responsibility, October 25th 2011.
[8] Action Plan, No. 85 above.

to double non-taxation; and continuing to develop standard forms for exchange of information in the field of taxation etc"[1].

The reminder of the communication set out procedures to be taken in long term, medium term and short term to treat the problems mentioned. "*This was the Commission's self-proclaimed general contribution to the wider international debate on taxation and which was aimed at assisting the G20 and the G8 in its on-going work in this field*"[2].

In the recommendation of good governance, the commission repeated the importance of sitting out the minimum criteria of good governance in tax issues. It was specified that a third state only be complying with minimum criteria of good governance in tax issues "*where it had adopted legal, regulatory and administrative measures intended to comply*"[3] with the criteria of exchange the information and transparency[4]. Where it effectively implemented those measures. Also, not operate hurtful tax measures in the field of business taxation[5].

"*Tax measures which provided for a significantly lower effective level of taxation, including zero taxation, were to be regarded as potentially harmful. Such a level of taxation could operate by virtue of the normal tax rate, the tax base or any other relevant factor*"[6].

Several procedures would be considered vis-à-vis third states, with a vision to encouraging those states to follow those standards. The was recommended that each member states must issue a list or blacklist of third states which not following or complying with the minimum of criteria or standards set out above[7].

Also, Member States that had already issued the blacklist must include in such lists third states which not following and complying with these minimum criteria and standards. Member States were encouraged to suspend or terminate tax treaties or renegotiate with non-compliant third states. Member States must consider providing closer assistance and cooperation to third states. Especially the state which were committed to follow and complying with the minimum criteria

[1] Panayi, Christiana HJI, Advanced Issues in International and European Tax Law, p. 176.
[2] Ibid.
[3] Ibid.
[4] These were set out in the Annex of the Recommendation on Good Governance, No. 89, p. 8.
[5] Ibid, p. 4-5.
[6] Panayi, Christiana HJI, *Advanced Issues in International and European Tax Law*, Hart publishing, 2018, p. 177.
[7] These were set out in Annex of the Recommendation on Good Governance, No. 89, p. 5.

and standards. The benefit of closer cooperation would help those third states in their fight against the aggressive tax planning and tax evasion[1].

The recommendation on Aggressive Tax Planning[2] include a described of aggressive tax planning as consisting in the tacking advantage of "*the technicalities of a tax system or of mismatches between two or more tax systems for the purpose of reducing tax liability*"[3]. Its consequences included double non- taxation and double deductions[4]. It was emphasized that, with a vision to shifting to a better functioning of the domestic market. It was needful to encourage all Member States to take the same general approach against the aggressive tax planning[5]. The circumstances leading to double non-taxation could "*lead to artificial capital flows and movements of taxpayers within the internal market and thus harm its proper functioning as well as erode Member States tax bases*"[6].

Member States encouraged to introduce a subject – to – tax requirement both in their bilateral tax treaties with third states and with other European Union Member State and in their unilateral double tax relief rules. Also, Member States were encouraged to incorporate GAARs in their national legislation the following wording as suggested.

"An artificial arrangement or an artificial series of arrangements which has been put into place for the essential purpose of avoiding taxation and leads to a tax benefit shall be ignored. National authorities shall treat these arrangements for tax purpose by reference to their economic substance"[7].

The concept of arrangement was explained in the recommendation as any transaction, action, scheme, operation, grant, agreement, promise, understanding, undertaking or event. An arrangement could include a lot of steps. The arrangement was considered artificial where it need commercial material[8].

[1] Ibid, p. 6.
[2] Recommendation on Aggressive Tax Planning, No. 90 above. Also see the definition of term in commission communication on concrete ways to reinforce the fight against tax fraud and tax evasion, No. 72, discussed in section 5.2.3.
[3] Panayi, Christiana HJI, *Advanced Issues in International and European Tax Law*, Hart publishing, 2018, p. 178.
[4] Recommendation on Aggressive Tax Planning, No. 90 above, p2.
[5] Ibid.
[6] Ibid.
[7] Christiana HJI Panayi, Advanced Issues in International and European Tax Law, page178.
[8] Recommendation on Aggressive Tax Planning, n 90 above, pp4-5.

The commission emphasized the risk on states seeking to treat the problem separately or alone- the companies would simply transfer. A European Union wide response was necessary to close gaps and ensure that no state lost out financially for addressing the problem. "*The commission was committed to monitoring the implementation of these recommendations and putting pressure on countries whose progress was slow*"[1].

The crucial point is that the concept of aggressive tax planning, was developed through these Commission initiatives as discussed in these section, also some of the Commission's recommendations for example the GAAR " *General Anti Avoidance Rules*"[2] run reverse to the Court of Justice of the European Union refusal to acknowledge, also in case of *3M Italia* [3], the being existence of a general principle of abuse of rights which would implement an obligation on the Member States to fight abusive practices in the area of direct taxation. No just is such a procedure now recommended- Though in a technically non-binding method- but the scope of abusive exercise is expanded to cover legal loopholes or mismatches assisting or leading to double non-taxation[4] and harmful tax systems.

In my opinion there are no definition of the abuse of law, because its simply the abuse of law is a several of violations of laws consider as a one group of violation of one law. Also, it can't issue specific law similar to criminal law, because the criminal law in most states are based on the principle of "*there shall be no crime or penalty except by virtue of the law*". According to that the violations can be determined and the applicable penalty on that can be determine by criminal law. But the taxation law in general is part of financial law which is part of administrative law. In that regard the administrative law is not codify law. So, there are now articles to explain the abuse of law in taxation law. And the violation is determining in general. In addition, the principle of there shall be no crime or penalty except by virtue of the law are not applied in taxation law. But the principle of "*breaking the requirements of the job is a violation*".

According to what mention above I suggest preparing domestic law under title of "*the crimes of administrative violations*". That law includes several groups of violations with details, neutral and punishments of the violations also the responsible entity to apply the law. Also, in the law

[1] Christiana HJI Panayi, Advanced Issues in International and European Tax Law, p. 179.
[2] Micheal Lang and others, *GAAR's – A key Element of Tax Systems in the Post-BEPS World*, European and International Tax Law and Policy Series, p. 1.
[3] ECJ, Case C-417/10 3M italia, No. 33 above.
[4] See Dourado, Ana Paula, *Aggressive Tax Planning in EU law and in the light of BEPS: The EC Recommandation on Aggressive Tax Planning and BEPS Actions 2 and 6*, 2015, p. 42-57.

must mention the principle of *"breaking the requirements of the job is a violation*" and the principle of "*there shall be no crime or penalty except by virtue of the law*" are not applicable.

Regarding the criminal violations the criminal law must include separate chapter for taxation violations.

§2. What is GAAR?

While they are very new additions to some states taxation laws, GAARs have played a core function in other taxation systems for well over a century. Quite possibly no another merit of tax law supplies a better insight into a nation's tax than is anti-avoidance rules. "*The intersection of general anti-avoidance (GAARs)- as well as their ancillary specific anti-avoidance rules(SAARs)- with operative provisions of tax law reveals much about all aspects of a country's tax system : citizens' tax morale; judicial perspectives on taxation and legal interpretation; drafters' inclinations towards technical or principled drafting; and legislators' willingness to confront politically sensitive issues or their tendency to delegate the tough decisions to administrators and courts. A comparative analysis of the role of GAARs (or the lack of an GAAR) in tax systems such as that found in this volume can thus offer unique perspectives on tax law across jurisdictions*"[1].

At the same time, comparative study of GAARs increases challenges rarely encountered in other fields of taxation law. While several tax concepts - transfer pricing, thin capitalization and establishment, for example - have concept across jurisdictions and taxation systems, even if the details change at the margins, there rises to be no global understanding of what constitutes a GAAR or, for that case, what constitutes "*tax avoidance*". The notional target of a GAAR. The avoidance label is restricted to convoluted and, at best, quasi-legal transactions verging on evasion; at the other, legal option between alternatives yielding different tax results can amount to avoidance in several circumstances.

There is a broad spectrum of definitions of a GAAR. In most states, the GAAR takes the format of a statutory rule, albeit with a very large domain of constructions. This is not always the issue, however. In a jurisdiction suffering from not existing a statutory rule, a doctrinal way established only on judicial interpretation perhaps considered a GAAR.

[1] Lang, Michael and others, *GAARs- A Key Element of Tax Systems in the Post-BEPS World*, IBDF, European and International Tax Law and Policy Series, 2016, p. 1.

"*There is similarly a divergence of views on the merits of, or drawbacks to, reliance on GAAR as a tool to safeguard the integrity of a tax system. The most commonly cited drawbacks are uncertainty for taxpayers and unfairness resulting from selective application. The two perceived problems are related. Because a GAAR is only applied after the fact, taxpayers cannot make investments predicting particular after-tax rates of return- a key expectation essential to the efficient allocation of capital in any market economy – as they cannot know with certainty what the tax consequences of their intended actions will be after possible application of a GAAR. For the same reason, the law will apply differently to different taxpayers in the same circumstances. Unlike a substantive tax rule, which sets out general rules for all taxpayers in a particular situation, a GAAR applies to each case separately, and its elements, including the taxpayers' purpose (to the extent this is incorporated into the rule), must be considered separately for each case. Only a portion of the pool of taxpayers who may have entered into similar transactions are subject to audit and only some of those transactions might be identified as transactions to which the GAAR might apply, with the rule applied successfully only to a portion of this subset. Equal application to all taxpayers of a rule that looks at the totality of circumstances in each case- including, as it does in most instances, the motives of each particular taxpayer – is not possible*"[1].

Commentators sympathetic to the use of GAARs opinion, these concerns as extreme. while they may have some legality prior to the first GAAR issues being heard, proponents of GAARs dispute or argue, once the results of attempts to implement the GAAR are recognized, the rule can work as a complement to substantive measures by appearance how particular types of arrangements are likely to be managed according to the rules, inhibiting behaviour similar to that recognized to be caught. To the range that the interest of critics is valid, supporters might further argue or debate, the basis is nevertheless needful to save the integrity of the taxation law, given the inherent locating on drafters' capability to expect every possible alternative deal open to taxpayers. The ultimate realistic of supports concede that there is inherent doubt appear from a GAAR but argue that this is a value that has to be paid in the benefit of the major target of saving the integrity of the tax basis.

[1] Lang Michael, and others, *GAARs- A Key Element of Tax Systems in the Post-BEPS World*, IBDF, European and International Tax Law and Policy Series, 2016, p. 2.

Whatever their feature or fault, there is no doubt that the shortage of precise burden in a GAAR shift great power and duty to the adjudicators. Supporters of a GAAR have to hope that the judges will practice those powers.

"*While GAARs have proliferated in modern times, they are not universal and proposals to introduce GAARs sometimes flounder in the face of resolute opposition, including that of the legislature. Jurisdictions reluctant to adopt GAARs delegate to the courts the task of identifying cases where the taxpayers' characterization of transactions could or should be rejected or rely on specific legislative responses where the courts decline to look beyond legal form even where transactions were carried out in a particular form with the clear objective of tax avoidance. In the rarest cases, there is no effective remedy in the absence of a GAAR. Somewhat ironically, the absence of a GAAR in a jurisdiction may be interpreted by courts as a sign that the legislature is willing to tolerate avoidance when other jurisdictions with similar legal backgrounds have adopted GAARs. In these cases, it may be implicit judicial invitations that prompts enactment of a GAAR. Also, ironically, adoption of a GAAR may have the opposite effect: there is a risk that adoption of a statutory GAAR will inhibit courts from adopting more robust interpretation doctrines to reduce opportunities for avoidance on the assumption that the legislature has fully occupied the anti-avoidance field*"[1].

There are many models or forms of GAAR, mainly its four groups of GAAR, the first group is the "*acts and benefits*" group which are mostly found un Anglo jurisdiction like UK, South Africa and Canada also other states are satisfy this definition. The principle of this group of GAAR is include principles that allow the government taxation authorities to recognize a transactions or series of transactions that had the aim impact of providing a tax benefit and then recomputed the taxpayer's liability on the grounds of a hypothetical transaction that the government taxation authorities surmise would have been the one used to have the taxpayer not followed the tax-effective way it did. GAARs in this kind of group look works carried out and benefits realized, without the need to recognize an economic matter[2].

The second group of GAAR is in general with a statutory basis but on sometimes derived solely from judicial exercise. Sets out principles that mandate an interpretation and implementation of taxation law to the economic material of transaction rather than the legal form. The rule allows

[1] Michael Lang and others, *GAARs- A Key Element of Tax Systems in the Post-BEPS World*, IBDF, European and International Tax Law and Policy Series, 2016, p. 2-3.
[2] Michael Lang and others, GAARs- A Key Element of Tax Systems in the Post-BEPS World, IBDF, European and International Tax Law and Policy Series, 2016, p. 4.

the government taxation authorities to reassess the taxpayer on the ground of a hypothetical legal transaction that mechanism is better reflects the economic substance. While nearly all jurisdictions with a legal substance over form rule, respect the rule as a GAAR. This description of the rule is not global. Nor is the opinion that a judicial substance over form rule amounts to a GAAR.

The third model or group is a judicial GAAR based on the adoption by the courts of a wide abuse of law doctrine.

A fourth model and the last is a legally abuse of law model that enforce where a taxpayer adopts a fictitious arrangement or one that is valid in law but used to fail the intention of the taxation legislation[1].

Whether a GAAR takes the model or form of abuse of law or an economic substance or the classic tax benefit identification rule, it can be effective in one condition if it allows "*a reassessment on the basis of a hypothetical alternative transaction different from the legal form chosen by the taxpayer to minimize tax*"[2]. In the matter of a reconstruction rule, the taxation authority accepted to substitute an appropriate arrangement for the one which use by the taxpayer. In other hand, in contrast, the economic substance rule, allows to assessment on the base of implementing the tax law but interpreting the cases to able into the law.

"*The difference between the two can be illustrated with the example of a taxpayer entering into a complex set of arrangements to avoid a loan having the form of a debt. Under the explicit reconstruction rule, the tax authorities would be allowed to substitute a fictional transaction (a direct loan) for the arrangements used by the taxpayer. Under the economic substance approach, the tax authorities can look at the totality of the arrangements and find that there actually is a loan, albeit by a somewhat complex route, and apply the tax law for debt directly. Commonly, the power of the tax authorities to reassess on the basis of an alternative hypothetical transaction is clear, whether it is based on an explicit or an implicit construction of the GAAR. In some rarer cases, however, there is debate over how the GAAR operates in this respect*"[3].

[1] Ibid.
[2] Michael Lang and others, GAARs- A Key Element of Tax Systems in the Post-BEPS World, IBDF, European and International Tax Law and Policy Series, 2016, p. 4.
[3] Michael Lang and others, GAARs- A Key Element of Tax Systems in the Post-BEPS World, IBDF, European and International Tax Law and Policy Series, 2016, p. 5.

Section two. Fraud

Tax Fraud is a topical issue in tough economic times. within the Member State of European Union. Several texts organize and define the fight against tax fraud. For example, In the State of Luxembourg, in year of 1993 the legislator has decriminalized most tax offenses, but the criminalization of the serious tax offenses, the "*sham*" ("escroquerie") has been hold. These offences or crimes are these that a consequence of a significant amount of taxes and that have been committed by the systematic use of fraudulent maneuvers[1].

In addition, in France the tax fraud is decriminalized and subject to penalty. Also, there is possibility to criminal prosecution[2] . The Tax Fraud raised when there is an intentional criminal behavior that can in specific consist in covering a part of the revenues or rising the expenses[3]. The Directive of VAT does not provide a definition of "*Fraud*" or the definition of provision which setting out a principle of interpretation[4]. The only guidance adopted by Council Regulation for protect the European Communities' fiscal interests, according to which: "*acts which are established to have as their purpose the obtaining of an advantage contrary to the objectives of the Community law applicable in the case by artificially creating the conditions required for obtaining that advantage shall result, as the case shall be, either in failure to obtain the advantage or in its withdrawal*"[5]. Even before the regulation became implement, the Court of Justice of the European Union considered that the abuse of law was a general standard of law which already in force in the community legal system[6]. In addition, there are no surprise that compensation for the lack of dedicated VAT rules concluded from the case-law of the Court of Justice of the European Union.

The case-law describing the situation in which a fraud may be present for VAT purposes has created the so-called doctrine of abuse. Swaying between objectivity and subjectivity, the doctrine developed in time. "*At the commencement, even before the word "abuse" was used, it was the element of the commercial authenticity which was taken into consideration to assess a*

[1] See Foumdjem, Celestin, *Blanchiment de capitaux et fraude fiscal*, L'Harmattan, 2011.
[2] Code général des impôts, Articles 1729 and 1741.
[3] Goldsmith, Jean – Claude, in *Tax Avoidance/ Tax Evasion*, IFA Cahiers, 1983, p. 375.
[4] ECJ, Case- C-255/02 *Halifax plc, Leeds Permanent Development Services Ltd and County Wide Property Investments Ltd v Commissioners of Customs & Excise* [2006] ECR I-1609, Opinion of AG Poiraes Maduro, § 75.
[5] European Union, Council Regulation No 2988/95 of December 1995 on the protection of the European Communities financial interests, Official Journal No. L.312/1, issued on December 23rd 1995, Article 4 § 3.
[6] ECJ, Case C-110/99 *Emsland – Starke GmbH v Hauptzllamt Hamburg-Jonas* [2000] ECR I-11569, § 38.

situation. The assessment relied upon the answer to the question of whether the transaction was a genuine commercial transaction or whether it had been triggered by the research of a tax advantage"[1]. The Court of Justice of the European Union claimed that there would be no real genuine commerciality in "*those cases where […] a commercial transaction [would be] purely speculative*" the speculative side that constitutes fraudulent exercise or an abuse of the system which defined as the absence of "*economic objective by reason of the fact that [the] sole purpose [of a transaction] is to exploit [a] Community [rule]*"[2]. Another example in Greek case, the Court of Justice of the European Union added a standard according to which a fraudulent case would be known whenever the claim at stake would be harmful to the business implicated[3]. After that, the concept of abuse of rights was developed by commission and contended that it comprised three elements: *"[…] An objective element, that is to say, evidence that the conditions for the grant of a benefit were created artificially, that is to say, that a commercial operation was not carried out for an economic purpose but solely to obtain from the Community budget the financial aid which accompanies that operation. This requires analysis, on a case by case basis, both of the meaning and the purpose of the Community rules at issue and of the conduct of a prudent trader who manages his affairs in accordance with the applicable rules of law and with current commercial and economic practices in the sector in question.*

A subjective element, namely the fact that the commercial operation was carried out essentially to obtain a financial advantage incompatible with the objective of the Community rules.

A procedural law element relating to the burden of proof. That burden falls on the relevant national administration. However, in the case of the most serious abuses, even prima facie evidence which might reverse the burden of proof is admissible."[4]

"*In the following step, while keeping an interest in the concept of the commercial authenticity of the transaction (the so-called "objective element"), the focus moved to the subjective intention of the business*"[5]. The question at the core of matter became whether or not the

[1] Herbain, Charlene Adline, *VAT NEUTRALITY*, Promoculture-Larcier, 1st edition, 2015, p. 106.
[2] ECJ, Case C-250/80 Anklagemyndigheden v Hans UIrish Schumacher, Peter Hans Gerth, Johannes Heinrich Gothmann and Alfred C. Topfer [1981] ECR 2465, 2473. See also among others ECJ, Case C-373/97 Dionysios Diamantis v Elliniko Dimosio (Greek State) and organismos Ikonoikis Anasygkortisis Epicheiriseon AE (OAE) [2000] ECR I-1705, § 32 and 33.
[3] ECJ, Case C-367/96 Alexandros Kefalas and Others V Elliniko Dimosio (Greek State) and Organismos Oikonomikis Anasygkrotisis Epicheiriseon AE (OAE) [1998] ECR I-2843, § 28.
[4] ECJ, Case C-110/99 *Emsland – Starke GmbH v Hauptzllamt Hamburg-Jonas* [2000] ECR I-11569, § 39 et seq.
[5] Herbain, Charlene Adline, *VAT NEUTRALITY*, Promoculture-Larcier, 1st edition, 2015, p. 107.

business had attempted manipulate the activities in order to gain an advantage by the artificial enforcement of the situations laid down because gain the said advantage[1]. But the doctrine continued to develop. Also, the Court of Justice of the European Union regressed from this subjective vision[2].

When evaluate the prescriptions for abuse, the focus was then bringing back towards an objective approach.

In case of *Halifax* the General Advocate expound that the purpose behind that move was to assure that VAT law does not become a legal "*wild-west*" where all sorts of opportunistic conduct would be tolerated "so long as it conforms with a strict formalistic interpretation of the relevant tax provisions and the legislature has not expressly taken measures to prevent such behavior"[3].

He contended that a fraudulent case or abusive was happened when a right was claimed and that such a claim was "*manifestly beyond the aims and objectives pursued by the provision [it is] abusively rel[ying] upon*". Because of these Experiences and as of that date, the two main standards in use are the result and the main purpose of the transaction. The first standard is satisfied upon the extravagant accrual of a tax advantage. Also, the second satisfied standard by evidence that such tax advantage had been the "*essential aim*" of the deal; "*not just of one particular step but the entirety of all the various elements comprising the transaction*"[4]. The Court of Justice of the European Union and The Advocate General declared that the purpose was to "*objectively determine*". "*Such an objective determination could be reached through "a number of objective factors" establishing that there was not "any other economic justification for the activity than that of creating a tax advantage*"[5].

Once the situation describeing fraud of VAT aims are known, the aim of this knowledge comes in the foreground as it is a fact that an anomaly may, from VAT perspective, have different result depending on its description. "*In that respect, the doctrine said the difficulty as well as the necessity of the characterization: Toute tentative de qualification des comportements de*

[1] ECJ, Case C-110/99 *Emsland – Starke GmbH v Hauptzllamt Hamburg-Jonas* [2000] ECR I-11569, § 53.
[2] See an analysis of the development of the doctrine in McCarthy, Hui Ling, *Abuse of rights, the effect of the doctrine on VAT planning,* British Tax Review, 2007.
[3] ECJ, Case- C-255/02 Halifax plc, Leeds Permanent Development Services Ltd and County Wide Property Investments Ltd v Commissioners of Customs & Excise [2006] ECR I-1609, Opinion of AG Poiraes Maduro, § 77.
[4] Herbain, Charlene Adline, *VAT NEUTRALITY*, Promoculture-Larcier, 1st edition, 2015, p. 108.
[5] Ibid.

refus de l'impot est, en effet, delicate […]la distinction des comportements […]est […]difficile, mais elle demeure necessaire"[1].

The prescriptions of the European Union case-law are purposed at catching "*cases where a person is looking to gain a financial or other advantage by way of an abusive use of Community law*"[2]. This is not to hold all transactions that are purposed at gaining a tax advantage. In fact, the Introduction of the Commission to the Court of Justice of the European Union tend to address the risk of exceedingly curtailing the rights of businesses to improvement their VAT position by vastly addressing the cases of improvement. The Commission notably struggled that: "*[…] the principles of effectiveness would be observed only if cases of rejection of repayment claims were exceptional and maintains that the exercise of rights derived from the Treaty cannot be impeded by general measures based on a presumption of abuse of rights*"[3].

It's just where a business action is having hard impact on community law that is transaction will be hold by the doctrine of abuse.

This section will include several issues which are How Fraud Happens according to several scenarios, Missing Trader Intra-Community (MTIC) and carousel VAT frauds explained and measures to prevent them and Carousel Fraud in UAE.

§1. How Fraud Happens according to several scenarios

Between commitment to the letter of the law and violate of its spirit there is no break. Sequential phases lead the business to illegality by a chain intermediate layer. The business passes from tolerance to skillful text manipulation and the end to fraud. The doctrine of abuse of law in VAT issues is basically purposed at catching cases where one abides to the letter of the law while violating the spirit of it and then at rework the non-fraudulent circumstances to prompt horizontal equity by subjective it, correctly, to VAT.

The target of the modification, or absence, of the VAT handling or treatment is to prevent the distortion of competition, in other way that it would give an unfair advantage to unlawful

[1] Ibid.
[2] McCarthy, Hui, Ling, *Abuse of rights, The effect of the doctrine on VAT planning*, British Tax Review, mai 2007.
[3] ECJ, Case-C-129/00 Commission of the European Communities v Italian Republic [2003] ECR I-14637, § 18.

process, or, as implicitly announced by the Court of Justice of the European Union, in order to avoid a difference of handling or treatment between the products which are equal[1].

A clarification of this target can be found in a case regarding the sale of counterfeit perfume products where the Court of Justice of the European Union considered that "*principle [of fiscal neutrality] precludes a generalized differentiation between lawful and unlawful transactions, except where, because of the special characteristics of certain products, all competition between a lawful economic sector and an unlawful sector is precluded"*[2]. The subject of this case that the sale of counterfeit perfume products influenced the lawful producers because the products were not extra commercium products or Trade products. on the contrary, the Court of Justice of the European Union ruled that unlawful transaction must not be subject to VAT, that meaning such products are not equal to commercium ones. The Court of Justice of the European Union logic behind this was based on the products question were not in competition with the products with cover law or lawful products. There was no need for equal treatment with lawful products. As the Court of Justice of the European Union pointed out, that exclusion from the VAT scope connect only to "*products which, because of their special characteristics, may not be marketed or incorporated into economic channel"*[3]*. Like as products that are "not confined within economic channels strictly controlled by the competent authorities for use for medical and scientific purposes*"[4].

These examples explain that the VAT handling or treatment of a transaction relying on the requirement of horizontal equity may or may not be adjust in the case of fraud. "*It's therefore questionable whether there can be at the same time concordance between equality of treatment and modification of the VAT treatment and between equality of treatment and absence of modification of the VAT treatment*"[5].

Penalties can be implemented on a business that proceed fraudulent transactions and its VAT deduction right can be reduced or refused.

[1] ECJ, Case C-283/95 Karlheinz Fischer v Finanzamt Donaueschingen [1998] ECR I-3369, § 22.
[2] ECJ, Case C-3/97 Criminal proceedings against John Charles Goodwin and Edward Thomas Unstead [1998] ECR I-3257, § 9.
[3] ECJ, Case C111/92 Lange v Finanzamt Furstenfeldbruck [1993] ECR I-4677, § 12.
[4] ECJ, Case C – 294/82 Senta Einberger v Hauptzollamt Freiburg [1984] ECR 1177, § 22.
[5] Herbain, Charlene Adline, *VAT NEUTRALITY*, Promoculture-Larcier, 1st edition, 2015, p. 110.

In addition, in other cases, the principle of open market value are applied to return the correct tax base.[1] " *The comparison between a situation where a change to the VAT treatment has been realized further to a fraudulent transaction and a similar but non-fraudulent situation where a business would keep its deduction right and would not see the tax base of its sale modified retroactively shows a different VAT treatment may be imposed on two businesses performing the same transactions. It therefore questionable if the change of VAT treatment is in line with the equality principle*"[2].

The answer of the question is lies in the perspective from which the operation or transaction is observed. A transaction is considered fraudulent when it has been changed to the scope that it appears different from that which really took place and therefore, for VAT aims, is treated differently to how it must have been treated. When one looks at the change transaction, the penalty enjoined on such transaction seems to interduce a contradiction in the VAT treatment of a similar transaction that does not subject to fraud. But, without this rectification, the fraudulent transaction would be treated differently for the aims of VAT from a similar, but not fraudulent operation or transaction.

The justification of that to take against this fraudulent transaction lies in the basic supposition that without such a correction, a violate of equality in treatment would happen. By way of explanation, an example is set out below:

"*The sale of salt is subject to VAT at 15% (situation A). The sale of pepper is subject to VAT at 3% (situation B). For tax purposes, a business colours the salt black and calls it pepper (situation C). The VAT treatment for situation C should be the same as the treatment for situation A, however the fraud makes it subject to VAT at 3%, the same treatment as situation B*"[3].

Where fraud has been detected, its joint in case law that transactions that constitute this fraud must be redefined by domestic courts or tax authorities for VAT aims to return the statues that

[1] European Union, Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax, Official Journal No. L 347 issued on December 11th 2006, Article 72. However, there is no rule according to which the occurrence of fraud would necessary involve a change in the VAT treatment of a transaction. The CJE case-law confirmed the absence of such obligation. It notably assessed that "*conduct [that] amounts to an offence does not entail [a different VAT treatment]".* Jointed ECJ, Cases C-439/04 and C-440/04 Kittel, § 49 and 50.
[2] Herbain, Charlene Adline, *VAT NEUTRALITY*, Promoculture-Larcier, 1st edition, 2015, p. 110.

[3] Herbain, Charlene Adline, *VAT NEUTRALITY*, Promoculture-Larcier, 1st edition, 2015, p. 111.

existed before to the fraudulent alterations[1]. The signal by the Court of Justice of the European Union that a fraudulent transaction must be return in a way that "*must go no further than is necessary for the correct charging of the VAT and the prevention of tax evasion*"[2] assimilates the "*correct charging of VAT*" to the equality of treatment. This finding that was predict by the judgment in the case Halifax that established aims of the redefinition as being dynamic by the research of VAT neutrality.

All these indicators taken together mean that, in the issue of fraud, the activities that are undertaken do not conflict, as may appear the case at first sight with equality of treatment. On the obverse, the purpose of these actions is to return the transaction to its non- fraudulent statues so that equality of treatment is protected. The same applies to penalties which purpose by their value to do what *"is necessary to attain the objectives of ensuring the correct collection of tax and preventing evasion*"[3].

"*As set out above, the fact that VAT neutrality demands that the VAT burden on similar transactions is similar means that, in cases where an irregularity occurs, discrepancies in VAT treatment would exist between fraudulent and non-fraudulent transactions if the fraudulent transaction was not corrected. However, in some cases, the occurrence of fraud will not necessarily trigger a different VAT treatment, and this questions how equality of treatment can be preserved when VAT treatment is not corrected after fraud has been committed*"[4].

The irregularities not all the same and the European legislature has introduced a difference between what can be called "*illegal fraudulent cases*". So-called tax evasion schemes, and the others which are not illegal, like tax avoidance schemes. "*Among the cases which are not fraudulent are those of VAT optimization*"[5]. That cases are consecrated by some writers as a style of legally tolerated fraud. The concept of legal fraud has explained by Andre Margairaz who announced that there is difference from illegal fraud as based on the breach of tax rules:

"[...] il existe la fraude legale ou licite et la fraude illegale ou illicite dont la definition peut ainsi etre formulée : la fraude legale ou licite est reconnue comme telle lorsqu'un contribuable

[1] European Union, Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax, Official Journal No. L 347 issued on December 11th 2006, § 94 and 98; ECJ, Case C-103/09 the Commissioners for her majesty's revenue and customs v weald leasing ltd [2010] ECR I- 13589, § 24 and 48.
[2] ECJ, Case C-103/09 HMRC v. Weald Leasing, 2013, § 52.
[3] ECJ, Case C-259/12 Teritorialna direktsia na Nationalnata agentsia za prihodite – Plovdiv v Rodopi- M 91 OOD [2013] ECR Not yet published, § 43.
[4] Herbain, Charlene Adline, *VAT NEUTRALITY*, Promoculture-Larcier, 1st edition, 2015, p. 112.
[5] Ibid.

recourt a une combiniason ingenieuse ou qu'il effectue une operation particulière en se basant sur une convention non frappe par la legislation fiscal en vigueur. Il ne fait donc que tourner le texte legal sans violer"[1].

That skillful uses of legal rules are tolerated and the reason of that is because they do not breach the legal provisions or their spirit. It is consistent case-law that within the borders of abusive practices, the businesses are free to choose to carry on their actions or activities in a move that attracts the less of tax. The Court of Justice of the European Union frequently ruled in this way as the following quotations signal: "*the principle of fiscal neutrality requires that economic decisions should not be influenced by tax factors*"[2].

"[...] a trader's choice between exempt transactions and taxable transactions may be based on a range of factors, including tax considerations relating to the VAT system"[3].

"*A taxable person who, for the purposes of achieving a particular economic goal, has a choice between exempt transactions and taxable transactions must therefore, in his own interest, duly take his decision while bearing in mind the neutral system of VAT. The principle of the neutrality of VAT does not mean that a taxable person with a choice between two transactions may choose one of them and avail himself of the effects of the other*"[4].

The jurisprudence in France has on many opportunities shows that a business which, without manipulation otherwise potential election of a corporate style. Manages to decrease the amount of tax it must pay is not placing itself a not legal tax evasion scheme[5]. A lot of sources used as the basis for such an interpretation. An example of that is Middle Ages Literature such as the 1762 "*Traite des Fiefs sur la coutume de Poitou" which mention that "celui qui use de son droit ne fait tort a personne*"[6] "*has been used as the basis for supporting the right to elect to*

[1] Margairaz, Andre, La fraude fiscale et ses succedanes : comment on echappe à l'impot, L'Imprimerir Vaudoise, 1972. Free translation by the author: there is legal or lawful fraud and illegal or illicit fraud whose definition can be formulated as follows; A legal or lawful fraud is recognized as such when a taxpayer uses an ingenious combination or exploits a provision not envisaged by the legislation. It therefore only turns around the legal text without violating it.
[2] ECJ, Case C-4/94 BLP Group plc v Commissioners of Customs Excise [2005] ECR I-983, § 15.
[3] Ibid., § 26.
[4] ECJ, Case C-18/99 Commissioners of Customs & Excise v Cantor Fitzgerald International [2001] ECR I -7257, § 33.
[5] See Delahaye, Thomas, *Le choix de la voie la moins imposee : etude de droit fiscal compare : Belgique, France, pays-Bas, Royaume-Uni, Bruylant*, 1977.
[6] Harcher, Jean-Baptiste Louis, *Traite des Fiefs – De la banalite des fours dans la Coutume du Poitou*, Histoire Passion, www.histoirepassion.eu/spip.php?article1678 [accessed August 20th 2013]. Free translation by the author "*who uses his rights is not doing any wrong*".

carry on business in a manner that attracts the least tax possible"[1]. Supporting this vision, in 1971 the French Minister of Finance claimed that "*il est de bonne gestion de savoir utiliser les options fiscales […] en presence de deux techniques juridiques dont la finalite est identique, il est licite d'operer un choix en function de la fiscalité*"[2]. Other writers have also identified the principle of "*liberty of tax choices*".

Maurice Cozian and Claude Gambier have mentioned that forbade a business of a tax advantage could be processed as mis-management of the business:

"[…] il n'est pas interdit aux contribuables d'etre habiles et lorsque deux ou plusieurs solutions leur sont offertes pour parvenir a des resultats approchants ils ont parfaitement le droit (on peut meme dire le devoir lorsque la decision doit etre prise au nom d'une societe par les dirigeants resposables) de choisir celle fisaclement la moins onereuse"[3].

Those transactions which have been designedly chosen to give VAT benefits, must not be hit by the doctrine of abuse if they stay commercially genuine. For example, if a European business, having the choice between two projects or financing projects (one in US and the other in Europe) decides to choose the project in the US. Instead of the one in another Member State, the reason of that is because in doing the business will have a right to deduct for its input VAT costs[4]. In the previous example of salt and pepper. A business can Legitimately give up its salt trading and instead opt for other trading which is pepper trading even though it is encouraged by a gain in relation to VAT. A transaction will not be invalidated because the authority of tax can prove "*that a commercially equivalent route exists with less beneficial VAT consequences*"[5].

[1] Herbain, Charlene Adline, *VAT NEUTRALITY*, Promoculture-Larcier, 1st edition, 2015, p. 113.
[2] Valery Giscard d'Estating [questions orales] Assemblee Nationale debats parlementaires, JORF du 20 mars 1971, 15-603, quoted from Afschrift, Thierry, L'évènement licite de I'impot et la réalite juridique, 2nd edition, Larcier, 2003. Free translation by the author: "*a good manager uses the tax possibilities […]. When two legal options are available and lead to the same end, the choice may legally be based on the taxation imposed on one or the other options*".
[3] Gambier, Claude, and Mercier, Jean-Yves, Les impots en France, 24th Edition, Francis Lefebvre, 1992. Free translation by the author: "taxpayers have the right to be clever and if two or more solutions are available to them to achieve results which are close, they have every right (you can even say, the duty, when the decision must be made on behalf of a company by its managers) to select the one that is the least expensive form a tax perspective".
[4] European Union, Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax, Official Journal No. L 347 issued on December 11th 2006, Article 169 § c.
[5] McCarthy, Hui Ling, *Abuse of rights, the effect of the doctrine on VAT planning*, British Tax Review, 2007, No. 441.

The Court of Justice of the European Union recognized in several examples the legitimacy of cases where, given the commerciality of the arrangements, a business was fully authorized to "*take […] advantage of a provision or of lacuna in legislation in order to pay less tax*" [1].

"*In a case where two Member States had transposed a VAT directive in such a way that a transaction could enjoy double non-taxation, it was ruled that a business using that double non-taxation possibility was not involved in fraudulent activity. The irregularity did not amount to an altered transaction and thus the principle of equality of VAT was preserved despite the absence of correction of the VAT treatment. In the case at hand, the VAT deduction right could not be denied to that business*"[2].

§2. Missing Trader Intra-Community (MTIC) and carousel VAT frauds explained and measures to prevent them

I used to kinds of fraud which are the Missing trader frauds and the carousel fraud, the reason of that chosen is to focus on the frauds which happens between states such as between the European Union and GCC.

So, this part of the section will include several main points which are the missing trader and MTIC frauds, Carousel Fraud, ECJ case law and The Attempts to Minimize the Tax Evasion.

A) Missing trader and MTIC frauds

In general, the missing trader is a VAT taxable person that levy's amounts of VAT on sales and after that disappears, in other words escaping with the amount of VAT levied. In my point of view, the European Union definition is narrower than the definition of Commission Regulation (EC) 1925/2004 of 29 October 2004 set detailed principles for implementing certain provisions of Council Regulation (EC) 1798/2003 regarding administrative cooperation in the aspect of value added tax [2004] OJ L331/13 defines in Article 2 "*missing trader*" " *as a trader registered as a taxable person for VAT purpose who, potentially with a fraudulent intent, acquires or purports to acquire goods or services without payment of VAT and supplies these goods or services with VAT but does not remit the VAT due to the appropriate national authority*". In comparing with meaning of missing trader, the EU definition requires the purported or factual

[1] De La Feria, *Prohibition of Abuse of (Community) Law*, Common Market Law Review, 2008, No. 142.
[2] Herbain, Charlene Adline, *VAT NEUTRALITY*, Promoculture-Larcier, 1st edition, 2015, p. 115.

acquisition of services and goods should be without paying VAT. The second section of the definition is similar the merchant goes missing without paying the levied VAT to the Taxation Authority. Regardless of the definition. It is obvious that to consider a missing trader it is not important for the taxable person to be engaged in intra-Community transactions[1].

In the next examples[2], I will display that it is far more lucrative to be a missing trader in conditions where services and goods acquired without paying VAT.

"*Suppose companies A, B and C are all VAT registered taxable persons in Member State X that has a VAT rate of 20%. They all operate exclusively in Member State X. Suppose Company A sells goods to company B for EUR 120 (EUR 100 net price and EUR 20 VAT). Company B resells these goods to Company C for EUR 144 (EUR 120 net price and EUR 24 VAT). Company B then disappears without filing its periodic VAT return and remitting EUR 24 VAT collected from Company C to the budget of Member State X. Company B illegally 'earns' EUR 4 in VAT from the added value (EUR 24 not remitted minus EUR 20 paid to company A).*

Now, assume that company A operates exclusively in Member State X while Companies B and C operate exclusively in Country Y which is not a Member State but has the same 20% VAT rate. Exports from Member State X are zero-rated. But at the border to Country Y, VAT is collected by customs from the importer (company B). So, the result stays as above.

If company B disappears without filing its periodic VAT return and remitting the VAT collected from the sale of goods to Company C, it will illegally 'earn' EUR4 (added value is EUR 20 plus 20% of this amount).

In intra-community transactions. however, where company A operates exclusively in Member State X and Companies B and C operate exclusively in Member State Z (where the VAT rate is 20%), the missing trader gain can be greater. The fiscal frontiers between EU Member States are abolished and customs no longer allot VAT. Instead, VAT is self-accounted by the acquiring business (company B). Company A will issue an invoice without VAT (net invoice, stating that Company B has to pay EUR 100). After the intra-community acquisition. Company B sells the goods to company C and collects EUR 144 (EUR 120 is net price and EUR 24 is VAT). Then it disappears without filing its periodic return in which it would have to self-declare the

[1] Podlipnik, Jernej, *Missing trader intra-community and carousel vat frauds- ECJ and ECtHR case law*, p. 461.
[2] The example is adopted from Durner, Leah, and Sedon, Jon, *VAT Administration : Issues and Enforcement, Tax Notes*, July 26th 2010, p. 431 ; http://www.Kpmginstitutes.com/taxwatch/insights/2011/pdf/vat-compiliation.pdf accessed 4 May 2012.

acquisition from Company A (EUR 20 VAT), the right to deduct this amount and the supply of goods to company C (EUR 24 VAT). This means that company B will illegally 'earn' EUR 24. The same amount is the revenue loss of Member State Z"[1].

B) Carousel Fraud

The traditional approach acknowledges that experience displays that real VATs are minimum resistance to avoidance and fraud than might be advised by the good VAT.[2]

Also, the specific issues are varying, VAT evasion and avoidance are critical issue across all jurisdictions in the world.[3] The avoidance of VAT is an increasingly important issue. With especially elaborate schemes happening in developed states.[4] "*This is perhaps reflected by the tendency of more recently introduced VATs to contain general anti-avoidance provisions*"[5].

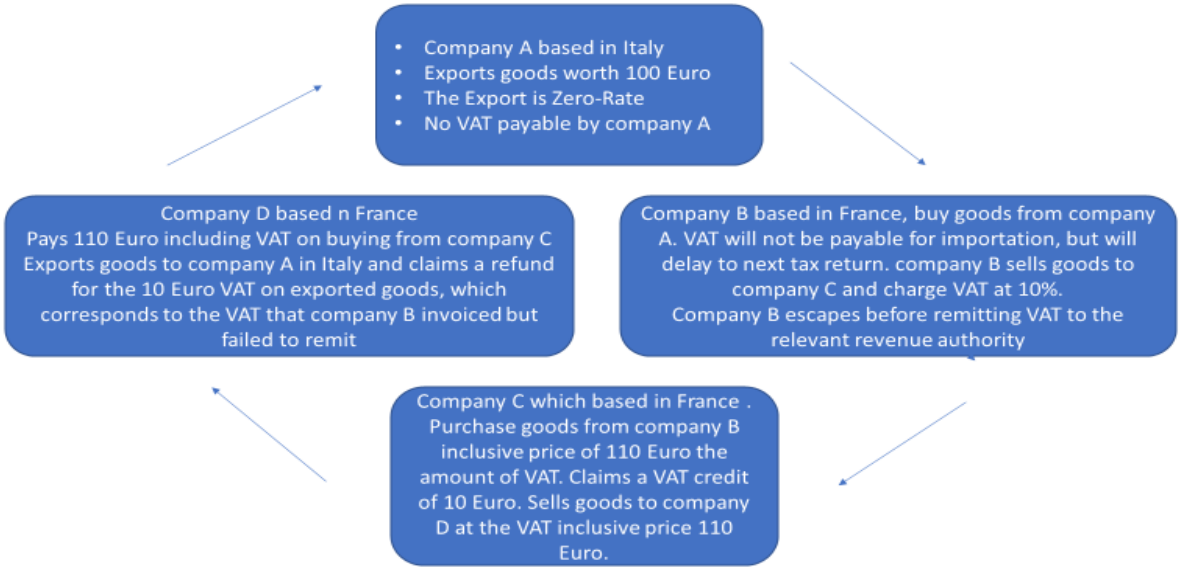
In this part will explain several points which are the mechanism of carousel fraud and The Gap of VAT.

1) The Mechanism of Carousel Fraud

In addition, the Studies have shown VAT fraud to be an important problem and significant issue elsewhere[6]. An example of that the GAO US Government Accountability Office studied VAT administration and compliance costs for New Zealand, Australia, Canada, France and UK and noted that: "*a VAT's reliance on credits and refunds makes the tax more susceptible than an income tax or RST to the compliance risks of fraudulent refund claims. Fraudulent refunds claims could exist under a conceptually simple VAT [i.e., the good VAT] and are a particular concern for all our study countries*"[7]. "*VAT evasion has occurred with*

[1] Jernej Podlipnik, missing trader intra-community and carousel vat frauds- ECJ and ECtHR case law, p. 462.
[2] Bird, Richard, and Gendron, Pierre-Pascal, *The VAT in Developing and Transitional Countries*, Cambridge University Press, New York, 2007; Keen, Micheal, and Smith, Stephen, *VAT Fraud and Evasion: what Do We Know Can Done*, National Tax Journal, 2006.
[3] Bird, Richard, and Gendron, Pierre-Pascal, *The VAT in Developing and Transitional Countries*, Cambridge University Press, New York, 2007, p. 25.
[4] Matthews, Kent, *VAT evasion and VAT avoidance: Is There a European Laffer Curve for VAT?*, International Review of Applied Economics,2003, p. 105. See also Chapter 6 of this book for a discussion of some of the issues in relation to Australia.
[5] James, Kathryn, *The Rise of the Value-Added Tax*, Cambridge University Press, p. 124.
[6] Keen, Micheal, and Smith, Stephen, *VAT Fraud and Evasion: what Do We Know Can Done?*, National Tax Journal, 2006, p. 861-873.
[7] US Government Accountability Office, Value-Added Taxes: Lessons Learned from Other Countries on Compliance Risks, Administrative Costs, Compliance Burden, and Transition (GAO-08-566), Washington, DC, 2008

varying degrees of sophistication"[1] *the simple techniques include the false claiming of refunds or falsification of invoices. More schemes include 'missing trader' fraud, "whereby a bogus company is established or falsely claim VAT credit (with or without false invoices) and then disappears before VAT liabilities fall due*"[2]. This can happen in any jurisdiction[3]. The elimination of customs borders in 1993 for intra-community trade in the European Union led several numbers of schemes in the European Union, for example "*carousel fraud*". "*A common type of carousel fraud exploits the VAT's incremental collection mechanism, the zero-rating of exports and the deferred payment of VAT on imports, which does not require VAT to be payable at the border for intra-community supplies but payable at the next periodic return. Put very simply, these schemes exploit the time leg between incurring VAT liabilities and being required to remit VAT and involve at least one entity charging VAT and absconding before being required to remit the VAT to revenue authorities*"[4].



(Figure 1)

Figure 1 provides explain of simplified example- the example assumes that there is no price markup for all transactions. As last figure, there is a loss of revenue of 10 Euro. Which consists of the 10 Euro VAT not remitted by company B. The carousel fraud is totally complete when

[1] Kathryn James, *The Rise of the Value-Added Tax*, Cambridge University Press, 2015, p. 125.
[2] Ibid.
[3] Keen, Micheal, and Smith, Stephen, *VAT Fraud and Evasion: what Do We Know Can Done?*, National Tax Journal, 2006, § 861, 865 and 868.
[4] Kathryn James, *The Rise of the Value-Added Tax*, Cambridge University Press, 2015, p. 125-126.

the goods return to the state of origin of company A[1]. In fact, the schemes are more complex and developed with modern technologies and markets, also the authorities have struggled to keep speed with the several evasion techniques[2].

It's important to mention that the carousel frauds are more complex variations of Missing trader and Missing Trader Intra-Community. The numbers of merchants trading the same goods or services in a circle to acquire an illegal profit by repetition the Missing trader and Missing Trader Intra-Community (MTIC). The major difference between carousel frauds and MTIC is by using the carousel frauds the goods or tradable services essentially make their way back to the original merchant or seller, or on the other words completing the loop.

2) The Gap of VAT

The VAT gap is another method designed at evaluation the performance of the VAT, the purpose of VAT gap is to reflects the difference between VAT in fact collected and the VAT that must in theory be collected if all taxpayers followed the requirements of law. The gap of VAT provides the measure which is currently available to assessment revenue losses that happen from avoidance activities and evasion[3]. The report of Reckon estimated that the VAT gap across the EU from 2000 until 2006 was between 12 to 14 per cent of the theoretical VAT revenues, which in year 2006 the amount was approximately 106.7 billion Euro. [4] The recent report authorized by the European Commission identified a raise in the gap of VAT as 17 per cent of theoretical VAT revenues, which was in year 2011 193 billion Euro or in other words 1.5 per cent of GDP.[5]

[1] Keen, Micheal, and Smith, Stephen, *VAT Fraud and Evasion: what Do We Know Can Done?*, National Tax Journal, 2006, p. 861-872.
[2] Ainsworth, Richard, *VAT Fraud and Technological Solutions* in C. Philip, Robinson and Saviano, Jeffrey, *The VAT Reader: what a federal Consumption Tax Would Mean for America*, Tax Analysts, Arlington, 2011.
[3] A number of different methods exist to calculate the VAT gap- see Keen, Michael, The Anatomy of VAT, IMF Working Paper No. WP/ 13/111, International Monetary Fund, 2013, p. 14-21.
[4] Reckon Report, Study to Quantify and analyse the VAT Gap in the EU-25 Memebr States (Reckon LLP, London, 2009), 8-9; European Commission, *Green Paper on the Future of VAT: Towards a simpler, More Robust and Efficient VAT System*, 2010.
[5] There is great variation in results across member states. The median VAT gap across the EU-26 for 2000-2011 was 13 percent. The results show the VAT gap increased with the economic recession and with an increase in VAT rates: Central Planning Bureau (CPB), Netherlands Bureau for Economic Policy Analysis, Study to Quantify and Analyse the VAT Gap in the EU-27 Member States – Final Report (TAXU D/2012/DE/316; FWC No TAXUD/2010/CG/104); Study Commission by the European Commission, COB Netherlands Bureau for Economic Policy Analysis, The Hague, 2013.

C) ECJ case law

Since missing trader entities are missing. Stolen VAT or missing VAT cannot be accessed from them. Therefore, the member states try to return at least some of these VAT amounts from taxable persons who were knowingly or unknowingly part of the carousel tax fraud chain or MITC. The ECJ judgments deal with the MTIC and carousel frauds in two issues, the first issue is to refuse a VAT deduction for supplies made to a business by a missing trader, the second issue is to hold a business jointly and severally liable for share in an MTIC or carousel fraud.

The ECJ case law include several points which are refusal of a VAT deduction and joint and several liabilities.

1) Refusal of a VAT deduction

There are two famous cases assets the ECJ developed its opinion on VAT deduction when a missing trader made a supply to a taxable person and made a deduction based on the VAT law, which is received invoices. The first case is the joint cases Optigen Ltd, Fulcrum Electronics Ltd and Bond House Systems Ltd v Commissioners of Customs & Excise[1]**.** The second case is Axel Kittel v Etat belge and Etat belge v Recolta Recucling SPRL[2]**.**

The Refusal of a VAT deduction include two cases which are Optigen and others and Kittel and Recolta.

a- Optigen and others

Optigen, Fulcrum and Bond House are dealing the business of buying central processing units (CPUs) from merchants established in the UK and selling them to firms established in other member state. The transactions are part of carousel. However, Optigen, Fulcrum and Bond House were not aware of that fraud. This issue is the core of that case and the ECJ answer that question. First, if transactions which are not themselves void by VAT fraud, but which form side of a chain of supply in which another previously or subsequent transaction is void by such fraud, without the merchant engaged in the first transactions having any means of knowing, constitute supplies of goods or services influenced by a taxable person acting as such and an

[1] Joint ECJ, cases C-354/03, C-355/03 and C-484/03 Optigen Ltd, Fulcrum Electronics Ltd and Bond House Systems Ltd v Commissioners of Customs & Excise [2006] ECR I-483.
[2] Joint ECJ, cases C-439/04 and C-440/04 Axel Kittel v Etat belge and Etat belge v Recolta Recycling SPRL [2006] ECR I-06161.

economic activity, and, second, whether, in such statues, the right of that merchant to deduct input VAT may be limited.

In court judgment, the ECJ assure its view on the right to deduct. This right of ECJ regarding the right to deduct is an integral part of the VAT scheme and in principle may not be limited. It should be exercised in respect of all the taxes charged on transactions relating to inputs. "*It is therefore irrelevant for the right to deduct input VAT whether the VAT on the earlier or later sale of the goods concerned to the end-user has or has not been paid to the public purse*"[1].

The view of point of ECJ, a taxable person cannot be prohibited the right to deduct input VAT because he was having any means of knowing of sharing in a carousel fraud. It was obvious that the ECJ has indicated, but not explicitly. That a taxable person who was known sharing in carousel frauds would not have, the right to deduct input VAT.

b- Kittel and Recolta

Ang Computime Belgium ('Computime') as a trader bought and resold computer components. The Belgium Tax Authorities determined that Computime had knowingly join in a carousel fraud and that the supplies effected to Computime were fictitious. Because of that, they refused to allow Computime the right to deduct the VAT, which paid on those supplies.

Recolta bought 16 luxury vehicles. The related seller did not charge for the VAT paid by Recolta. Which resold the vehicles without charge? The investigation by the special Inspectorate of Taxes showed that both related parties selling to Recolta and purchasing from it had set up a scheme for carousel tax fraud, of which the transactions with Recolta formed side.

The ECJ asked two questions, *"Which must be considered together, the referring court asks essentially whether, where a recipient of a supply of goods is a taxable person who did not and could not know that the transaction concerned was part of a fraud committed by the seller, Article 17 of the Sixth Directive must be interpreted as meaning that it precludes a rule of national law under which the fact that the contract of sale is void, by reason of a civil law provision which renders the contract incurably void as contrary to public policy on the ground that the basis of the contract is unlawful by reason of a matter which is attributable to the seller,*

[1] Podlipnik, Jernej, *Missing trader intra-community and carousel vat frauds- ECJ and ECtHR case law*, p. 467.

causes that taxable person to lose his right to deduct that tax, That court asks whether the answer to that question is different where the contract is incurably void for fraudulent evasion of VAT.

The referring court also asks whether the answer to that question is different where the taxable person knew or should have known that, by his purchase, he was participating in a transaction connected with fraudulent evasion of VAT"**[1].**

So, the case of Kittel and Recolta is an evolution of the case of Optigen and the others. The ECJ mention that the doctrine of Optigen and others is applicable to fraudulent transactions where the recipient of the supplies knowing or having any means of knowing**[2]**. Therefore, if a supplier is fraudulent evasion, but the recipient knowing or having any means of knowing of his intent. The right of recipient to deduct input VAT. Connected with that transaction. Keep it the same. "*For the right of the taxable person to deduct input VAT, it is also irrelevant if VAT was actually paid to the Treasury*"[3] .

Taxable persons who take every caution, which could reasonably be needed of them to assure that their transactions, are not related with a fraud "*must be able to rely on the legality of those transactions without the risk of losing their right to deduct the input VAT*"**[4]**.

A taxable person who knowing or having any means of knowing that his deal, also he was taking part in a transaction relating with fraudulent tax evasion of VAT should be considered as a participant in the fraud, "*irrespective of whether or not he profited by the resale of the goods. That is because in such a situation the taxable person aids the perpetrators of the fraud and becomes their accomplice*"[5].

[1] Joint ECJ, cases C-439/04 and C-440/04 Axel Kittel v Etat belge and Etat belge v Recolta Recycling SPRL [2006] ECR I-06161, § 27-28.
[2] Joint ECJ, cases C-439/04 and C-440/04 Axel Kittel v Etat belge and Etat belge v Recolta Recycling SPRL [2006] ECR I-06161, § 46.
[3] Podlipnik, Jernej, *Missing trader intra-community and carousel vat frauds- ECJ and ECtHR case law*, p. 468.
[4] Joint ECJ, cases C-439/04 and C-440/04 Axel Kittel v Etat belge and Etat belge v Recolta Recycling SPRL [2006] ECR I-06161, § 51.
[5] Joint ECJ, cases C-439/04 and C-440/04 Axel Kittel v Etat belge and Etat belge v Recolta Recycling SPRL [2006] ECR I-06161, § 56-57.

2) Joint and several liabilities

The main and important case of the joint and several liabilities which dealt by ECJ is Case C-384/04 Commissioners of Customs & Excise, Attorney General v Federation of Technological Industries and others [2006] ECR I-4191.

The issue of that case was a several firms were trading mobile telephones and computer processing units. They were corporation in carousel frauds and MTIC. Based to the VAT Act, which valid in the United Kingdome, the tax commissioner decided that they were jointly and severally responsible for unpaid VAT by missing traders. In the steps before the ECJ, they claimed that the rules of VAT Act, on the regard of which they were ordered to pay VAT, was completely contrary to community law.

The ECJ disagreed with their opinion, but realized a few limits. The Member States are authorized to enact or issue legislation which provides that a taxable person. "*To whom a supply of goods or services has been made and who knew, or had responsible grounds to suspect, that some or all of the value added tax payable in respect of that supply, or of any previous or subsequent supply, would go unpaid, may be made jointly and severally liable, with the person whi is initially liable, for payment of that tax. But such legislation must comply with the general principles of law which form part of the community legal order and which include, in particular, the principles of legal certainty and proportionally, in addition, Member States may enact measures which impose on the jointly and severally liable persons a requirement to provide security for the payment of that tax which is due*"[1].

So those merchants who take cautions which could reasonably be needed of them to ensure that their deals do not form side of a chain which includes a deal vitiated by VAT fraud should be able to depend on the legality of those deals without the risk of being made jointly and severally liable to pay the VAT due from other taxable persons.

Based on Article 205 RVD the Member States have the right to pass a law in accord to which taxable persons who knew, or had reasonable grounds to suspect, that they are side or part of a carousel fraud or MTIC can be held liable to pay stolen VAT.

[1] Podlipnik, Jernej, *Missing trader intra-community and carousel vat frauds- ECJ and ECtHR case law*, p. 469.

D) The Attempts to Minimize the Tax Evasion

A few procedures have been suggested to try to address this issue, also other evasion schemes. The procedures include: 1) efforts to promote information exchange, coordination and cooperation between the revenue authorities of European Union member states[1]. For example, the establishment of Eurofisc, which is "*a network of national officials charged with the deduction and response to cross-border VAT evasion schemes such as carousel fraud*"[2]. Moves to promote exchange of information and cooperation have extended outside the EU and cross the OECD[3]. 2) the options of law reforms: which including proposed reforms to the rules of the place of supply[4]. "*The introduction by some member states of joint and several liability provisions and the introduction of a reverse-charge mechanism on selected vulnerable intra-community business-to-business (B2B) supplies. A reverse-charge mechanism means that the recipient of a supply remits the VAT rather than the supplier. If the recipient is a registered business, it self-assesses and applies for credit without collecting or paying VAT. While this addresses the missing trader issue (because Company 2 no longer has an incentive to go missing)*" that means VAT operates like RST, for example, the seller needs to check the status of the recipient to locate whether to charge the VAT, also all the amount of tax is levied at the final stage of the supply or distribution chain. Which therefore gives increase to all the fraud risks that such a method entails[5]. "*The selective application of the reverses-charge mechanism*

[1] The European commission has responded to carousel fraud by adopting proposal to amend the recast VAT Directive (2006/112/EC) and associated regulations to enhance collection and exchange of information on intra-communities supplies from 1 January 2010; Commission of the European Communities, Communication from the commission to the Council, the European Parliament, the European Economic and social Committee, *On a Coordinated Strategy to Improve the Fight against VAT fraud in the European Union*, 2008 ; European Commission, *Green Paper on the future of VAT : Towards a Simpler, More Robust and efficient VAT Systems*, 2010. See also Lejeune Ine, Daou-Azzi Jeanine and Powell Mark (of PricewaterhouseCoopers), *The Balance Has Shifted to Consumption Taxes – Lessons Learned and Best Practices for VAT*, in M, Lang, Michael, Melz, Peter, Kristoffersson, Eleonor, *Value Added Tax and Direct Taxation: Similarities and Differences*, IBFD, 2009, p. 59 to 87; Keen, Micheal, and Smith, Stephen, *VAT Fraud and Evasion: what Do We Know Can Done*, National Tax Journal, 2006, p. 87; Cnossen, Sijbren, *VAT Coordination in Common Markets and Federations: Lessons from the European Experience*, Tax Law Review No. 63, 2010, §. 583 and 603-4.

[2] James, Kathryn, *The Rise of the Value-Added Tax*, Cambridge University Press, p. 127.

[3] European Union, Council Regulation 904/2010 of 7 October 2010 on Administrative Cooperation and Combating Fraud in the field of Value Added Tax (Recast), Official Journal No. L2680 issued on October 12th 2010, Article 18 ; OECD, *Consumption Tax Trends 2012: VAT/GST and Excise Rates, Trends and Administration Issues*, OECD Publishing, Paris, 2012.

[4] The European Commission has acknowledged that the response to VAT fraud also requires a more coherent policy approach to non-member states: European Commission, *Communication from the commission from the Commission to the European Parliament and the Council on Concrete Ways to Reinforce the Fight against Tax Fraud and Tax Evasion Including in Relation to Third Countries,* 2012, p. 9-13.

[5] Shepard, Lee, *Addressing VAT Fraud Problems*, Tax Notes International No. 46, 2007, p. 255. The recent Henry Review of taxation in Australia highlighted the same point: "*[r]everse charging would be similar in effect to a retail sales tax, as some transactions within the supply chain would be excluded from GST, provided that the*

to problematic supplies, such as the temporary option available to EU member states of applying the reverse-charge mechanism to supplies in carbon emissions trading permits, has thus far not been sufficient to stem abuse and has therefore prompted the European Commission to call for a more widespread application of the mechanism"[1]. Reforms have extended the reverse charge mechanism to other weak supplies[2], also provided a Quick Reaction Mechanism to let member states an expedited transaction to implement the reverse-charge mechanism to transactions suspected of massive and sudden VAT fraud[3] ; and 3) efforts to support VAT collection mechanism ranging from proposals for real-time VAT collection and/or verification measures for B2B (business to business) supplies to the certification of the taxpayers' VAT processing method[4]. Despite numerous of proposal and reviews, the fraud of VAT continues to outpace the response of European Union taxation authorities[5].

Developing states are even more susceptible to the fraud present in developed states by their weaker administrative ability, according to the ITD VAT Paper highlights: "*in additions to the reluctance of financially weak governments to pay refunds, it has become increasingly apparent*

recipient is registered for GST": commonwealth of Australia Treasury, Australia Future Tax System Review Panel, *Australia's Future tax System:* Report to the Treasurer, Canberra, 2009, p. 290.

[1] Kathryn James, *The Rise of the Value-Added Tax*, Cambridge University Press, 2015, p. 128.

[2] The list of supplies includes those of mobile telephones, certain gas and electricity supplies, telecommunication services, game consoles, tablet PC's and laptops and cereals and industrial crops: council Directive 2013/43/EU of 22 july 2013 amending Directive 2006/112/EC on the Common System of Value Added Tax, as regards an Optional and Temporary Application of the Reverse charge Mechanism in Relation to Supplies of Certain Goods and Services Susceptible to Fraud, 2013, Official Journal No. L201/4.

[3] European Union, Council Directive 2013/42/EU of 22 July 2013 amending Directive 2006/112/EC on the Common system of Value Added Tax, as Regards a Quick Reaction Mechanism against VAT Fraud, 2013, Official Journal No. 201/1.

[4] For example, under the real-time collection model, VAT would be charged and remitted to revenue authorities at the time of the settlement of a transaction (rather than VAT withheld and remitted later). Although such a proposal would address the exploitation of the time lag between the receipt of VAT by the missing trader and the remittance of VAT common to such missing-trader schemes, stakeholders have opposed such suggestions because of concerns over the cost and complexity of introduction such a system, as well as the significant cash-flow implication: *European Commissions, Green Paper on the Future of VAT: Towards a Simpler, More Robust and Efficient VAT System,* 2010; European Commission. Directorate-General Taxation and Customs Union, Indirect Taxation and Tax administration, VAT and other Turnover Taxes, *Summary Report of the* Outcome of the Public Consultation on the Green Paper on the Future of VAT Towards a Simpler, More Robust and Efficient VAT System (1 December 2010- 31 May 2011), 2011. For an overview of the technology-based options, see Ainsworth, Richard, *VAT Fraud and Technological Solutions*, in C. Philip, Robinson and Saviano, Jeffrey, *The VAT Reader: what a federal Consumption Tax Would Mean for America*, Tax Analysts, Arlington, 2011.

[5] OECD, *Consumption Tax Trends 2012: VAT/GST and Excise Rates, Trends and Administration Issues*, OECD Publishing, Paris, 2012 ; For a summary of Judicial responses to the issue, see Wolf, Redmar, *Mecsek-Gabona: The Final Step of the ECJ's Doctrine on Reliance on EU law for Abusive or Fraudulent Ends in the Context of Intra-Community Transactions*, September-October 2013.

that many tax administrations are incapable of policing the issuance of cash refunds to taxpayers without inviting abuse"[1].

In addition, in some cases the delays in refunds are an output of efforts to guard against fraud[2]. Also, "*the significant size of the informal economy means that the VAT chain can be bypassed altogether, and therefore the VAT is no more effective at reaching the cash economy than the retail sales tax*"[3]. Also, the corruption and fraud are a major source of attention in developing states, Stiglitz confirms that: *"[...] one developing country after another has had problems in its rebate system. Sometime rebates are paid only after a long lag. For firms facing a shortage of capital. This can be crippling. Even worse, the rebates have become a source of corruption, as fake documents have been used to secure large payments to corporations*"[4].

Stiglitz used example of Kenya, "*where the corruption in relation to the issuing of VAT refunds promoted the introduction of a requirement that large refund claims be verified by a certified public accountant, which has reduced refund claims by 40 per cent – a figure that suggests the magnitude of the fraud*"[5]. Many resources have been used to stopping VAT fraud with less success[6]. "*Country-specific measures have included selectively matching invoices to verify refunds claims (Pakistan); large scale cross-checking of invoices (Korea, China); VAT withholding regimes that combine a reverse-charge mechanism with the requirement that VAT withheld be remitted to revenue authorities (common in Latin American jurisdictions such as Argentina and Ecuador); and the establishment of special VAT bank accounts (Bulgaria)*"[7].

§3. Carousel Fraud in UAE

The carousel fraud happened in European Union after 1993 the date of elimination the barriers between European States, that made a difficulty to control the border particularly the transfer of goods via the borders, but the situations of UAE is different.

[1] International Tax Dialogue (ITD), 'The Value Added Tax: Experience and Issues' (Back-ground Paper Prepared for the International Tax Dialogue Conference on the VAT, Rome, March 15-16, 2005, ITD), 31.
[2] Thuronyi, Victor, *Comparative Tax Law*, Kluwer Law International, The Hague, 2003.
[3] James, Kathryn, *The Rise of the Value-Added Tax*, Cambridge University Press, p. 130.
[4] Stiglitz, Joseph E., *Development-Oriented Tax Policy*, in Gardon, Roger H, *Taxation in Developing Countries: Six Case Studies and Policy Implications*, Columbia University Pres, New York, 2010, p. 11-13.
[5] James, Kathryn, *The Rise of the Value-Added Tax*, Cambridge University Press, p. 130.
[6] Keen, Micheal, and Smith, Stephen, *VAT Fraud and Evasion: what Do We Know Can Done*, National Tax Journal, 2006. p. 880-84.
[7] James, Kathryn, *The Rise of the Value-Added Tax*, Cambridge University Press, p. 131.

The UAE implement the VAT according to GCC convention that allow the GCC Member State to implement VAT under GCC umbrella, which is similar situation of EU. However, the major difference is the border which is still working and exist. The Member States of GCC not eliminate the borders.

The other issue is the GCC convention still not exist in UAE, according to article 70/15 from VAT regulation in UAE. In addition, the federal customs of UAE charge the VAT in border. In addition, the VAT law give the right to taxable person to delay the payment until the due tax period with the tax return. That option is linked between the Federal Taxation Authority and Federal customs Authority by system. In that system the shows all the customs declaration with the amounts.

In other side the European States have experience on that field, and they establish several legal entities to eliminate the fraud and to stop bad impact on the VAT. One of the most effective entity is the European Court of Justice which have the jurisdiction of conflict between the states and with cases happens between several European States. On other hand there are no GCC court to deal with the same cases which happens in GCC states. Also, that court will assist to interpretation the GCC VAT agreement and will assist to develop the VAT in GCC by issuing the judgments. That judgment is a basis of legal principles. In addition, there are other entity in European level which are the commission communication on Anti-Abuse. So, my suggestion is to adopt the GCC committee to reduce or eliminate the taxation fraud between the GCC states. The responsibilities of that committee are to study the legislations and adopt suggestions to reduce the taxation fraud or study the gap of legislations. The committee is responsible to observe the applying the VAT and send reports to GCC organizations.

In addition, the taxation transaction must be electronics, that will assist the taxation authority to observe that transactions and to notice the violations, the idea is nobody can stop the fraud but the taxation authority can make the taxation fraud hard to happens by using the artificial intelligence, the AI can’t work without shifting from manual transactions to electronic transactions.

PART TWO
Implementation the Value Added Tax in United Arab Emirates

In part one the focus was on the VAT in general, because the VAT is not a new taxation system, VAT was start in 1954 and has been developed and spread across the world, in previous part the explanation was on the concept of Direct tax and indirect tax then focusing the indirect tax to show the features of it, then the VAT as a type of indirect tax with comparing between the VAT and Direct Tax and VAT with other type of indirect tax. Furthermore, the focusing was on the concept and principle of Neutrality of VAT.

Then in title two of part one the consternation was on the influence on VAT system, the good influence and impact by the International Organization and states with best practice.

That effort from the states and international organization assist to develop the VAT system like the effort to adopt the reverse charge which promote the VAT without bad impact on international business, the reverse charge was a result of international corporation in that field. Also, the bad influence on VAT system by the taxable person who refuse to pay the tax or who want to reduce the amount of tax or who want to get benefit from the tax, which called Fraud on tax. It may be an abuse of law or may be tax evasion. The carousal fraud was a type of fraud in tax which happened between several states to reduce the amount of tax.

In part two the study will be on UAE legislation of VAT and the beginning the Title one will focus on the legal cover of VAT law in UAE. The discussion will be on the UAE VAT legal framework which will include the UAE VAT law, Excise law, VAT regulation and guide books and relation between the procedure law and VAT law. Then in second chapter the focusing will be on the GCC VAT agreement which id the legal base of implementation VAT in GCC states. The last chapter in title one is the relation between the VAT law and other laws in UAE (taxation laws or non-taxation laws).

In title two of the part two will focus on the Features of VAT law, after implementation of VAT in UAE there are some modifying on VAT system happened, the chapter will focus on

the legal developments specially the issue of expo and the decision to support gold market which had bad influence from the VAT system.

At the end of the part the discuses will be on the ethics of tax administration, Rights of tax auditing, Controls on tax audit and The Rights of taxable person, in my opinion the VAT law and the procedures law give the Federal Taxation Authority several powers to control the VAT and the taxable person, that powers may influence on the economic and VAT system if the usage of law was wrong or abuse of law happen. So, in last chapter the focus will be on that to see the advantage and disadvantage of the UAE VAT system in that matter.

TITLE ONE

The legal cover of VAT law in UAE

Any taxation system should start by law, any law should organize the relation between the parties of law. The UAE VAT law must organize the relation between the taxable person and the Federal Taxation Authority and that is the purpose of issuance the UAE VAT Law.

At the beginning the Common VAT Agreement of the states of the Gulf Cooperation Council was issued to implement the VAT in the GCC states with special rules between the states. The agreement adopts the general outline and give a leeway for states to enact the domestic legislations article (79/2) said "*each Member States shall take the necessary internal procedures to issue a local law to implement the provisions of this agreement, including setting the policies and procedures necessary for the implementation of the Tax in a manner consistent with the provision of this agreement"*[1]. In that regard the member states issue the domestic legislation to implement the VAT in their states. According to that UAE was issue the UAE VAT law and other legislation, the subject of the thesis is the implementation of VAT law in UAE, so in this title will be the implementation of VAT in UAE if its correct or not and to show the issues of applying VAT in UAE.

[1] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 79 § 2.

At the beginning of the title one of part two will be a discussion about the VAT law and other taxation legislation, whereas the Excise tax is implemented at the same period of implementation VAT in UAE and at the same level which is the federal level and at the similar scope in some parts which is the goods, the Excise goods are subject to VAT and the excise tax, that issue need to clarify in the thesis. Also, the other taxation legislation needs to be focused and observe the integration between that legislation and VAT law to achieve the target which is correct implementation. Furthermore, the GCC VAT agreement is a field for study and comparing with EU VAT Directive.

At the end the Title one will include three chapters, chapter one is UAE VAT legal framework, chapter two is the national VAT in regional area and the last chapter is the relation of VAT with other laws.

CHAPTER ONE
UAE VAT legal framework

The UAE VAT law was issued in 23th August 2017 according to the article (85) of the Federal Decree-Law No. (8) of 2017 on Value Added Tax which said *"this Decree-Law shall published in the Official Gazette and shall come into effect as of January 1, 2018"*[1]. So, the implementation of VAT law and system will start in UAE on 1st January 2018, there are two questions raises, the first one is why its issuing as a Decree-law not law? The second question which is regarding the applying of VAT, what is the effected time on the first of January 2018 of VAT?

The answer of the first question is it's a constitutional issue. Article (113) of UAE constitution said *"if, between meetings of the Supreme Council, the speedy promulgation of Union laws, which cannot be delayed, is required, the President of the Union and the Council of Ministers may together promulgate the necessary laws in the form of decrees which shall have the force of law, provided they are not inconsistent with the Constitution. Such decree laws must be submitted to the Supreme Council within a week at the maximum for assent or rejection. In the*

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No 8 of 2017 on Value Added Tax, Official Journal No 621, issued on August 23rd 2017, Article 85.

case of assent the force of law shall be confirmed and the Union National Council shall be informed accordingly at its next meeting. In the event that the Supreme Council does not assent, such decree laws shall cease to have force of law, except that it may be decided to sanction their effectiveness during the earlier period, or to sanction adjustment of their effects". According to that article of UAE constitution, the VAT law was issued as a Decree-Law.

The answer of the second question is the law issued without the determine the time of effected VAT law on the date of first of January 2018, the challenge is the transaction of trade it might happen at any time of day. That issue was solved in the cabinet decision No 52 of 2017 on the executive regulations of federal Decree – law No (8) of 2017 on Value Added Tax. Article (75) of last decision organize that which said *"the Decision shall be published in the Official Gazette and shall came into effect on 1 January 2018 at the earlier of: 1. The time of opining the business on 1 January 2018. 2. 7 am on 1 January 2018"*[1]. But that article mentions the decision not the law. In my opinion the VAT law is very general and can't work without the decision which organize the work with VAT in details, so the VAT system in UAE can't implemented without the decision, so the VAT system in UAE start on 1th January 2018 at the earlier the time of opining the business on 1 January 2018. Or 7 am on 1 January 2018.

Before issuing the VAT law in UAE and regulations, the government of UAE was signed the GCC VAT agreement and ratify it, that agreement was issued in 2015 to implement VAT in GCC region under umbrella of GCC. According to article (79/1) of the GCC VAT agreement which said *"This agreement shall be adopted by GCC Supreme Council and should be ratified by Member States in accordance with their constitutional procedures"*[2]. That issue will focus on it in chapter two. I want to add one more points in that issue, the unofficial translate agreement or English version of the agreement which downloaded from the official website of the Federal Taxation Authority it include major mistake which not include the article (76) under the name of annex, the English version skip that article and the numbering after article (76) was mistake, so the article (79) of Arabic version was under name of coming into force but in English version that article was under article number (78).

The other issue before starting the chapter is the excise tax in UAE and relation of that tax with VAT. As mention in part one of the thesis, there are two types of taxes in the world, the direct

[1] Cabinet of the United Arab Emirates, Decision No. 52 of 2017 on the Executive Regulations of Federal Decree-Law No. of 2017 on Value Added Tax, Official Gazette No. 624, issued on November 26th 2017, Article 75.
[2] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 8 of 2017 on Value Added Tax, Official Gazette No. 621, issued on August 23rd 2017, Article 79 § 1.

tax and indirect tax. The other name of indirect tax is consumption tax which the consumer burdens the payment of tax and the taxation authority or government collect the tax by the third party. The consumption tax includes in general VAT, sales tax and the excise tax.

The excise tax was implemented in UAE after the government of UAE was signed the GCC excise tax agreement and ratify it, that agreement was issued in 2015 to implement excise tax in GCC region under the umbrella of GCC. Its similar situation of VAT. According to article 29 of common Excise tax Agreement of the states of the Gulf Cooperation Council (GCC) which said *"this Agreement shall be adopted by the GCC Supreme Council and shall be ratified by Member States in accordance with their constitutional procedures. 1. This Agreement shall be treated as coming into force from the deposit of the ratification document by the second Member State at the General Secretariat of the GCC".* The excise tax applied only on the specific goods which mentions in the cabinet decision 38 of 2017 on Excise goods, Excise Tax Rates and Methods of Calculating the Excise price, that mention on article (6), tobacco and tobacco products with rate 100%, energy drinks with rate 100% and carbonated drinks with rate 50%. In 2019 the range of the excise tax was extending to include two more items of goods which are the Sweetened drinks and Electronic Cigarettes.

There is a relation between the VAT and excise tax in UAE, in regard of applying the VAT or excise tax what is the kind of tax with right of implement, VAT or excise tax?

According to Article (35) of Federal Law No. 8 of 2017 concerning Value Added Tax in United Arab Emirates VAT mention explicitly that the value of product is the price of product with any custom duty and any excise tax. It's clearly noted that after adding the excise tax on price then the VAT will apply. Article (35) said *"The import value of goods consists of: 1. The customs value pursuant to Custom Legislation, including the value of insurance, fright and any customs fees and Excise Tax paid on the Import of the Goods. Tax shall not be included in the Value of the Supply. 2. If it is not possible to determine the value pursuant to Clause (1) of this Article, the value shall be determined based on alternate valuation rules stated in the applicable Custom Legislation"*[1].

When looking at the previous article, its noted that the article mention the value of goods at import whereas the value of insurance, fright, customs fees and any excise taxes are calculated

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No 8 of 2017 on Value Added Tax, Official Journal No 621, issued on August 23rd 2017, Article 35.

and then VAT is imposed on the full amount, in other words that VAT is levied on imported goods after the excise tax is calculated. Its noted that the VAT imposed on the other tax which is excise tax, and on this matter, I have two comments. The first comments or issue is the impose tax on other tax is right or wrong. The second comment or issue is the impose of VAT on the excise tax is only in regard of import according to article (35) of UAE VAT law, whereas the article (2) of UAE excise tax, the excise tax imposed on the goods only one time on production of excise goods in state, import of excise goods, release of excise good from a designated zone and stockpiling of excise goods in the state. So, in my opinion there are mistake or shortage in taxations laws, whereas the last article mentions four situations of impose excise tax and the article (35) of UAE VAT LAW organize only one situation which is the import of excise goods, so the taxations laws doesn't mention the situation of produce the excise tax and how the relation between VAT and excise tax will be.

After discussing the relation between VAT and excise tax in UAE, this chapter will include three sections which are Section one the UAE VAT law which are value added tax federal Decree law, no (8) 2017, Section two the VAT regulation and guide books (The guide books were issued by federal taxation Authority), Section three the taxation procedure law in UAE.

Section one. The Federal Decree-law No. (8) 2017 on Value Added Tax in UAE

To review and focus on the Federal Decree-law No. (8) 2017 on Value Added Tax in UAE I have to justify the issuance of the law as a federal decree-law not the normal way which is the federal law (the constitutionality of law). Then will see the position of the previous law with the principle of neutrality of VAT which is one of the main and common principle of VAT (The position of UAE VAT law on the principle of tax Neutrality), the last subject in this regard will be Criticism of the UAE VAT law in my view of point after focusing on the principle of neutrality and best practice in part one of the Thesis.

§1. Constitutionality of law

The United Arab Emirates is a federal state, its established by union between seven states or Emirates, that seven states establish the new entity which is United Arab Emirates,

whereas the United Arab Emirates includes eight governments, the federal government and the seven domestic governments. The jurisdictions distribute between the federal government and domestic governments based on the provision of UAE constitution. Whereas article (120) from the UAE constitution mention the distribution of legislative, executive and international jurisdiction between the union and the emirates, the article said *"The Union shall have exclusive legislative and executive Jurisdiction in the following affairs: 1. Foreign affairs. 2. Defence and the Union Armed Forces. 3. Protection of the Union's security against internal or external threat. 4. Matters pertaining to security, order and rule in the permanent capital of the Union. 5. Matters relating to Union officials and Union judiciary. 6. Union finance and Union taxes, duties and fees. 7. Union public loans. 8. Postal, telegraph, telephone and wireless services. 9. Construction, maintenance and improvement of Union roads which the Supreme Council has determined to be trunk roads. The organisation of traffic on such roads. 10. Air Traffic Control and the issue of licences to aircrafts and pilots. 11. Education. 12. Public health and medical services. 13. Currency board and coinage. 14. Measures, standards and weights. 15. Electricity services. 16. Union nationality, passports, residence and immigration. 17. Union properties and all matters relating thereto. 18. Census affairs and statistics relevant to Union purposes. 19. Union Information"*[1].

According to part 6 of previous article, it noted the Union finance and Union taxes, duties and fees are the exclusive right for the federal government, whereas the domestic governments not allowed to legislative or executive the federal tax or fees. Also, it noted from the previous article there are no legal obstacle for domestic governments to adopt any domestic fees and taxes.

In light of Article (120) of the UAE Constitution, the Emirate of Abu Dhabi issued the law No (1) of 2017 for Financial system of the government of Abu Dhabi. Article 16/1 of that law said *"1. No tax shall be imposed, modified or cancelled except by virtue of law; and no person shall be exempt from the payment of the said taxes, other than in the cases set forth in this law"*[2].

Whereas that law is a domestic law of public financial issues in Abu Dhabi and in article (16) of that law organize the issue of adopting the fees and taxes in Abu Dhabi, I have three comments in that regards, the first comments is in the preamble of that law, there are no refer to UAE constitution, but the legislator is only refer to domestic and federal law and forget the

[1] United Arab Emirates, The Constitution of UAE, Article 120.
[2] United Arab Emirates, Law No 1 of 2017 of the United Arab Emirates for Financial system of the government of Abu Dhabi, Official Gazette, the first edition- the forty sixth year, issue on January 10th 2017, Article16.

main source which is the construction, because the constitution give the rights to union to legislate and execute some issue which mention in article (120) from UAE constitution, so its important issue the refer to constitution in any finance domestic law.

The second comments are the law no (1) of 2017 issued with mistake, because its not mention the range of law if its is only in Emirate of Abu Dhabi or federal (it's not mention in article). This comment can't resist from other opinion which is the issuer of that law is the president of UAE and the ruler of Abu Dhabi, and if the law mentions at the preamble the ruler of Abu Dhabi that meaning a domestic law, but if the law mentions the president of UAE that meaning federal law.

The third comments are there are two types of taxes in UAE, federal and domestic. In constitution the federal government have exclusive jurisdiction over the administration, collection and enforcement of federal taxes according to article (120) of UAE constitution. Also, the domestic law has a jurisdiction over the domestic taxes according to article (122) which said *"the Emirates shall have jurisdiction in all matters not assigned to the exclusive jurisdiction of the Union in accordance with the provisions of the two preceding Articles"*[1] , its obvious that there is no obstacle to adopt any domestic taxes. My concern is what is the situation if any domestic government adopt domestic VAT in territorial of that Emirate? The situation will be there are federal VAT law and domestic VAT law and that it will not work. Maybe that will not happen, but there is no legal clause to prevent that to happens, in my opinion that is disaster if happened and the VAT federal law must amend and include article said that the VAT is a federal law and the domestic governments are not allowed to adopt or issue domestic VAT.

Coming back to jurisdiction of federal taxes, the federal decree law No (13) of 2016 on the establishment of federal taxation authority was issued, whereas the law establishes a federal taxation authority with jurisdiction over the administration, collection and enforcement of federal taxes and relevant penalties[2].

The subject of this section is the UAE VAT LAW, whereas the law was issued as a decree - law, in that matter the issue of VAT UAE law was legally and following the UAE constitution,

[1] United Arab Emirates, The Constitution of UAE, Article 122.
[2] United Arab Emirates, The Federal Decree-Law No. 13 of 2016 on establishment of the Federal Tax Authority, Official Gazette No. 604, issued on September 26th 2016, Article 4.

because the UAE constitution allow the law to issue as a law or decree-law. So, what is the reason of issued the UAE VAT LAW as a federal decree-law?

According to chapter five from UAE constitution which organize the legislations and ordinary decree, the constitution include three types of laws, the union laws (federal), decree-laws and ordinary decree which are as following, the article (110) from the constitution said *"1. Union laws shall be promulgated in accordance with the provisions of this Article and other appropriate provisions of the Constitution. 2. A draft law shall become a law after the adoption of the following procedure : (a) The Council of Ministers shall prepare a bill and submit it to the Union National Assembly. (b) The Council of Ministers shall submit the bill to the president of the Union for his approval and presentation to the Supreme Council for ratification. (c) The President of the Union shall sign the bill after ratification by the Supreme Council and shall promulgate it. 3. (a) If the Union National Assembly inserts any amendment to the bill and this amendment is not acceptable to the President of the Union or the Supreme Council, or if the Union National Assembly rejects the bill, the President of the Union or the Supreme Council may refer it back to the National Assembly. If the Union National Assembly introduces an amendment on that occasion which is not acceptable to the President of the Union or the Supreme Council, or if the Union National Assembly decides to reject the bill, the President of the Union may promulgate the law after ratification by the Supreme Council. (b) The term "bill" in this clause shall mean the draft which is submitted to the President of the Union by the Council of Ministers including the amendments, if any, made to it by the Union National Assembly. 4. Notwithstanding the foregoing, if the situation requires the promulgation of Union laws when the National Assembly is not in session, the Council of Ministers of the Union may issue them through the Supreme Council and the President of the Union, provided that the Union Assembly is notified at its next meeting"*[1]. Whereas the article refers the normal laws or union laws issuing by the cabinet preparing the draft and submit that draft to Union National Assembly, the cabinet of Ministers shall submit the draft to the president of the Union for his approval and presentation to the Supreme Council for ratification. Also, in case of absent of the Union National Assembly, the cabinet has a right to issuing the law by the Supreme Council and president. But the Union Assembly must notify at its next meeting.

The other type of the laws is the federal decree-law, an example of that is the VAT law and the law of establishment the federal taxation authority, whereas article (113) from the constitution

[1] United Arab Emirates, The Constitution of UAE, Article 110.

said *"Should necessity arise for urgent promulgation of Union laws between sessions of the Supreme Council, the President of the Union together with the Council of Ministers may promulgate the necessary laws in the from of decrees which shall have the force of law, provided that they are not inconsistent with the Constitution. Such decree-laws must be referred to the Supreme Council within a week at the maximum for assent or rejection. If they are approved, they shall have the force of law and the Union National Assembly shall be notified at its next meeting. However, if the Supreme Council does not approve them, they shall cease to have the force of law unless that it has decided to sanction their effectiveness during the preceding period, or to settle in some other way the effects arising therefrom"*[1] . In case of urgent promulgation of unions laws and between the sessions of Supreme Council. The President of the Union together with the Council of Ministers may promulgate the necessary laws in the form of decrees which shall have the force of law. If they are not inconsistent with the Constitution. Such decree-laws must be referred to the Supreme Council within a week at the maximum for assent or rejection.

That previous provision is applied on the law of VAT, which means the issuing of the UAE VAT law was constitutional. In two ways, the first way is the jurisdiction of federal government, the second way is the way of adopting the law which not inconsistent the UAE constitution.

The third and last type of laws, while the Supreme Council is out of session and if necessity arises, it may authorize the President of the Union and the Council of Ministers collectively to promulgate decrees whose ratification is within the power of the Supreme Council, in exemption of that there are four types, which are ratification of international agreements and treaties or declaration or remission of martial law or declaration of a defensive war or appointment of the President or Judges of the Union Supreme Court.

§2. The position of UAE VAT law on the principle of tax Neutrality

The economic efficiency in matter of taxation are prevent the society and people from suffering loses and leads to society to get benefit because the people are burden the payment of taxes. The concept of the economic efficiency can be summarized as follow "*economic efficiency is fundamentally associated with economic costs and benefits. Maximizing economic efficiency requires, to the extent possible, maximizing economic benefits and minimizing*

[1] United Arab Emirates, The Constitution of UAE, Article 113.

economic costs. Maximizing economic efficiency is thought to result in maximum wellbeing in overall terms"[1].

It's like a scale, in one side the benefits for the government or the money yield, in other side the suffering of people from paying the taxes or impact on economy, so it's not easy formula to make a balance between collecting taxes and not suffering the people, so the efficiency tax is the tax which maximize the yield and minimize the suffering of people or impact on economy.

"*The aim governing the birth of VAT in France and in Europe was to lunch a system of taxation that would trigger the least dead-weight loss to society and to evaluate its success, it is therefore crucial to identify the concept of neutrality as applied to VAT in an economic context. Special consideration should be given to the intimate link between economic efficiency and the notion of neutrality*"[2].

The neutrality of VAT basically establishes from several elements, which are the idea of no charge on business, the second element is no distortion of the internal market. In this sub-section will explain the position of UAE VAT law on the principle of tax Neutrality. Is the UAE VAT law follow that principle and draft that principle in articles of law or not? Is UAE VAT law follow the principle of neutrality in articles and not following the principle in practice?

A) No Charge on Business

As what mention in part one of the Thesis and the mean idea of VAT, the VAT is a consumption tax that must implements without any distinction to all commercial activities including the production and distribution of goods and the providing services. VAT is not a corporate tax applied on the capital of businesses or income. VAT are established to be borne by the final consumer and definitely not borne by the businesses involved in the lifecycle of the product or service. Based on what mention above the VAT is the consumption tax and the UAE VAT law applied that in article (1) from the previous law the definition of VAT is *"Value Added Tax: A tax imposed on the import and supply of Goods and Services at each stage of production and distribution, including the Deemed Supply"*[3]. That was the definition of VAT according the UAE VAT law in the application of the provisions of the law. Also, the scope of tax in UAE

[1] Shaheen, Fadi, *International Tax Neutrality: Reconsiderations*, Virginia Tax Review No. 206, 2007, p. 203-239.
[2] Herbain, Charlene Adline, *VAT NEUTRALITY*, Promoculture-Larcier, 1st edition, 2015, p. 49.
[3] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 8 of 2017 on Value Added Tax, Official Journal No 621, issued on August 23rd 2017, Article 1.

VAT law assure that the VAT is a consumption tax, article (2) of UAE VAT law said *"Tax shall be imposed on: 1. Every taxable supply and deemed supply made by the taxable person. 2. Import of concerned goods except as specified in the executive regulation of this decree-law"*[1] the third assurance of the VAT is a consumption tax in UAE VAT law is in article (5) of UAE VAT law which the article explain the concept of supply of goods, the article said *" The following shall be considered a supply of Goods: 1. Transfer of ownership of the Goods or the right of use them to another person according to what is specified in the executive regulation of this decree-law. 2. Entry into a contract between two parties entailing the transfer of goods at a later time, pursuant to the conditions specified in the executive regulation of this decree-law"*[2] . Furthermore article (6) of UAE VAT law explain the concept of supply services which assure and indicate that the VAT is a consumption law in UAE. Article (6) of UAE VAT law said *"A supply of services shall be every supply that is not considered a supply of goods, including any provision of services specified in the executive regulation of this decree-law"*[3]**.** In my opinion the drafting the UAE VAT law in regard of assure that the VAT is a consumption tax, the drafting was perfect, also in that regards the definition of supply was complete with all elements of supply, supply of goods, supply of services and finally the deemed supply which means according to UAE VAT law in article (1) *" Deemed supply: anything considered as a supply and treated as a taxable supply according to the instance stipulated in this decree-law"*[4] **.** also, the cases of deemed supply are mention in article (11) of UAE VAT law which said *"1. A supply of goods and services, which constituted the whole assets of a taxable person or a part thereof, but are no longer considered to be us such, provided that the supply was made without consideration. 2. The transfer by a taxable person of goods that constituted a part of his business assets from the state to another implementing state, or from the taxable person's business in an implementing state to his business in the state, except in the case where such transfer: a. is considered as temporary under the custom legislation. b. is made as part of another taxable supply of these goods. 3. A supply of goods or services which input tax may be recovered but the goods or services were used, in part or whole, for purposes other than business, and such supply shall be considered as deemed only to extent of the use for non-*

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 8 of 2017 on Value Added Tax, Official Journal No 621, issued on August 23rd 2017, Article 2.
[2] Ibid., Article 5.
[3] Ibid., Article 6.
[4] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 8 of 2017 on Value Added Tax, Official Gazette No. 621, issued on August 23rd 2017, Article 1.

business purposes. 4. Goods and services that a taxable person owns at the date of tax deregistration"[1].

The VAT mechanism is designed and created to pass the burden of VAT into the other or next level in the production or distribution process or even cycle of service until the burden of pay has reached the end consumer. That is the other factor of no charge on business, this referred to as a passing through. That process enables states to raise more revenue on final consumption and not weighing economically on all stage of product or services cycle. That mechanism called indirect levying. Applying that principle on UAE VAT law, its notable that the UAE VAT law not provide any explain or article to explain that mechanism, the only provision can conclude that mechanism its only in article one in the definition of VAT, the article said "*Value Added Tax: A tax imposed on the import and supply of Goods and Services at each stage of production and distribution, including the Deemed Supply"*[2]. In addition, the law provides another provision in that regard which is the responsibility of impose tax which on three types: a taxable person who makes any supply stipulated in clause (1) of article (2) of this decree-law. the second type is the importer of concerned goods and the last one is the registrant who acquires goods as stated in clause (3) of article 48 of this decree-law. But the issue is the law is not providing any indicate or explain for the mechanism of indirect levying. It's an important issue to mention that mechanism and explain it in the law, the reason of that is the VAT is part of indirect taxes which levied or collected by third party in behalf of taxation authority. So, I suggest the UAE VAT law to be amend with article to explain the mechanism of indirect levying.

The third principle or element of the principle of no charge on business is the deduction or refund mechanism. The OECD asserts that "*the fundamental principle that the burden of the tax should not rest on businesses, requires a mechanism for reliving business of the burden of the VAT they pay when they acquire goods, services, or intangibles*"[3]. Indeed, in regard of the business activity, the business almost bound at some point to be the clients of other businesses, also, in that regards they may be charged VAT. It is in these cases that the deduction mechanism and the refund mechanism come into play.

That principle was set by the first VAT directive: *"the principle of the common system of value added tax involves the application to goods and services of a general tax on consumption*

[1] Ibid., Article 11.
[2] Ibid., Article 1.
[3] OECD, *International VAT/ GST Guidelines*, OECD publishing, Paris, 2017.

exactly proportional to the price of the goods and services, whatever the number of transactions which take place in the production and distribution process before the stage at which tax is charged. On each transaction, value added tax, calculated on the price of goods or services at the rate applicable to such goods or services, shall be chargeable after deduction of the amount of value added tax borne directly by the various cost component"[1]. That rules laid down in the second VAT Directive[2] and in more detail in the Sixth Directive[3] later recasted by the VAT Directive[4].

The mechanism of deduction allows businesses to deduct from the VAT collected on their output the same amount paid to their suppliers in regard of VAT and thus to pass to their taxation authority only the difference. In result of that the principle of no charge on business are happened and the business will not suffer from paying VAT, because the burden of payment is on consumer and the business are not consumer.

The position of UAE VAT law was clear in that matter, I mean the matter of deduction, its notable in article (53) of UAE VAT law which said *"The payable tax for any tax period shall be calculated as being equal to the total output tax payable pursuant to this decree-law and which has been done in the tax period less the total recoverable tax by said taxable person over the same tax period"* [5]. So, its obvious that the UAE VAT law following the mechanism of deduction which is part of no charge on business which is the main principle on naturality of VAT. in additional the UAE VAT law give the business right to deduct the tax which paid on the business but not on goods for example before the starting the business and the tax was paid to prepare the business like paying rent, software and stationary. All rules of dedication were mention in the UAE VAT law between article (53) until (64).

My concern is not legislating the article which organize and following the principle of naturality, the issue is the UAE VAT law did a mistake which destroy the principle of neutrality

[1] European Union, First Council Directive 67/227/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes, Official Journal No. 71 issued on April 14th 196, Article 2.
[2] European Union, Second Council Directive 67/228/EEC of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes - Structure and procedures for application of the common system of value added tax, Official Journal No. 1303/67, April 11th 1967, Article 11.
[3] European Union, Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes - Common system of value added tax: uniform basis of assessment, Official Journal No. L.145, issued on June 13th 1977, Article 17.
[4] European Union, Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax, Official Journal No. L 347 issued on December 11th 2006, Article 167 to 192.
[5] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 8 of 2017 on Value Added Tax, Official Gazette No. 621, issued on August 23rd 2017, Article 53.

of VAT. the issue is the UAE VAT law is mention the deduction and organize that in several article but the law did mistake by forget to organize the issue of Continuous contracts, in article (85) of UAE VAT law, the article said *"this decree-law shall be published in the official gazette and shall come into effect as of January 1 2018"*[1]. What Is the situation with the Continuous contracts, the contracts signing before implementing the VAT and that contracts will finish after implementing VAT, so part of that contract will be without VAT and the other part will be subject to VAT, such as the contracting contracts, insurance contracts and services contracts. That missing or mistake in UAE VAT law cause a lot of troubles on business, the result of that the business are responsible to pay VAT not the consumer because it not mentions in the contract and the consumer refuse to pay, for example the issue of car insurance, the clients or consumer pay the amount of insurance in 2017 in advance and the contract will finish in 2018, the part of 2018 are subject to VAT and the insurance company will pay that amount because the insurance can't collect the VAT from the clients.

So, from what mention above the UAE VAT law was broken the principle of neutrality of VAT from side of implementation and following the naturality of VAT from the side of enact the articles following the principle of neutrality.

B) No Distortion of the Internal Market

One of the elements of VAT neutrality related to cross-border trade. In general VAT must not impact a decision being made by a business and not to engage in international trade, or in other way force to avoid an investment or to seek specific markets.

In matter to avoid causing interference by VAT with the natural cross border flow of goods and services, of course the VAT must not distort trade between traders such service provided, and products manufactured domestically, and those services provided, and products manufactured in other state.

In regard with direct tax, the potential discriminatory levels of taxation are the non-double taxation or double taxation, that solved and addressed by the international convention the bi and multilateral binding convention and international coordination. In other side, in regard of

[1] Ibid., Article 85.

indirect taxes, there are no international conventions available to counter non-double taxation and double taxation.

In other word the VAT will distort the international trade, because the mechanism of VAT and specifically the impose VAT in each stage will impact on international trade, the issue of direct taxes in regard with international trade is in part of double taxation and non-double taxation, and its solve it by the conventions and agreements, but with indirect taxes there are no international convention, but the solution was by adopting the principle of destination which I explained in part one of the thesis with comparing between the destination principle and origin principle. The idea of destination principle is the export are zero rated, and import is subject to VAT, each state has the full jurisdiction in their territory to impose VAT and collect VAT.

In regard of VAT in UAE, the UAE VAT law are applied the destination principle by exempt the export and it subject to zero-rate, also in other side the import is subject to VAT under the standard rate which is 5%.

According to article (45) of UAE VAT law the export is subject to zero-rate, the article said *"The zero rate shall apply to the following Goods and Services: 1. A direct or indirect export to outside the implementing States as specified in the executive regulation of this decree-law"*[1]. In addition, the UAE VAT law organize the imposing VAT on the import in article (35) which said "*The import value of goods consists of: 1. The customs value pursuant to Custom Legislation, including the value of insurance, fright and any customs fees and Excise Tax paid on the Import of the Goods. Tax shall not be included in the Value of the Supply. 2. If it is not possible to determine the value pursuant to Clause (1) of this Article, the value shall be determined based on alternate valuation rules stated in the applicable Custom Legislation"*[2]. That articles assure that the UAE VAT law follows the principle of destination to not distort the trade following the principle of Neutrality of VAT in regard of the supply of goods, but the subject of VAT is goods and services, what is the situation of services? Whereas the import and export goods can control it by the borders but the import or export services can't control it by border because it's not physical things, so the solve was to adopt the reverse charge mechanism which not impact on international trade by the export of service are zero-rated, and the import

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 8 of 2017 on Value Added Tax, Official Gazette No. 621, issued on August 23rd 2017, Article 45 § 1.
[2] Ibid., Article 35.

of service are subject to VAT by the importer or receiver of the service must pay the VAT (as explained in part one of the thesis).

According to article (48) of UAE VAT law the taxable person is responsible of concerned goods and concerned services which import it for his business. the article said *"1. If the taxable person imports concerned goods or concerned services for the purposes of his business, then he shall be treated as making a taxable supply to himself and shall be responsible for all applicable tax obligations and accounting for due tax in respect of these supplies"*[1]. My concern in regard of reverse charge is the concept of reverse charge is strange and its not easy to understand, the UAE VAT law is not mentioning the definition of the reverse charge concept. In my opinion its better to start the law with the definition of the concepts. The idea of reverse charge its not an old idea, its not start with VAT at the beginning, the idea of reverse charge was a result of implement VAT and develop VAT to not impact the international trade. In GCC region the VAT is new and that concepts are new so the GCC VAT agreement mention the definition of reverse charge, then after that the agreement mention the articles of reverse charge to explain the idea and to establish legal place for that rules, in other side the UAE VAT law is not mention the definition of reverse charge. And the UAE legislator suppose that reverse charge is known in the state and that was wrong. The legal rule must be conclusive.

The last issue with the Distortion of the Internal Market is the free zones or designated zones as mention in UAE VAT law. The UAE VAT law provide provisions for designated zones and ignore the free zones, the reason of that is that provision of VAT law is applicable in some free zones not all in UAE, so the legislator uses the concept of designated zone for specific area which meet the requirements which mention in the UAE VAT law. So, in other word all designated zones is free zone, but not all free zones is a designated zones in UAE.

The UAE VAT law define the designated area as *"any area specified by a cabinet decision issued at the suggestion of the minister, as a designated zone for the purpose of this decree-law"*[2].

In more details the UAE VAT law consider the designated zone as a place outside the UAE, so according to that and applying the rules of UAE VAT law the import of goods from the

[1] Ibid., Article 48.
[2] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 8 of 2017 on Value Added Tax, Official Gazette No. 621, issued on August 23rd 2017, Article 1.

designated zone to mainland are subject to VAT. Also, the export of goods from mainland to designated zone are exempt from VAT and subject to zero-rate because its export.

Article (50) of VAT UAE law said *"A "Designated Zone" that meets the conditions specified in the executive regulation of this decree-law shall be treated as being outside the State"*[1].

Also, the UAE VAT law provide one rule in that matter, article (51) of UAE VAT law said *"1. Goods may be transferred from one designated zone to another designated zone without any tax becoming due. 2. The executive regulation of this decree-law shall specify the procedures and condition for the transfer of goods from and to designated zone as well as the method of keeping, storing and processing such goods therein"*[2] . Also, the other rule of designated zone was establish by article (52) of UAE VAT law, the article said *"as an exception to article (50) of this decree-law, the executive regulation of this decree-law shall specify the condition under which the business conducted within the designated zones will be regarded as being conducted in the state"* [3]. In my opinion the gap was in the rules of designated zone in UAE VAT law are obvious, the scope of VAT includes goods and services, the UAE VAT rules in regard of designated zone consider the designated zone as a place outside the state and the transfer of goods between the designated zones without any tax becoming due. But the law was silent in regard of supply services. In addition, the law allows the executive regulation to specify the condition under which the business conducted within the designated zones will be regarded as being conducted in the state. The law determines the business not the services. In my opinion the rules of import and export the services between the designated zones and mainland will consider as a service to be provide outside the state and it will be subject to zero- rate or reverse charge in case of import the service to main land from designated zone, but what is the situation of providing the services from provider inside the designated zone to other business inside the designated zone? The answer and according to UAE VAT law that services will not be subject to VAT. What is the situation of the suppling the goods from provider inside the designated zone to the other inside the designated zone? The answer and according to UAE VAT law that supply will not be subject to VAT.

My concern is the executive regulation organize that and provide many rules in that matter, but the law didn't give the cabinet of ministers and the executive regulation that right to legislate,

[1] Ibid., Article 50.
[2] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 8 of 2017 on Value Added Tax, Official Gazette No. 621, issued on August 23rd 2017, Article 51.
[3] Ibid., Article 52.

the only delegations from the law to the cabinet of ministers and the executive regulation is to determine the requirements of designated zones. The conditions of transfer the goods between the mainland and designated zone and the mechanism of storage and the last delegations is specify the condition under which the business conducted within the designated zones will be regarded as being conducted in the state. In my opinion the articles of designated zones must amend to allow the executive regulation to enact the rules of charging VAT in regard of supply the goods or services.

§3. Criticism of the UAE VAT law

In this sub-section of the Thesis, I will explain some criticism from my view of point after reviewing the UAE VAT law, this criticism its only for the federal decree law No. 8 of 2017 in regard the value added tax not for all VAT system in UAE. The reason of that criticism is to display the lacks or gaps in the law and to avoid it and amend it in future. That for develop the system of VAT in UAE, the criticisms are summarized below

This part will include several points which are the issue of continues contracts, the issue of absence of rules that prevent domestic states of adopting the VAT in domestic level and the issue of tax recovery of mosques.

A) The issue of continues contracts

The reason on enact law or legislation in general is to organize the relation between people themselves or between people and government or between governments, the reason of enact the UAE VAT law is to establish VAT in UAE and collecting money from the tax or as they called (money machine). Also, the reason of enact the UAE VAT law is to organize the relation between the people and government in regard of VAT, the job of everybody must know, the duties and responsibility must know by the law.

In the issue of continues contracts, the law was adopted in 23rd of August 2017, and the effective date for the law and the VAT system is 1st January 2018. The issue is there are many kinds of contracts do not finish at once, it takes more times, in many cases it takes years, such as constructing contracts and insurance contracts.

That kind of contracts sign before issuing the UAE VAT law and in the proposals and visibility studies it not consider the increment of price 5% as a result of implementing VAT. So, part of

that contracts was in 2017 before implementing the VAT and the other part of that contracts was in 2018 with implementing the VAT. That situation made a problems for the business, the business will borne the payment of VAT and that is violate of the principle of VAT and the principle of neutrality, the scope of VAT is the consumer and with that situation the scope is business and that is a bad implementation of VAT.

In my opinion there are a solution for the continues constructing contracts, the solution is for the residential building that are subject to zero-rate according to article (45) of UAE VAT law, so based on that rules the business will charge the customer the 5%, then the price of the residential building will increase at the maximum for 5%, after finishing the residential building the land lord can get benefit from the provision of tax recovery which mention in article (75/1) of the UAE VAT law, which said *" The authority may according to the conditions, restrictions and procedures specified in the executive regulation of this Decree-law, return tax paid for any supply received by or import carried out by any of the following : 1. A citizen of the state in respect of the goods and services related to the construction of a new residence that is not part of the person's Business"*[1].

For the issue of commercial continues constructing, the landlord or the consumer is a business, so the business must register with the Federal Taxation Authority according to articles from (13) to (20) from UAE VAT law. So, after registration the landlord will get balance with Federal Taxation Authority because the landlord is register and have a right to deducts the taxes, but in that case the landlord pay the tax and didn't charge tax, so the result of that the landlord will get balance and have a right to recover that balance according to article (74/2) of UAE VAT law.

These is the type of the first common continues contracts which the UAE VAT law not solving that issue and the law was issued with that gap. The second type of the common continues contracts is the insurance contract. Normally the payment of insurance contracts is one payment in the advance, so the contracts which signed in 2017 and before issuing the UAE VAT law are played by consumer and that contracts also exist in 2018 the year of implementing VAT, so the payment of taxes for 2018 for continues contract is not happen and it's very hard to

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 8 of 2017 on Value Added Tax, Official Gazette No. 621, issued on August 23rd 2017, Article 75.

happen, so the insurance companies are borne the payment of VAT and that is violate of VAT law and the principle of neutrality.

That is a trouble mistake in UAE VAT law because that law is not solving the issue of continues contracts and that law in this regard are violate the principle of VAT and the principle of neutrality of VAT, more detail the law of VAT violate itself, because at the beginning of the UAE VAT law it mentions the consumer is subject to law. With bad drafting and missing the issue of continues contract the UAE VAT law make a trouble for business and economic.

In my opinion with the cases which will be in future the judicial will assist to amend that law and judicial will take a decision for the business because according to general principle if the law is publish in the official gazette the law will be legally binding to all, so any contract sign before the publishing the UAE VAT law in official gazette will not be subject to UAE VAT law.

Its valuable to add that the UAE VAT Law delegate the executive regulation to determine the rules and condition of the continues contracts. Article (80/3) said *"the executive regulation of this Decree-law shall set forth special provisions related to the implementation of this decree-law where a contract has been concluded before the effective date of the decree-law but the supply under the contract wholly or partly made after the effective date of this Decree-law"*[1] .

But the issue is the regulation not solve that issue and keep the gap in that matter, the solution must be to determine the date of effective the law on the continues contracts and that date must be not a random date, the date must be the date of publishing the UAE VAT law in official gazette. More details regarding the issue of continues contracts in executive regulation will be explained it in next section.

B) The issue of absence of rules that prevent domestic states of adopting the VAT in domestic level

It's a legal issue, and it's not happened until the date of writing the thesis, but there is no legal obstacle to prevent that to happens. As mention before in this chapter, the UAE constitution give the exclusive right for the Union (federal government) to have exclusive legislative and executive Jurisdiction for Union finance and Union taxes, duties and fees. That in federal level,

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 8 of 2017 on Value Added Tax, Official Gazette No. 621, issued on August 23rd 2017, Article 80 § 3.

but in the domestic level there are no any rules or condition in UAE constitution in regard of adopting domestic taxes. My concern is any domestic governments in UAE can adopt any kind of indirect taxes specially the VAT, and that will make duplication in the market. So far that not happen, but my opinion is there are nothing to avoid that to happens. I suggest amending the UAE VAT law and add an article which enact that the all domestic governments are not allowed to adopt any kind of indirect taxes. The question will be raised why the amend must be on the UAE VAT law not in the constitution? In my opinion both of that way can do the expectation, but I chose to amend the UAE VAT law, because the federal law have a superiority on the other domestic law, so in case of conflict between the federal law and domestic law, the federal law is superior, according to article (151) from UAE constitution, which said *"The provisions of this constitution shall prevail over the constitutions of the member Emirates of the Union, and the Union laws which are issued in accordance with the provisions of this constitution shall have precedence over the legislation, regulations and decisions issued by the authorities of the Emirates. In the case of conflict, that part of the inferior legislation which is inconsistent with the superior legislation shall be rendered null and void to the extent that removes the inconsistency. In case of dispute, the matter shall be referred to the Supreme Court of the Union for its ruling"*[1].

C) The issue of tax recovery of mosques

Mosques is a religion place designed for religion used for praying, that mosques are building by three ways, by government, by Charities and by people or normal person. The question raised what the situation of VAT in regard of building the mosques?

Article (45/10) of UAE VAT law said *"The first supply of buildings specifically designed to be used by Charities through sale or lease according to the controls specified in the Executive Regulation of this Decree-Law"*[2]. Article 45 of UAE VAT law is the article of supply of Goods and Services that is subject to Zero Rate. Its only mention the buildings specifically designed to be used by Charities and there are no referred to building mosques. Article (46) from UAE VAT law which is the article of supply Exempt from tax not referred to building mosques. Even article (57) from UAE VAT law which is the article of recovery of tax by Government Entities and Charities do not mention or referred to building mosques. So, in the conclusion and result

[1] United Arab Emirates, The Constitution of UAE, Article 151.
[2] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 8 of 2017 on Value Added Tax, Official Gazette No. 621, issued on August 23rd 2017, Article 45 § 10.

of what mention above the buildings of mosques are subject to VAT and standard rate and there are no exemption or tax recovery in that matter.

In my opinion there are gap in UAE VAT law in that matter, because the building of mosques must be subject to zero rate or subject to tax recovery, because there are three way to fund building mosques by government, by Charities and by people or normal person. In first and second way the government and according to article (57) of UAE VAT the government entity can recover the tax. Article (57) from UAE VAT law said *"A Cabinet decision shall be issued at the suggestion of the minister determining the government entities and charities entitled to recover the full amount of input tax paid by them, except for: 1. A tax excluded from recovery as specified in the executive regulation of this Decree-law. 2. Tax paid for Goods and Services used to perform exempt supplies"* [1]. But for the third way which the building by normal person or people there are no condition to recover the tax and the person will burden the payment tax. My opinion is the UAE VAT law must encourage the people for assist the government and community and that not happened in this case. In section two will see the opinion of executive regulation of VAT in that matter.

Section two. The Cabinet Decision No. (52) Of 2017 On the Executive Regulations of The Federal Decree-law No. (8) Of 2017 On Value Added Tax and The Guidebooks

Based on the principle of the law can't read it alone, to understand specific law, the reader must read the law and the executive regulations and the related decisions and related laws, in that regard this section will focus and explain the executive regulation of the UAE VAT law and the guidebooks which adopted by FTA, the reason of that guidebooks is to ease the VAT law and system for the public and to assist them to follow the UAE VAT law. the question arise what is the legal base of the executive regulation and the guidebook?

So, this section will include several issues which are The Legal Base of the Executive Regulations of The Federal Decree-law No. (8) Of 2017 On Value Added Tax and The FTA Guidebooks. The mistakes in UAE VAT law and the position of executive regulation in that

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No 8 of 2017 on Value Added Tax, Official Journal No 621, issued on August 23rd 2017, Article 57.

mistakes and the conflict between the VAT Executive Regulation and VAT Guidebooks in side and the UAE VAT law in other side.

§1. The Legal Base of the Executive Regulations of The Federal Decree-law No. (8) Of 2017 On Value Added Tax and The FTA Guidebooks.

According to article (82) of UAE VAT law, the article said *"The cabinet shall issue the Executive Regulation of this Decree-law at the suggestion of the Minister"*[1]**.** The minister is the minister of finance according to the article (1) of the same law. So, based on the article (82) of the UAE VAT law the cabinet has a legal right to issue the executive regulation of the law. The executive regulation must issue based on the law to implement that law. its obvious that the issuer of the executive regulation is the Cabinet. In my opinion its good idea to give the Executive Authority the right to enact rules and conditions to implement the law and that rules must follow the provisions of law. The reason of that to make the developments ease, the amend of executive regulation is easier than amend the law, because the amending of law must follow several stages which mention in the constitution. Article (110) of UAE constitution said *"1. Union laws shall be promulgated in accordance with the provisions of this Article and other appropriate provisions of the Constitution. 2. A draft law shall become law after the adoption of the following procedure: — a. The Council of Ministers shall prepare a draft law and submit it to the Union National Council. b. The Council of Ministers shall submit the draft law to the President of the Union for his agreement and presentation to the Supreme Council for their ratification. c. The President of the Union shall sign the law after ratification by the Supreme Council and shall promulgate it. 3. a. If the Union National Council inserts any amendment in the draft law and this amendment is not acceptable to the President of the Union or the Supreme Council, or if the Union National Council rejects the draft, the President of the Union or the Supreme Council shall refer it back to the Union National Council. If the Union National Council inserts any amendment on that occasion which is not acceptable to the President of the Union or the Supreme Council, or if the Union National Council deems fit to reject the draft, the President of the Union may promulgate the law after ratification by the Supreme Council. b. The term "the draft law" in this section shall mean the draft which is submitted to the President of the Union by the Council of Ministers including the amendments, if any, made to it by the Union National Council. 4. Notwithstanding the foregoing, if the situation demands*

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No 8 of 2017 on Value Added Tax, Official Journal No 621, issued on August 23rd 2017, Article 82.

the promulgation of Union laws when the Union National Council is not sitting, the Council of Ministers of the Union may issue them through the Supreme Council and the President of the Union, provided that the Union National Council are advised of them at their next meeting". So, that stages must follow to issue or amend the federal law in UAE, that long stages are not assisting the rapid working in government specially in regard of VAT, in other hand the issuing or amending the executive regulation is more easy than the law, the executive regulation can amend by the suggestion of the minister of finance and the cabinet approve and issue the regulation.

The second aspect of these sub-section is the Guidebooks which issues by FTA. According to article (73) of the VAT executive regulation which said *"The Authority shall have jurisdiction over the issuing of clarifications and guidance regarding the implementation of the provisions of this decision"*[1]. So, in that regard the FTA have jurisdictions to using the clarifications and guidance regarding the implementing the provisions of the VAT executive regulation. The main restriction in that regard is the guidebooks must follow the law and the executive regulation, and in case of conflict between the guidance books and law, the law has the power to implement.

The other issue is the Authority have full jurisdiction to issue the VAT guidebooks without any reviewing from the legislation Authority. In that regards the FTA issued several guidebooks to implement the executive regulation, its noted that there are several mistakes and conflict in that guidebooks, that issued will explained in this section.

§2. The mistakes in UAE VAT law and the position of executive regulation in that mistakes

In last section the explanation was focus the Criticism of the UAE VAT law in my view of point, in this part of section will display that issued which was raised in last section and the position of the VAT executive regulation, the expected scenarios is the executive regulation solve that issues or not solving that issue or try to solve that issue but failed. Will display in this part of section the issue of continues contracts and the issue of zero-rate for the residential buildings.

[1] Cabinet of the United Arab Emirates, Decision No 52 of 2017 on the Executive Regulations of Federal Decree-Law No. 8 of 2017 on Value Added Tax, Official Journal No 624, issued on November 26th 2017, Article 73.

This part will include several points which are the issue of continues contracts, The issue of tax recovery of mosques and the issue of capital assets scheme.

A) The issue of continues contracts

As mention in last section the UAE VAT law not provide the solation for the issue of continues contracts, but the UAE VAT law give the right to the executive regulation to set forth special provisions related to the implementing of the UAE VAT law on the issue of continues contracts.

Article (80/3) of UAE VAT law said *"The executive regulation of this Decree-law shall set forth special provisions related to the implementation of this decree-law where a contract has been concluded before the effective date of the decree-law but the supply under the contract wholly or partly made after the effective date of this Decree-law"*[1] .

Article (70) of the VAT executive regulation which is the article of transitional rules, this article provides the rules and condition to transfer from normal work to work with VAT. Article (70/3) said *"in the case of Clause (3) of article (80) of the Decree-law, a supply shall be considered to have taken place in accordance with the following provisions: a. For supplies to which article (25) of the Decree-law applies, the Date of Supply shall be determined in accordance with Clause (1) to (6) of that Article. b. for supplies to which article (26) of Decree-law applies, the supply shall be treated as taking place in accordance with the rules in that article"*[2]. The result of that article is to refer the issue to other articles in the Decree-law. Clauses (1) and (6) of article (25) form the UAE VAT law said *"tax shall be collected on the date of supply of Goods or Services, which shall be the earliest of any of the following dates: 1. The date on which goods were transferred, if such transfer was under the supervision of the supplier…… 6. The date of receipt of payment or the date on which tax invoiced was issued"* [3]. Article (26) said *"the date of supply of Goods or Services for any contract that includes periodic payments or consecutive invoices shall be the earliest of any of the following dates, provided that it does not exceed one year from the date of the provision of such Goods and Services: a. The date of issuance of any tax invoices. b. the date payment is due as shown on the Tax invoice. c. the date of receipt of*

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No 8 of 2017 on Value Added Tax, Official Journal No 621, issued on August 23rd 2017, Article 80 § 3.
[2] Cabinet of the United Arab Emirates, Decision No 52 of 2017 on the Executive Regulations of Federal Decree-Law No of 2017 on Value Added Tax, Official Journal No 624, issued on November 26th 2017, Article 70 § 3.
[3] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No 8 of 2017 on Value Added Tax, Official Journal No 621, issued on August 23rd 2017, Article 25, Clause 1 and 6.

payment. 20 the date of supply, in cases where payment is made through vending machines, shall be the date on which funds are collected from the machine. 3. The date of deemed supply of goods or services shall be the date of their supply, disposal, change of usage or the date of deregistration, as the case may be. 4. The date of a supply of a voucher shall be the date of issuance or supply thereafter"[1].

My opinion will explain it in two points, the first point the rule of article (25), the second point is the rule in article (26).

The first point is the issue with article (25) of UAE VAT law in regard of continues contracts, basically the UAE VAT law not solve the issue of continues contracts and refer that to the executive regulation in article (80/3) of UAE VAT law, the executive regulation not provide the solution and refer to the UAE VAT law in article (70/3) of VAT executive regulation, so the solution must be in article 25 and 26 of UAE VAT law. Article (25) of UAE VAT law is regarding the date of supply, which shall be the earliest of two cases the date on which goods were transferred, if such transfer was under the supervision of the supplier. Or The date of receipt of payment or the date on which tax invoiced was issued.

The issue is not the date of supply, the issue is the continues contracts which the law will apply on it on the first of January 2018 and the contract was sign before that date and part of the contracts will be subject of the VAT according to provision of article (70/3) of VAT executive regulation. So, in my opinion there are no solution of the continues contracts, but that provisions of articles assure that contracts will be subject of VAT, and that is violate of the principle of VAT and neutrality of VAT.

The second point is the issue of article (26) of UAE VAT law which is the article of date of supply in special cases, its obvious this article is more suitable for the issue of continues contracts because its mention the contract that includes periodic payments or consecutive invoices, which typically perfect for the constructing contracts. But the issue is that article its good and suitable in normal cases not in transitional period, so according to provision the continues contracts will be subject to VAT after the implementing of VAT in first of January 2018. In my opinion the article (26) of UAE VAT law is not solving the issue of continues contracts in perfect way, because there are violation of VAT and neutrality of VAT.

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No 8 of 2017 on Value Added Tax, Official Journal No 621, issued on August 23rd 2017, Article 26.

At the end of this part of section the UAE legislator deal with this issue in very Superficial method without any deep study and solving all the issue, it seems like the legislator not realize or consider the issue of continues issue and the result of not solving the issue. Also, the problem was in side of the business is not aware of VAT before issuing the law and the solving was far away from the problem, so the legislator not solving the issue. Also, the UAE legislator try to solve the issue of continues contracts, but he failed.

B) The issue of tax recovery of mosques

The issue is the normal person who is a volunteer and assist to build mosque from his own money are burden from the payment of VAT and that discourage people to volunteer and add value in the community. The UAE VAT law are not solving that issue. Article (37) of the executive regulation of UAE VAT, which the article of residential buildings not provide the definition of religion buildings or mosques.

Article (38) of the executive regulation of UAE VAT, which is the article of zero-rating of buildings specifically designed to be used by charities. The article said *"The first sale or a lease of a building, or any part of a building, shall be zero-rated if the building was specifically designed to be used by a charity and solely for a relevant charitable activity. 2. In clause (1) of this article "relevant charitable activity" means any activity for the purpose other than for the purpose of profit or benefit to any proprietor, member, or shareholder of the Charity, and one which is undertaken by the charity in the course or furtherance of its charitable purpose or objectives to carry out a charitable activity in the State as approved by the minister 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 licenses. Such charitable purposes and objectives include, for instance, advancing health, education, public welfare, religion, culture, science and similar activities"*[1].

Clause (2) of last article define the charitable activity, according to that the building mosques by people or funding by people are subject to standard rate and not subject to any tax recovery conditions. In my opinion that is a gap of VAT system and legislation its need to amends to encourage people to add value to the community and to work in parallel with the government.

[1] Cabinet decision of the United Arab Emirates No 52 of 2017 on the Executive Regulations of Federal Decree-Law No. 8 of 2017 on Value Added Tax, Official Journal No 624, issued on November 26th 2017, Article 38.

The legislator enacts special rules for the government and charities entity to recover the tax in religions activity and ignore the tax recovery for people in regard of religion activities, in the general principle the there are rules or direction to tax recover from the religion activity, so the legislator forget to enact special rules to recover tax which paid in religion activity.

C) The issue of capital assets scheme

The capital assets scheme is *"a scheme by which initially recovered input tax is adjust based on actual use during a specified time"*[1]. And the capital assets are "Business assets for a long-term use"[2].

Article (57) of the executive regulation provides special rules for capital assets scheme, which said *" 1. A Capital Asset is a single item of expenditure of the Business amounting to AED 5,000,000 or more excluding Tax, on which Tax is payable and which has estimated useful life equal or longer than: a. 10 years in case of a building or a part thereof. b. 5 years for all Capital Assets other than buildings or parts thereof. 2. Items of stock, which are for resale, shall not be treated as Capital Assets. 3. Expenditure consisting of smaller sums which collectively amount to AED 5,000,000 or more shall be treated as a single item of expenditure of AED 5,000,000 or more for the purposes of this Article where the sums are staged payments for any of the following: a. For the purchase of a building. This is an unofficial translation 41 b. For the construction of a building. c. In relation to an extension, refurbishment, renewal, fitting out, or other work undertaken to a building, except that where there is a distinct break between any such works being undertaken they shall be taken to be separate items of expenditure. d. For the purchase, construction, assembly or installation of any goods or immovable property where components are supplied separately for assembly"*[3].

Based on that the capital scheme is for business and includes commercial buildings and residential buildings, the issue is the residential whereas the residential buildings are subject to zero rate for the first three years from complete or finish the building and after that will be exempt according to article (45) and (46) from the UAE VAT Law. In sample words the taxable person can refund his tax in the first three years because it zero-rate and after that he can't

[1] Ibid., Article 1.
[2] Ibid.
[3] Cabinet decision of the United Arab Emirates No. 52 of 2017 on the Executive Regulations of Federal Decree-Law No of 2017 on Value Added Tax, Official Journal No 624, issued on November 26th 2017, Article 57.

because the residential building will be exempt and cant charge tax on the customers and cant refund tax in that period which is after three years of first supply.

But with the issue of capital asset scheme the residential building are subject to that scheme and must follow that scheme, but the issue is in article (58) of the executive regulation which said *"1. A Capital Asset eligible for the Capital Asset Scheme shall be monitored and the Input Tax incurred shall be adjusted, as required in accordance with the provisions of this Article, over a period of either (10) ten consecutive years for buildings or parts thereof or (5) five consecutive years for other Capital Assets, commencing on the day on which the owner first uses the Capital Asset for the purposes of its Business. 2. Notwithstanding Clause (1) of this Article, if a Capital Asset is destroyed, sold, or otherwise disposed of before the end of the period referred to in Clause (1) of this Article, the Capital Asset Scheme shall cease in respect of the asset in the Tax year in which the asset was destroyed, sold or disposed of. 3. The Tax year in which the Capital Asset is acquired shall be treated as Year 1 for the purposes of the Capital Asset Scheme. 4. A Taxable Person shall keep a Capital Asset register and record therein the Input Tax incurred on the Capital Asset in Year 1 (represented by "W" in this Article) as well as details of any adjustments made to the Input Tax calculations under this Article. 5. The Input Tax recovered on the Capital Asset in Year 1 after any adjustment that may be due under Article (58) of the Decree-Law shall be recorded together with the percentage that gave rise to that recovery (referred to as "X" in this Article). 6. At the end of each year from Year 2 onwards, the Taxable Person shall calculate the percentage of Recoverable Tax for that Capital Asset for that year in accordance with Article (58) of the Decree-Law (referred to as "Q" in this Article). 7. If Q is not equal to X, the Taxable Person shall perform the calculation described in Clauses (8) to (11) of this Article, and shall make an adjustment to his Input Tax. 8. The Taxable Person shall calculate an amount (referred to as "R" in this Article) as: a. One tenth of W multiplied by Q if the Capital Asset is a building or a part thereof; or b. One fifth of W multiplied by Q if the Capital Asset is not a buildings or a part thereof. 9. The Taxable Person shall calculate an amount (referred to as "Z" in this Article) as: a. One tenth of W multiplied by X if the Capital Asset is a building or a part thereof. This is an unofficial translation 42 b. One fifth of W multiplied by X if the Capital Asset is not a buildings or a part thereof. 10. Where R is more than Z, the Taxable Person shall increase his Input Tax by the difference. 11. Where R is less than Z, the Taxable Person shall reduce his Input Tax by the difference. 12. If the Capital Asset is disposed of by the Taxable Person in any year other than the final year or the Taxable Person deregisters from Tax and is required to account for tax on the asset as a Deemed Supply, the*

use to which the Capital Asset is deemed to have been put in any remaining years will be: a. For making Taxable Supplies, where it is disposed of by way of a supply or Deemed Supply that is subject to Tax or would be subject to Tax were it to be made in the State. b. For making Exempt Supplies, where it is disposed of by way of a supply that is exempt or would be exempt were it to be made in the State. c. Not in the course of conducting Business, where is it disposed of by way of a transaction that is not deemed as supply in the course of Business, unless it is deemed as a supply according to the meaning provided in Clause (2) of Article (7) of the Decree-Law. 13. Where a Taxable Person transfers his Capital Assets as part of a transfer of his Business or a part thereof according to Clause (2) of Article (7) of the Decree-Law, or to become a member of a Tax Group, or to leave a Tax Group and immediately become a Taxable Person on a stand-alone basis, then the Tax year then applying shall end on the day the Taxable Person transfers the Business or part of the Business, or becomes or ceases to be part of a Tax Group. On the next day, the next Tax year shall commence with the owner of the Capital Assets. 14. Where a Person who registers for Tax has already owned a Capital Asset for the purpose of his Business before registration for Tax, Year 1 shall be deemed to have commenced on the date of first use by that Person. 15. For the purposes of Clauses (12) and (13) of this Article, any adjustments that may be required in respect of any such remaining years shall be included in the Tax Return relating to the Tax Period in which the Capital Asset is disposed of. 16. Any adjustments other than required under Clauses (12) and (13) of this Article shall be made in the Tax Period mentioned in Clause (8) of Article (55) of this Decision"[1].

Clause (1) from previous article assure that the period of adjustment under the capital asset scheme is (10) years and that is a conflict with the UAE VAT law which assure that the refund for residential building in three years and the capital assets scheme said (10) years. In my opinion that a mistake needs to amend to remove the conflict.

§3. The conflict between the VAT Executive Regulation and VAT Guidebooks inside and the UAE VAT law in other side

It's supposed to be no conflict between the VAT Executive Regulation and VAT Guidebooks in side and the UAE VAT law in other side, because the rule of the executive regulation is to implement the law by following the law and adding the rules and conditions to implement the law without any conflict, if the conflict happens that mean there are mistake in

[1] Cabinet decision of the United Arab Emirates No. 52 of 2017 on the Executive Regulations of Federal Decree-Law No. of 2017 on Value Added Tax, Official Gazette No. 624, issued on November 26th 2017, Article 58.

executive regulation and the law will superior and implement in that case. Also, in regard of VAT guidebooks which issued by the FTA and according to article (73) of the VAT executive regulation which said *"the Authority shall have jurisdiction over the issuing of clarifications and guidance regarding the implementation of the provisions of this decision"*[1]. The rule of that guidebooks is to clarification and implement the executive regulation. So that guidebooks must follow the executive regulation and law and not conflict with them.

In this sub-section will considerate the conflict between the VAT Executive Regulation and VAT Guidebooks inside and the UAE VAT law in other side.

The issue of the local passenger transport: according to article (46/4) from UAE VAT law the local passenger transport are exempt, the previous article said *"the following supply shall be exempt from the Tax: […]. 4. Supply of local passenger transport"*[2]. According to that previous the executive regulation following that rule and provide more rules in that regard, article (45/1) from VAT executive regulation said *"the supply of local passenger transport Services in a qualifying means of transport by land, water or air from a place in the State to another place in the State Shall be exempt"*[3]. The general rule of law and executive regulation are clear and obvious which means the local transport of passenger are exempt from tax and not subject to standard rate.

The federal Taxation Authority issued VAT Public Clarification Public Transportation (VATP007), the summary of that guidebook include sentences are totally conflicted with UAE VAT law, that sentence or article said *"only buses or train which are designed or adopted to be used for the mass transport of individuals, without being restricted to a specific category of users, shall qualify to be supplied at the zero rate. As a result, those means of transport which are designed to transport a specific category of individuals, such as school students or employees of a business, do not meet the conditions to be treated as a qualifying means of transport for the purposes of zero-rating provision. Such means of transport shall therefore be subject to the standard rate of VAT"*[4] .

[1] Cabinet decision of the United Arab Emirates No. 52 of 2017 on the Executive Regulations of Federal Decree-Law No.8 of 2017 on Value Added Tax, Official Gazette No. 624, issued on November 26th 2017, Article 73.
[2] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No 8 of 2017 on Value added tax, Official Journal No 621, issued on August 23rd 2017, Article 46 § 4.
[3] Cabinet decision of the United Arab Emirates No. 52 of 2017 on the Executive Regulations of Federal Decree-Law No. 8 of 2017 on Value Added Tax, Official Gazette No 624, issued on November 26th 2017, Article 45 § 1.
[4] Federal Taxation Authority of the United Arab Emirates, VAT Public Clarification on Public Transportation

In my opinion the FTA made a mistake in that regard, the role of FTA according to the VAT executive regulation is "*"the Authority shall have jurisdiction over the issuing of clarifications and guidance regarding the implementation of the provisions of this decision"*[1]. But what happens in the previous guidebook or clarification is the FTA do the legislation rule and enact new condition which conflict with the VAT law, the new condition is the transportation such as school students or employees of a business are subject to standard rate while the local transport passenger are exempt by the law, so the result of that is the guidebook are conflict with VAT law, in that regard the law have the superior on the guidebook. So, the law will apply and the school students or employees of a business are exempt. In my opinion that clarification or guidebook needs to amend immediately. Also, the other opinion is the clarification or guidebook was correct in regard that kind of transportation is not qualified to be subject to zero rate, but the mistake of clarification or guidebook is to mention that kind of transportation is exempt not subject to standard rate.

Section three. Tax Procedures and VAT law

The system of federal taxation in UAE contains three laws the Federal Decree-Law No. (8) of 2017 on Value Added Tax, Federal Decree-Law No. (7) of 2017 on Excise Tax and Federal law No (7) of 2017 on Tax Procedures. It's obvious that two of them are issued as a federal decree-law and the last one is the federal law. The tax procedures law was issued in 11/06/2017 as a federal law, its valuable to considerate constitutionality of tax procedures law while that law is different than the other in aspect of issuing.

This section will include several issues which are the constitutionality of law, The Relation between The Federal Decree-law No. (8) 2017 on Value Added Tax in UAE and Federal Law No. (7) of 2017 on tax procedures and Criticism of the UAE Procedure taxation law.

§1. Constitutionality of law

As mention in previous section and according to UAE constitution the issuing of federal law is three kinds the union law or federal law, decree law and ordinary decree. Its mention in

[1] Cabinet decision of the United Arab Emirates No. 52 of 2017 on the Executive Regulations of Federal Decree-Law No. 8 of 2017 on Value Added Tax, Official Gazette No 624, issued on November 26th 2017, Article 73.

previous section the decree law considering VAT law and Excise tax law. the normal way of issuing the federal law is according to article (110) from UAE constitution which said *"1. Union laws shall be promulgated in accordance with the provisions of this Article and other appropriate provisions of the Constitution. 2. A draft law shall become a law after the adoption of the following procedure: (a) The Council of Ministers shall prepare a bill and submit it to the Union National Assembly. (b) The Council of Ministers shall submit the bill to the president of the Union for his approval and presentation to the Supreme Council for ratification. (c) The President of the Union shall sign the bill after ratification by the Supreme Council and shall promulgate it. 3. (a) If the Union National Assembly inserts any amendment to the bill and this amendment is not acceptable to the President of the Union or the Supreme Council, or if the Union National Assembly rejects the bill, the President of the Union or the Supreme Council may refer it back to the National Assembly. If the Union National Assembly introduces an amendment on that occasion which is not acceptable to the President of the Union or the Supreme Council, or if the Union National Assembly decides to reject the bill, the President of the Union may promulgate the law after ratification by the Supreme Council. (b) The term "bill" in this clause shall mean the draft which is submitted to the President of the Union by the Council of Ministers including the amendments, if any, made to it by the Union National Assembly. 4. Notwithstanding the foregoing, if the situation requires the promulgation of Union laws when the National Assembly is not in session, the Council of Ministers of the Union may issue them through the Supreme Council and the President of the Union, provided that the Union Assembly is notified at its next meeting"*[1] . According to that article the tax procedures law was issued based on that and that way is a normal way. There is nothing to add or to comment in that regard, so the issuing of tax procedures law was based on the constitution.

Article (53) from UAE tax procedures law said *"the cabinet shall, according to suggestion by the Minister, issue the executive regulation of this law within 6 months as of the issuance of this law"*[2].

Based on that the cabinet of minister in UAE issued the cabinet decision No. (36) of 2017 on the executive regulation of federal law No. (7) of 2017 on Tax procedures. This decision will considerate on details in this chapter.

[1] United Arab Emirates, The Constitution of UAE, Article 110.
[2] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No 7 of 2017 on Tax Procedures, Official Journal No 616, issued on June 11th 2017, Article 53.

§2. The Relation between The Federal Decree-law No. (8) 2017 on Value Added Tax in UAE and Federal Law No. (7) of 2017 on tax procedures

Article (3) of the tax procedures law said, *"This law aims to achieve the following: 1. Regulation of the mutual rights and obligations between the Authority and the Taxpayer and any other Person dealing with the Authority; 2. Regulation of the common procedures and rules applicable to all tax laws in the State"*[1] . The second aim of the law is to regulate the common procedures and rules which are applicable to all the tax laws, one of that law is the UAE VAT law. So, this law is aimed to regulate the common procedures and rules which applied on VAT law. The main cross points or the common rules and procedures are Tax Registration, de-registration, record keeping, tax return, tax refund and the penalties. In this sub-section will focus on that issues.

This part will include four main elements which are tax registration, record keeping, tax return, tax refund and penalties.

A) Tax Registration

Article (6) from the tax procedures law said *"1. A non-registered taxable person or aby other person who has the right to register shall apply for registration under the relevant provisions of the tax law. 2. A Registrant shall: a. includes his TRN in all correspondence and transactions with the Authority or with others in accordance with the provisions of the Tax Law. b. Inform the Authority, as per the form prepared by the latter, of the occurrence of any circumstance that might require the amendment of information related to his Tax record kept by the Authority, within 20 business days from the occurrence of such circumstance. c. Apply for de-registration in accordance with the relevant provisions of the Tax law. 3. The Executive Regulation of this law specify the procedures for the Tax Registration, de-registration, and amendment of the Tax registration data with the Authority. 4. The governmental entities concerned with licensing businesses shall notify the Authority within a time limit of maximum (20) business days from the date of issuance of ant license of the fact and according to the provisions of the Executive Regulation of this law"*[2]. The previous article is the only article in tax procedures organize the issue of registration. The registration in this law is a general its not

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 3.
[2] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 6.

specify for the certain tax based on article (1) of the previous law which define the tax as *"any federal tax administrated, collected and enforced by the Authority"*[1]. The question raises what is the benefit of mention the registration in general while the VAT law mention the registration with more detail such as rules and procedures? In point of view there are no issue of refer and mention the registration on tax procedures law and for the VAT it's better to mention the registration with more detail, because each tax has unique rules and it needs more and different rules.

The second issue in this sub-section, its notes in article (6) of executive regulation of tax procedures law that *"Any person appointed as a legal representative is required to give a notice of his appointment to the Authority within (20) business days from the appointment date"* [2]. The legislator determines the legal representative as a responsible to notice the FTA about his new position, according to article (7) from the tax procedures law the legal representative is *"any person appointed as a legal representative of a taxable person or his funds or his inheritance shall inform the Authority within 20 business days from the date of his appointment"*[3]. Last article defines the legal representative and confirm that the legal representative is responsible to notice the FTA regarding his appointment. My opinion that responsibility must be on the taxable person not the legal representative, the reason of that is the taxable person has a registrar number and tax return, I mean there are long relation between the FTA and taxable person. In other side there are no solid relation between the taxable person and FTA and it's hard to follow the legal representative and hard to punch him comparing to taxable person.

The third issue is the de-registration, article (6) from tax procedures law organize that issue and refer it to the relevant provision of tax law, the article said *"apply for de-registration in accordance with the relevant provisions of the Tax law"*[4]. So according to previous article, the tax procedures law refers the issue of de-registration to the VAT law in regards of VAT and excise law in regard of excise tax. In my opinion its good way to solve that issue, because each tax has special and unique rules, for example one of the main requirements for register in regard of VAT is the exceed the threshold, but in regard of excise tax the requirements of registration

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 1.
[2] Cabinet decision No. 36 of 2017 on the Executive Regulations of Federal Law No. 7 of 2017 on Tax Procedures, Official Gazette No 622, issued on September 24th 2017, Article 6 § 8.
[3] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 7.
[4] Ibid., Article 6 § 2. c.

is totally different, the main requirement of registration in regard of excise tax is the activity of taxable person (warehouse keeper, producer, importer).

The last issue of registration is the responsibility of correct information to register, it's a debate about the role of FTA in this regard, the question is do the FTA have a right to accept the registration or not?

Article (6/3) from the from cabinet decision No. (36) of 2017 on the Executive Regulation of federal law No. (7) of 2017 on the Tax Procedures start that debate, the article said *"The Authority shall review the tax registration or de-registration application in accordance with the rules adopted in this regard"* [1].

According to the previous article the FTA is responsible to review the tax registration and the FTA have a right to accept or reject the registration, so in the result of that if the registration was not correct the responsibility of that will be on the taxable person and the FTA so the FTA can't charge a penalty on the taxable because mistake of registration or de-registration.

B) Record keeping

One of the tax obligations is record keeping to assist the tax auditing to work and review the taxable person taxation record, so the tax procedures law includes the rule of record keeping, article (4) from tax procedures law said *"any person conducting any business shall keep accounting records and commercial books of his business and any tax-related information as determined by the tax law and maintain the same according to the controls that will be specified by the Executive Regulation of this law"*[2]. So, in this article there are two main elements in record keeping, the first element the legislator refers that any person conducting any business shall keep accounting records, so the legislator mains any person conducting business without determine the taxable person. In result of that the responsibility of record keeping its on the any person conducting business regardless register or not.

The second element is the tax procedures law refer the issue of record keeping to the tax law, which means any federal tax law pursuant to which a federal Tax is imposed.

[1] Cabinet decision No. 36 of 2017 on the Executive Regulations of Federal Law No. 7 of 2017 on Tax Procedures, Official Gazette No. 622, issued on September 24th 2017, Article 6 § 3.
[2] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 4.

Article (78) form UAE VAT law organize the issue of record keeping with rules and procedures. Also, the UAE VAT law delegate the executive regulation to determine the time limits, restrictions and condition for keeping the records. Also, restrictions and condition regarding the maintenance of the confidentiality of the records.

In my opinion after reviewing the cross point or the common rules and procedures in regard of record keeping between the UAE VAT law and Tax procedures law, there are no conflict between the UAE VAT law and Tax procedures law in matter of record keeping.

C) Tax Return

Tax return is an obligation on the taxable person which let the taxable person to declare his supplies and expenses. Article (8) from tax procedures said *"Each taxable person shall: a. prepare the Tax Return for each tax period for each tax within the time limit of registration in accordance with the Tax Law. b. submit the tax return to the authority in accordance with the provisions of this law and the Tax law. c. settle any payable tax as specified in the tax return or any tax assessment within the timeframe specified in this law and the tax law. 2. Any incomplete tax return submitted to the authority shall be treated as not having been accepted by it if it does not include the basic information determined by the Tax law. 3. Each taxable person is responsible for the accuracy of the information and data in the Tax Return and in all his correspondence with the Authority. 4. Each taxpayer shall settle any administrative penalties prescribed within the period of time specified in this law and the tax law"*[1]. This article mentions the main rules of tax return and refer the detail to tax law which means the VAT law and excise law, so there are two kind of tax return one for VAT and the other for excise tax. In result of that the taxable person who conduct with excise goods must submit two kind of return one for VAT and the other for excise tax. In my opinion after reviewing the cross point or the common rules and procedures in regard of record tax return between the UAE VAT law and Tax procedures law, there are no conflict between the UAE VAT law and Tax procedures law in matter of tax return.

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 8.

D) Tax Refund

The tax refund is one of the taxable person rights by the tax procedures law, article (34) from tax procedures law said *" a taxpayer may apply for a refund of any tax has paid if he is entitled to a refund under the tax law and it appears that the amount he has paid is in excess of the payable tax and administrative penalties, pursuant to the procedures specified in the executive regulation of this law"*[1]. This article gives the taxable person right to refund his money but after following the rules in executive regulation and the executive regulation refer to the tax law which VAT law in case of VAT and excise law in case of excise tax. In general, there are no conflict between the taxation laws in regard of tax refund.

E) Penalties

The tax procedures law refers to the to kind of violations, administrative penalties and tax evasion penalties, the tax procedures law explains the general violation on two kinds of violations in articles (25) and (26) form the tax procedures law. In addition, the UAE VAT law add more violations which specific for the VAT law. In my opinion there is a gap in UAE taxations laws, because the types of taxation violations are very wide and cannot specified in several kinds of violations which mention in several articles, my opinion is in regard of administrative law to mention that any violate of general system of taxation is a violation. Also, my opinion in regard of tax evasion it must mention in penal law under chapter of taxation crimes and provide all types of tax evasion under that chapter. So, I suggest the UAE penal law must amend to include that chapter of crimes.

§3. Criticism of the UAE Procedure taxation law

The purpose of critic the UAE Tax procedures is to develop that law and develop the taxation system in UAE which will make benefits on UAE economic, in other word, increase the tax efficiency. So, the Criticism will include the rules and procedures which conflict with general rules and in practice can't apply. The criticism will include three issues, the issue of challenge procedures before courts, the issue of procedures for application for reconsideration and the issue of tax agent and legal representative.

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 34.

This part will include three main elements which are the issue of challenge procedures before courts, the issue of procedures for application for reconsideration and the issue of tax agent and legal representative.

A) The issue of challenge procedures before courts

Before court receive the case, it must move throw several procedures and steps. At the beginning the FTA start to perform a tax audit on taxable person or even not taxable person, the FTA has a right to audit over any person according to article (17) from UAE Tax procedures law, the article said *"the Authority may perform a Tax audit on any person to verify the extent of that person's compliance with the provisions of this law and the Tax Law"*[1]. After that FTA shall inform the person subject to tax audit of the final results of the tax audit within the time which determine in executive regulation according to article (23) from the UAE Tax procedures law. Then the Authority or FTA shall issue a tax assessment to determine the payable tax and shall issue an administrative penalties assessment. After that the rule of person subject to administrative start by submit a request to FTA to reconsider any of its decisions issued in connection to him, in whole or part, provided that reasons are included, within 20 business days from him being notified of the decision according to article (27) from UAE Tax procedures. Then the FTA shall review a request for reconsideration if it has fulfilled the requirements and issue its justified decision within 20 business days from receipt of such application, also, the Authority shall inform the applicant of its decision within five business days as of the issuance therefore.

The last step before the court accept the case is the Tax Dispute Resolution Committee, that committee chaired by a member of the judicial authority and two expert members registered in the register of tax experts[2]. The jurisdictions of the committee are mention in article (29) from UAE Tax procedures which said *"the committee shall have jurisdictions to: 1. Decide in respect of objections submitted regarding the Authority's decisions on applications for reconsideration. 2. Decide in respect of applications for reconsideration that were submitted to the Authority and yet, the Authority has not made a decision in their regard according to the provisions of this law. 3. Any other jurisdictions entrusted to the committee by the cabinet"*[3]. The procedures

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 17 § 1.
[2] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 28 § 1.
[3] Ibid., Article 29.

for submitting objections is *"1. An objection regarding the Authority's decisions an application for reconsideration shall be submitted within 20 business days from the date of Notification. 2. An objection submitted to the Committee shall not be accepted in the following instances: a. If a reconsideration request has not been previously submitted to the Authority. b. if the tax and penalties subject of the objection have not been settled"*[1].

In my opinion the issue is in article (30/2/b) which said *"if the tax and penalties subject of the objection have not been settled"*[2]. This part of article will make a problem with the taxable person or business, usually not all administrative penalties assessment is correct and the committee in many cases refuse the assessment which submit it by FTA, so that issue is avoid amount of money from the business and impact on business. Also, article (31) form tax procedures law provide other rules which said *"in no case may Tax disputes be brought before the Competent Court if an objection has not been first submitted to the committee"*[3]. So according to article (30/2/b) and Article (31/5) form UAE Tax procedures law, the person subject to administrative penalties assessment can't submit his case to the court without paying the penalties, in my opinion that is conflict to the principle of the Everyone has the right to file a complaint with the judiciary, also that articles will consider as a waist of the right of people to compliant to the judiciary and try to establish a barrier in face of the people to not get their right. In my opinion that articles must eliminate immediately.

In my opinion there are other way to wrap round the law, article (33/2) from the Tax procedures law said *"challenges may be made to the Competent Court in the following instance: a. A n objection to the whole or part of the decision of the committee. B. non-issuance of a decision by the Committee regarding an objection submitted to it in accordance with the provisions of this law"*[4]. The way to wrap round the law is not paying the penalties, then submit the reconsideration to the FTA, the reconsideration will refuse from the FTA. Then the next step is to submit an objection to the Tax Dispute Resolution Committee which will decide to not accept the objection because the penalty is not paid. Then according to article (33/2/a) from UAE Tax procedures the court must accept the case because it was submitted to the committee and refused.

[1] Ibid., Article 30.
[2] Ibid., Article 30 § 2.b.
[3] Ibid., Article 31 § 5.
[4] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 33 § 2.

That just an idea to solve the issue in legal way, but in general the law was includes mistake. the avoiding the people from their right to submit cases to the courts, also that decision of that Tax Dispute Resolution Committee is an administrative decision not jurisdiction decision because the objection on that decision is must be in first Instance court not in appeal court, if the decision from that committee was judicial, the objection will be to the appeal court, the reason of that debate is that committee chaired by a member of the judicial authority and two expert members registered in the register of tax experts according to article (28) from UAE Tax procedures law.

B) The issue of procedures for application for reconsideration

The main issue in this sub-section is to give the FTA the right to reduction of administrative penalties or waiving therefrom. Article (46) from UAE Tax procedures said *"if the Authority imposes an administrative penalty on any person for violating the provisions of this law or the Tax Law, the Authority may reduce or waive such administrative penalty if the person produces evidence justifying the reason for his failure to comply, pursuant to the controls specified in the executive regulation of this law"*[1].

In my opinion is giving the FTA the right to cancel or waive the administrative penalty is a good idea because the person subject to administrative penalty have a right to submit the reconsideration to FTA for review his claim, and the decision of FTA is to accept his reconsideration and cancel the penalty or refuse the reconsideration and accept the penalty, but what is the reason to give the FTA right to reducing the penalty, the logic is if there is a violation it will be penalty, if there is no violate so there are no penalty.

My opinion is giving the FTA right to reducing the penalty, that will be led to fraud by the FTA employee, in the result of that article (27) of UAE Tax procedures must amend and erase the right to reducing the penalty.

C) The issue of tax agent and legal representative

The issue of tax agent is in two parts, part one is the license by the Ministry of Economic, the second issue is the different between the tax agent and legal representative.

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 46.

The first part is article (13) from UAE Tax procedures said *"it is not permitted for any person to practice the profession of a Tax agent in the state unless he is listed in the register and licensed for this purpose by the Minister of Economic and the competent local authority"*[1], based on last article the Ministry of Economic and the competent local authority has a right to register the Tax Agent not the Federal Taxation Authority. Article (10) from cabinet decision No. (36) of 2017 on the Executive Regulation of federal law No. (7) of 2017 on the Tax Procedures, which the article under title of procedures for listing a Tax Agent in the register and Rights and Obligations of Tax Agents. The last article gives the FTA the right to register and de-register the Tax Agents which is totally conflict with the whereas the law gives the right of register Tax Agents to Ministry of Economic and the competent local authority.

The second part is the representative of the taxable person to the Tax Dispute Resolution Committee, whereas the law didn't determine who is the representative (lawyer, tax agent, legal representative) its better from the practice is the tax agent because he have experience in tax and can deal that issue, but the law and executive regulation didn't determine that and keep it open. So, in practice the committee accept any person to be a representative under condition of providing the power of attorney to delegate that person to be a representative, so that matter will impose on the taxation work and will not give value for the cases and knowledge, so I suggest to amend the law and mention the only representative acceptable to the committee is the Tax Agent.

CHAPTER TWO
The National VAT in Regional Area

The Gulf Cooperation Council (GCC) was established in 1981 and includes The United Arab Emirates, The Kingdom of Bahrain, The Kingdom of Saudi Arabia, The Sultanate of Oman, The State of Qatar and The State of Kuwait. The basic objectives of the Cooperation Council are to formulate similar regulations in various fields including the Economic and financial affairs, Commerce, customs and communications.

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 13.

In addition, The GCC states accept and signed The Economic Agreement between the GCC States which signed in 31 of August 2001, this article establish the general frame for the economic relation between the member states. Also, the agreement includes new articles regarding the Union Customs, Common Market, Economic Union and other articles belongs to human resources development.

Considering that agreement and to continues the principles of integrated and development between the member states agreed to establish the Common VAT agreement of the states of the Gulf Cooperation Council (GCC). In that regard and before starting the chapter its valuable to discuss the article (79) of the GCC VAT Agreement, which is the article of coming into force, the article said *"this agreement shall be adopted by the GCC Supreme Council and shall be ratified by Member States in accordance with their constitutional procedures. 1. This agreement shall be treated as coming into force the deposit of the ratification document by the second Member States at the General Secretariat of the GCC. 2. Each Member States shall take the necessary internal procedures to issue a local law to implement the provisions of this agreement, including setting the policies and procedures necessary for the implementation of the Tax in a manner consistent with the provision of this agreement. 3. Each Member State that has not implemented its local law shall remain outside the scope of implementation of this Agreement until such local law becomes effective"*[1].

There are three main rules in that article. The rule in clause one is the agreement shall come into force after deposit of the ratification document by the second Member States at the General Secretariat of the council. So, based on that if only one state deposit the document at the general secretariat the agreement will not coming into force. Based on that The Kingdom of Saudi Arabia was signed and deposit the documents at the general secretariat. Also, The United Arab Emirates was signed the agreement at 27 of November 2016.

According to ordinary decree No (31) of 2017 the UAE was ratified the agreement Then the UAE deposit the agreement at the General Secretariat of Council.

The second rule of the article (79) of the GCC VAT Agreement is in clause (2), each member state must adopt internal procedures to issue a local law to implement the provisions of this agreement and implementation the tax in a manner consistent with the provision of this

[1] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 79.

agreement, so the domestic legislation of the states must respect the agreement and not conflict with the rules of agreement, that assure the principle of the law must not conflict with the international agreement.

The last rule of the article (79) of the GCC VAT Agreement is in clause (3), Each Member State that has not implemented its local law shall remain outside the scope of implementation of this Agreement, so based on that the rules of agreement will not be implemented on member states which are not implemented domestic law of tax, and that will impact on the taxation treated between the member states. In my opinion it's a gap in the agreement which is not mention the deadline for states to implement the domestic tax law, my concern is that issue will impact on integrated between that states, because the VAT has huge influence on business so keeping the issue of adopting domestic law will influence on the business between the member states which is the conflict with the principle of GCC.

To continue focusing on the legal cover of VAT in UAE, in this chapter will include the describe of VAT in regional area (GCC), whereas the UAE applied VAT following the GCC VAT agreement which issued in November 2016. Whereas the GCC VAT agreement is the corner stone and the basis for applying VAT in GCC member states. It's important to say that the UAE and KSA was applying VAT at the beginning of 2018. In more details the UAE VAT law was signed in 23 of August 2017 and the effective date is 1th January 2018 according to the UAE VAT law and the GCC VAT agreement, in Saudi Arabia VAT law was signed in 2017 and the effective date is 1th January 2018 according to the VAT GCC agreement. Based on that and according to article (79) the GCC VAT agreement will be valid after submitting the document to the secretariat of GCC.

After that Bahrain following them and applied VAT, but the rest member states of GCC which are Oman, Kuwait and Qatar are not applying VAT until now.

In this chapter will focus on the GCC VAT agreement, so the section one will includes a comparing between UAE VAT law and GCC VAT agreement and the similarity of UAE law rules with the rules of agreement, whereas the explaining will include provisions that adopted by the agreement and the UAE law was organized by issuing the law and executive regulation. Also, focusing on the issues that UAE VAT law not following the GCC VAT agreement rules which consider as a breach of agreement according to article (79/2) Each Member States shall issue a domestic law to implement the provisions of this agreement, including setting the

policies and procedures necessary for the implementation of the Tax in a manner consistent with the provision of this agreement.

Its important to see the taxation transactions between GCC member states which consider as an implementation states or not according to the provision of VAT GCC agreement. In addition, will focus on the relation between the GCC VAT agreement and the GCC Custom agreement.

In section two will consider the comparing between GCC VAT agreement and EU Directive to show th gaps in GCC VAT agreement, also the positive ideas in the agreement, so will mention the similarities between the GCC VAT agreement and the EU directive, after that will focus on the differences between the GCC VAT agreement and the EU Directive, at the end will mention the gaps with suggestion based on my view of point.

The question will raise what is importance of comparison between the GCC VAT agreement and the EU Directive? The answer is the importance is to show the gaps in new system which is the taxation system in GCC by comparing with old and solid system in Europe. The GCC is a regional organization same the union in some aspects and the EU is a Union between European states, and there are similarities between them in aspects of unify the laws and harmonies the taxation system, so the example of European Union is good for comparison. In additional the VAT start from Europe and extend to most states in world.

This chapter will include two sections, section one: UAE VAT Law & Common VAT Agreement of the states of the Gulf Cooperation Council and the section two is The GAPs in GCC treaty (compromise with EU VAT Directives).

Section one. UAE VAT Law & Common VAT Agreement of the states of the Gulf Cooperation Council

Align with the objectives of the GCC Economic Agreement of 2001, which seeks to reach advanced stages of economic integration, and develop similar economic and financial legislation and legal foundations amongst member states, and with a desire to promote the GCC economy and proceed with the measures that have been taken to establish economic unity amongst Member States; and Pursuant to the Supreme Council decision at its 36th meeting (Riyadh – 9-10 December, 2015) with respect to the common imposition by the GCC States of

VAT at a rate of 5%, and delegating to the Financial and Economic Cooperation Committee the completion of all the requirements necessary to pass the (Common VAT Agreement of the states of the Gulf Cooperation Council) and signing it. And whereas this agreement aims to establish a common legal framework for introduction for a general tax on consumption in the GCC known as (VAT) levied on the import and supply of goods and services at each stage of production and distribution, the GCC states have agreed the GCC VAT agreement and signed the agreement, but the agreement will not be coming into force until two-member states submit the documents to the secretariat of Council. So, the GCC VAT agreement is a continues of the principles of GCC and principle of GCC Economic Agreement of 2001.

The common VAT Agreement of the States of the Gulf Cooperation Council was signed by the member states in 2016, UAE was signed and ratified the agreement (as mention above), and the question is, what is the time to the agreement to become effective?

"*In many cases treaties will specify that they will come into effect upon a certain date or after a determined period following the last ratification. It is usual where multilateral conventions are involved to provide for entry into force upon ratification by a fixed number of states, since otherwise large multilateral treaties may be prejudiced. The Geneva Convention on the High Seas, 1958, for example provides for entry into force on the thirtieth day following the deposit of the twenty-second instrument of ratifications with the United Nations Secretary-General, while the Convention on the Law of Treaties, 1969 itself came into effect thirty days after the deposit of the thirty-fifth ratification and the Rome Statue for the international Criminal Court required sixty ratifications. Of course, even though the necessary number of ratifications has been received for the treaty to come into operation, only those states that have actually ratified the treaty will bound. It will not bind those that have merely signed it, unless of course, signature is in the particular circumstance regarded as sufficient to express the consent of the state to be bound*."[1] In my view of point the GCC agreement was following the rules of Convention on the Law of Treaties.

The reflecting of that, the common VAT Agreement of the States of the Gulf Cooperation Council refers that the agreement shall be coming into force from the deposit of the ratification's documents by the second member state at the General Secretariat of the GCC[2], in the date of

[1] Shaw, Malcolm, *International Law*, Cambridge University Press, 6th edition, 2008, p. 926.
[2] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 79 § 1.

the agreement all GCC states was sign the agreement. After that the KSA was ratified the agreement and submit the document, then UAE was ratified the agreement and submit the document.

The result of that is the agreement become valid according to article (79) from Common VAT Agreement of the States of the Gulf Cooperation Council (GCC), the legal statues is the UAE are Legally committed according to last agreement and the provisions of public international law.

In line with this, the UAE is required to enact legislation or amend it exist legislation in line with the provisions of the Common VAT Agreement of the States of the Gulf Cooperation Council. The agreement said "*each Member State shall take the necessary internal procedures to issue a Local Law to implement the provisions of this Agreement, including setting the policies and procedures necessary for the implementation of the Tax in a manner consistent with the provisions of this Agreement*"[1].

To continue focusing on the subject the section will include three sub-sections, The similarity of the UAE VAT law with the GCC agreement, Tax transactions between the GCC countries and the similarity of the applicable VAT in the UAE with the GCC customs agreement.

§1. The Similarity of the UAE VAT law with the GCC agreement

In August 2017 the Federal Decree-Law No. (8) of 2017 on Value Added Tax was adopted[2], in addition, the federal decree law shall come into effect as of January 1, 2018[3]. The adopting of domestic VAT law is to follow the principles of international law and the GCC agreement which said "*each Member State shall take the necessary internal procedures to issue a Local Law to implement the provisions of this Agreement, including setting the policies and procedures necessary for the implementation of the Tax in a manner consistent with the provisions of this Agreement*"[4]. In regard of following the GCC VAT agreement in matter of

[1] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 51 § 2.
[2] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 8 of 2017 on Value Added Tax, Official Gazette No. 621, issued on August 23rd 2017.
[3] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 8 of 2017 on Value Added Tax, Official Gazette No. 621, issued on August 23rd 2017, Article 85.
[4] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 78 § 2.

internal procedures the UAE legislation issue the VAT law and the cabinet issue the executive regulation and the Federal Tax Authority issue the guidance book.

To study the similarity of the UAE VAT law with the GCC VAT agreement and analyze that, it must focus in two ways, the first way is the points agreed by the UAE law with the GCC VAT agreement, and the other way is the Points that UAE law is not following with the GCC VAT agreement.

A) The provisions of the GCC agreement organized by the UAE law

According to the principles of the GCC VAT Agreement[1], the domestic law is compatible with the international treaty and complements the provisions of the international agreement, therefore, the agreements provide provisions that have been mentioned in general, so that domestic law may be interpreted and that provisions, for example in GCC VAT Agreement; Exceptions.

1) Exceptions

Whereas articles (29) to (36) of the GCC VAT agreement referred to exemptions from the implementation of VAT provisions, which are exemptions and zero rate, and which are mentioned exclusively by the agreement. In other words, the Member States can't exclude other sectors, goods or services which are not mentioned in the Agreement. This matter was organized by articles (45) – (46) of the domestic law without any adding of new sectors, goods and services to list of exceptions. The provision of UAE law is following the provisions of the GCC agreement in issue of exceptions.

A question arise, is the exemption for a products or services, are it on a sector or is it a taxpayer?

As the scope of application of the VAT in accordance with Article 2 of the domestic law stated that the exception is on goods and services, while the GCC agreement excludes categories or taxpayers from the implementation. Therefore, the legislator of the United Arab Emirates legislated a special text for this, namely, Recovery of Tax by Government Entities and Charities in accordance with the provisions of Article 57 of the UAE Law *"A Cabinet Decision shall be*

[1] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 79.

issued at the suggestion of the Minister determining the Government Entities and Charities entitled to recover the full amount of Input Tax paid by them, except for:

1. Tax excluded from recovery as specified in the Executive Regulation of this Decree-Law. 2. Tax paid for Goods and Services used to perform exempt supplies[1].

In accordance with this text, the special Decision on Expo 2020 was issued, which is in conformity with the provisions of the domestic law and GCC VAT agreement, the expo decision was issued according to Article 30, paragraph 3 from GCC VAT agreement which said *"each Member State may exclude the following categories from paying Tax upon receipt of Goods and Services in that State, and each Member State may allow these Persons to reclaim Tax borne upon receipt of the Goods and Services in accordance with the conditions and rules determined by that Member State. These categories include: - Government bodies specified by each State; - Charities and Public Benefit Establishments specified by each State; - Exempted companies under international event hosting agreements; - Citizens of the Member State when constructing their homes for private use; - Farmers and fishermen who are not registered for Tax"*[2]. The expo 2020 issue will explain it in part two, title two, chapter one. While the UAE legislation follow the rules of article 30 of GCC VAT Agreement and made a conflict between the law and the executive regulation.

Article (31) of the GCC Agreement stipulates that the zero rate may be applied to food Items, and that the UAE law was issued without including the exception on food items, which is the right of the UAE legislator. The agreement stated that exceptions may be applied to these commodities. In other side the Kingdome of Bahrain applied the exceptions on certain food items according to article (3) and (53) from VAT Bahrain law.

2) Tax Return

The tax return is related with tax period, the tax return is submitting after finishing the tax period, Whereas the article (60) from GCC VAT agreement mention that all member state have a right to determine the tax periods, which may not be less than one month[3].

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 8 of 2017 on Value Added Tax, Official Gazette No. 621, issued on August 23rd 2017, Article 57.
[2] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 30.
[3] Ibid., Article 60.

Furthermore, the GCC VAT agreement leeway the member state to adopt rules and condition for submitting the tax return following to article (61) from GCC VAT agreement. The article said *"each Member State shall determine the timeframes, conditions and rules for submission of Tax Returns by a Taxable Person for each tax period, provided that The Ministerial Committee shall determine the minimum data required to be included in the tax return"*[1].

In that regards the UAE legislation adopt the restrictions on the tax return in article (72) of the UAE VAT law, the article said *"1. The Taxable Person shall submit the Tax Return to the Authority at the end of each Tax Period within the time limits and according to the procedures specified in the Executive Regulation of this Decree-Law declaring all supplies made and received during that Tax Period. 2. A Cabinet Decision shall be issued upon the recommendation of the Minister, determining the Government Entities that may submit simplified Tax Returns to the Authority"*[2].

In conclusion the UAE VAT law was following the GCC VAT agreement in that regards and organize the issue of tax return by using the right from article (60) of the GCC VAT law.

B) The points that UAE law is not following with the GCC agreement

It may sometimes occur that domestic legislation is issued in a way that does not comply with the provisions of the international agreement. The reason may be legal, whereas the member state reserves an article in the agreement provided that this article can be reserves and that the agreement is non-bilateral.

It may happen that the legislation is issued in a manner that does not comply with the provisions of the International agreement for technical reasons or error in legislate. In this section we review some provisions of UAE VAT law that do not comply with the GCC VAT agreement, for example: the concept of taxable person and the threshold.

1) Taxable person

The taxable person according to GCC VAT agreement is *"a person conducting an Economic Activity independently for the purpose of generating income, who is registered or*

[1] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 61.
[2] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 8 of 2017 on Value Added Tax, Official Gazette No. 621, issued on August 23rd 2017, Article 72.

obligated to register for VAT in accordance with the provisions of this Agreement"[1] the concept include three elements of taxable person which are: 1) conducting an economic activity independently 2) the purpose of conducting that activity is to generating income. 3) the person must be registered or obligated to register. While the UAE VAT law referred taxable person is *"Any Person registered or obligated to register for Tax purposes under this Decree-Law"*[2] the concept include only one element, which is the taxable person must be registered or obligated to register.

From this Comparison the conclusion is the concept of taxable person from UAE VAT law is wider than the concept from GCC agreement, whereas it is based on the GCC VAT agreement, the Public Associations and Institutions of Public Benefit also the government entities can't recognized as a taxable person, because it's not conducting an economic activities, that issue conflict with article 30 from GCC VAT agreement which said *" Each Member State may exclude the following categories from paying Tax upon receipt of Goods and Services in that State, and each Member State may allow these Persons to reclaim Tax borne upon receipt of the Goods and Services in accordance with the conditions and rules determined by that Member State. These categories include: - Government bodies specified by each State; - Charities and Public Benefit Establishments specified by each State; - Exempted companies under international event hosting agreements; - Citizens of the Member State when constructing their homes for private use; - Farmers and fishermen who are not registered for Tax"*[3].

That means the Public Associations and Institutions of Public Benefit and the government entities in general is a taxable person and according to last article has a right to reclaim the tax later, which means the GCC agreement it contradicted herself.

In one side in the definition of the taxable person specify the condition of generation income as a one condition to be a taxable person, in other side the GCC VAT agreement give the right to member state to allow the Associations and Institutions of Public Benefit also the government entities to reclaim the taxes as a taxable person, which the condition of taxable person are not fit on it, in my opinion the definition of UAE VAT law is better than the GCC

[1] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 1.
[2] The Federal Decree-Law of the United Arab Emirates No. 8 of 2017 on Value Added Tax, Official Gazette No. 621, issued on August 23rd 2017, Article 1.
[3] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 30.

VAT agreement definition of taxable person, in that regards the UAE VAT law not follow the GCC VAT definition.

In that regards it's good to focus on Case C-249/17 between Ryanair Ltd and The Revenue Commissioners from ECJ, the subject of the case is the concept of the conducting economic activity of taxable person and the right to deduct the input tax which happen as a result of acquisition from Ryanair of another company's shares. Ryanair requested the deduction of input VAT paid on that expenditure, stating that its intention, after it gained control of the target company, had been to involve itself in its management by providing management services subject to VAT. The tax authority having refused that deduction, Ryanair brought an appeal before the Tax Appeals Commission (Ireland), which dismissed the appeal. Ryanair brought a second appeal before the Circuit Court (Ireland), which took the same position as the tax authority. The Circuit Court nevertheless referred the case to the High Court (Ireland) for an opinion.

After that court upheld the decision of the Circuit Court, Ryanair appealed to the Supreme Court (Ireland). In the present case, it is apparent from the file before the Court that the services at issue were provided to Ryanair when it intended, by the planned acquisition of shares in the target company, to pursue an economic activity consisting in providing to that company management services subject to VAT. Thus, it appears that, first, Ryanair acted as a taxable person at the time it incurred the expenditure linked to the services at issue. By doing so, Ryanair thus benefits, in principle, from the right to deduct VAT paid on the services at issue immediately, even if, ultimately, that economic activity, which was to give rise to taxable transactions, was not carried out and, accordingly, did not give rise to such transactions. Second, as regards the conditions for the exercise of the right to deduct and more specifically the scope of that right, the expenditure incurred for the purpose of the acquisition of the shares of the target company must be regarded as being attributable to the performance of that economic activity which consisted in carrying out transactions giving rise to a right to deduct. On that basis, that expenditure has a direct and immediate link with that economic activity and, consequently, is part of its general costs. It follows that the corresponding VAT gives rise to the right to deduction in full[1].

[1] ECJ, First chamber, Case C-249/17, 17 October 2018.

The decision from court was *"Articles 4 and 17 of Sixth Council Directive 77/388/EEC of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment must be interpreted as conferring on a company, such as that at issue in the main proceedings, which intends to acquire all the shares of another company in order to pursue an economic activity consisting in the provision of management services subject to value added tax (VAT) to that other company, the right to deduct, in full, input VAT paid on expenditure relating to consultancy services provided in the context of a takeover bid, even if ultimately that economic activity was not carried out, provided that the exclusive reason for that expenditure is to be found in the intended economic activity"*[1].

2) Registration Threshold

According to GCC VAT agreement there are two types of registration threshold, the first one is the mandatory registration threshold and the second is the voluntary registration threshold. The GCC VAT agreement determines the mandatory threshold with SAR 375,000[2] and the Voluntary Registration Threshold is 50% of the Mandatory Registration Threshold[3]. That is the value of registration threshold, the issue with the concept of registration threshold.

a) According to the GCC agreement the mandatory threshold is *"the minimum limit of the value of actual supplies at which the Taxable Person becomes obligated to register for Tax purposes"*[4], also the concept of mandatory threshold according to UAE VAT law is *" an amount specified in the Executive Regulation of this Decree Law; if exceeded by the value of Taxable Supplies or is anticipated to be exceeded, the supplier shall apply for Tax Registration"*[5] it's obvious that there are no conflict between the GCC agreement and UAE LAW in that matter, but the conflict is in;

b) The voluntary registration threshold, according to the GCC agreement is *"the minimum limit of the value of actual supplies at which the Taxable Person may apply to register for Tax*

[1] ECJ, First chamber, Case C-249/17, 17 October 2018.
[2] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 50 § 2.
[3] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 51 § 3.
[4] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 1.
[5]The Federal Decree-Law of the United Arab Emirates No. 8 of 2017 on Value Added Tax, Official Gazette No. 621, issued on August 23rd 2017, Article 1.

purposes" there is one element of that concept which is the minimum limit of the value of actual supplies. But the conflict is from UAE VAT law that said the Voluntary Registration Threshold: is "*An amount specified in the Executive Regulation of this Decree Law; if exceeded by the value of Taxable Supplies or taxable expenses or is anticipated to be exceeded, the supplier may apply for Tax Registration*"[1], there are two elements of that concept which are 1) taxable supplies 2) taxable expenses. And that is the conflict between GCC agreement and UAE VAT law. The domestic law adds one more element to voluntary threshold and that is not include in GCC agreement.

The Saudi legislator apply same rule with UAE VAT law and add the taxable expenses to the concept of voluntary threshold according to article 7 from Value Added Tax - Implementing Regulations *" A Resident Person in the Kingdom who is not required to register under the Agreement and the Law may apply to the Authority for registration in any of the following cases (a) the value of the Person's Supplies or expenses during the then ended twelve months were equal to an amount not less than the Voluntary Registration Threshold,"* . In my view of point the UAE & KSA legislation conflict with GCC agreement in matter of voluntary threshold concept.

§2. Tax transactions between the GCC countries

According to the provisions of article 78/5 from GCC VAT agreement which said *"This Agreement shall be adopted by the GCC Supreme Council and shall be ratified by Member States in accordance with their constitutional procedures […] 3. Each Member State that has not implemented its Local Law shall remain outside the scope of implementation of this Agreement until such Local Law becomes effective […]"*[2].

Based on last article, the UAE legislator adopt the provision of transactions with the other states in article 70/15 of Cabinet Decision No. (52) of 2017 on the Executive Regulations of the Federal Decree-Law No (8) of 2017 on Value Added Tax which said "15. *A GCC State shall be treated as an Implementing State according to the provisions of the Decree-Law and this Decision if the following conditions are met: a. Where the GCC State treats the State*

[1] The Federal Decree-Law of the United Arab Emirates No 8 of 2017 on Value Added Tax, Official Journal No 621, issued on August 23rd 2017, Article 1.
[2] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 78 § 5.

similarly as an Implementing State in its published legislation. b. Full compliance with the provisions of the Common VAT Agreement of the States of the Gulf Cooperation Council (GCC)"[1].

The question arise is what is the different between the implementation states and non-implementation states in regards of tax transactions? Or in other words what is the different between in the scope of implementation or out of the scope of implementation?

A) Dealing with implementation states (inside the scope of implementation)

The purpose of tax transactions among member states is import and export, which is the essential issue, the question is, are these transactions subject to standard rate or zero rate or exempt from implementation the VAT?

Whereas the GCC agreement was defined the supply of goods is *"1. A Supply of Goods means the transfer of ownership of such Goods or the right to dispose of the same as an owner.*

2. A Supply of Goods includes the following transactions:

a) disposal of Goods under an agreement that provides for the transfer of ownership of these Goods or the possibility of transferring the same at a date subsequent to the date of the agreement, which shall be no later than the date on which the Consideration is paid in full;

b) granting rights in rem deriving from ownership giving the right to use real estate;

c) compulsory transfer of ownership of the Goods for Consideration pursuant to a decision of the public authorities or by virtue of any applicable law"[2].

Whereas the essential point in this matter is Are the exports from member states to another member states recognized as export? This issue organized by provision of article 6/1 from GCC agreement which said *"a Taxable Person who transports Goods forming part of his assets for*

[1] Cabinet decision No. 52 of 2017 on the Executive Regulations of Federal Decree-Law No. of 2017 on Value Added Tax, Official Gazette No. 624, issued on November 26th 2017, Article 70 § 15.
[2] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 5.

the purposes of his business from the place where they are in a Member State to another place in another Member State shall be deemed to have made a Supply of Goods"[1] .

Based on last article the export from member state to other member state recognized as supply. Also, the last article exempts from the last principle under two conditions which are *"2. A transportation of Goods as provided for in subsection 1 above shall not be considered a Supply of Goods if it was done for one of the following purposes:*

a) to use the Goods in the other Member State temporarily within the conditions of temporary entry provided for in the Common Customs Law;

b) where the transportation of goods is done as part of another Taxable Supply in the other Member State"[2].

Based on article 25/1 from GCC agreement which said *"1. Tax shall be applied at the standard rate of 5% of the value of the Supply or the value of Imports, unless this Agreement provides for an exemption or the zero-rate on such supplies"*[3]. So, the exports between member states which implement the VAT recognized as supply and subject to standard rate, which means the zero rate are not applied on that transactions.

As mention above the standard rate are applied on supply goods between the member state, also the result of that, the zero rate are not applying on the exports between member states also the reverse charge will not apply. Whilst the export to Outside the GCC Territory are subject to the zero rate. According to article 34/1 from GCC agreement which *said "1. The following supplies shall be subject to the zero-rate: a) the export of Goods outside the GCC Territory"*[4].

Until the date of write the thesis, the last provisions regarding the tax transactions with the member states are not valid in UAE according to article 70/15 from Cabinet Decision No. (52) of 2017 on the Executive Regulations of the Federal Decree-Law No (8) of 2017 on Value Added Tax, which said *"a GCC State shall be treated as an Implementing State according to the provisions of the Decree-Law and this Decision if the following conditions are met:*

[1] Ibid., Article 6§ 1.
[2] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 6 § 2.
[3] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 25 § 1.
[4] Ibid., Article 34 § 1.

a. Where the GCC State treats the State similarly as an Implementing State in its published legislation. b. Full compliance with the provisions of the Common VAT Agreement of the States of the Gulf Cooperation Council (GCC)"[1].

B) Dealing with non-implementation states (outside the scope of implementation)

According to the provisions of article 78 from GCC agreement which said *"this Agreement shall be adopted by the GCC Supreme Council and shall be ratified by Member States in accordance with their constitutional procedures[…] 3. Each Member State that has not implemented its Local Law shall remain outside the scope of implementation of this Agreement until such Local Law becomes effective […] "*[2].

Until the date of write the thesis the three states are not issuance VAT law and not implement the VAT, so the last article is applied on tax transactions with them, the result of that the zero-rate will implement on export from the member state which implement VAT to state not implement VAT as an export for non-implementation states or in other word the states outside the scope of GCC VAT Agreement.

§3. The Similarity of the applicable VAT in the UAE with the GCC customs agreement

It's good to focus on this corner, while the VAT will influence on international trade in export and import, in that regards its good to see the influence of VAT on the GCC Customs Agreement which aimed to develop the international trade. In this sub-section will describe the method of calculating the value added tax in the presence of the customs duty, General principles of the GCC Customs Union and their similarity with the implementation of VAT and the issue of under custom duty suspension and their similarity with implementation of VAT.

A) The method of calculating the value added tax in the presence of the customs duty

The custom duty applied on the Imports. But the question is how to apply the customs duty in regard of VAT? According to GCC agreement the value of imported goods Consisting

[1] Cabinet decision No. 52 of 2017 on the Executive Regulations of Federal Decree-Law No. of 2017 on Value Added Tax, Official Journal No. 624, issued on November 26th 2017, Article 70 § 15.
[2] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 78.

of the value of goods according to Common Customs Law plus Customs duty and any Excise tax without VAT, which means the VAT will implement after calculating the value of imported Goods includes the custom duty. Article 28/1 from GCC agreement said *"1. The value of imported Goods will be the customs value determined in accordance with the Common Customs Law plus Excise Tax, Customs duty and any other imposts apart from VAT"*[1]. In that regards the UAE legislation follow the GCC VAT Agreement in article (35) said *"The import value of goods consists of: 1. The customs value pursuant to Custom Legislation, including the value of insurance, fright and any customs fees and Excise Tax paid on the Import of the Goods. Tax shall not be included in the Value of the Supply. 2. If it is not possible to determine the value pursuant to Clause (1) of this Article, the value shall be determined based on alternate valuation rules stated in the applicable Custom Legislation"*[2]. So, the value of imported goods is the value of insurance, fright and any customs fees and Excise Tax. The other issue will raise in that matter is the imposing tax on tax which is impose the VAT on excise tax, this issue is explained in next chapter.

B) General principles of the GCC Customs Union and their Similarity with the implementation of VAT

According to The Economic Agreement between the GCC States which signed on 31 December 2001, the trade exchange between the GCC countries shall be within a customs union to be implemented by the date of January 2003 which include several elements like: Indicating customs duty to the outside world, Uniform customs regulations and procedures, one entry point at which the combined customs duties are collected. With the movement of goods between the GCC countries without customs or non-tariff restrictions and commodities and National treatment of goods produced in any of the GCC countries as products[3].

In that regards, the issue of one entry point is important, the single point of entry is one of the most important bases for the requirement of the customs union. Consider Any land, sea or air customs port of the GCC States shall be connected to the outside world as a point of entry for the foreign goods of any Member State. The first customs port of the GCC countries towards the outside world shall inspect the goods received by any Member State, ensure that they

[1] Ibid., Article 28 § 1.
[2] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 8 of 2017 on Value Added Tax, Official Gazette No. 621, issued on august 23rd, 2017, Article 35.
[3] Gulf Corporation Council (GCC), The Economic Agreement between the Gulf Corporation Council States, issued in 31 of December 2001, Article 1.

comply with the required documents, free of prohibitions, and fulfill the customs duties due thereon. Unification of restrictions on goods allowed after certain conditions are met in all GCC countries. Applying uniform controls for importing and transporting government imports and special exemptions that enjoy exemption from customs duties.

Goods which are prohibited for importation in some Member States and whose importation is permitted in other countries shall be imported directly to the importing country or through a Member State which permits their entry provided that they do not cross into the territory of the Member States that prevent their importation.

Foreign goods imported within the GCC States from free zones shall be subject to customs duties upon departure from these areas and shall be treated in the same way as other GCC States[1].

Comparing with GCC VAT agreement, the custom duty apply one time in the entry point, but the VAT apply in all steps of supply chain, so the VAT apply in entry point in first member state and apply on the country of destination or on customs authority in other member state.

C) The issue of under custom duty suspension and their Similarity with implementation of VAT

The GCC VAT agreement mention the custom duty suspension in article 22 which said *"1. The place of import for Goods shall be the State of the First Point of Entry.2. When Goods are placed under customs duty suspension under the Common Customs Law immediately upon entry into the GCC Territory, then the place of import shall be in the Member State where these Goods were released from the duty suspension status"*[2]. Also, the UAE VAT regulation mention the custom duty suspension in article 30/1 which said *"1. The Direct Export shall be subject to the zero rate if the following conditions are met: a. The Goods are physically exported to a place outside the Implementing States or are put into a customs suspension regime in accordance with GCC Common Customs Law within 90 days of the date of the supply. b.*

[1]http://www.gccsg.org/arsa/CooperationAndAchievements/Achievements/GCCCustomsUnion/Pages/GCCCustomsUnionProcedures.aspx [consulted in 12 may 2019].
[2] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 22.

Official and commercial evidence of Export or customs suspension is retained by the exporter"[1].

In general, any item of goods entre the state must apply VAT on it, but in the custom suspension the situation is different because the VAT is suspending until 90 days from the import. After that period there are two options, the first option is exporting the goods, and the second option is applied VAT on the importation the goods.

That provision was adopted by the GCC VAT agreement and the UAE Law follow that provision in the custom suspension issue.

Section two. The GAPs in GCC VAT Agreement (Compromise with EU VAT Directives)

In section one the focus was on the UAE VAT Law & Common VAT Agreement of the states of the Gulf Cooperation Council by concentrating on The Similarity of the UAE VAT law with the GCC agreement, Tax transactions between the GCC countries and The Similarity of the applicable VAT in the UAE with the GCC customs agreement.

In this section the concentrating will be on the GAPs of the Common VAT Agreement of the states of the Gulf Cooperation Council by compare the previous agreement with EU Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax.

The reason of compare the GCC VAT agreement with the EU Directive is the EU Directive old and solid. Although the EU Directive has been developing several times. Both of EU Directive and GCC VAT agreement are aimed to harmonized the VAT system between the member states, but the EU system are more develop than the GCC system, whereas the conflict in regard of implementation the VAT between the states can finalize by European Court and the Court has the jurisdiction to interpreted the EU Directive, in other side there are no GCC court to dispute the settlement and to interpreted the GCC VAT agreement, and that is one of the GAPs in the GCC VAT agreement. Also, this is a one of the benefits of the comparison.

[1] Cabinet decision No. 52 of 2017 on the Executive Regulations of Federal Decree-Law No. 8 of 2017 on Value Added Tax, Official Gazette No. 624, issued on November 26th 2017, Article 30 § 1.

In this section will compare between the GCC VAT agreement and the EU Directive 2006/112/EC from several aspects, the comparing will include the similarity between the GCC VAT agreement and EU, the differences between the EU VAT Directive and GCC VAT Agreement. The main rules of the GCC VAT Agreement and the powers granted to the domestic laws in this regard with comparing the provisions of EU VAT Directive and the main issue which is the Gaps of GCC VAT Directive comparing with EU Directive.

§1. The similarity between the GCC VAT Agreement and EU Directives

In general, the international conventions addressed the states, that states are the parties of the international conventions, in other side the constitution addressed the government authorities, also the law addressed the people in the state. Based on that principle the GCC agreement and EU directive No. 2006/112/EC are same from the aspect of addressed the states. The GCC agreement addressed GCC applied states and non-applied states. The EU directive No. 2006/112/EC addressed the European States member in EU.

It's necessary to mention that in general, the International Conventions establish the outline, with given the leeway for signed states to apply the convention with adding more condition without conflict with the principle of convention and the respect the outline of convention.

Its good to mention that the GCC VAT Agreement and EU directives are not compatible, but in this chapter the reason of compromise is to highlights on gaps in new taxation system in GCC by comparing with old and solid system in EU, the GCC VAT agreement cover several states and aimed to unify the polices like the EU.

The following are some of the topics that highlight the similarities between the GCC agreement and EU directive in regard of VAT. The topics of taxable person definition, margin scheme, reverse charge and export.

A) Taxable Person definition

When reviewing the first time of the definition of the Gulf Convention and the definition in the European Directive, there are many differences in wording and meaning, many effects will arise resulting of that different. But with more consideration on the both definitions will have noted that the two definition are same and implement the same purpose, whereas the GCC agreement define the taxable person as "*a person conducting an economic activity*

independently for the purpose of generating income, who is registered or obligated to register for VAT in accordance with the provisions of this agreements"[1]. Whereas the definition includes several elements, which are: i) person and the definition didn't identify if natural person or legal person, so in the interfere that means in general the concept of person includes two types natural and legal, because the definition not set a specific one. ii) conducting an economic activity. iii) independently. iv) the purpose is generating income. v) registered or obligated to register for VAT.

When comparing between the previous definition with the European definition, will note that the European definition includes same elements of GCC definition, according to article 9/1 from European directive, excepting generating income which mention in article 9/2 from same directive. Whereas the previous article mentions that the conducting activities of the professions, that means the person do his activity in professional way not an amateur.in additional the professional person conducting the economic activity with purpose to generate income.

In addition, the European directive did not mention the condition of registration, that issue is a mistake in European directive, the elements of taxable person definition it may meet in person but the person is not eligible to register or not register because he is not meet the require of threshold but from my view of point it may not consider that point because if the elements of taxable person definition meet the person and his yearly income reached the threshold, he will be eligible to register and the last conditions will apply on him. At the end the European articles of taxable person are similar to GCC articles from the impact but different from the form aspect.

B) Margin scheme

In general, the EU directive are like GCC VAT agreement in margin scheme or in other words profit margin (GCC VAT agreement wording), both of them are applied the margin scheme. Whereas the article 37 from GCC VAT agreement said "*each member state may*

[1] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 1.

determine the conditions and provisions for the imposition of tax on the supply of used goods by the taxable person based on the profit margin"[1].

The GCC VAT agreement establish the basis of margin profit in GCC member states by mention that in the last article and giving the member states the right to determine the conditions and provisions for the applying tax on supply goods. Also, the GCC VAT agreement implement two elements of margin profit which are supply of used goods and supply by taxable person. In addition, the GCC VAT agreement didn't determine the kinds of used goods. Also, we can add that the margin scheme can't applied on supply of services.

On other side, which is the EU directive, whereas the articles of that directive from 312-325 organize applying the margin profit and establish the general conditions for that purpose with more details. The similarity between the GCC VAT agreement and EU directive in margin scheme aspect are in several ways which are supply of used goods and supply by taxable person.

In general, the profit margin is applying tax on the profit margin not on the amount of good, that is an indicate of exemption on applying tax.

C) Reverse Charge

As discussed before the general principle of reverse charge and the importance of implement it for VAT, in that matter the reverse charge promotes on non-impact on international trade, also that enhance the spread implement VAT.

The applying of reverse charge is one of the international best practices in that matter, Whereas the GCC VAT agreement define the reverse charge in article one which said "*a mechanism by which the taxable customer is obligated to pay the tax due on behalf of the supplier and is liable for all the obligations provided for in this agreement and the local law*"[2].

Also the GCC VAT agreement organize the statues of applying reverse charge Whereas the supply form member state to non-member state according to article 9/1 from the agreement which said "*if the taxable in a member state receives taxable goods or services from a person who is a resident in another member state, then he shall be deemed to have supplied these goods*

[1] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 37.
[2] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 1.

or services to himself and the supply shall be taxable in accordance with the reverse charge mechanism"[1].

In addition, the GCC VAT agreement organize the export goods and services to customer in article 41/1 from the GCC VAT agreement which said "*if the place of supply for goods and services is in a member state where is the supplier is not a resident, then the taxable customer residing in that member state shall be obligated to pay the tax due*"[2].

Also, the GCC VAT agreement organize tax deduction principle which the result of reverse charge applied, that mention in article 44/3 from the GCC VAT agreement which said "*a customer who is obligated to pay tax pursuant to the reverse charge mechanism may deduct deductible tax related thereto provided that he has declared the tax due under article 41 (2) of this agreement*"[3].

Its noted that the article 44/3 from previous agreement refer to article 41/2 from same agreement which related to paying tax by tax return or independently as determined by each member state. Which mistake from my point of view because the article 41/2 from previous agreement which said "*tax under subsection 1 of this article shall be paid pursuant to a tax return or independently as determined by each member state*"[4]. The article addressed the customer not the taxable person and the customer is not obliged to submit the tax return. In other words, article 41 is for the customer not taxable person so in my view of point this article must amended to delete the tax return and article 44 which is the article of tax deduction, must amend to add the tax return, because this article addressed directly the taxable person who has the right to deduct tax and submit tax return.

Its noted the agreement establish the general principle of reverse charge and give the right to member state to adopt the conditions of reverse charge. In other side the EU directive refer to reverse charge in article 226/11 and giving the member state the right to applied. Whereas the principle of reverse charge is a result of best practice in international trade and result of international organization works.

[1] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 9 § 1.
[2] Ibid., Article 41 § 1.
[3]Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 44 § 3.
[4] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 41 § 2.

D) Export

The export of goods according to GCC agreement is "supply of goods from any member state to the outside of the GCC territory in accordance with the provisions of the common customs law"[1].

Based on last provision the supply between GCC member state it's not considered as an export, according to article 1 of the GCC agreement the Intra-GCC supply is "*supplies of goods or services by a supplier who resides in a member state to a customer who resides in another member state*"[2].

The GCC agreement follow the international custom and best practice so the legislator adopts the export under zero-rate provision, which mention in article 34/1/a, which said "*the following supplies shall be subject to the zero-rate: a) the export of goods outside the GCC territory*"[3].

In addition, the GCC VAT agreement organize the issue of re-export which is one of the important issues related to export, article 34/1/c said "*re-export of movable goods that have been temporarily imported into the GCC territory for repairs, refurbishment, conversion or processing as well as the services add to these goods*"[4].

In result of that, the GCC VAT agreement didn't mention the export of services to outside GCC territory, for example, a law firm based in UAE do advisory services for client in UK, this kind of services happen in UAE to serve client in UK, that must consider as a gap in the agreement.

In comparing between GCC VAT agreement with EU directive in regards of export, its noted that the provision of EU directive are similar to GCC VAT agreement in several aspects, according to GCC VAT the export is exempted, also the export are exempted in EU directive based on article 146/1 from EU directive which said "*member states shall exempt the following transactions: a) the supply of goods dispatched or transported to a destination outside the community by or on behalf of the vendor*"[5].

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[1] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 1.
[2] Ibid.
[3] Ibid., Article 34 § 1.a.
[4] Ibid., Article 34 § 1.c.
[5] European Union, Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax, Official Journal No. L 347 issued on December 11th 2006, Article 146 § 1.

§2. The differences between the EU VAT Directive and GCC VAT Agreement

The general content of the EU VAT Directive and GCC VAT Agreement is the value added tax applied in terms of the main points and organize the tax relationship between the member states. It is expected that there will be similarities between the EU VAT Directive and GCC VAT Agreement in several points and the difference between the EU VAT Directive and GCC VAT Agreement in other points. In this sub-section I will describe some differences between the two conventions, which are the definition of VAT and Rates.

A) The definition of VAT

The most important issue in the discussion of the difference between the EU VAT Directive and GCC VAT Agreement is that the GCC Convention mentioned definitions of some of the terms contained in the Convention and organized under Article 1 of the Convention which is the article of definitions. The question arises, what is the importance of this article, and what value it adds to the Convention? If we look at this article, we found that it refers to abbreviations such as the use of the word Council and is meant by the Gulf Cooperation Council or may mean a term such as the tax which means the value added tax applied on the import and supply of goods and services at each stage of production and distribution include deemed supply. But when reviewing the definition of VAT in this article is found to be incomplete as VAT is a tax imposed on the import and supply of goods and services at each stage of production and distribution, which is referred to the definition but reduced the right of the merchant of deduction.

By focusing on this definition as it is, it supports the principle that VAT is a cascading tax and this is not true from the point of view. In addition, this definition contravenes the principle of VAT neutrality which ensure that VAT is not imposed on businesses. Therefore, the wording of the definition was not successful and suggested that the definition should be as follow: a tax imposed on the import and supply of goods and services at each stage of production and distribution and subject to the provisions of the deemed supply and give the merchant right to deduct the tax on its inputs according to the certain mechanism and the target of this tax is consumption. And to return to the previous question about the importance of definition article in GCC agreement. When compared with the European Directive, we find that the European Directive does not contain this article. As the Directive stated this article implicitly through the articles of the directive, an example of that, the directive defines VAT and its mechanism of

implementation and scope through title one of directive. Hence the difference between the American and European approaches in the drafting the legislations, as the American or Anglo-Saxon approach includes article of definition. In addition, the GCC legislator followed the Anglo-Saxon approach in drafting the GCC agreement.

In comparison between the European definition and the GCC definition, it is noted that the European definition mentioned the principle of taxation at all stages of supply in addition to giving the right to deduct, which is not mentioned in the GCC agreement definition. As the European legislator stated in the articles of the directive that the target is the consumer and not the trader in accordance with the principle of not applied VAT on merchant and business. It is one of the elements of the principle of VAT neutrality.

B) Rates

The rate is one of the most important elements of the work of value added tax, and when the using of the exception of the applying of the rate, the breaks of the supply chain will happen, and the break in the collection of the tax will happen, but this break is legal because the law allowed in some goods or services may be on citrine natural people or legal people.

Article 25 of the GCC VAT agreement which mention the tax shall apply at the rate of 5% of the value of supply or import unless this provides for an exemption or impose zero rate in such supplies. That means the basis is apply the rate of 5% on all goods and services, the 5% called the standard rate. And the exception is legal principle from article mention excepted several goods and services.

The GCC agreement refers in article 29 to apply zero-rate on several sectors, and that is exception from the general basis which is apply the standard rate on all goods and services. Also, articles from 30 to 38 of GCC agreement refers to several types of exception.

A conclusion from the above the GCC agreement mention three types of rates, the standard rate which is 5%, zero-rate and the exception. On the other side the European directive, which mention that there are four types of rates, the standard rate, reduced rate, zero-rate and the exception.

Whereas the article 97 from the European directive mention that the standard rate must be not less than 15%, also for the reduced rate which is important for this sub-section must be not less

than 5% according to article 99 from the EU directive, and that is the difference between the GCC agreement and European directive. Whereas the article 98 from EU directive refer to Annex III, that annex provide the list of goods and services eligible to applied reduced rate on it, which is in example supply of water and foodstuffs.

The directive gives the member states right to apply the reduced rate on the goods and services and the member state must follow the condition of the rate must be not less than 5%, also the directive give the right to implement one or two reduced rates according to article 98/1 from directive.

§3. The main rules of the GCC VAT Agreement and the powers granted to the domestic laws in this regard with comparing the provisions of EU VAT Directive

In this subsection will focus on the rules which established by the GCC VAT agreement, and the GCC VAT agreement give the member states right or leeway to adopt the conditions to follow the GCC VAT provisions according to article (78) of GCC VAT Agreement. For example, in EU VAT directive mention the reduced rate in article 98 of EU directive, also the EU directive adopt the main provision in that regard which is the reduced rate must be not less than 5% of taxable amount, so in result of that the EU directive adopt main provision which is the reduced rate and give the member states the right to adopt the reduced rate under condition which is the reduced rate not allowed to be less than 5% of taxable amount[1].

So, in that regard will consider the right of member states to enact VAT legislation include provisions mention in GCC VAT agreement in general and domestic law mention that provisions with more details. Also, it's necessary to mention example of that provisions with analyzation, which are VAT Group, Tax Invoice and Tax Return.

A) VAT group

The GCC VAT agreement mention the VAT group in article (4) which said *"each member state may treat the VAT group as a single taxable in accordance with the rules and conditions it puts in place for that purpose. A vat group means two or more corporate persons who are*

[1]European Union, Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax, Official Journal No. L 347 issued on December 11th 2006, Article 99.

residents of the same member state"[1]. The previous article includes several provisions which are: a) treat the VAT group as a single taxable person. b) the member states have the right to adopt rules and conditions for that purpose. c) the definition of VAT group.

Whereas the GCC VAT agreement gives right to member states to treat a VAT group as a one taxable person, in more details the previous agreement gives the member states right to adopt rules and conditions to achieves that purpose. In addition, the previous agreement defines the VAT group as two or more corporate persons who are residents of the same member state. Which means the natural person can't consider as VAT group, also if the taxable person resident in one-member state and the other taxable person resident in other member state, it can't be a VAT group.

In that regards the UAE legislation follow the GCC VAT agreement and enact the VAT group in article (14) of UAE VAT law, the article said *"1. Two or more persons conducting Businesses may apply for Tax Registration as a Tax Group if all of the following conditions are met: a. Each shall have a Place of Establishment or Fixed Establishment in the State. b. The relevant persons shall be Related Parties. c. One or more persons conducting business in a partnership shall control the others. 2. The Executive Regulation of this Decree-Law will determine the instances where the Authority may reject the application to register a Tax Group. 3. Any Person conducting Business is not allowed to have more than one Tax Registration Number, unless otherwise prescribed in the Executive Regulation. 4. If Related Parties do not apply for Tax Registration as a Tax Group under Clause (1) of this Article, the Authority may assess their relation based on their economic, financial and regulatory practices in business and register them as a Tax Group if their relation was proved thereto according to the controls and Conditions specified by the Executive Regulation of this Decree-Law. 5. The Authority may deregister the Tax Group registration in accordance with this Article as per the conditions specified in the Executive Regulation of this Decree-Law. 6. The Authority may make changes to the Persons registered as a Tax Group by adding or removing Persons as requested by the Taxable Person or in accordance with the instances mentioned in the Executive Regulation"*[2], the UAE VAT law follow the GCC VAT agreement and enact more rules to restrict the VAT group.

[1] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 4.
[2] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 8 of 2017 on Value added tax, Official Gazette No. 621, issued on august 23rd 2017, Article 14.

In comparing between GCC VAT agreement with EU directive, the previous directive didn't mention VAT group.

B) Tax invoice

The tax invoice is the one of aspect of implement the VAT in certain state. Whereas the issue it is related to taxable person and he has the liability to issue it, while the non-register person can't issue the tax invoice according to article 55/1 from GCC VAT agreement which said "*the taxable person must issue a tax invoice or similar document […]*"[1].

Whereas the GCC VAT agreement allow to deal with tax invoice on paper or electronically and allow the member states to adopt rules and conditions in that regard according to article 55/4 which said "*for the purpose of applying this agreement, the member states must accept the invoices in form, whether issued on paper or electronically, in accordance with the conditions and procedures determined by each member states*"[2].

In addition, the GCC VAT agreement allow issuing the simplified invoice, of course according to rules and conditions which determined by member state by following article 56/1 from VAT GCC agreement, that issue is similar to EU directive which allow member state to issue simplified invoice according to article 238 from EU directive, which allow member states to issue simplified invoice not include the elements which mention in in articles 226-230. But must following the main points in article 238 from EU directive, which include the condition of simplifications invoice.

C) Tax return

The tax return is an element of applying VAT, through it the taxable person declares the volume of tax which he collects. That matter assists government or taxation authority to collect the amount of tax. In addition, the GCC VAT agreement includes several provisions belongs to tax return, but the previous agreement not includes the definition of tax return, counter to EU directive which mention in article (250/1) that the taxable person must apply the vat return which include *"every taxable person shall submit a VAT return setting out all the information needed to calculate the tax that has become chargeable and the deductions to be made*

[1] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 55 § 1.
[2] Ibid., Article 55 § 4.

including, in so far as is necessary for the establishment of the basis of assessment, the total value of the transactions relating to such tax and deductions and the value of any exempt transactions"[1].

The tax return is totally related with tax period, in other word the tax return is submit after finishing the tax period, Whereas the article (61) from GCC VAT agreement mention that all member state have a right to determine the tax periods, which may not be less than one month[2].

Furthermore, the GCC VAT agreement leeway the member state to adopt rules and condition for submitting the tax return following to article (62) from GCC VAT agreement.

In that regards the UAE legislation adopt the restrictions on the tax return in article (72) of the UAE VAT law, the article said *"1. The Taxable Person shall submit the Tax Return to the Authority at the end of each Tax Period within the time limits and according to the procedures specified in the Executive Regulation of this Decree-Law declaring all supplies made and received during that Tax Period. 2. A Cabinet Decision shall be issued upon the recommendation of the Minister, determining the Government Entities that may submit simplified Tax Returns to the Authority"*[3].

It's happened that the tax return amends by taxable person after submitting it, that called voluntary disclosure, so article (62) from GCC VAT agreement said *"each member state shall determine the conditions and provisions that allow a taxable person to amend a tax return that has already been submit"*[4]. Its noted from the last article that each member state have a right to adopt rules and conditions which give the taxable person the right to amend tax return after submitting.

The paying of tax amount by the taxable person is related by submitting the tax return within the period, based on that the GCC VAT agreement is allow to delay the payment after submitting the tax return in importing condition according to article 64/2, also its give the member state the right to adopt the rules and condition to fulfill that last provision.

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[1] European Union, Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax, Official Journal No. L 347 issued on December 11th 2006, Article 250 § 1.
[2] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 61.
[3] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 8 of 2017 on Value added tax, Official Gazette No. 621, issued on august 23rd 2017, Article 72.
[4] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 62.

In the other side the EU directive mention the tax periods which must do not exceed one year[1], while the GCC VAT agreement mention the tax periods with giving the right for member state to adopt tax periods in condition that tax periods must not less than one month[2].

Also, in the EU directive in article 366/1 its mention that the VAT return shall be made out in Euro currency. In other side the GCC VAT agreement didn't mention any currency, in my opinion there are two reasons of that. The first reason the euro is the currency for most European state and there are 6 currencies for 6 GCC member states, so the GCC VAT agreement can't mention one currency, the second reason is in article 63 of GCC VAT agreement, the agreement give the right to each member state to determine the condition and provisions that for payment by the taxable person. It's important to mention that the EU directive use the term of VAT return while the GCC VAT agreement use the term of TAX return. In addition, the GCC VAT agreement use the term of tax return while there are other kind of taxation which is the excise tax, and its needs to submit tax return, so that will make confuse. So, my view of point is to use term VAT return.

Its noted that the EU include a unique issue in article 253 in regard of VAT return, whereas the article adopt special conditions for Sweden, in that matter the question arise is regarding the concept of law which said that the law is general rule, that means the law is for all not for special case. And in my point of view the article 253 are not following the previous rule, which the article is only addressed for Sweden. In other side the GCC VAT agreement are not mention any special case for any state in tax return issue.

In the reality the tax return is a significant element for collecting tax, also it may consider as an element to distinction between tax and fees, Whereas the fees collected by government directly without submitting the tax return. In other side the tax and in precisely VAT can't collecting without tax return. The philosophy of determine the tax periods it belongs to the needful to cash flow in state by classifying the taxable person depending on their income yearly. On the other side the tax return is a load on the business sector because its cost time and money to prepare it then submit it then paying tax, the load because its need more employees and advisor. That cost

[1] European Union, Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax, Official Journal No. L 347 issued on December 11th 2006, Article 252.
[2] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 60.

more money and time, so the idea to adopt several tax periods depending on money income is good and it will relieve the load on business in precisely medium and small business.

§4. The Gaps of GCC VAT Directive comparing with EU Directive

It's important to mention that the European VAT directive issued after the implementation of VAT in several European States, also the directive has been changing several times. "*The first piece of common legislation on VAT of the first and Second VAT directives, enacted in 1967 and that required member-state to adopt a VAT system by 1970. Those first two directives only established a very elementary framework leaving a considerable level of leeway to the member-States.*

In 1977 the Sixth VAT Directive was approved substantially increasing the VAT framework and decreasing the leeway of member-States.

After the elimination of boarders (1993) a transitional VAT system was adopted through the adopting of several directives amending the Sixth Directives, which implied an harmonization of VAT rates (maximum & minimum rates, standard & reduced rates), the introduction of ancillary systems for statistical and control purposes (the Intrastat and the VIES control), simplification of arrangements applicable to triangular operations, etc.

In 1996, the EU started working on a program for a definitive VAT system and in 2000 eventually concluded that such a definitive system should be postponed as a long-term goal.

In 2007, a Recast VAT Directives, which complies all provisions that were scattered in the previous directives and further, rationalized the European VAT law"[1].

The issue with GCC VAT agreement is different, the GCC VAT agreement was issued before the implementation of VAT in GCC states. So, I will focus in this subsection to showing the Gaps of GCC VAT agreement comparing with EU directive, it should the GCC VAT agreement take ideas and rules from the others and previous agreements as a best practice.

Before starting the subsection, I really have deep thinking regarding the importance of GCC VAT agreement, do we need that agreement? What does the benefit of that?

[1] Calisto Pato, Antonio and Marques, Marlon, *Commented Recast VAT Directive*, Createspace Indepenant Publishing, 2015, p. 11.

We must refer to other GCC agreement precisely to the Economic Agreement between the GCC States which signed in 31 of August 2001. That agreement mentions under the section of custom union that the movement of goods between the GCC States without customs or non-tariff restrictions[1]. Also, the article 2 of previous agreement establish the system of international economic dealing as a group against the other international bodies. To achieves that target the member states must adopt several rules like unifying trade policies with the outside world[2].

From the above I conclude that the GCC states needs to adopt an agreement to unify the applying the VAT in their states, it's a huge part of VAT related to exports and imports so the decision to sign an agreement was correct and wisdom.

In this subsection, I will focus on the gaps of GCC VAT agreement from my view according to the main principles of GCC and comparing to EU VAT directive, the gaps will be on seven main points, the relation between VAT and other domestic taxes, the interpretation and court, reduced rate, exemption, VAT Group, Free Zone and the issue of continues contracts and didn't specify the date of implementation.

A) The relation between VAT and other domestic taxes

The GCC VAT agreement indicate in article (28/1) that *"the value of imported goods will be the customs value determined in accordance with the common customs law plus excise tax, custom duty and any other imposts apart from VAT"*[3]. From the previous article its noted that the relation between excise tax and VAT. So, the excise tax start applying in GCC states with solid ground, which is the GCC excise tax agreement. That is similar circumstances with VAT. But the real meaning in this subsection is the domestic taxes which are implemented without GCC agreements.

The statues nowadays, there are several GCC states are applying domestic taxes in national level inside that states, like the tax of zakat and income tax in Saudi Arabia. The business is subject to that tax. The question is, do we need an GCC agreements to organize that kind of taxation? Or that is national matter belong to the states?

[1] Gulf Cooperation Council (GCC), The Economic Agreement between the GCC States signed in 31 of August 2001, Article 1.
[2] Gulf Cooperation Council (GCC), The Economic Agreement between the GCC States signed in 31 of August 2001, Article 2.
[3] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the GCC issued on November 27th, 2016, Article 28 § 1.

Referring to the article (2) of Economic Agreement between the GCC States which signed in 31 of August 2001, which mention that in order to create better conditions and equal conditions in the international economic dealings, the member states shall formulate their economic policies and relations collectively towards the states, blocs and other regional groupings, regional and international bodies and organizations. In addition, that kind of taxation needs to cover by Double taxation agreements, in the result of that the GCC states must adopt agreements to organize the other kinds of taxation to fulfill and follow the Economic Agreement between the GCC States.

What mention above is not defect in legislation but to go out of this issue, the GCC VAT agreement must include an article allow the member states to issue other taxation according certain criteria's, also that matter is similar the European directive of VAT in article (401) which said *"without prejudice to other provisions of Community law, this Directive shall not prevent a Member State from maintaining or introducing taxes on insurance contracts, taxes on betting and gambling, excise duties, stamp duties or, more generally, any taxes, duties or charges which cannot be characterized as turnover taxes, provided that the collecting of those taxes, duties or charges does not give rise, in trade between Member States, to formalities connected with the crossing of frontiers"*[1].

The second issue in that matter is imposing the VAT on the other tax according to article (28/1) from the GCC VAT agreement, the article said *"1. The value of imported Goods will be the customs value determined in accordance with the Common Customs Law plus Excise Tax, Customs duty and any other imposts apart from VAT"*[2]. The issue is imposed the VAT on other tax and customs, in my opinion that is conflict with the definition of VAT in purpose of the agreement, article one of the GCC VAT agreement provide the definition of VAT, the article said *"Tax: Value Added Tax (VAT) imposed on the import and supply of Goods and Services at each stage of production and distribution, including "Deemed Supplies""*[3]. The definition specifies the tax must impose on the import and supply of Goods and Services at each stage of production and distribution not on other tax or customs fees. In addition, the article (28/1) from the GCC VAT agreement conflict with article (2) from the VAT GCC agreement, the article said *"the Agreement shall come into effect in the GCC and Tax shall be imposed on the*

[1] European Union, Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax, Official Journal No. L 347 issued on December 11th 2006, Article 401.
[2] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 28 § 1.
[3] Ibid., Article 1.

following transactions: 1. Taxable Supplies by a Taxable Person in the Member State Territory. 2. Receipt by a Taxable Customer of Goods or Services supplied to him by a Non-Resident and non-Taxable Person in the Member State in instances where Reverse Tax Mechanism applies. 3. Importation of Goods by any Person"[1]. Even the previous article does not mention the impose VAT on other tax or customs fees.

B) The interpretation and court

In this part of section, the focus on two issues, the first issue is the interpretation and the second is the dispute regulation.

Based on article (75) from GCC VAT agreement which said "*the Ministerial Committee shall have jurisdiction to consider matters related to the application and interpretation of this Agreement and its decisions shall be binding on the Member States*"[2].

From the last article its notes that the interpretation in the last agreement with the Ministerial Committee which means the final and economic cooperation committee of the council states according to article 1 from the GCC VAT agreement. Whereas that committee is an executive committee belongs to Executive Authority and the members of that committee is not judges and not belong to judicial authority. Also, that committee work on several aspects and several responsibilities according to the GCC VAT agreement, which are legislation responsibility and Procedural responsibility, for example article (53) from GCC VAT agreement "*when registering for the Tax purposes in any of the Member States, each Member States shall allocate a TIN for the Taxable Person provided that The Ministerial Committee shall determine the provisions for issuing the TIN*"[3].

The issue of dispute regulation according to article (76) from GCC VAT agreement "*Member States shall strive to amicably resolve any disputes that may arise amongst them pertaining to this agreement, and they may be agreement, if a settlement as aforesaid is not possible, refer the dispute to arbitration in accordance with rules of arbitration to be agreed*"[4]. Whereas the dispute is not resolve in painfully way, the despite must arise to arbitration. Whereas the

[1]Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 2.
[2] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 75.
[3] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 53.
[4] Ibid., Article 76.

condition of starting to solve the issue by arbitration is to sign the agreement of arbitration by the parties of conflict, so without that agreement the arbitration can't start. Also, the arbitration can't be from one side.

In conclusion, the GCC VAT agreement includes a gap which is the dispute between member states must be under the jurisdiction of GCC taxation court. Also, the rule of that court is Interpretation of GCC VAT agreement texts.

The GCC VAT agreement must mention to establish the GCC taxation court like ECJ, to settle the despite between member states and to interpretation of the agreements.

C) Reduced rate

The European VAT directive mention the reduced rate, standard rate and zero-rate, that several rates give the member states ease to adopt taxation policies suitable for all categories of community and volume of economic which may achieve the expectations of people, whereas the European directive give the member states to adopt one or two reduced rates according to article 98 from EU Directive.

On the other side, the GCC VAT agreement include the standard rate which is 5% and the zero-rate, unfortunately the previous agreement didn't include the reduced rate, in my view of point that is wasting of the right of member states to adopt reduced rate and taxation policies suitable with its economic circumstance. Its known that the GCC member states are vary in economics volume and the GDP. In addition, the member state can't adopt the reduced rate without amend the GCC VAT agreement. If a member state adopts the reduced rate without amending the GCC VAT agreement, that will consider as the violate of the agreement, if there are a GCC taxation court, that issue will arise to the court, but in current situation the issue settle by arbitration.

In conclusion the agreement includes the gap regarding the reduced rate, my suggestion is to amend the agreement and mention the reduced rates.

D) Exemptions

Article 29 from GCC VAT agreement allow the member states to exempt or apply the zero-rate, but the GCC VAT agreement didn't adopt the explanation for zero-rate concept, also its not explain the deference between the exemption and zero-rate, so in my view of point that is a

gap in the previous agreement, because the applying of VAT is new and the concepts and mechanism are both new, in practice its hard for understand for lawyers, judges and auditors.

In addition, the GCC VAT agreement identified the sectors, services and goods which are subject to exempt from VAT, that sectors, goods and services are a small number comparing with the European directive, whereas the European directive give a wide range to exempt. My point of view is whenever increasing the scope of exemptions whenever give wide range to member states to easy implementation and fixable. Also whenever increasing the range of exemptions whenever increasing the broken of supply chain of collecting tax which consider as barrier of implementation for government.

So that matter is subject to discretion by government according to economic indexes. In my view it is better to give the member state more flexibility to adopt more exemptions by adopt more exemptions in the agreements and keep the right to choose for member states.

Also, the article 29/1 from GCC VAT agreement said "*each Member State may exempt or tax a zero-rate the following sectors in accordance with the conditions and provisions set by that Member State:*

a) *Education Sector;*
b) *Health Sector;*
c) *Real estate sector; and*
d) *Local transport sector*"[1].

Whereas the agreement exempts four sectors which are education, health, real estate and local transport. Also, the previous agreement allows the member states the right to adopt rules and conditions, after focusing in the text its notes that the first three sectors are governmental sectors or sectors belongs to governments and its support it by governments. Also, the private sector work in that sectors, so the exempt of that sectors in general and without determination was perfect, and that do not impact the competitive between the private and public sectors.

In my view, its butter for legislator to adopt the main conditions and rules for exemptions and zero-rate, for the 4 sectors which mention in article 29/1 from GCC VAT agreement. The purpose of that is to unify the systems and laws according to article 5/1 from the Economic

[1] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 29 § 1.

Agreement between the GCC States which said "*in order to develop domestic, intra-regional and foreign investments in the GCC States and to provide a transparent and stable investment environment, the Member States agree to take the following measures: 1. Unify their investment laws and regulations*"[1]. Whereas the VAT GCC agreement mention only the exempt sectors and give the member states the right to adopt the rules and conditions, in my view the agreement must adopt that rules and conditions as what implement by European directive, and allow the member states to adopt the complementary and procedural rules. The result of my opinion is the article of Economic Agreement between the GCC States will implement and the best practice in that aspect will apply.

E) VAT Group

The VAT group is an idea to prompt the business sector to following the VAT law in better and easier way, it's basically helps the business sector by consider group of taxable persons as a one taxable person, the result of that is submit one tax invoice for the all group, also the transactions between the companies under the group are not subject to tax, that would reduce the shortage of cash. Also, the VAT group is generally optional.

Article 4 from the GCC VAT group enact that "*each Member State may treat the VAT group as a single Taxable Person in accordance with the rules and conditions its puts in place for that purpose. A VAT Group means two or more Corporate Persons who are Resident of the same Member State*"[2]. Whereas the Arabic version of GCC VAT agreement mention one person and doesn't mention taxable person which is a defect in drafting. As for the English version of the GCC VAT agreement mention the taxable person. Whereas the basis is Arabic text according to article 79 from GCC VAT agreement which said "*this agreement is executed in Arabic*"[3].

It's important to mention that the European Directive doesn't mention the VAT group. In result of that the idea of VAT group in GCC VAT agreement was better than the European Directive.

[1] Gulf Corporation Council, The Economic Agreement between the GCC States signed in 31 of August 2001, Article 5 § 1.
[2] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 4.
[3] Ibid., Article 79.

F) Free zone

The issue of the free zones is important in implementation of VAT also for international trade, whereas the idea of free zone is to consider that zones as a zone within the territory of mainland but with other laws different the applicable law of the state. There are several reasons of that, one of them is attract investments.

Upon review the GCC VAT agreement notes that it's not includes texts organize the free zones, whereas defective that the GCC VAT agreement does not include the texts organize the transactions of free zones and their trade transactions between the member states and other states. In fact, the trade situations seem normal in regard of free zones, because the GCC VAT agreement still not coming into force according to article (78) of GCC VAT agreement. But with the full applying of GCC VAT agreement it can't settling the issue within the current VAT GCC agreement or domestic law. But the settling must be by adopting the new articles by amending the current agreement, that article must organize the trade throw free zones. Also, in evidence of importance of free zone issue and rang of wide of free zone, the United Arab Emirates alone includes 23 free zone or designated zone as per as the domestic law.

G) The issue of continues contracts and didn't specify the date of implementation

The date of applying VAT in GCC was organize in article (78) from GCC VAT agreement. Based on that the UAE and KSA were sign and deposit the ratification document before 2018. And the applicable was on 1st January 2018 on that both states, but the issue was happened with the continues contracts. That contracts means the contracts sign before the applicable of VAT and the implementation of it will continue after the applicable of VAT, such as the contracting contracts and insurance contracts. Whereas the cost of implementation that contracts will increase 5% in 2018, also that increment may not consider in visibility studies of business. So, the legislation must solve that issue by adopting texts to organize that matter.

So, the agreement was including gap in that matter and doesn't organize the transactions of continues contracts, whereas KSA was organize that by determine the date before implementation the VAT, the rules of that refer the continues contract sign before that date doesn't a subject of VAT. Also, the continues contract sign after that date even if the VAT was not implemented are subject to contract after 1st of January 2018.

The situation in UAE is the legislator doesn't determine the specific date in regards of continues contracts, and the legislation was missing the continues contracts. So, the general principles of law will apply to solve that gap in legislation.

The legislation become in force after issuing in Gazette, whereas the VAT law in UAE was issue in 23th of August 2017 and publish by Gazette after one month, so the law was known for people on 1th of October 2017. In my point of view, the law was not applicable on continues contracts which signed before 1th of October 2017, and the continues contracts which signed after 1th of October 2017 must be subject to VAT after 1th of January 2018.

In addition, the agreement doesn't determine a specific date for implementation VAT in member state. But the date of implementing mention in the GCC VAT agreement does not mention as a date but its mention, whereas maybe the ratification deposit in a date and the applicable in second day or next year. In fact, the deposit of ratification by two states was happened before 2018 and the applicable was in 1st of January 2018. It was better the agreement mention the implementation must start in the beginning of next year after deposit the ratification of two-member states.

CHAPTER THREE

The Relation of Value Added Tax with other applied laws in UAE

In this chapter will see the general view of the taxation system and taxation laws in UAE, its other way to focus from another angel. The reason of that is to see the places which can develop on the taxation system and taxation laws.

Chapter three is important to brief the conclusion of chapter one and chapter two, then to provide solutions of what was subject to criticism in chapter one and chapter two. It's important to see the relation of VAT and other taxes in UAE and focus on the integrated between the taxation laws.

Section one of this chapter will cover that issues, the title of the section one will be the integration of implementation VAT and other taxation law in UAE. In UAE there are many

laws applied in all aspects, for example the criminal law, civil law and trade law. All that laws influence the people, Society and other laws. In other way the VAT law influence the other laws, the effect of violate VAT law is applying penalties and that has effect on penal or criminal law mainly the penal law.

Also, in the preamble of VAT law was mention that several laws have reviewed before issuance of VAT law, for example the civil transactions law, penal law and commercial law was reviewed in regard of issuance the VAT law. So, section two will cover the relation of VAT law with other laws under the title of the different laws are complementarity with taxation laws.

The main reason which encourage to write this section is the article which is a common in most laws, in UAE VAT law article (84) said *"Any text or provisions contrary to or inconsistent with the provisions of this Decree-law shall be abrogated"*[1]. In my opinion this article is an open field for study because that article may abrogate other articles in other laws or may abrogate another law, in my opinion that article is serious rule and before add it to any laws must review the other laws and legal impact of that article, by the way this rule of abrogate any text contrary with this law is mention in the three-taxation law and FTA establishment law.

Section one. The Integration of Implementation VAT and other taxation laws in UAE

There are three taxation laws in UAE, the Federal Decree-Law No. (8) of 2017 on Value Added Tax, Federal Decree-Law No. (7) of 2017 on Excise Tax and Federal law No (7) of 2017 on Tax Procedures. Also, there are the FTA taxation law.

In this section will focus on the integration between the UAE VAT law and each other taxation laws, the reasons of that is to see the taxation system and the influence of law in that regards, for example some rules in tax procedures law have bad influence on VAT law. So, in refer to one of the main general of law is the laws are read together and the laws are complete each other, in additional that study will help to more understand the VAT law and system and will lead to develop the VAT system, in general all taxation laws must integrated with each other

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 8 of 2017 on Value added tax, Official Gazette No. 621, issued on august 23rd 2017, Article 84.

and lead to same result which is efficiency tax, but that is a general principle, in practice there are conflict between taxation laws and in other side there are integrated between all taxation laws.

Section one will include three sub-section, the first sub-section is the integrated between VAT law and excise tax law, the second sub-section is the integrate between VAT law and tax procedures law and the last sub-section is the review of FTA establishment law.

§1. The integrated between VAT law and excise tax law

As mention in several places in the Thesis there are two kinds of taxes in the world, the direct taxes and indirect taxes, also the different between them were mention in several places in the thesis. The Federal government adopted two types of indirect taxes which are the Value Added Tax and the Excise Tax, both are indirect taxes which means the taxable person are responsible to collect the taxes and submit the tax money to government, in addition both taxes are implemented in federal level not domestic level.

The features of the integrated between the taxes are obvious in one way, the VAT are implemented in all stages of production or distribution according to article (2) of UAE VAT law which said "*Tax shall be imposed on: 1. Every taxable supply and deemed supply made by the taxable person. 2. Import of concerned goods except as specified in the executive regulation of this decree-law"*[1].

In other side the excise tax is implemented in one time of production or distribution according to article (2) of UAE excise law which said *"1. The provisions of this decree-law shall apply to the excise goods specified by a cabinet decision at the suggestion of the Minister. 2. Tax shall be imposed on the following activities related to excise goods: a. production of excise goods in the state, where such production was in the course of doing business. import of excise goods. c. release of excise goods from a designated zone. d. stockpiling of excise goods in the state, where such stockpiling was in the course of doing business"*[2]. In my opinion that mechanism of distribute the roles between the taxes is consider as the integrated between the two kind of taxes.

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 8 of 2017 on Value added tax, Official Gazette No. 621, issued on august 23rd 2017, Article 2.
[2] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Excise Tax, Official Gazette No. 621, issued on August 17th 2017, Article 2.

The natural of these taxes establish the integrated. Also, there are segregation between the two taxes which means each kind of tax has separate tax return with special rules.

In my opinion that mechanism of collecting taxes made an issue, I mean in mechanism of collection is the VAT are implemented in all stages of production or distribution and the excise tax is implemented in one time of production or distribution. The issue is the VAT are implemented on the excise tax which means implement tax on tax or the excise tax are subject to VAT.

Based on articles (2)(5)(6) of UAE VAT law the VAT is imposed on the supply of goods and services and it's not refer that the VAT are imposed on the other taxes. In my opinion that was mistake in law and must amend it.

In general, the practices in the market are hard to segregate the value of excise goods from the excise tax so the impose of VAT will be on the excise goods and tax, in my opinion it's hard to stop imposing the VAT on excise goods and taxes, so I suggest to add article in UAE VAT law which means in regard of excise tax, the excise tax which imposed on the excise goods are consider as a part of cost of the excise good in matter of applying VAT.

§2. The integrate between VAT law and tax procedures law

In general, the Tax procedures law is not a law to enact tax, not like the VAT law or excise law, it's a law to organize the taxation in the state, the tax procedures law is aimed to achieved *"this law aims to achieve the following: 1. Regulation of the mutual rights and obligations between the Authority and Taxpayer and any other person dealing with the Authority; 2. Regulation of the common procedures and rules applicable to all Tax Laws in the State"*[1]. In other way the taxation laws (VAT, Excise) are aims to collect yields, but the aims of the VAT and excise tax not mention in the law. In my opinion that is a gap in laws and legislation, each law need to mention the aim and target, that will help the executives to implement the laws and will assist the government to follow the executives by know the targets of laws and the purpose of law, it's a tool for audit and accountability.

The main issue of integrated between VAT and tax producers' law is the tax procedures law establish the main points of starting the VAT, that rules are assist the VAT to work but there

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 3.

are some rules are same to other rule in other laws. Also, the tax procedures law enacts the rules which applicable for the two-taxation laws, and that taxation laws have same these rules with more details like tax registration, record keeping, tax return, tax refund and penalties.

In my point of view, the tax procedures law in UAE have several articles and rules should apply on the federal taxes in UAE. Also there are taxes law which have rules to apply the tax. In addition, the UAE Tax procedures law includes other rules which organize the issue of tax agents, legal representative, the issue of challenge procedures before courts, reconsideration and Tax Dispute Resolution Committee. In my opinion the tax procedures law must not include the rules which mention on other taxation laws. It will seem like the tax procedures law as a law and other taxation laws is an explanation laws or executive regulation for the tax procedures law. I think the tax procedures law must organize the issue of tax agents which only provide the general rules and the executive regulation was conflict with that rules in matter of tax agents as mention in the previous chapter. In my point of view the repeat of rules in several rules will lead to conflict between the laws and issue of applying the correct rules like the issue of tax registration which mention in the previous chapter. So, I suggest amending the tax procedures law and abrogate the repeat rules to avoid the conflict even if there are no conflict between the laws but the conflict will happen in the executive regulation.

§3. The general review of FTA establishment law and comments

The federal taxation Authority is a federal government entity which responsible on implement VAT in UAE. Its known that any legal entity have trade license if it belongs to private sector or establishment law if it belongs to public sector or government. According to article (92) form UAE Civil Law which said *" Juridical persons shall consist of the following:- (a) the State, the (individual) Emirates, the Municipalities and other administrative units, under the conditions laid down for them by law; (b) public departments, authorities and bodies and public institutions and establishments upon which a judicial personality is conferred by law; (c) Islamic bodies recognized by the State as having a juridical personality; (d) waqfs; (e) civil and trading companies, save as excluded by a special provision; (f) private societies and establishments established in accordance with the law; and (g) any grouping of persons or property having a juridical personality under the provisions of the law"*[1], FTA is a government

[1] United Arab Emirates, The Federal Decree-Law No. 5 of 1985 on the civil transactions, Official Gazette No. 158, issued on December 12th 1985, Article 92.

entity belong to UAE government. The FTA establish by the establishment law which named federal decree-law No. (13) of 2016 on the establishment of the Federal Tax Authority.

Before starting the comments on the establishment law, the constitutionality of law is an important issue whereas the establishment law is a federal-decree law, as mention in the previous chapter the UAE constitution allow to issuance the law as a federal-decree law in a specific condition. Also, that condition was applied on the situation of establishment law, so the issuance of the FTA establishment law was correct and based on the UAE constitution.

It's obvious that the FTA procedures law include the definition of Tax evasion. Article (1) of FTA establishment law said *"the person's use of illegitimate means in order not to pay taxes that are due or the use of illegitimate means to reclaim tax without having the right to reclaim or refund"*[1]. Based on that article there are two conditions of tax evasion the first condition is the person's use of illegitimate means in order not to pay taxes that are due, and the second condition is the use of illegitimate means to reclaim tax without having the right to reclaim or refund. In my opinion that definition is used only for the purpose of FTA establishment law and can't apply on the other law like VAT law because at the beginning of the article (1) from the FTA establishment law mention that *"in the application of the provisions of this Decree-Law, the following words and expressions shall have the meanings assigned against each, unless the context otherwise requires"*[2].

The issue of Headquarter of FTA was raised in article (3) which said *"The Authority Head Office shall be in the city of Abu Dhabi and it may, pursuant to a Board Decision, establish branches and offices inside the state"* but in the practice the Authority Head Office is in Dubai city not Abu Dhabi city.

The other issue in regard of registration mention in article (4/5) that article is promote my opinion which is the Authority is responsible of registration even if the registration is wrong, the article said *"Decide on the applications submitted for registration in the tax systems applicable in the State and allocate tax registration numbers to register in said system"*[3] . In

[1] United Arab Emirates, The Federal Decree-Law No 13 of 2016 on establishment of the Federal Tax Authority, Official Journal No 604, issued on September 26th 2016, Article 1.
[2] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 13 of 2016 on establishment of the Federal Tax Authority, Official Gazette No. 604, issued on September 26th 2016, Article 1.
[3] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 13 of 2016 on establishment of the Federal Tax Authority, Official Gazette No. 604, issued on September 26th 2016, Article 4 § 5.

my opinion who have the right to decide can accept or reject and the decision must be after study of case, so the wrong registration is a mistake on the FTA and the taxable person.

The other issue is mention in article (10) of FTA establishment law, article said *"The Authority's funds shall be considered as public funds and shall be exempt from all taxes and duties"*[1] .

Whereas the article said taxes without determine if its federal or domestic, so the FTA are exempt from all taxes federal or domestic whereas the federal law is superior over the domestic law, but in my opinion this article is not applicable on VAT whereas the VAT law said *" a Cabinet Decision shall be issued at the suggestion of the Minister determining the Government Entities and Charities entitled to recover the full amount of Input Tax paid by them, except for: 1. Tax excluded from recovery as specified in the Executive Regulation of this Decree-law. 2. Tax paid for Goods and Services used to perform exempt supplies"*[2]. So, this article will be applied because the VAT law mention that *"Any text or provisions contrary to or inconsistent with the provisions of this Decree-law shall be abrogated"*[3]. Whereas article (10) form FTA establishment law is conflict with article (57) of UAE VAT law so the article (57) of UAE VAT law will apply. In addition, the concept of exempt in FTA establishment law is different than the definition in VAT law. So, the provision of article (57) of VAT law will apply and the cabinet decision shall include FTA in the list of government entities.

The issue of sharing the revenue between the federal government and domestic governments is mention in articles (15) and (17) of FTA establishment law. I think there are duplications in rules in article (15) the first role was by each tax law and the other role is on the cabinet of ministers, article (15) said *"1. Each Tax law shall determine whether the revenues of federal taxes and relevant penalties arising out of said law will be shared between federal government and the emirates government 2. The mechanism of sharing the revenues of federal taxes and relevant penalties and the dates of their distribution shall be determined according to a Cabinet decision based on the recommendation of the Minister and as agreed between the Federal Government and the Emirate's Governments"*[4]. Whereas the VAT law and excise tax not

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 13 of 2016 on establishment of the Federal Tax Authority, Official Gazette No. 604, issued on September 26th 2016, Article 10.
[2] United Arab Emirates, The Federal decree law of the United Arab Emirates No. 8 of 2017 on Value added tax, Official Gazette No. 621, issued on august 23rd 2017, Article 84.
[3] United Arab Emirates, The Federal decree law of the United Arab Emirates No. 8 of 2017 on Value added tax, Official Gazette No. 621, issued on august 23rd 2017, Article 57.
[4] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 13 of 2016 on establishment of the Federal Tax Authority, Official Gazette No. 604, issued on September 26th 2016, Article 15.

mention the issue of sharing the revenue, so the clause one will not apply and the clause two will apply because the Cabinet issue the decision to share the revenues. In my opinion the legislator made a mistake in this article because he mentions two clauses and both of them are conflict, so its obvious one of the clauses will not apply. I think this article need to amend.

The last common on this sub-section is the effective date of the law. it's a constitution issue, article (111) from UAE constitution said *"laws shall be published in the official gazette of the Union within a maximum of two weeks from the date of their signature and promulgation by the President of the union after the supreme council has ratified them. Such laws shall become effective one month after the date of their publication in the said gazette, unless the law stipules another date"*[1].

So, based on that article the FTA establishment law said *"The Decree-law shall be published in the official gazette and will come into effect 90 days from the date of its publication"*[2]. In my opinion the establishment law was following the constitution in that matter and there is no conflict.

Section two. The Different Laws are Complementarity with Value Added Tax Law

The last section was to focus on the relation of the VAT and other taxation laws (excise tax law, tax procedures law, FTA establishment law). This section will be focus on the relation of VAT law with other applied non-taxation law in UAE, whereas the UAE VAT law mention in the preamble that in regard of issuance the law it was reviewing the Constitution and 19 laws, penal law is part of reviewing laws.

In this section will focus on the relation between the VAT law and the penal law because penal law is an important element on the avoid tax evasion and fraud.

Compatibility between the UAE VAT law and the UAE Penal law: the federal penal law was issued in 1987 under the number of (3) of 1987. The scope of the penal law

[1] United Arab Emirates, The Constitution of UAE, Article 111.
[2] United Arab Emirates, The Federal Decree-Law No. 13 of 2016 on establishment of the Federal Tax Authority, Official Gazette No. 604, issued on September 26th 2016, Article 21.

according to article (1) of the penal law is *"the code (law) attached hereto shall apply to all crimes and punishments, and any tax contradicting its provisions shall become null and void"*[1].

There are a relation between the two laws, the UAE VAT law include the articles of violation the law, some of that violations is consider as an administrative violations and that is not in the scope of this section, the other violation is the criminal violation which they called the tax evasion violations, this violation is part of the section.

Article (77) of UAE VAT law said *"if its proven that a person who is not a registrant acquires Goods referred to in Clause (3) of Article 48 of this decree-law, claiming that he is a registrant, he shall be considered as having committed Tax evasion and shall be subject to the penalties provided for in Federal Law No. (7) of 2017 on Tax procedures"*[2].

As a result of this article there are two points, the point one is the law provide only one scenario of tax evasion which mention in article (48/3) from UAE VAT law. The other point is the UAE VAT law in regard of tax evasion penalties refer to UAE tax procedures law.

As a result of review the UAE VAT law in regard of tax evasion, the UAE VAT law not provide the definition of tax evasion and not provide any rules of tax evasion and penalties of tax evasion only one case in article (77) of the law. So, in that regard will focus on the tax procedures law in matter of tax evasion.

Article (1) of UAE Tax Procedures law provide the definition of Tax Evasion, the article said *"the use of illegal means resulting in the reduction of the amount of the Due Tax, non-payment thereof, or a refund of a tax that a person does not have the right to have refunded under any Tax Law"*[3].

In this definition there are using of illegal ways to achieves one of the following results or all of them, the targets is to reduction the amount of the Due Tax or non-payment the Due Tax or refund of a tax that a person does not have the right to refunded.

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[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 3 of 1987 promulgating the penal law, Official Gazette No. 182, issued on December 20th 1987, Article 1.
[2] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 8 of 2017 on Value Added Tax, Official Gazette No. 621, issued on August 23rd 2017, Article 77.
[3] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 1.

My comments on this definition is the definition provided the three targets of violate the law and that is brief of what the taxable person try to do it to get illegal benefit from the taxation law and system. The definition includes wide scope and can cover most of tax evasion scenarios.

The other article which provides rules of tax evasion in UAE Tax procedures law is article (26), the article said *"1. Without prejudice to any more severe penalty applicable under any other law, a prison sentence and monetary penalty not exceeding five times the amount of evaded Tax or either of the two, shall be imposed on: a. a Taxable Person who deliberately fails to settle any Payable Tax or Administrative Penalties. b. a Taxable Person who deliberately understates the actual value of his Business or fails to consolidate his related Businesses with the intent of remaining below the required registration threshold. c. a Person who charges and collects amounts from his clients claiming them to be Tax without being registered. d. a Person who deliberately provides false information and data and incorrect documents to the Authority. e. a Person who deliberately conceals or destroys documents or other material that he is required to keep and provide to the Authority. f. a Person who deliberately steals, mis-uses or causes the destruction of documents or other materials that are in the possession of the Authority. g. a Person who prevents or hinders the Authority's employees from performing their duties. h. a Person who deliberately decreases the Payable Tax through Tax Evasion or conspiring to evade Tax. 2. The imposition of a penalty under the provisions of this Law or any other Law shall not exempt any Person from the liability to pay any Payable Tax or Administrative Penalties under the provisions of this Law or any Tax Law. 3. The competent court shall impose Tax Evasion penalties against any Person who is proven to have been directly involved or instrumental in Tax Evasion pursuant to said Federal Law No. (3) of 1987. 4. Without prejudice to Clause (2) of this Article, any Person who is proven to have been directly involved or instrumental in Tax Evasion pursuant to Clause (3) of this Article shall be jointly and severally liable with the Person whom he has assisted, to pay the Payable Tax and Administrative Penalties pursuant to this Law or any other Tax Law"*[1].

The previous article provides several rules of tax evasion which the penalties of tax evasion is, the scenarios of tax evasion, direct involved or instrumental in Tax Evasion and the liability.

My comments on the previous article is this article provide the penalties of the tax evasion which is the prison sentence and monetary penalty not exceeding five times the amount of

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 26.

evaded Tax or either of the two the prison is a penalty of the misdemeanor according to the article (29) of UAE Penal law, but the second penalty is penalty not exceeding five times the amount of evaded Tax. The amount of the penalty is not determine may it become less than thousand dirhams, and that amount will not consider as a misdemeanor and that rule is a conflict with the article (29) of UAE penal law, which said *" a misdemeanor is an offense that a punishable by one or more of the following penalties: 1- imprisonment 2- A fine of more than thousand Dirhams. 3- Diyat"*[1].

The other comments are article provide 8 scenarios of tax evasion, the question is what is the legal opinion of the action of tax evasion happened, but is not mention in article (26) of UAE tax procedures law? In my opinion will apply the rules of definition of tax evasion in article one of tax procedures law, that definition include the three main scenarios of tax evasion in a wide range and that will include most of the scenarios of tax evasion.

My opinion in relation between the UAE VAT law and the UAE Penal law in matter of tax evasion. I suggest adding a separate chapter include all the tax penalties which the tax evasion and the violation from the FTA employee in code of penal law. So, the violation will be subject to principle of No crime and no punishment except by stipulation. The reason of adding the new chapter of is the issue of tax evasion is very important and have direct influence in UAE economy. So, the chapter of tax evasion violation in UAE Penal law will include articles of the punishment, legal excuses, discretionary extenuating, aggravating circumstances, the scenarios of tax evasion, Link to other crimes and assistance or facilitation by the government employee.

TITLE TWO

The Features Apply VAT law

In previous title of the second part of the thesis the concentration was on the UAE taxation legislations which are the VAT law, Excise tax law and the taxation procedures law with them executive regulations. Also, the title includes comparations between UAE VAT law

[1] The Federal Law No. 3 of 1987 promulgating the Penal Law, Official Gazette No. 182, issued on December 20th 1987, Article 29.

and the GCC VAT agreement, and other comparation between the GCC VAT law and EU VAT directive. That was not enough, whereas the comparation was between UAE VAT law and other non-taxation law like penal law.

In this title of second part will focus on the development of taxation legislations in UAE after implementation of VAT, the implementation of VAT was on 1st January 2018, but after the implementation its was observed that some rules need to amend or develop for several reason, so the result of that the UAE legislator amend some rules to serve the taxation system and that normal because the legislation must develop. That develops were obvious in two aspect, the first aspect is the decision of Gold and the second decision is the Expo decision (that will explain it in chapter one, section two).

But before start explain the Taxation Legislation Development, it's necessary to explain the exemptions of VAT in UAE legislations, the exemptions in any VAT system law is a major issue and that indicate the trend of state economic. So, in UAE legislation of taxation there are several exemptions and that will explain it in section one of chapter one od's this title.

At the end of the thesis, which is the chapter two from this title, the focusing will be on important issue which is the Ethics of tax administration, which will include three main issues. The first issue is the right of tax auditing, that right was giving to Federal Taxation Authority by the legislation to audit on the business sector in regard of implementation VAT. The second issue is the controls on tax audit and the third issue is the rights of taxable person in regard of tax audit, in other words how the legislations protect the rights of person who is subject to tax audit.

So, at the end of this introduction its necessary to mention that this title will include two chapters, chapter one is Distorting the Key feature of Value Added Tax and the second chapter is Ethics of tax administration.

CHAPTER ONE

Distorting the Key feature of Value Added Tax in UAE

In last title was the focus on the UAE VAT law with comparing with other legislation like the GCC VAT agreement and the integration with other laws like Excise tax, Procedures tax and the law of establish FTA. Also, how the executive regulation follows the UAE VAT law.

So, in that title the focus was in feature of VAT in UAE. This chapter will focus on the distorting the key feature of VAT in UAE law. The most famous feature of VAT and the central design feature is staged collection process. It is obvious that the tax collected through a staged process. Each business or taxable person in the supply chain take share in the process of collecting the tax and submitting the amount of tax to the government.

The principle of tax collected at each stage of distribution or production it came from the margin or the difference between input tax and output tax, and the mechanism of that is tax imposed on its taxed inputs, after that tax imposed on its taxed outputs. That principle called value added. But that is a normal process of VAT mechanism, but there are exempt on that which called the exemption, that implemented by the power of law to apply the VAT and to enhance the principle of tax efficiency. In other word the result of that it will make a cut into the chain of collecting VAT by the law.

Most of taxation system have same directing to exempt some goods and services or sectors from the rule of VAT, the reason of that mainly to enhance the business and to reduce the burden on the consumer.

The issue of exemptions in UAE law will cover in section one, in section two the concentrating will be in the legislations which purpose to develop the taxation system in UAE, that legislations are distorting the Key feature of Value Added Tax.

The issue of gold trade is the first issue amend after implement the VAT in UAE, that amend or develop are aimed to develop the VAT on the gold trade and to stop bad influence on the trade of gold, but unfortunately the settlement made a conflict with the UAE VAT law, and that settlement was distorting the feature of VAT.

The second issue is the expo subject, in October 2020 Dubai will host the world and will organize the expo exhibition. So, to not make a bad influence the legislator in UAE adopt the special decision for the expo and that decision is distorting the feature of VAT but in legal way, because that issue is organized by the GCC VAT agreement and the UAE VAT law.

At the end, this chapter will include two sections, section one is the exemptions in UAE law, Section two is the Developments of Taxation legislations. (Expo decision & Gold decision).

Section one. Exemptions in UAE law

As mention above the exemptions in UAE law are consider as a distorting the feature of VAT, because the amount of tax is not collecting in each stage and the consumer are not paying the tax. In this regard the zero-rate is a distorting the feature of VAT but in my opinion the zero-rate is not part of exemption because the taxable person is paying the VAT in each stage but at the final stage the taxable person is not charging the consumer, but the taxable person has a right to deduct his paying tax.

At the end the zero-rate is distorting the feature of VAT but not part of exemption and have some similarity with exemption which the consumers are not paying the tax and that similarity is the point of distorting the feature of VAT.

Before starting the explanation, the UAE VAT Law include two articles for exemptions and zero-rate, article (45) from UAE VAT law is concerning the Supply of Goods and Services that is Subject to Zero Rate and the article said *"the Zero rate shall apply to the following Goods and Services: 1. A direct or indirect Export to outside the Implementing States as specified in the Executive Regulation of this Decree-Law. 2. International transport of passengers and Goods which starts or ends in the State or passes through its territory, including Transport-related Services. 3. Air passenger transport in the State if it is considered an "international carriage" pursuant to Article (1) of the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air 1929. 4. Supply of air, sea and land means of transport for the transportation of passengers and Goods as specified in the Executive Regulation of this Decree-Law. 5. Supply of Goods and Services related to the supply of the*

means of transport mentioned in Clause (4) of this Article and which are designed for the operation, repair, maintenance or conversion of these means of transport. 6. Supply of aircrafts or vessels designated for rescue and assistance by air or sea. 7. Supply of Goods and Services related to the transfer of Goods or passengers aboard land, air or sea means of transport pursuant to Clauses (2) and (3) of this Article, designated for consumption on board; or anything consumed by any means of transport, any installations or addition thereto or any other use during transportation. 8. The supply or Import of investment precious metals. The Executive Regulation of this Decree Law shall specify the precious metals and the standards based on which they are classified as being for investment purposes. This is an unofficial translation 9. The first supply of residential buildings within (3) years of its completion, either through sale or lease in whole or in part, according to the controls specified in the Executive Regulation of this Decree-Law. 10. The first supply of buildings specifically designed to be used by Charities through sale or lease according to the controls specified in the Executive Regulation of this Decree-Law. 11. The first supply of buildings converted from non-residential to residential through sale or lease according to the conditions specified in the Executive Regulation of this Decree-Law. 12. The supply of crude oil and natural gas. 13. The supply of educational services and related Goods and Services for nurseries, preschool, school education, and higher educational institutions owned or funded by Federal or local Government, as specified in the Executive Regulation of this Decree-Law. 14. The supply of preventive and basic healthcare Services and related Goods and Services according to what is specified in the Executive Regulation of this Decree-Law"[1].

Article (46) from UAE VAT law is concerning Supply Exempt from Tax, the article said *"The following supplies shall be exempt from Tax: 1. Financial services that are specified in the Executive Regulation of this Decree-Law. 2. Supply of residential buildings through sale or lease, other than that which is zero-rated according to Clauses (9) and (11) of Article (45) of this Decree-Law. 3. Supply of bare land. 4. Supply of local passenger transport. The Executive Regulation of this Decree-Law shall specify the conditions and controls for exempting the supplies mentioned in the preceding clauses of this Article"*[2].

[1] The Federal decree law of the United Arab Emirates No. 8 of 2017 on Value added tax, Official Gazette No. 621, issued on august 23rd 2017, Article 45.
[2] The Federal decree law of the United Arab Emirates No 8 of 2017 on Value added tax, Official Gazette No. 621, issued on august 23rd 2017, Article 46.

My comments is on article (44) from the UAE VAT Law, in my view of point the article is additional and there is no benefit of it, I think the UAE legislator made a mistake when he write that article and that is kind of filling, the article said *" The supply and Import of Goods and Services specified in this Chapter made by a Taxable Person shall be a Taxable Supply subject to the zero rate".* That chaper mentioned in the previous article includes only two articles. Article (44) and article (45). In addition, article (45) include same rule which mention in article (44) so in my opinion if the legislator erase article (44) that will not make any confuse in law. Also, in the next chapter in law which is the chapter of exemptions, that chapter includes one article which is article (46) and there is no article similar two article (44). And that assure the article (44) was additional and I suggest deleting article (44).

In this section the focusing will be on the articles (45) and (46) from the UAE VAT Law and the articles form the GCC VAT law which enhance the issue, Also the articles from VAT executive regulation to support the articles of law.

To make the issue more sample the exemptions will classify as a sector of exemptions, that sectors will be financial services sector, real state sector, health sector, transportation sector, education sector, export sector, oil and gas sector.

§1. Financial Services Sector

At the beginning the GCC VAT agreement agree to exempt the financial services from the VAT with two main rules, article (36) from the GCC VAT law said *"1. Financial Services performed by banks and financial institutions licensed under the laws in force in each Member State shall be exempt from Tax. Banks and financial institutions may reclaim Input Tax on the basis of the refund rates determined by each State. 2. As an exception to subsection 1 of this Article, each State may apply any other tax treatment to financial Services"*[1]. So, based on that article the GCC legislator accept to be the financial services subject to zero rate according to clause one of the previous article. The article enact that the Banks and financial institutions may reclaim Input Tax on the basis of the refund rates determined by each State. In my opinion that means the applying of zero-rate. In addition, the clause two of that article exempt the member state and allow them to apply any other tax treatment to financial Services. So, at the end the GCC

[1] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 36.

VAT agreement allow member state to exempt the financial services from the VAT and to allow them to apply any tax treatment. So, the member states can apply zero-rate rules on financial services or exempt the financial services from the VAT rules.

The UAE legislator in UAE VAT law exempt the financial services from the VAT rules and transfer the issue of financial services to the executive regulation to specify the financial services, so not all the financial services are exempt and not all are subject to VAT. Article (46) from the UAE VAT law said *" The following supplies shall be exempt from Tax: 1. Financial services that are specified in the Executive Regulation of this Decree-Law"*[1].

The VAT executive regulation define the financial services in article (42/2), the article said *"Financial services are services connected to dealings in money (or its equivalent) and the provision of credit and include for instance the following: a. The exchange of currency, whether effected by the exchange of bank notes or coin, by crediting or debiting accounts, or otherwise. b. The issue, payment, collection, or transfer of ownership of a cheque or letter of credit. c. The issue, allotment, drawing, acceptance, endorsement, or transfer of ownership of a debt security. d. The provision of any loan, advance or credit. e. The renewal or variation of a debt security, equity security, or credit contract. f. The provision, taking, variation, or release of a guarantee, indemnity, security, or bond in respect of the performance of obligations under a cheque, credit, equity security, debt security, or in respect of the activities specified in paragraphs (b) to (e) of this Article. g. The operation of any current, deposit or savings account. h. The provision or transfer of ownership of financial instruments such as derivatives, options, swaps, credit default swaps, and futures. This is an unofficial translation 30 i. The payment or collection of any amount of interest, principal, dividend, or other amount whatever in respect of any debt security, equity security, credit, and contract of life insurance. j. Agreeing to do, or arranging, any of the activities specified in paragraphs (a) to (i) of this Clause, other than advising thereon"*[2].

The executive regulation exempts three situations form the VAT, also the UAE legislation create the general condition of applying VAT on financial services. Article (42/3) said *"The*

[1] The Federal decree law of the United Arab Emirates No. 8 of 2017 on Value added tax, Official Gazette No. 621, issued on august 23rd 2017, Article 46 § 1.
[2] Cabinet decision No. 52 of 2017 on the Executive Regulations of Federal Decree-Law No. 8 of 2017 on Value Added Tax, Official Gazette No. 624, issued on November 26th 2017, Article 42 § 2.

following financial services shall be exempted: a. Activities under Clause (2) of this Article where they are not conducted in return for an explicit fee, discount, commission, and rebate or similar. b. The issue, allotment, or transfer of ownership of an equity security or a debt security; c. The provision or transfer of ownership of a life insurance contract or the provision of re-insurance in respect of any such contract"[1]. In that regards, the financial services are exempt, but it must be not conducted in return for an explicit fee, discount, commission, and rebate or similar. Also, the issue, allotment, or transfer of ownership of an equity security or a debt security; c. The provision or transfer of ownership of a life insurance contract or the provision of re-insurance in respect of any such contract.

The UAE legislator enact the rules of exempt the financial services from the VAT. The rules are if the financial services was conducting fess the financial services are subject to VAT. If there are no fees so the financial services are exempt. Article (42/4) insure that principle. The article said *"Activities under Clause (2) of this Article shall be subject to tax where the consideration payable in respect of a supply of Services is an explicit fee, commission, discount, and rebate or similar"*[2].

the issue of the Islamic financial services is settling on article (42/5) and (42/6) which said *"5. Islamic finance products, being financial products under contract which are certified as Islamic Shariah compliant, which simulate the intention and achieve effectively the same result as a non-Shariah compliant financial product, will be treated in a similar manner as the equivalent non-Shariah financial product for the purpose of applying exemption from Tax. 6. Any supply made under an Islamic financial arrangement shall be treated in such a way as to give an outcome for the purposes of the Decree-Law and the decisions issued by the Authority, comparable to that which would be the case for their non-Islamic counterparts"*[3].

At the end the issue of export services is subject to the rules of export article (42/7) which said *"Where Article (31) of this Decision applies in respect of a supply of financial services, this supply should be treated as zero-rated"*[4]. Article (31) is the article of export services, I think

[1] Cabinet decision No. 52 of 2017 on the Executive Regulations of Federal Decree-Law No. 8 of 2017 on Value Added Tax, Official Gazette No. 624, issued on November 26th 2017, Article 42 § 3.
[2] Ibid., Article 42 § 4.
[3] Cabinet decision No. 52 of 2017 on the Executive Regulations of Federal Decree-Law No. 8 of 2017 on Value Added Tax, Official Journal No. 624, issued on November 26th 2017, Article 42 § 5 and 6.
[4] Ibid., Article 42 § 7.

its good the issue of export services is subject to rules of export services, because at the end that is export services and to not make a conflict with the principle of destination. In my opinion the issue of financial services must be exempt from the VAT rules at all. The reason of that is the hardness to apply the VAT on that services which very complicated and difficult. "*The difficulty arises for services charged for in the margin between the re-turn paid to lenders and that charged to borrowers. Even though the aggregate value added created by intermediation can be identified, to the extent that the financial services are used by registered firms, one needs further to allocate the aggregate value added between the two sides of the transaction. This is difficult*."[1].

§2. Real State Sector

Based on the GCC VAT agreement, the GCC legislator allow the member states to exempt or apply the zero-rate or even apply the rules of VAT and standard rate on the real state sector. Article (29) from the GCC VAT agreement said *"1. Each Member State may exempt or tax at zero-rate the following sectors in accordance with the conditions and provisions set by that Member State: a) Education sector; b) Health sector; c) real estate sector; and d) local transport sector. 2. Each of the Member States may subject its oil, oil derivatives and gas sector to Tax at zero-rate in accordance with the conditions and provisions set by each Member State"*[2].

The UAE VAT law exempt in general the supply of bare land and the Supply of residential buildings through sale or lease. But there are other situations subjected to zero rate according to Clauses (9) and (11) of Article (45) of UAE VAT Law.

According to previous clauses that the conditions which are subject to zero rate are the first supply of residential buildings within three years of its completion, either through sale or lease in whole or in part and the second condition is the first supply of buildings converted from non-residential to residential through sale or lease[3]. In addition, another rule is subject to zero rate

[1] Ebrill, Liam, Keen, Michael, Bodin, Jean-Paul, and Summers, Victoria, *The Modern VAT*, International Monetary Fund, Washington D.C., 2001, p. 94-95.
[2] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 29.
[3] Cabinet decision No. 52 of 2017 on the Executive Regulations of Federal Decree-Law No. 8 of 2017 on Value Added Tax, Official Gazette No. 624, issued on November 26th 2017, Article 45 § 9 and 11.

which mention in article (45/10) from UAE VAT law, that clause mention the issue of the first supply of buildings specifically designed to be used by Charities through sale or lease.

Whereas, the clauses (9), (10), (11) from article (45) transfer the issue of that rules to executive regulation to specified and controls.

Before start explanation based on executive regulation, there are three issues need to be explanation based on the law and by the executive regulation which are the first issue exemption the residential buildings. The second issue is applying the zero-rate on buildings specifically designed to be used by charities and the last issue is applying the zero rate on converted residential buildings.

The executive regulation specified the definition of residential buildings in article (37), the article said *"1. The phrase "residential building" means a building intended and designed for human occupation, including: a. 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. b. Residential accommodation for students or school pupils. c. Residential accommodation for armed forces and police. d. Orphanages, nursing homes, and rest homes. 2. A "Residential building" does not include any of the following: a. Any place that is not a building fixed to the ground and can be moved without being damaged. b. Any building that is used as a hotel, motel, bed and breakfast establishment, or hospital or the like. c. A serviced apartment for which services in addition to the supply of accommodation are provided. d. Any building constructed or converted without lawful authority. 3. A building shall be considered as 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 it, or it includes any other features that may be said to comprise part of the residential building"*[1].

That definition assist to implement the exempt on the residential buildings and the converted residential buildings, in my view of point that good idea to provide the definition and the rules, the rules of exempt the residential buildings are mention in article (43), the article said *"1. The supply of residential buildings is exempt, unless it is zero-rated, where the lease is more than (6) six months or the tenant of the property is a holder of an ID card issued by Federal Authority*

[1] Cabinet decision No. 52 of 2017 on the Executive Regulations of Federal Decree-Law No. 8 of 2017 on Value Added Tax, Official Gazette No. 624, issued on November 26th 2017, Article 37.

for Identity and Citizenship. 2. The period of tenancy referred to in Clause (1) of this Article shall be identified with reference to the contractual period of tenancy and shall not take into account any period arising from a right or option to extend the period of tenancy or renew the tenancy. 3. For the purposes of Clause (1) of this Article, a right of any party to terminate the lease early shall be ignored"[1].

In addition, article (39) provide the rules of converted residential buildings, the article said *" The first supply of a building, or any part of a building, which is converted to a residential building shall be subject to the zero rate provided that the supply takes place within 3 years of the completion of the conversion and the original building, or any part of it, was not used as a residential building and did not comprise part of a residential building within (5) five years prior to the conversion work commencing. 2. 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 or any part thereon as part of a pre-existing residential building"*[2].

Based on what mention above in the explanation of the real state sector, the residential buildings are exempt or subject to zero-rate in several situation. Also, the UAE legislator was silent on the issue of non-residential buildings which is the commercial buildings, so the commercial buildings are subject to the rules of VAT and subject to standard rate. The question is raised what is the situation of mixed buildings which includes the residential part and commercial part?

The same issue was deal with case No C-291/92 in October 1995 in ECJ, where a taxable person sells property part of which he had chosen not to use for business purposes but to reserve for his private use. He does not act with respect to the sale of that part as a taxable person.

At that time there is no provision in the Directive which precludes a taxable person who wishes to retain part of an item of property amongst his private assets from excluding it from the VAT system. In such a case, apportionment between the part allocated to the taxable person' s business use and the part retained for private use should be based on the proportions of private and business use in the year of acquisition and not on a geographical division. The taxable

[1] Cabinet decision No. 52 of 2017 on the Executive Regulations of Federal Decree-Law No. 8 of 2017 on Value Added Tax, Official Gazette No. 624, issued on November 26th 2017, Article 43.
[2] Ibid., Article 39.

person should, moreover, throughout his period of ownership of the property in question, demonstrate an intention to retain part of it amongst his private assets.

Where the taxable person has made that choice at the time of acquiring the property, only the part of the property assigned to his business is to be taken into consider for the application of Directive rules regarding the right to deduct input tax, and the adjustment of such deductions under the directive should be limited to that part[1].

The decision of court was "*in answer to the questions referred to it by the Bundesfinanzhof by order of 28 April 1992, hereby rules:1. Where a taxable person sells property part of which he had chosen to reserve for his private use, he does not act with respect to the sale of that part as a taxable person within the meaning of Article 2(1) of the Sixth Council Directive (77/388/EEC) of 17 May 1977 on the harmonization of the laws of the Member States relating to turnover taxes ° Common system of value added tax: uniform basis of assessment.2. Where a taxable person sells property part of which he had chosen at the time of acquisition not to assign to his business, only the part of the property assigned to his business is to be taken into account for the application of Article 17(2) of the said directive.3. The adjustment of the input-tax deduction under Article 20(2) of the said directive must be limited to the part of the property assigned to the business*"[2].

In that regard the UAE legislator follow the same rules of ECJ and enact rules for the Apportionment of Input Tax in article (55) of UAE VAT executive regulation.

My comments on the issue of the exempt of the real state sector in UAE law, in article (66/2/a) the rules of claim the tax which paid on the residential buildings is only for UAE citizen. That rule is conflict with the article (2) of the GCC Economic Agreement of 2001 which insure that the citizen of the GCC states must treat in same way as their citizens without discrimination specially in issue of tax treatment and take ownership of the property.

[1] ECJ, Case C-291/92, Finanzamt Uelzen v. Dieter Armbrecht [1995].
[2] Ibid.

§3. Health Sector

At the beginning the issue of health sector was discusses and raise by the GCC VAT agreement, because the issue of apply VAT was by the GCC VAT agreement and the previous agreement have the right to exempt any goods or services or sectors from the VAT. So, article (29) of GCC VAT agreement said *"1. Each Member State may exempt or tax at zero-rate the following sectors in accordance with the conditions and provisions set by that Member State: a) Education sector; b) Health sector; c) real estate sector; and d) local transport sector. 2. Each of the Member States may subject its oil, oil derivatives and gas sector to Tax at zero-rate in accordance with the conditions and provisions set by each Member State"*[1]. Based on that article the issue of exempt health sector from the VAT are subject to state. Either apply zero rate or standard rate or exempt from VAT. The comments on the previous article is the goods and services are subject to VAT. So, the determine the sectors to be exempt from the applying VAT are faced to criticism. The first one is the GCC VAT agreement must addressed the specified goods and services to be exempt not the sectors. The second criticism is the way which the GCC VAT agreement exempt the sectors are correct because that sectors have many goods and services and the role of agreement is to enact the highlight the outline and leeway the member state to enact the domestic law with their vision but with following the outline of the agreement without conflict.

In that regard the GCC VAT agreement enact other rules regarding the medicines and medical equipment, article (31/2) of the GCC VAT agreement said, *"Medicines and medical equipment shall be subject to the zero-rate in accordance with unified provisions proposed by the Committee of Ministers of Health and approved by the Financial and Economic Cooperation Committee"*[2].

The issue of the previous clause was mention in article (29) of the same agreement, so that is additional no need it for the agreement because the agreement allow the member states to exempt or apply zero rate or apply the standard rate, but the article (31/2) conflict the provision of the article (29). Article (29) give the member state the right to exempt or apply zero rate or apply the standard rate the health sector, but article (31/2) enact that the medicine and the

[1] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 29.
[2] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 31 § 1.

medical equipment are subject to zero-rate with unified provisions proposed by the Committee of Ministers of Health and approved by the Financial and Economic Cooperation Committee. In the result of that the member state must follow the provisions approved by the Financial and Economic Cooperation Committee.

The UAE VAT law apply zero rate on the supply of preventive and basic healthcare Services and related Goods and transfer the issue to the executive regulation to specify the issue services and goods according to article (45/15) from UAE VAT law.

In that regard and following the UAE VAT law, the executive regulation was enacting that issue in article (41). The issue of the health sector includes a lot of services and goods, so what is the definition of health care? Article (41/1-2) answer the question with determine the standard of applying zero rate on the services. the article said *"1. The phrase "healthcare services" means any Service supplied that is generally accepted in the medical profession as being necessary for the treatment of the Recipient of the supply including preventive treatment. 2. A supply of healthcare services shall be zero rated on the condition that the supply shall: a. Be made by a healthcare body or institution, doctor, nurse, technician, dentist, or pharmacy, licensed by the Ministry of Health or by any other competent authority. b. Relate to the wellbeing of a human being. 3. " Healthcare services" do not include any of the following: a. Any part of a supply that relates to staying in or attending an establishment the principal purpose of which is to provide holiday accommodation or entertainment such that any healthcare service is incidental to the provision of the accommodation or entertainment. b. Elective treatment for cosmetic reasons other than prescribed by a doctor or medical professional for treating or prevention of a medical condition*"[1]. Based on the previous article the standard of applying the zero rate on the health care is the necessary for the treatment, made it by a healthcare body or institution, doctor, nurse, technician, dentist, or pharmacy, licensed by the Ministry of Health or by any other competent authority and relate to the wellbeing of a human.

In result of that the elective treatment for cosmetic reasons and the veterinary treatment are subject to standard rate.

[1] Cabinet decision No. 52 of 2017 on the Executive Regulations of Federal Decree-Law No. 8 of 2017 on Value Added Tax, Official Gazette No. 624, issued on November 26th 2017, Article 41 § 1 and 2.

The second part of the health care is the issue of goods, whereas the article (41/4) transfer that issue to the decision of the cabinet of minister. The article said *"A supply of Goods is zero-rated if it is a supply of: a. Any pharmaceutical products identified in a decision issued by the Cabinet. b. Any medical equipment identified in a decision issued by the Cabinet. c. Any other Goods not covered by paragraphs (a) and (b) of this Clause which are supplied in the course of supplying a Person with zero-rated healthcare services that are necessary for the supply of such healthcare services"*[1].

My opinion on the UAE VAT law in regard of the exempt the health sector, the UAE legislation was conflict with the article (31/2) of the GCC VAT agreement, because the GCC VAT agreement determine that the medicines and medical equipment shall be subject to the zero-rate in accordance with unified provisions proposed by the Committee of Ministers of Health and approved by the Financial and Economic Cooperation Committee. So according to that article the member states don't have a right to adopt the provisions and the right is exclusive on the Financial and Economic Cooperation Committee.

In my opinion the article (31/2) of the GCC VAT agreement must amend because it makes confusing in the implementation and made and conflict with article (29) from the GCC VAT agreement.

§4. Transportation Sector

Based on the GCC VAT agreement the member state has a right to exempt the transport sector from the VAT or apply the zero rate or even apply the normal standard according to article (29) which said *"1. Each Member State may exempt or tax at zero-rate the following sectors in accordance with the conditions and provisions set by that Member State: a) Education sector; b) Health sector; c) real estate sector; and d) local transport sector. 2. Each of the Member States may subject its oil, oil derivatives and gas sector to Tax at zero-rate in accordance with the conditions and provisions set by each Member State"*[2]. In this article the legislator specified the local transport sector, so the question is what is the station for the international transport and the transport between the member states?

[1] Ibid., Article 41 § 4.
[2] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 29.

Article (32) from the GCC VAT agreement solve that issue which said *"The following transportation transactions shall be subject to Tax at zero-rate: 1. Goods and passenger transport from one Member State to another and the supply of transport-related Services; 2. International Goods and passenger transport from and to the GCC Territory and the supply of transport-related Services"*[1]. According to the previous article the transport between the member state are subject to zero rate, and the transport form the member state to other state out of the GCC territory are subject to zero rate.

In addition, the GCC VAT agreement provide a useful condition to the taxable person who carry the transportation, the agreement allow the member state to implement the zero rate on the several supplies which related to the transport, article (33) from GCC VAT agreement said *" each Member State may apply the zero-rate to the following supplies: 1. Supply of sea, land and air means of transport allocated to the transportation of Goods and passengers in return for a fee for commercial purposes; 2. Supply of Goods and Services related to the supply of the means of transport mentioned in subsection 1 of this Article allocated to the operation, repair, maintenance or conversion any of these means or for the requirements of the means of transport or their cargo or passengers; 3. Supply of rescue airplanes, rescue boats and aid by land and sea and boats allocated to sea fishing"*[2].

The UAE legislator follow the GCC VAT agreement in that regards and enact the rules that the Supply of local passenger transport are exempt according to UAE VAT law. In addition, the supply of *"International transport of passengers and Goods which starts or ends in the State or passes through its territory, including Transport-related Services 3. Air passenger transport in the State if it is considered an "international carriage" pursuant to Article (1) of the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air 1929. 4. Supply of air, sea and land means of transport for the transportation of passengers and Goods as specified in the Executive Regulation of this Decree-Law. 5. Supply of Goods and Services related to the supply of the means of transport mentioned in Clause (4) of this Article and which are designed for the operation, repair, maintenance or conversion of these means of transport. 6. Supply of aircrafts or vessels designated for rescue and assistance by air or sea. 7. Supply of Goods and Services related to the transfer of Goods or passengers aboard land, air or sea*

[1] Ibid., Article 32.
[2] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 33.

means of transport pursuant to Clauses (2) and (3) of this Article, designated for consumption on board; or anything consumed by any means of transport, any installations or addition thereto or any other use during transportation"[1], are subject to zero rate, and the previous article of UAE VAT law was refer several issues to the executive regulation of UAE VAT.

In way to more explanation of the transport sector, the executive regulation continues the legal framework of the transport sector issue. The executive regulation enacts the rules of transport sector regarding the exempt and the applying the zero rate in articles (33), (34), (35) from the executive regulation.

My opinion in the transport sector is the good choice is to exempt the transport sector and the apply zero rate on the transport from/to outside the country and the supply of the goods and services related to the transport sector are subject to zero rate is good for the economic and the taxable person, also that following to the best practice to exempt the export services form the VAT, but the implementation was wrong in one way.

The federal Taxation Authority issued VAT Public Clarification Public Transportation (VATP007), the summary of that guidebook include sentences are totally conflicted with UAE VAT law, that sentence or article said *"only buses or train which are designed or adopted to be used for the mass transport of individuals, without being restricted to a specific category of users, shall qualify to be supplied at the zero rate. As a result, those means of transport which are designed to transport a specific category of individuals, such as school students or employees of a business, do not meet the conditions to be treated as a qualifying means of transport for the purposes of zero-rating provision. Such means of transport shall therefore be subject to the standard rate of VAT"*[2] .

In my opinion the FTA made a mistake in that regard, the new condition is the transportation such as school students or employees of a business are subject to standard rate while the local transport passenger is exempt by the law according to article (45/4).

[1] Cabinet decision No. 52 of 2017 on the Executive Regulations of Federal Decree-Law No. 8 of 2017 on Value Added Tax, Official Gazette No. 624, issued on November 26th 2017, Article 45 § 2 and 7.
[2] Federal Taxation Authority of the United Arab Emirates, VAT Public Clarification on Public Transportation.

§5. Education Sector

The education sector includes a huge number of services and goods and its not easy to go throw that services and choice which services of goods are exempt or subject to zero rate oar subject to standard rate. The best choice is to determine the rule or standard then apply it on the goods and services.

At the beginning the issue of the education sector was enact it by the GCC VAT agreement. the general article of exemptions which is article (29) said *"1. Each Member State may exempt or tax at zero-rate the following sectors in accordance with the conditions and provisions set by that Member State: a) Education sector; b) Health sector; c) real estate sector; and d) local transport sector. 2. Each of the Member States may subject its oil, oil derivatives and gas sector to Tax at zero-rate in accordance with the conditions and provisions set by each Member State"*[1]. The previous article delegates the member state to apply the zero rate or standard rate or to exempt the education sector from the rules of VAT.

Based on the UAE VAT law the supply of the education services and goods and services related to the education are subject to the zero rate. Article (45/13) from the UAE VAT law said *"The Zero rate shall apply to the following Goods and Services:[…] 13. The supply of educational services and related Goods and Services for nurseries, preschool, school education, and higher educational institutions owned or funded by Federal or local Government, as specified in the Executive Regulation of this Decree-Law"*[2]. According to the previous article the supply of the education services, goods and services related to the education are subject to the zero rate, but the UAE VAT executive regulation have another idea conflicted with the UAE VAT law, article (40) from the UAE VAT executive regulation said *"1. The supply of educational services shall be subject to the zero rate if the following conditions are met: a. The supply of educational services is provided in accordance with the curriculum recognised by the federal or local competent government entity regulating the education sector where the course is delivered. b. The supplier of the educational services is an educational institution which is recognised by the federal or local competent government entity regulating the education sector where the course is delivered. c. Where the Supplier of educational services is a higher education institution, the*

[1] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 29.
[2] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 8 of 2017 on Value added tax, Official Gazette No. 621, issued on August 23rd 2017, Article 45 § 13.

institution is either owned by the federal or local government or receives more than 50% of its annual funding directly from the federal or local government. 2. A supply of Goods or Services made by educational institutions identified in Clause (1) of this Article shall be zero-rated where the supply is directly related to the provision of a zero-rated educational service. 3. Printed and digital reading material provided by educational institutions identified in Clause (1) of this Article and which are related to the curriculum of an education shall be zero-rated. 4. As an exception to Clause (2) of this Article, the following supplies shall not be zero-rated: a. Goods and Services supplied by the educational institution referred to in Clause (1) that are made available to Persons who are not enrolled in the educational institution. b. Any Goods other than educational materials provided by the educational institution referred to in Clause (1) that are consumed or transformed by the students undertaking the educational service for the purposes of education. This is an unofficial translation 28 c. Uniforms or any other clothing which are required to be worn by the educational institution referred to in Clause (1), irrespective of whether or not supplied by the educational institutions as part of the supply of educational services. d. Electronic devices in relation to educational services, irrespective of whether or not supplied by the educational institution referred to in Clause (1) as part of the supply of educational services. e. Food and beverages supplied at the educational institution referred to in Clause (1), including supplies from vending machines or vouchers in respect of food and beverages. f. Field trips, unless these are directly related to the curriculum of an education service and are not predominantly recreational. g. Extracurricular activities provided by or through the educational institution referred to in Clause (1) for a fee additional to the fee for the education service. h. A supply of membership in a student organization"[1]. Based on that article the related goods or services are not subject to zero rate, but subject to the general principle which is the standard rate, and that consider as a conflict between the law and executive regulation.

In my opinion there are no conflict between the UAE VAT law and the UAE VAT executive regulation because article (45/13) from the UAE VAT law mention that the executive regulation is delegated to specified the goods and serviced which are subject to the zero rate. In my opinion the article (45/13) of the UAE VAT law need to amend because on the current editing will make

[1] Cabinet decision No. 52 of 2017 on the Executive Regulations of Federal Decree-Law No. 8 of 2017 on Value Added Tax, Official Gazette No. 624, issued on November 26th 2017, Article 40.

a confuse, the suggestion is to say in article (the supply of education services, and the executive regulation are delegate in determine the related services which are subject to zero rate).

§6. Export Sector

The principle of the destination in regard of exports is to consider the exports of goods and services are subject to zero rate, most states on the world are following that principle and the GCC VAT agreements follow that principle.

According to the GCC VAT agreement the export outside the territory are subject to zero rate, article (34) from the GCC VAT agreement said *"1. The following supplies shall be subject to the zero-rate: a) the export of Goods outside the GCC Territory; b) supply of Goods to a customs duty suspension situation as provided for in the Common Customs Law and the supply of Goods within customs duty suspension situations; c) re-export of moveable Goods that have been temporarily imported into the GCC Territory for repairs, refurbishment, conversion or processing as well as the Services added to these Goods. supply of Services by a Taxable Supplier residing in a Member State for a Customer who does not reside in the GCC Territory who benefits from the service outside the GCC Territory in accordance with the criteria determined by each of the Member States, except for the cases provided for in Articles 17 to 21 of this Agreement that determine the place of supply as being in a Member State. 2. The supply of Goods and Services out of the GCC Territory shall be subject to the zero-rate when such supply is exempt from Tax inside the Member State"*[1].

Based on that the export outside the GCC territory is subject to zero rate, and the export between the GCC states are subject to zero rate.

But the GCC VAT agreement classify the member state to two categories, first category the implemented states and the second category is the un-implemented states. In addition, the un-implemented states are considering outside the scope of the agreement until implement the VAT, based on that the export from implemented member state to un-implemented member state are consider an export subject to zero rate. Article (79/3) from the GCC VAT agreement

[1] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 34.

said *"each Member State that has not implemented its Local Law shall remain outside the scope of implementation of this Agreement until such Local Law becomes effective"*[1].

But in the practice the situation is different while the export from UAE (implemented state) to KSA (implemented state) are consider as export and subject to zero rate and that are consider as a conflict with the GCC VAT agreement. that rules apply in UAE based on the article (70/15) from the UAE VAT executive regulation, the article said *"a GCC State shall be treated as an Implementing State according to the provisions of the Decree-Law and this Decision if the following conditions are met: a. Where the GCC State treats the State similarly as an Implementing State in its published legislation. b. Full compliance with the provisions of the Common VAT Agreement of the States of the Gulf Cooperation Council (GCC)"*[2].

Even in KSA the same situation is implement which is the export from KSA (implemented state) to UAE (implemented state) are consider as export and subject to zero rate and that are consider as a conflict with the GCC VAT agreement. That rules apply in KSA based on the article (79/6) from the KSA VAT executive regulation which said *"any Member State which has not introduced VAT following 1 January 2018 will be considered a country outside of Council Territory in accordance with the Agreement. A Supply treated under the provisions of the Agreement as made in 2018 such Member State shall be considered as being made in a third country outside of Council Territory and persons who is a Resident Person in such Member State will be treated as residents of a third country"*[3].

§7. Oil and Gas Sector

Article (29/2) from the GCC VAT agreement delegate the member states to apply zero rate on the oil, oil derivatives and gas sector, the article said *"each of the Member States may subject its oil, oil derivatives and gas sector to Tax at zero-rate in accordance with the conditions and provisions set by each Member State"*[4].

[1] Cabinet decision No. 52 of 2017 on the Executive Regulations of Federal Decree-Law No. 8 of 2017 on Value Added Tax, Official Gazette No. 624, issued on November 26th 2017, Article 79 § 3.
[2] Cabinet decision No. 52 of 2017 on the Executive Regulations of Federal Decree-Law No. 8 of 2017 on Value Added Tax, Official Gazette No. 624, issued on November 26th 2017, Article 70 § 15.
[3] KSA, Resolution of the Board of Directors of the General Authority of Zakat and Income No. 3839, Article 79 § 6.
[4] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 29 § 2.

Based on that the UAE legislator apply the zero rate on the crude oil and neutral gas, so the oil derivatives are subject to standard rate according to Article (45/12).

Section two. The Developments of Taxation legislations (Expo decision & Gold decision)

Its natural that life is change and develop, the develop happens every day in the world, each system must develop to follow the changes and develops in the life. Based on that its natural that the taxation system is change and develop. The main evidence of that the change and develop in VAT, and to follow that develop of taxation system, the taxation legislation must develop.

The first EU directive in regard of VAT was in 11 April 1967, the title of that directive was FIRST COUNCIL DIRECTIVE of 11 April 1967 on the harmonization of legislation of Member States concerning turnover taxes (67/227/EEC). The aim of that directive was to establish common market with healthy competition within framework of an economic union. To achieve that aim the member states must amend their domestic laws to which at that time not assist to achieve the aim[1].

In 17 of May 1977 SIXTH COUNCIL DIRECTIVE was issued on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment (77/388/EEC). The aim of that directive is to made effective removal of restrictions on the movement of persons, goods, services and capital and the integration of national economies[2].

In 28 November 2006 the COUNCIL DIRECTIVE NO. 2006/112/EC on the common system of value added tax was issued, the aim of the new directive is to ensure that the provisions are presented in a clear and rational manner, it is appropriate to recast the structure and the wording of the Directive, in principle, bring about material changes in the existing legislation. A miner of substantive amendments is however prompt to the recasting exercise and must nevertheless

[1] European Union, First Council Directive of 11 April 1967 on the harmonisation of legislation of Member States concerning turnover taxes, Official Journal No. 71, issued on April 14th 1967.
[2] European Union, Sixth Council Directive on the harmonization of the laws of the Member States relating to turnover taxes — Common system of value added tax: uniform basis of assessment, Official Journal No. 145, issued May 17th 1977.

be made. Where such changes are made, these are listed exhaustively in the provisions governing transposition and entry into force[1].

That an example of develop in the aim of taxation system and the develop of taxation legislation reflects taxation system develop.

In that regards the legislation of taxation in UAE still new but that not means there are no develop happened. The framework of legislation in UAE contents from the GCC agreement for VAT and excise tax, federal laws (VAT law, Excise tax law, procedures law, FTA establishment law), the cabinet decisions of executive regulations, cabinet decisions and the decisions from the FTA.

The develop of the taxation system in UAE must be by amending the current legislations, that amending of legislation need to follow the steps and the rule to amend, at the beginning the amending of Common VAT Agreement of the States of the Gulf Cooperation Council (GCC) can happen, but after following two steps, the first step is the suggestion from a member state to amend the agreement, step two is the approve from all member state according to article (78) from GCC VAT law. The article said *"This Agreement may be amended upon the approval of all Member States and upon the proposal of any of them, and the coming into force of such amendments shall be subject to the same procedures provided for in Article (79) of this Agreement"*[2].

The second category of the legislations in UAE is the federal law, to amend that law there are several steps according to article (110) of UAE constitution, the article said *"1. Union laws shall be promulgated in accordance with the provisions of this Article and other appropriate provisions of the Constitution. 2. A draft law shall become a law after the adoption of the following procedure: (a) The Council of Ministers shall prepare a bill and submit it to the Union National Assembly. (b) The Council of Ministers shall submit the bill to the president of the Union for his approval and presentation to the Supreme Council for ratification. (c) The President of the Union shall sign the bill after ratification by the Supreme Council and shall promulgate it. 3. (a) If the Union National Assembly inserts any amendment to the bill and this amendment is not acceptable to the President of the Union or the Supreme Council, or if the*

[1] European Union, Council Directive 2006/112/EC of 28 November 2006 on the Common System of Value Added Tax, Official Journal No. L 347 issued on December 11th 2006.

[2] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 78.

Union National Assembly rejects the bill, the President of the Union or the Supreme Council may refer it back to the National Assembly. If the Union National Assembly introduces an amendment on that occasion which is not acceptable to the President of the Union or the Supreme Council, or if the Union National Assembly decides to reject the bill, the President of the Union may promulgate the law after ratification by the Supreme Council. (b) The term "bill" in this clause shall mean the draft which is submitted to the President of the Union by the Council of Ministers including the amendments, if any, made to it by the Union National Assembly. 4. Notwithstanding the foregoing, if the situation requires the promulgation of Union laws when the National Assembly is not in session, the Council of Ministers of the Union may issue them through the Supreme Council and the President of the Union, provided that the Union Assembly is notified at its next meeting"[1].

In addition, in the same category of law there is the federal Decree-law which adopted by the president of UAE same the normal federal law, but the different is the procedures of issuing the federal decree-law, according to article (113) from the UAE constitution which said *"Should necessity arise for urgent promulgation of Union laws between sessions of the Supreme Council, the President of the Union together with the Council of Ministers may promulgate the necessary laws in the form of decrees which shall have the force of law, provided that they are not inconsistent with the Constitution. Such decree-laws must be referred to the Supreme Council within a week at the maximum for assent or rejection. If they are approved, they shall have the force of law and the Union National Assembly shall be notified at its next meeting. However, if the Supreme Council does not approve them, they shall cease to have the force of law unless that it has decided to sanction their effectiveness during the preceding period, or to settle in some other way the effects arising therefrom"*[2].

That the previous rules are to issuing the federal laws and the federal Decree-laws, the provisions of issuing the laws is same the provisions of amending that law.

The third category of the legislation which is the executive regulations and the cabinet decisions, that legislations needs to by amend by the issuer of that decisions which is the cabinet of ministries.

[1] United Arab Emirates, The Constitution of UAE, Article 110.
[2] United Arab Emirates, The Constitution of UAE, Article 113.

Its obvious the amend of the executive regulation and the decisions of cabinet of ministers are easier that the amend of the GCC agreement and the federal laws. The reason of that is there are no much and hard steps to be followed. In that regards most of the laws are adopting the main rules and provision or outline then the laws give the executive regulation the right to enact the conditions and detailed rules.

In my opinion the law must determine the subjects of the executive regulations and not give the executive regulations rights to enacts in all subjects of law. It must determine in each article if there are any rights to executive regulation to be enacting more rules in regard of that article, the reason of that is to stop the conflict between the law and the executive regulation. The law is an expression of the Legislation Authority desire. Also, the Legislation Authority has a power to control the actions of the Executive Authority. An example of the conflict between the Law and the executive regulation in UAE legislation the issue of education sector. Based on the UAE VAT law the supply of the education services and goods and services related to the education are subject to the zero rate.

Article (45/13) from the UAE VAT law said *"The Zero rate shall apply to the following Goods and Services:[…] 13. The supply of educational services and related Goods and Services for nurseries, preschool, school education, and higher educational institutions owned or funded by Federal or local Government, as specified in the Executive Regulation of this Decree-Law"*[1]. According to the previous article the supply of the education services, goods and services related to the education are subject to the zero rate, but the UAE VAT executive regulation have another idea conflicted with the UAE VAT law, article (40) from the UAE VAT executive regulation said *"1. The supply of educational services shall be subject to the zero rate if the following conditions are met: a. The supply of educational services is provided in accordance with the curriculum recognised by the federal or local competent government entity regulating the education sector where the course is delivered. b. The supplier of the educational services is an educational institution which is recognised by the federal or local competent government entity regulating the education sector where the course is delivered. c. Where the Supplier of educational services is a higher education institution, the institution is either owned by the federal or local government or receives more than 50% of its annual funding directly from the federal or local government. 2. A supply of Goods or Services made by educational institutions*

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 8 of 2017 on Value added tax, Official Gazette No. 621, issued on August 23rd 2017, Article 45 § 13.

identified in Clause (1) of this Article shall be zero-rated where the supply is directly related to the provision of a zero-rated educational service. 3. Printed and digital reading material provided by educational institutions identified in Clause (1) of this Article and which are related to the curriculum of an education shall be zero-rated. 4. As an exception to Clause (2) of this Article, the following supplies shall not be zero-rated: a. Goods and Services supplied by the educational institution referred to in Clause (1) that are made available to Persons who are not enrolled in the educational institution. b. Any Goods other than educational materials provided by the educational institution referred to in Clause (1) that are consumed or transformed by the students undertaking the educational service for the purposes of education. This is an unofficial translation 28 c. Uniforms or any other clothing which are required to be worn by the educational institution referred to in Clause (1), irrespective of whether or not supplied by the educational institutions as part of the supply of educational services. d. Electronic devices in relation to educational services, irrespective of whether or not supplied by the educational institution referred to in Clause (1) as part of the supply of educational services. e. Food and beverages supplied at the educational institution referred to in Clause (1), including supplies from vending machines or vouchers in respect of food and beverages. f. Field trips, unless these are directly related to the curriculum of an education service and are not predominantly recreational. g. Extracurricular activities provided by or through the educational institution referred to in Clause (1) for a fee additional to the fee for the education service. h. A supply of membership in a student organization"[1]. Based on that article the related goods or services are not subject to zero rate, but subject to the general principle which is the standard rate, and that consider as a conflict between the law and executive regulation.

After this introduction of the taxation legislation, In UAE there are two examples of developing the VAT system and amending the legislations, the first issue is the gold treatment in regard of VAT, the UAE VAT law enact the rules of the gold treatment and that rule influence on the market of the gold and the position of the state as a gold business hub in the region, based on that the government develop the gold treatment to stop the influence of VAT on gold market and that was by amending the legislations.

[1] Cabinet decision No. 52 of 2017 on the Executive Regulations of Federal Decree-Law No. 8 of 2017 on Value Added Tax, Official Gazette No. 624, issued on November 26th 2017, Article 40.

The other issue of the develop of VAT system in UAE is the EXPO issue, in that regard the government and the legislator adopt the decision to be the VAT less influence on the exhibition and to assist the exhibition to attract the business to the domestic market.

So, in the rest of section will describe two main points the point one is the gold treatment and the second point is the EXPO issue.

§1. Gold Treatment

In regard of what mention and display in the previous introduction, in this sub-section the consecration will be on the VAT legislations development. The gold treatment is one of the legislation developments examples. Whereas the VAT system and law start implemented in UAE at the beginning of year 2018. But after the implementation of VAT law and system it was obvious in the market and to the government that the current legislations are not serving the gold market in the state, and the current legislation are impact negatively on the gold market, because the implement the standard rate on the gold are influence on the gold wholesalers, the capital of gold wholesalers is the gold not the money and the profit margin of the wholesalers are maximum 1.5% from the value of the gold. Also, the business transactions between the wholesalers are by gold not by money.

With implemented the VAT the way of deal business between the wholesalers will impact, because the mechanism of VAT which is the staged process not serving the wholesales of the gold, that will increase the price of gold and the gold market will collapse.

After that the government solve that issue by issuing the decision for the gold with new treatment of gold between the wholesalers, the decision was satisfied to the wholesalers and government, will see in point one the situation before the decision, and in number two will see the situation after the gold decision with the legal comments on that legislations amending.

A) The situation before issuing the Cabinet Decision No. (25) of 2018 on the Mechanism of Applying Value Added Tax on Gold and Diamonds between Registrants in the State

Based on the Common VAT Agreement of the States of the Gulf Cooperation Council (GCC), the gold is considered to three categories, the first category is the investment gold, silver and platinum shall be subject to the zero-rate (the investment gold, silver and platinum shall be

considered as an investment when the metal is at a purity level not less than 99% and tradable on the Global Bullion Exchange). The second category is the first supply after extraction of gold, silver and platinum shall be subject to the zero-rate. The third category is the other percentage of the gold which is not 99% of the purity which shall be subject to standard rate.

The previous rules were mention in article (35) of GCC VAT agreement, the article said *"1. For the purposes of this Article, Gold, Silver or Platinum shall be considered as an investment when the metal is at a purity level not less than 99% and tradable on the Global Bullion Exchange. 2. The supply of investment gold, silver and platinum shall be subject to the zero-rate. 3. The first supply after extraction of gold, silver and platinum shall be subject to the zero-rate"*[1] . The strange in this article is not mention the diamond which is one of the expensive materials in the world and usually its used for the trade and deal with the gold in trade. So, based on the article (35) of GCC VAT agreement the diamond is subject to standard rate and the gold, silver and platinum which is the percentage of purity less than 99% are subject to standard rate.

In addition, the GCC VAT agreement to delegate the member states to specify the rules of that article, and it's obvious the GCC VAT agreement to give any choice to member states to choose the zero rate or exempt or standard rate as mention in the article (29) form the GCC VAT agreement (the article of exemptions).

That is the issue of the gold treatment by the GCC VAT agreement, the UAE legislator in UAE VAT law enact the rules of gold treatment. The issue of gold treatment was enacting in UAE VAT law under three rules. The rule number one is the direct export or indirect export of the investment precious metals are subject to zero rate according to the article (45/1) which said *" The Zero rate shall apply to the following Goods and Services: 1. A direct or indirect Export to outside the Implementing States as specified in the Executive Regulation of this Decree-Law"*[2], the investment precious metals is part of the goods according to article (1) from the UAE VAT law which define the concept of goods as *"Goods: Physical property that can be supplied*

[1] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 35.
[2] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 8 of 2017 on Value added tax, Official Gazette No. 621, issued on August 23rd 2017, Article 45 § 1.

including real estate, water, and all forms of energy as specified in the Executive Regulation of this Decree-Law"[1].

The rule number two is the supply of the investment precious metals are subject to zero rate, and the executive regulation of the UAE VAT law determine the investment precious metals and the standard to consider as an investment, according to article (45/8) from the UAE VAT law. The article said *"The Zero rate shall apply to the following Goods and Services: 8. The supply or Import of investment precious metals. The Executive Regulation of this Decree Law shall specify the precious metals and the standards based on which they are classified as being for investment purposes"*[2]. In my opinion the executive regulation can't conflict with the GCC VAT agreement which determine the investment precious metals which are gold, silver and platinum and the GCC VAT agreement determine the standard of the purity of the metals must be 99% to be consider as an investment precious metal. In my opinion the executive regulation can't add a new metals or new rules.

The rule number three is the investment precious metals which the purity is less than 99% are not subject to the zero rate, but subject to the standard rate, so the trade of gold in market or even the gold for investment like what the wholesalers deal with it are subject to standard rate the 5% by the force of the law.

Based on the UAE VAT law the issue of the precious metals was delegated to the UAE VAT executive regulation which enact the rules in that matter.

Article (36) from the UAE VAT executive regulation said *"The supply or import of investment precious metals shall be zero-rated. The phrase "investment precious metals" means gold, silver and platinum that meet the following standards: a. The metal is of a purity of 99 percent or more. b. The metal is in a form tradeable in global bullion markets"*[3].

Based on the previous article, the executive regulation not provide any new rules, the previous rules are same in the GCC VAT agreement and the UAE legislation can't conflict with that

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 8 of 2017 on Value added tax, Official Gazette No. 621, issued on August 23rd 2017, Article 1.
[2] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 8 of 2017 on Value added tax, Official Gazette No. 621, issued on August 23rd 2017, Article 45 § 8.
[3] Cabinet decision No. 52 of 2017 on the Executive Regulations of the Federal Decree-Law No. 8 of 2017 on Value Added Tax, Official Gazette No. 624, issued on November 26th 2017, Article 36.

rules which mentions in the GCC VAT agreement. So, the executive regulation was following the GCC VAT agreement in that matter.

But there is one issue in regard of the precious metals, the GCC VAT agreement it was mention that the *"The first supply after extraction of gold, silver and platinum shall be subject to the zero-rate"*[1]. The UAE legislator ignore that rules and not mention it in the UAE VAT legislation and the reason of that is there are no any extraction of gold, silver and platinum in UAE territory so there is no benefit to add the previous rule to UAE legislation.

That was the situation of gold treatment in UAE before issuing The Cabinet Decision No. (25) of 2018 on the Mechanism of Applying Value Added Tax on Gold and Diamonds between Registrants in the State. In next sub-section will explain the situation after issuing the Cabinet Decision No. (25) of 2018 on the Mechanism of Applying Value Added Tax on Gold and Diamonds between Registrants in the State, that what called the legislation develop.

B) The situation after issuing the Cabinet Decision No. (25) of 2018 on the Mechanism of Applying Value Added Tax on Gold and Diamonds between Registrants in the State

After the applying the VAT in UAE, it was notes that the mechanism of VAT is influence on the gold market because the margin profit between the wholesalers are very small and the transactions between the traders are by gold not by money and its hard to apply VAT in that.

So, the government decided to develop the gold treatment system to stop impact on the gold market and to keep the state business hub for gold trades in the region.

If they need to amend and develop the system of VAT, the legislation must amend, in this case the legislation is the UAE VAT law and the executive regulation because in UAE VAT law. The law enacts three rules one of them is the gold under the 99% of purity is subject to standard rate, also the executive regulation follows the law in that regards. So, the law and executive regulation must amend.

In 22th of May 2018 the decision from the cabinet of ministers issued the Cabinet Decision No. (25) of 2018 on the Mechanism of Applying Value Added Tax on Gold and Diamonds between

[1] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 35 § 3.

Registrants in the State, that decision enact new rules which assist the gold market to deal with VAT law and system. The new rules are the supply of gold and diamond between the traders are deal without charge tax, and the supply to the consumer are subject to tax, according to article (2/1) from the Cabinet Decision No. (25) of 2018 on the Mechanism of Applying Value Added Tax on Gold and Diamonds between Registrants in the State. The article said *" 1. Where a Supplier makes a supply of Goods to a Registrant Recipient in the State, and the Recipient intends to either resell such Goods or use them to produce or manufacture any of the Goods, the following rules shall apply: a. The supplier shall not be liable for calculating the Tax in relation to the supply of the Goods and shall not include it in his Tax Return, in cases where the Registrant Recipient declares in writing the following: 1) The acquisition of the Goods is for the purpose of resale or use to produce or manufacture any of the Goods 2) The Recipient is registered on the date of supply. 3) The Recipient shall calculate Tax on the value of the Goods supplied to him. b. The Recipient of the Goods shall calculate the Tax on the value of the Goods supplied to him and shall be responsible for all applicable Tax obligations related to the supply and for calculating the Due Tax in respect of such supplies"*[1].

Based on that article the problem of impact the VAT on the gold market are end, because the issue was the wholesalers can't pay tax on supply to other traders.

In my opinion the decision was conflict with the GCC VAT agreement and with the UAE VAT law and with the executive regulation in several ways. At the beginning the supply of diamond[2] are subject to the standard rate based on the GCC VAT agreement, the UAE VAT law and the executive regulation of VAT. All of the legislation not exempt the supply of diamond from the VAT or not enact that the supply of diamond is subject to zero rate.

The second conflict is based on the GCC VAT law, UAE VAT law and the executive regulation the supply of gold which the percentage of purity less than 99% are subject to standard rate, and the cabinet conflict with that rules by enact that the supply of gold to other registrant recipient in the State, the supplier are not liable to collecting tax with several of restrictions.

In addition, the other rule which enact by the decision what mention in article (2/3), the article said *"3. Where the Supplier was aware or was supposed to be aware that the Recipient was not*

[1] Cabinet Decision No. 25 of 2018 on the Mechanism of Applying Value Added Tax on Gold and Diamonds between Registrants in the United Arab Emirates, Official Gazette No. 631, issued on May 22th 2018, Article 2 § 1.

[2] Article 1 of the decision defines the goods as "*Gold, diamonds and any products where the principal component is of gold or diamonds*".

registered for tax purposes at the date of supply, the Supplier and the Recipient shall be jointly and severely liable for any Due Tax and relevant penalties in respect of the supply"[1]. This rule is following the other rule in article (2/3) in case of violate the rule in article (2/3).

In my opinion there are no mistake if the decision conflict with the executive regulation because both of the previous legislations was issued by the same issuer and the conflict will terminate by adding the article of the conflict which said in usual any provision conflict with the rules and provisions of this legislation must not apply and the rules of this legislation must apply.

In addition, the legislator settles the problem of impact the VAT on gold market and save the sector from the economy from the negative impact, but the way of settle that problem was not perfect, my suggestion the GCC VAT agreement and the UAE VAT LAW must amend to add the diamond to the investment precious metals and add the new mechanism to the GCC VAT law and UAE VAT law.

Its good to mention that the KSA law follow the GCC VAT agreement in rules of gold and investment precious metals issued, in additional the KSA legislation not amend in that regards.

§2. EXPO Issue

Considering that the UAE will host the world exhibition, Expo 2020 Dubai, from 20th October 2020 until 10th April 2021 in Dubai city, United Arab Emirates and registered by the BIA (Bureau International des Exhibiting) during the 158th session of the General Assembly of 25th of November 2015.

In 13th of March 2018 the United Arab Emirates and the Bureau International des Exhibiting sign the agreement of privileges and advantages for official participates related to the EXPO 2020 Dubai.

According to article (10) from the previous agreement the UAE direct and indirect tax reliefs will be made available to the offices of the section commissioners-General, their property and

[1] Cabinet Decision No. 25 of 2018 on the Mechanism of Applying Value Added Tax on Gold and Diamonds between Registrants in the United Arab Emirates, Official Gazette No. 631, issued on May 22th 2018, Article 2 § 3.

income to the extent that they have been imported into, procured for, or otherwise obtained for the purpose of their institutional and non-commercial activities connected with the Exhibition[1].

Based on that there is a new exemption will apply in UAE in the period of the EXPO2020, taking into account the new rule was adopted by international agreement and the rules of international agreement have a superiority on the domestic law. In addition, the previous agreement was ratified by the president of the United Arab Emirates in 18th December 2018 according to federal ordinary No (203) of 2018.

The question is do the UAE legislations needs to amend to follow the previous rules? The answer of that question will explain it in the next paragraphs.

At the beginning the GCC VAT agreement delegate the member states to exempt the companies under international event hosting agreements according to article (30) from the GCC VAT agreement. the article said *"each Member State may exclude the following categories from paying Tax upon receipt of Goods and Services in that State, and each Member State may allow these Persons to reclaim Tax borne upon receipt of the Goods and Services in accordance with the conditions and rules determined by that Member State. These categories include: - Government bodies specified by each State; - Charities and Public Benefit Establishments specified by each State; - Exempted companies under international event hosting agreements; - Citizens of the Member State when constructing their homes for private use; - Farmers and fishermen who are not registered for Tax"*[2].

Based on the previous article from the GCC VAT agreement, UAE are delegated to exempt the entities related to the EXPO 2020.

The UAE legislator include a special clause assist can assist with the EXPO issue, article (75/5) from the UAE VAT law said *"The Authority may according to the conditions, restrictions and procedures specified in the Executive Regulation of this Decree-Law, return Tax paid for any supply received by or Import carried out by any of the following:[…]5. Any Persons or classes listed in a Cabinet Decision issued at the suggestion of the Minister"*[3].

[1] The Agreement of Privileges and Advantages for Official Participates related to the EXPO 2020 Dubai, Paris, March 13th 2018, Article 10.
[2] Gulf Cooperation Council (GCC), The Common VAT Agreement of the States of the Gulf Cooperation Council issued on November 27th, 2016, Article 30.
[3] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 8 of 2017 on Value added tax, Official Gazette No. 621, issued on August 23rd 2017, Article 75 § 5.

Based on the previous article the cabinet of ministers are delegated to issue the decision to return tax to the persons or any categories. So, in continue of develop the UAE taxation legislations for the EXPO2020, the UAE cabinet of ministers issued the cabinet Decision No. (1) of 2019 on the refund of Value-Added Tax payed on goods and services connected with Expo 2020. Based on the previous decision the UAE legislator allow to return the tax payed by the participations in the EXPO 2020 according to the several conditions.

In my opinion the legislations development in the issue of the EXPO2020 was perfect and the legislations was achieving the expectations and did the rule without any conflicts with other legislations.

CHAPTER TWO
Ethics of Tax Administration

In the all parts, titles, chapters and sections the explanations were on the features of VAT, distorting the features of VAT, implementing the VAT and the problems of implementations the VAT, but there is no any indication of the tax auditing in the thesis.

Considering the tax audit one of the main elements of applying the VAT or any kind of taxations, by the tax auditing the government ensures that the taxable person is following the rules of taxation laws and if not, the government can take the action in face of the taxable person who are not following the taxation legislations. Also, by the tax auditing the government enforce the taxable person to apply the taxation legislations and follow the taxation legislations.

In addition, the huge number of the taxable persons are the main challenge in face of the government in matter of tax auditing, so the legislator assists the government to their job in tax auditing by giving them the rights to audit after several years to cover the big numbers of taxable persons as much as they can.

According to the UAE executive regulation of the Taxation Procedures law any person must save and maintain his records for five years in general. Article (3) from the UAE executive regulation of the Taxation Procedures law said *"1. Every Person holding and maintaining any*

of the records mentioned in Article (2) of this Decision, shall keep these records in a manner that enables the Authority, or an officer authorised by the Authority, to ascertain that Person's Tax obligations, as follows: a. For a period of (5) years after the end of the Tax Period to which they relate in the case of a Taxable Person. b. For a period of (5) years from the end of the calendar year in which the concerned document was created in the case of non-Taxable Persons. c. For a period specified in the Tax Law for real estate records"[1] . Also, there are other rules in regard of saving and maintaining the records will explained further, but in general the period is five years.

In general, the government has several rights on the matter of tax auditing, that rights of governments auditing are impact on the freedom of the taxable person or even the person in general.

So, the legislator enacts the limits of that rights to save the freedom of people and in other way to not influence on the tax auditing. Although the legislator enacts rules that to keep the work of tax auditing in several situations under the observing of the Public Prosecution (the Judicial Authority).

So, in this chapter the focus will be on the right of the government to audit on the taxable person and the rights of taxable person in that regards. This chapter will include two sections, section one is the Federal Taxation Authority rights of tax auditing, and the second section will be the Rights of taxable person in regard of tax auditing.

Section one. Federal Taxation Authority rights of tax auditing

The general rules of auditing, the rights of FTA to auditing and the rights of taxable person are all mentions in the procedures law, which is the UAE taxation procedures law, not mention in the other taxations law like VAT law and Excise Tax law which are specialized on the certain kind of tax in specify. Whereas the article (3) from UAE Taxation Procedures law are mention the aims of taxation law which is *"This Law aims to achieve the following: 1. Regulation of the mutual rights and obligations between the Authority and the Taxpayer and any other Person dealing with the Authority; 2. Regulation of the common procedures and rules applicable to all*

[1] Cabinet decision No. 36 of 2017 on the Executive Regulations of Federal Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures issued on September 24th 2017, Article 3 § 1.

Tax Laws in the State"[1]. The subject of this section is the FTA rights of tax auditing and the previous article ensure that the aim of UAE taxation procedures law is to regulate mutual rights and obligations between the Authority and the taxpayer, so the focus on this section will be on the UAE Taxation Procedures law.

The instructions of this section will include three main sub-sections which are the first sub-section is the obligations on the taxable person which assist the auditing. The second sub-section will be the rights of FTA in regard of auditing. The last sub-section will be the procedures of auditing.

§1. The obligations on the taxable person which assist the auditing

The taxable person is one of the main elements of implementing VAT. The reason of that is the VAT is an indirect tax which means the taxation authority not collecting the VAT from the consumer, taxable person is a responsible to collect that tax from the consumer and submit the money of tax to the taxation authority. So, the taxable person is one of the main elements in implementation VAT.

So, in result of that the taxation laws enact several obligations on the taxable person to ensure the success of VAT system and to ensure perfect collection of tax money, farther more the tax auditing job is to ensure that the taxable person do their obligations correctly.

A) The first obligations on the taxable person

The keeping accounting records and commercial books, article (4) from UAE Procedures Taxations law said *"any Person conducting any Business shall keep Accounting Records and Commercial Books of his Business and any Tax-related information as determined by the Tax Law and maintain the same according to the controls that will be specified by the Executive Regulation of this Law"*[2].

Its notes that the legislator enact rule that makes an obligation of keep accounting records and commercial books on the any person conducting any business. That means all business have obligation to keep accounting records and commercial books, that includes the taxable person

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 53.
[2] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 4.

and non-taxable person. In some time, there are numbers of business that are not register with the FTA, but that does not mean that there are not in the scope of previous article. The reason of that is obvious that the legislator gives the right to FTA to audit in all business either register or not register, because some time the non-register business are not register to violate the law.

The other comments on the previous article is the UAE Procedures Taxation law delegate the tax law to determine the accounting records and commercial books of his business and any Tax-related information. Based on that the UAE VAT law enact on article (78) the rules of keep accounting records and commercial books and determine the list of requirements. Article (78) from UAE VAT law said *"1. Without prejudice to the provisions related to record-keeping stated in any other law, the Taxable Person shall keep the following records: a. Records of all supplies and Imports of Goods and Services. b. All Tax Invoices and alternative documents related to receiving Goods or Services. c. All Tax Credit Notes and alternative documents received. d. All Tax Invoices and alternative documents issued. e. All Tax Credit Notes and alternative documents issued. f. Records of Goods and Services that have been disposed of or used for matters not related to Business, showing Taxes paid for the same. g. Records of Goods and Services purchased and for which the Input Tax was not deducted. h. Records of exported Goods and Services. i. Records of adjustments or corrections made to accounts or Tax Invoices. j. Records of any Taxable Supplies made or received in accordance with Clause (3) of Article 48 of this Decree-Law, including any declarations provided or received in respect of those Taxable Supplies. k. A Tax Record that includes the following information: 1) Due Tax on Taxable Supplies. 2) Due Tax on Taxable Supplies pursuant to the mechanism in Clause (1) of Article (48) of this Decree-Law. 3) Due Tax after the error correction or adjustment. 4) Recoverable Tax for supplies or Imports. 5) Recoverable Tax after the error correction or adjustment. 2. The Executive Regulation of this Decree-Law shall specify the following: a. Time limits, restrictions and conditions for keeping the records listed in Clause (1) of this Article. b. Restrictions and procedures regarding the maintenance of the confidentiality of the records that may be accessed by the Authority in the case of Government Entities mentioned under Clause (2) of Article (72) of this Decree-Law"*[1].

In addition, the article (4) from UAE Procedures Taxations law delegate the executive regulation to specify the controls of keep and maintaining the records. Based on that the

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 8 of 2017 on Value added tax, Official Gazette No. 621, issued on August 23rd 2017, Article 78.

legislator enact the rules of keeping accounting records and commercial books in article (2) from the executive regulation. The article said *"1. Accounting Records and Commercial Books shall include the following: a. Accounting books in relation to that Business, which include records of payments and receipts, purchases and sales, revenues and expenditures, and any business, and any matters as required under any Tax Law or any other applicable law, including: 1) Balance sheet and profit and loss accounts. 2) Records of wages and salaries. 3) Records of fixed assets. 4) Inventory records and statements (including quantities and values) at the end of any relevant Tax Period and all records of stock-counts related to Inventory statements. b. Additional records as may be required in the Tax Law and its Executive Regulation. 2. In addition to the Accounting Records and Commercial Books mentioned in Clause (1) of this Article, the Authority may require any other information in order to confirm, through an audit trail, the Person's Tax obligations, including any liability to register for Tax purposes"*[1].

In addition, the UAE legislator in the tax procedures executive regulation enact other rules in that regards to make the issue of keeping the records clearer. The executive regulation determines the period of keep the records for five years2 according to article (3/1) from the executive regulation.

The other rules were enacting in that regard, the rule of How to keep accounting records and commercial books, article (4) from the executive regulation said *"1. Unless otherwise required by the Tax Law, the obligation to maintain Accounting Records and Commercial Books shall be met through any of the following: a. Creating the record and the retention of original Documents which support the entries contained in the record. b. Creating the record and preserving the information that was contained in the original document, provided that: 1) The information matches the data contained in the original document, and shall be available during the periods referred to in Article (3) of this Decision. 2) The information retained or stored in either photocopy or electronic form, and an easily readable copy of it can be reproduced within a reasonable period, if requested by the Authority. 2. The Authority may lay down the rules of preserving information contained in Accounting Records and Commercial Books and impose*

[1] Cabinet decision No. 36 of 2017 on the Executive Regulations of Federal Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures issued on September 24th 2017, Article 2.
[2] Ibid., Article 3 § 1.

such reasonable requirements for ensuring that the information will be as readily available to it as if the original records themselves had been preserved"[1].

In my opinion the rules and article of keep records was good in drafting and to achieve the objectives of law, also there are no conflict with other laws in that regard.

B) The second obligations on the taxable person

is the language of the documents and records submitted to the FTA, each person must submit the documents, records, information and the tax return in Arabic language according to the main rule of that which mention in article (5/1) from the UAE taxation procedures law. The article said *"Each Person shall submit the Tax Return, data, information, records and documents related to the Tax and that he is required to submit to the Authority in Arabic as determined by the provisions of the Tax Law"*[2]. The exemption from the main rules is the FTA have a right to accept the documents, records, information and other related documents in other language under several conditions. Article (5/2) from the UAE taxation procedures law said *"The Authority may accept data, information, records, and documents related to Tax in any other language, provided that the Person provides the Authority with a translated copy of any of them into Arabic at his expense and responsibility, if so requested, and in accordance with the Executive Regulation of this Law"*[3]. Based on the previous article the legislator enacts the rules of accepting the other languages in the executive regulation.

Article (5) from the executive regulation of tax procedures law said *"1. Unless otherwise required by the Tax Law, the obligation to maintain Accounting Records and Commercial Books shall be met through any of the following: a. Creating the record and the retention of original Documents which support the entries contained in the record. b. Creating the record and preserving the information that was contained in the original document, provided that: 1) The information matches the data contained in the original document, and shall be available during the periods referred to in Article (3) of this Decision. 2) The information retained or stored in either photocopy or electronic form, and an easily readable copy of it can be reproduced within a reasonable period, if requested by the Authority. 2. The Authority may lay*

[1] Cabinet decision No. 36 of 2017 on the Executive Regulations of Federal Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures issued on September 24th 2017, Article 4.
[2] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 5 § 1.
[3] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 5 § 2.

down the rules of preserving information contained in Accounting Records and Commercial Books and impose such reasonable requirements for ensuring that the information will be as readily available to it as if the original records themselves had been preserved"[1].

In my opinion the legislator assists the FTA and the Business to follow the rules of taxation laws by enact the previous rules which is a reflects of business in UAE. UAE market is a regional market for the Arabian Gulf, Middle East, Asia and Africa. In the result of that the market includes the business from the mix states and the language market is the international language which is the English languages, but the legislator not stop at this point. The legislator accepts other languages not only Arabic or English, also the other languages but with several rules to save the rights of FTA and the Business.

C) The third obligations on the taxable person

The tax registration which is the one of the main obligations on the business, the element of obligations means if the business register with the FTA the business will be taxable person and responsible to charge VAT, submit tax return, submit the amount of tax and follow the taxations laws, in other side the business can use the deduct mechanism.

If the business is meet all requirements of registration and refuse or delay registering that means the business are violate the law, or even the business is meet the requirements of de-registration and the business refuse or delay to de-register the business consider as a violate of taxations law.

Article (6) from the UAE procedures taxation law enact that rule of registration and de-registration or amend the registration. Also, the executive regulation of tax procedures law follows the law and enact several rules of tax registration.

[1] Cabinet decision No. 36 of 2017 on the Executive Regulations of Federal Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures issued on September 24th 2017, Article 5.

D) The fourth obligations on the taxable person

Preparing and submit the tax returns on the time. The tax return means *"information and data specified for Tax purposes and submitted by a Taxable Person in accordance with the form prepared by the Authority"*[1].

The taxable person is responsible to prepare the tax return on each tax period and submit the money of tax to the FTA in the tax period. In addition, the taxable person is responsible of the information of tax which must be true, and the tax return must be complete according to article (8) form the procedures taxation law. the article said *"1. Each Taxable Person shall: a. Prepare the Tax Return for each Tax Period for each Tax within the time limit of registration in accordance with the Tax Law. b. Submit the Tax Return to the Authority in accordance with the provisions of this Law and the Tax Law. c. Settle any Payable Tax as specified in the Tax Return or any Tax Assessment within the timeframe specified in this Law and the Tax Law. 2. Any incomplete Tax Return submitted to the Authority shall be treated as not having been accepted by it if it does not include the basic information determined by the Tax Law. 3. Each Taxable Person is responsible for the accuracy of the information and data in the Tax Return and in all his correspondence with the Authority. 4. Each Taxpayer shall settle any Administrative Penalties prescribed within the period of time specified in this Law and the Tax Law"*[2].

In addition, the previous article mentions the tax period which is *"A specified period of time for which the Payable Tax shall be calculated and paid"*[3].

The tax return is an international system in the taxation field, the KSA law include the rules of tax return in articles (24), (25) and (26). The rules in KSA law are like the rules of UAE law in regards of tax return the face of similarity is the taxable person are responsible to prepare and submit tax return in the tax period.

Its good to refer that if there are any mistake in tax return the taxable person have a right to submit the Voluntary Disclosure[4] to correct his mistake.

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[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 1.
[2] Ibid., Article 8.
[3] Ibid., Article 1.
[4] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017; Cabinet decision No. 36 of 2017 on the Executive Regulations

§2. The rights of FTA in regard of auditing

The previous sub-section was regarding the obligations on the taxable person and on the any person who conducting the business which includes neutral person and legal person. In this sub-section the explanation will be on the rights of FTA to audit the business to ensure that the implementation of VAT is correct and to punish the person who violate the law in two aspects (criminal, administrative). The explanation will include four rights of authority, the right of the Authority to perform a Tax Audit, the Right of the Authority to Access the Original Records or Copies Thereof During a Tax Audit, the right of treatment the New Information Surfacing after a Tax Audit and finally Judicial Officers.

A) The right of the Authority to perform a Tax Audit

In my opinion this article is important to give the FTA legitimacy of auditing and the person who conduct business must accept that and accept the tax audit on his business. Article (17) from the procedures taxation law includes the right of FTA to perfume the tax audit on the any person who conduct business to ensure that the person are following the taxation legislations. The article gives the FTA right to do the audit in the FTA offices or in the Business place. The article organizes the issue of entering the place of business in regard of tax audit and the other rules which serve the tax audit. Article (17) said *"1. The Authority may perform a Tax Audit on any Person to verify the extent of that Person's compliance with the provisions of this Law and the Tax Law. 7 2. The Authority may perform the Tax Audit at its office or the place of business of the Person subject to the Tax Audit or any other place where such Person conducts Business, stores goods or keeps records. 3. If the Authority decides to perform a Tax Audit at the place of Business of the Person subject to the Tax Audit or any other place where such Person conducts his Business, stores goods or keeps records, the Authority shall inform him at least five business days prior to the Tax Audit. 4. By way of exception to Clause (3) of this Article, the Tax Auditor has the right of entry to any place where the Person subject to the Tax Audit conducts his Business, stores goods, or keeps records, and as the case may be, it will be temporarily closed in order to perform the Tax Audit for a period not exceeding 72 hours without prior notice in any of the following cases: a. If the Authority has serious grounds to believe that the Person subject to the Tax Audit is participating or involved in Tax Evasion in respect to this Person or another Person; b. If the Authority has serious grounds to believe that not temporarily closing*

of Federal Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures issued on September 24th 2017, Article 8.

the place where the Tax Audit is conducted will hinder the conduct of the Tax Audit; 5. If the Person who has been given advance notice of the Tax Audit under Clause (3) of this Article attempts to hinder the Tax Auditor's access to the place where the Tax Audit is to be performed. In all cases provided for in Clause (4) of this Article, the Tax Auditor shall obtain the prior written consent of the Director-General; and if the place to be accessed is a place of residence, then a permit from the Public Prosecutor shall also be obtained. 6. Places closed under this Article shall be reopened after the lapse of 72 hours, unless the Authority obtains a permit from the Public Prosecutor to extend the closure period for a similar period prior to the expiry of the preceding 72 hours. 7. A criminal case may be initiated only upon an application from the Director-General. 8. The Executive Regulation of this Law shall determine the necessary procedures related to the Tax Audit"[1].

The previous article enacts several rules which assist the tax auditing, the first rule is the right of FTA to audit any person who conduct business not only the taxable person. The reason of that is to audit the non-register to ensure that he is following the law. So, any business in UAE are subject to FTA tax auditing. The second rule is the FTA has a right to determine the place of tax audit in the FTA offices or in the business offices after informing him. The third rule is right is to temporarily be closed in order to perform the Tax Audit for a period not exceeding 72 hours without prior notice in any of the several cases, but that not happens without the prior written consent of the public prosecution in case the place is an accommodation. Based on that the tax audit can happen in the business place without notice. In my opinion, this rule must be under control and the legislations must amend to limit the right of tax auditing without notice. I suggest that can happen after approval from the General Manager of FTA in prepared form. The reason of that is to not abuse the rights of tax audit.

B) The Right of the Authority to Access the Original Records or Copies Thereof During a Tax Audit

Article (18) form the procedures taxation law enact the rules of access on the records, the article said *"while conducting a Tax Audit, the Tax Auditor may obtain the original records or copies thereof, or take samples of the stock, equipment or other assets from the place at which the Person subject to the Tax Audit conducts his business or which are in his possession, or may*

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 17.

seize them in accordance with the rules that shall be specified in the Executive Regulation of this Law"[1].

Based on the previous article the legislator enacts several rules in that regards in the executive regulation, article (14), (15) and (16) organized that issue. Its good to mention that the executive regulation give it the person who is the owner of the records the rights to copy the records in any time.

I think its gap in the legislation that not mention the tax audit on the several business for ensure the correct documents of other business which are the premier subject of audit. That happens in practice the tax audit happen with other business which have relation with the primer business which is the subject to tax audit. In my opinion the law must enact that rules because that happens without legal ambarella.

C) The right of treatment the New Information Surfacing after a Tax Audit

Article (20) from the proce dures taxation law said *"The Authority may audit any issue previously audited if new information that might impact the outcome of the Tax Audit surfaces, provided that the Tax Audit procedures apply in accordance with the provisions of this Law and its Executive Regulation"*[2] .

My comment in this article is that issue is not important and will restrict the tax audit, because in the general the FTA has a rights to audit in any time but its need the notifications before start the tax audit in general without determine the numbers of tax audit time. The previous article means that the FTA cannot make the re-tax audit or other tax audit after finish the tax audit without raise a new information's. In addition, and to ensure that the previous article is not important and restrict the FTA tax audit, the legislator not mention any rule related to previous article in the executive regulation.

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 18.
[2] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 20.

§3. The procedures of tax auditing

In this sub-section will see the three main procedures mentions in the UAE procedures taxation law which are the methods of notifications, timing of the tax audit and the notifications of the tax audit results.

A) Methods of Notifications

The issue of notifications is really important issue and the evidence that the person who is subject to tax audit are known that the tax audit will happens on his business with determined date. The reason of that the issue of notifications was mention in the UAE taxation procedures law, the UAE legislator not ignore that issue by enact the rules of notifications in the law. Article (11) from the UAE taxation procedures law said *"1. The Authority shall notify a Person of any decisions or procedures through the address stated in the correspondence between the Authority and that Person. 2. The Authority shall notify a Taxable Person through the address stated in the Tax Return, unless the Authority is informed of an address change by the Taxable Person, his Legal Representative or his Agent. 3. In all cases, a Person shall be treated as having been notified of any decision and as having received any correspondence if it appears that the Authority has sent the notification and correspondence according to the provisions of Clauses (1) and (2) of this Article. 4. The Executive Regulation of this Law shall specify the means used for Notifications and correspondence"*[1] .

In addition, the executive regulation follows the law in that matter and enacts several rules and conditions in matter of notifications. Article (9) form the executive regulation said *"1. The Authority shall execute the Notification by any of the following means: a. Post. b. Registered post. c. By electronic mail to the address provided by the Person being notified. d. Posting on the premises of the Taxable Person e. Any other means as may be agreed by the Person and the Authority. 2. If the Authority considers that notifying the unregistered person by the means mentioned in Clause (1) of this Article is not practical for the cases of Notification mentioned in Article (13) of this Decision, the Notification may be made by posting a notice in a printed or written form at the Premises at which a Tax Audit is to be conducted. 3. For the purposes of Clause (1) of this Article, the Authority may use any of the following contact addresses for a Person, according to the cases mentioned: a. For delivery by post or registered post: the*

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 11.

address provided by the Person to the Authority, or the address of their usual or last known place of residence or business may be used. This is an unofficial translation 8 b. In case of natural Person: the email address that they have provided to the Authority or the Person's last known email address may be used. c. In case of legal Person: the email address shall be used in the following order: 1) The email address that they have provided to the Authority. 2) The email address of any Person acting in favour or on behalf of the Person being notified concerning the relevant matter. 3) The last known email address of a Person acting in favour or on behalf of the Person being notified concerning the relevant matter. 4) Any other email address of another Person, if there are reasonable grounds to suppose that that Legal Person will receive the Notification through that other Person. 4. For the purposes of making a communication under Clauses (1) and (2) of this Article, the Authority may communicate with either of the following: a. The relevant Person. b. The Tax Agent or Legal Representative of the Taxable Person"[1].

B) Timing of the Tax Audit

There are two different timing for the tax auditing, the regular time in normal situations which must happens in normal time or the formal working hour for the FTA. The other time is when situations are not normal, and the situations required that the tax auditing in not working hours. Article (19) from the UAE taxation procedures law said *"a Tax Audit will be conducted during the official working hours of the Authority. In cases of necessity, a Tax Audit may be exceptionally conducted outside of these times by a decision of the Director-General"*[2].

In my opinion this article is fair for all parties of tax auditing, and it is fruitful to keep that element of determine the tax auditing outside the official working hours in hand of the General Director.

But the issue and question, the General Director are authorized or not to delegate that authority to another person?

[1] Cabinet decision No. 36 of 2017 on the Executive Regulations of Federal Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures issued on September 24th 2017, Article 9.
[2] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 19.

According the law of establishment the FTA the General Director ate authorized to delegate some of powers to the executive directors[1]. So, this a selection choice in hand of the General Director of FTA, he can delegate or not.

C) The Notifications of The Tax Audit Results

Article (23) from the UAE taxation procedures law enact the rules of notifications of the tax audit results which said *"1. The Authority shall inform the Person subject to Tax Audit of the final results of the Tax Audit within the time limit and according to the procedures specified in the Executive Regulation of this Law. 2. The Person subject to the Tax Audit may view or obtain the documents and data on which the Authority based its assessment of Due Tax according to the provisions specified in the Executive Regulation of this Law"*[2].

In addition, the executive regulation follows that methods in regard of notification after finishing the tax audit and the executive regulation enacts procedures rules and conditions.

Article (17) of the executive regulation said *"1. The Person subject to the Tax Audit shall be notified of the results of the Tax Audit within (10) business days from the end of the audit. 2. Where the Person subject to the Tax Audit is notified of the results of the Tax Audit in accordance with Clause (1) of this Article, he may request the Authority to view or obtain Documents and data on which the Authority based the assessment of Due Tax. Such request shall be made in writing or through such other form adopted by the Authority within (20) business days from the date of the notice provided by the Authority, and shall provide the requested information within (10) business days in the following manner: a. A paper or electronic copy of the Document or data requested. b. The original Document or data requested if such Documents or data belong to the Person subject to the Tax Audit who made the request. 3. The Authority is not required to provide: a. Documents or data which would reveal internal correspondence or decisions made by the Authority. b. Any confidential information or data related to any other Person or Persons. c. Any Documents or data, which are known to be in possession of the Person, who is subject to the Tax Audit and made the request. In this case, the*

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 13 of 2016 on Establishment of the Federal Tax Authority, Official Gazette, issued on September 26th 2016, Article 28 § 1-2.
[2] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 23.

Authority shall provide the Person subject to the Tax Audit with sufficient information to enable him to identify the Documents and data requested"[1]

It's fair to notify the person who was subject to tax audit with the results of that tax audit, and the rule of the FTA finish at this stage, then the person has a choice to complete the procedures or stop and satisfy with the result of FTA.

The person has a several right in matter of the tax audit, he can reject the result of the tax audit in the form of reconsiderations or in Tax Disputes Resolution Committee. Also, the legislations give the person who is subject to the tax audit several rights to save his rights and to stop abusing the law by the auditor, that will explain it in next section).

Section two. The Rights of Taxable Person in Regard of Tax Auditing

The taxation legislations give the FTA rights to tax auditing on the person who conducting business on UAE territory, on the other hand the taxation legislations give the person who conducting business on UAE territory to save him and his business rights from the abuse of tax auditing. The range of tax auditing is not open, but the tax auditing was limited by the legislations to save the business rights and in certain situations the law demands specified form before start the tax auditing like the approval form the General Director of FTA before start tax audit in outside the official timing. Also, the written approval from the Public Prosecutor before entering the business if the part of business place is for accommodations.

Considering of that this section will be specified on the rights of the taxable person and non-taxable person (person who conducting business but not register with FTA for VAT) in regard of protect the person from abuse of law and protect his privacy.

Conducting the article (3) from UAE Taxation Procedures law are mention the aims of taxation law which is *"this Law aims to achieve the following: 1. Regulation of the mutual rights and obligations between the Authority and the Taxpayer and any other Person dealing with the Authority; 2. Regulation of the common procedures and rules applicable to all Tax Laws in the*

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 17.

State"[1]. The subject of this section is the rights of taxable person in regard of tax audit and the previous article ensure that the aim of UAE taxation procedures law is to regulate mutual rights and obligations between the Authority and the taxpayer. So, the focus on this section will be on the UAE Taxation Procedures law.

In this section the consecration will be on several rights which are the related rights of tax audit, the rights of the person who is subject to tax audit, notification of the tax audit results, applications of reconsideration, tax despite resolution committee, challenge before courts, application for tax refund, professional confidentiality and statute of limitation.

§1. The Related Rights of Tax Audit

As mention in last section the FTA has a right to tax audit according to article (17) from the UAE taxation procedures law, but that rights are not open, there are several restricted on that rights, that restricted on the tax audit consider as a right of person who is subject to tax audit.

The restricted mainly three types the first condition is the notify the person before five working days of tax audit according to article (17/3) which said *"If the Authority decides to perform a Tax Audit at the place of Business of the Person subject to the Tax Audit or any other place where such Person conducts his Business, stores goods or keeps records, the Authority shall inform him at least five business days prior to the Tax Audit"*[2]. It's obvious that the reason of that is to give the person who is subject to tax audit proper time to prepare himself and prepare the records which may take time. In my opinion this right is suitable for both the FTA and the person who is subject to tax audit, because that will give him time to prepare the records which good for FTA tax audit to not spend time, also suitable for the person who is subject to tax audit to not influence on his daily business if the notification happens before five working day.

The question if what is the situation if the notification happens not in the correct period of tax audit? The person who is subject to tax audit has a right to refuse the result of tax audit because the tax audit was not following the form which is a requirement of tax as per the law.

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 53.
[2] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 17 § 3.

The second right of person who is subject to tax audit in regard of tax audit is the approval from public prefecture.

There are exemption from the notifying the person who is subject to tax audit before the tax audit start, whereas the tax audit can enter the place of business, stores goods, or keeps records and can temporarily closed in order to perform the Tax Audit for a period not exceeding 72 hours without prior notice in any of the cases which mention in article (17/4) which said *" a. If the Authority has serious grounds to believe that the Person subject to the Tax Audit is participating or involved in Tax Evasion in respect to this Person or another Person; b. If the Authority has serious grounds to believe that not temporarily closing the place where the Tax Audit is conducted will hinder the conduct of the Tax Audit; c. If the Person who has been given advance notice of the Tax Audit under Clause (3) of this Article attempts to hinder the Tax Auditor's access to the place where the Tax Audit is to be performed"*[1].

In all previous cases, the Tax Auditor shall obtain the prior written consent of the Director-General; and if the place to be accessed is a place of residence, then a permit from the Public Prosecutor shall also be obtained[2].

The question is why do they need the written approval form the General Director of FTA and the Public Prosecutor permit if the place to be accessed is a place of residence?

For the approval from the General Director of the FTA because its major issue and for a regulation issue its need approval from him and to not keep that major issue between tax auditor hands. Also, the General Director has a right to delegate that issue to one of the executive regulations based on the FTA establishment law as mention in previous section. In addition, its also protocol issue because the communication with the Public Persecution usually happen from the senior's positions.

The issue of permission from the public prosecution is a constitutional issue, whereas the article (36) from the UAE constitution said *"Habitations shall be inviolable. They may not be entered without the permission of their inhabitants except in accordance with the provisions of the law and in the circumstances laid down therein"*[3]. The UAE prevent entered any house without the

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 17 § 4.
[2] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 17 § 5.
[3] United Arab Emirates, The Constitution of UAE, Article 36.

permission of the inhabitants and expected from that the provisions of the law and in the circumstances laid down therein. The law in the previous article means the criminal procedures law. based on that article (51) from UAE procedures criminal law enact the rules that entering the houses must be after permission from the Public Prosecutor.

In my opinion the UAE procedures taxation law follow the UAE legislation in that regard and save the right of not entering houses without permission from Public Prefecture.

If the tax auditor not follow the law and enter to the house which part of the house is for conducting business and that entering was without permission from Public Prefecture. The tax auditor will be made a mistake and violate the law and his charge will be entering the houses without approval from the holder of the house according to the UAE penal law.

The third right of person who is subject to tax audit in regard of tax audit is *"A criminal case may be initiated only upon an application from the Director-General"*[1]. This is a regulation issue and internal issue inside the FTA, but in other side it considers as a major issue which needs an application from the Director – General of FTA, and that also ensure that the Director-General of FTA is a legal representative of FTA.

§2. The rights of the person who is subject to tax audit

That's rights are mentions in article (22) from the UAE procedures taxation law, the articles said *"The person subject to tax audit shall have the right to: 1. Request the Tax Auditors to show their job identification cards. 2. Obtain a copy of the Tax Audit Notification. 3. Attend the Tax Audit which takes place outside the Authority. 4. Obtain copies of any original paper or digital documents seized or obtained by the Authority during the Tax Audit, according to what is specified in the Executive Regulation of this Law"*[2].

That's rights which mentions in the previous article are simple and to keep the person who is subject to tax audit aware of the tax auditing and the result of that and aware of the tax auditors. Also, that rights are enhance the transparency of the tax audit.

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 17 § 7.
[2] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 22.

In assumption the previous article is not exist, the result of that, the person subject to tax audit will not be aware of the tax audit and that will open the field to fraud on the business. Also, the person who is subject to tax audit can't apply on the reconsideration because he doesn't know the result of the tax audit.

In addition, the person who is subject to tax audit may his business will impact because the tax audit can take his record and he can't take a copy of that records in assumption the previous article is not exist. So, in what mentions above the article (22) from the UAE procedures taxation law is important to save the rights of the person who is subject to tax audit.

The other issue in this regard is the notification of the result of tax audit. Article (23) from the UAE procedures taxation law said *"1. The Authority shall inform the Person subject to Tax Audit of the final results of the Tax Audit within the time limit and according to the procedures specified in the Executive Regulation of this Law. 2. The Person subject to the Tax Audit may view or obtain the documents and data on which the Authority based its assessment of Due Tax according to the provisions specified in the Executive Regulation of this Law"*[1].

As mention above the right of notification will assist the person who subject to tax audit to see the result of the tax audit also, he can decade if he will complete the procedures like apply the tax reconsideration.

In that regard the FTA can't audit on the records after five years of that records according to article (42) from the UAE procedures taxation law. The article said *"1. Except in cases of proven Tax Evasion or non-registration for Tax purposes, the Authority may not conduct a Tax Assessment after the expiration of five years from the end of the relevant Tax Period. 2. In case Tax Evasion is proven, the Authority may conduct a Tax Assessment within 15 years from the end of the Tax Period in which the Tax Evasion occurred. 3. In cases of non-registration for Tax purposes, the Authority may conduct a Tax Assessment within 15 years from the date on which the Taxable Person should have registered"*[2]. In general, the period of tax record must happen within 5 years but the exemption is in case of tax evasion which limited to 15 years because its related with criminal case.

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 23.
[2] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 42.

§3. Applications of Reconsideration

This right is mentions in article (22) from the UAE procedures taxation law, the articles said *"1. Any Person may submit a request to the Authority to reconsider any of its decisions issued in connection to him, in whole or in part, provided that reasons are included, within 20 business days from him being notified of the decision. 2. The Authority shall review a request for reconsideration if it has fulfilled the requirements and issue its justified decision within 20 business days from receipt of such application. The Authority shall inform the applicant of its decision within five business days as of the issuance thereof"*[1].

Actually, this right is a result of the tax audit, after notifying the person who was subject to tax audit with the result of that tax audit, so that right in hand of person by the law, but he must follow the procedures of the reconsideration which mention in the article (27) from the previous law.

The question rise is Are the FTA has a right to cancel the penalties or to decrease that penalties?

As known the FTA is a executive entity not judicial entity or court to cancel or amend the penalties, the FTA are responsible to apply the law and the right to cancelation are not with them, but article (46) from the UAE procedures taxation law allow the FTA to reduce or cancel the penalties according to the previous article which said *"if the Authority imposes an Administrative Penalty on any Person for violating the provisions of this Law or the Tax Law, the Authority may reduce or waive such Administrative Penalty if the Person produces evidence justifying the reason for his failure to comply, pursuant to the controls specified in the Executive Regulation of this Law"*[2].

Based on what mention above the person who is subject to tax audit have a right to reconsider his penalty and submit his application to the FTA, also the FTA has a right to review the application and reject or accept the application then keep the penalties as its or cancel it or amend it.

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 27.
[2] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 46.

§4. Tax disputes resolution committee

This committee have jurisdiction on *"1. decide in respect of objections submitted regarding the Authority's decisions on applications for reconsideration. 2. decide in respect of applications for reconsideration that were submitted to the Authority and yet, the Authority has not made a decision in their regard according to the provisions of this Law. 3. any other jurisdictions entrusted to the Committee by the Cabinet"*[1]. Also, the form of the committee is *"1. One or more permanent committee shall be formed known as the "Tax Disputes Resolution Committee", chaired by a member of the judicial authority and two expert members registered in the register of tax experts to be appointed by a decision by the Minister of Justice in coordination with the Minister. 2. A Cabinet Decision shall be issued regarding the Committee's bylaws, the remuneration of its members, and the procedures followed thereby"*[2].

The procedures of the committee are *"1. An objection regarding the Authority's decisions on applications for reconsideration shall be submitted within 20 business days from the date of Notification. 2. An objection submitted to the Committee shall not be accepted in the following instances: a. if a reconsideration request has not been previously submitted to the Authority. b. if the Tax and Penalties subject of the objection have not been settled"*[3].

In my opinion in case the taxable person refuses to pay, and he submit his application the tax disputes resolution committee will reject his application, then he can direct submit his application to the court. So that considers a gab in the law and its useful for the person who don't want to pay.

The procedures of the committee are *"1. The Committee shall review the objection submitted thereto and make a decision within 20 business days from receipt of the objection. 2. The Committee may extend the period for deciding on the objection for no more than 20 additional business days after the end of the time limit specified in Clause (1) of this Article if it sees that there are reasonable grounds for the purpose of deciding on the objection. 3. The Authority shall inform the Person submitting the objection of its decision within five business days as of its issuance. 4. The Committee's decision on the objection shall be deemed as final if the total amount of the Due Tax and Administrative Penalties determined accordingly does not exceed*

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 29.
[2] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 28.
[3] Ibid., Article 30.

100,000 Dirhams. 5. In no case may Tax disputes be brought before the Competent Court if an objection has not been first submitted to the Committee".

The clause (5) from the previous article ensure that the competent court can't receive any tax case before submit the objection to the committee, but if the person submit the case to the committee without paying the penalties. The committee will reject the case or objection according to article (30), then the person can submit his case to the court.

In my opinion that committee is not judicial committee even if the president of that committee is a judge, for two reasons. The first reasons is the committee is established by a decision from the cabinet of ministers. The second reason is the decision of the committee, in case of objection, the first stage of court (Court of First Instance) will see the case not the Court of Appeal. And that is good for the person or taxable person because at that procedures the person will not miss one chance of reconsider the case.

In addition, there are several rules to challenge before courts which mentions in article (33) from the law. the article said *"1. Without prejudice to the provisions of Article (32) of this Law, the Authority and a Person may challenge any of the Committee's decisions before the Competent Court within 20 business days from the date of notification of the objector thereof. 2. Challenges may be made to the Competent Court in the following instances: a. An objection to the whole or part of the decision of the Committee. b. Non-issuance of a decision by the Committee regarding an objection submitted to it in accordance with the provisions of this Law"*[1]. Not following this rule will lead to reject the acceptance the case and lose the rights. At the end the law saves the rights of person who is subject to tax audit, but he needs to follow the procedures and rules of law.

An example of that the right of taxable person to submit the application for tax refund and his right to refund his money. The legislation save that right to the taxable person by enacting the article No (34) from the UAE tax procedures law, the article said *"a Taxpayer may apply for a refund of any Tax he has paid if he is entitled to a refund under the Tax Law and it appears that the amount he has paid is in excess of the Payable Tax and Administrative Penalties, pursuant to the procedures specified in the Executive Regulation of this Law"*[2].

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 33.
[2] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 34.

According to the previous article the UAE legislation save the rights of the taxable person to refund his money, but the taxable person must follow the procedures and rules of that which mentions in the executive regulation of tax procedures law in article (24).

§5. Professional confidentiality and Conflict of Interest

In the fact the UAE tax procedures law include two articles which addressed directly all the FTA employees to save the transparency and dignity of the FTA and FTA employees reputation. The issue of confidentiality and conflict of interest will save in direct way the business rights.

The law organizes the issue of conflict of interest in article (49) from UAE tax procedures law, which said *"all Authority's employees are prohibited from performing or participating in any tax procedures related to any Person in the following cases: 1. The existence of a kinship up to the fourth degree between the employee and said person. 2. The existence of a common interest between the employee and said Person or between any of their relatives up to the third degree. 3. If the Director-General decides that the employee should not perform any tax procedures related to that Person due to any case of conflict of interest"*[1].

In fact, this article enacts the rules to prevent conflict of interest to happen, but this article not provide the rules is the employees violate that rules and not follow the legislation or event what the employee knows that he is in the deep of conflict of interests and he want to disclose that? In addition, the previous article not mentions that the executive regulation must enact the rules of disclosure.

So, in this regard the general rules will apply, whereas the FTA employees are working with the federal government, the rules of Human Resources of federal government will apply.

In my opinion the rules of Human Resources of federal government are very general for all federal government employees, my suggestion is the FTA must issue the code of conducts and code of ethics to enacts all rules of prevent the conflict of interest. In this regard, the board of FTA have a right to enact the internal policies of FTA according to article (6/4) from the FTA establishment law.

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 49.

The second issue is what mention in article (41) from the UAE tax procedures law regarding the professional confidentiality, the article said *"1. Employees of the Authority shall not disclose information that they have obtained or to which they have had access to in their capacity as employees or by reason of such capacity during their employment, save as specified or defined in accordance with the Executive Regulation of this Law. 2. In all cases provided for in Clause (1) of this Article, disclosure may be made only with the approval of the officers authorised by the Authority's board of directors, in accordance with the Executive Regulation of this Law. 3. The employees of the Authority shall, after cessation of their employment, continue to maintain professional confidentiality, and shall not disclose information that they have obtained or to which they have had access to in their capacity as employees or by reason of such capacity, unless otherwise requested by the judicial authorities and in accordance with the Executive Regulation of this Law. 4. Any person who has obtained information pursuant to the provisions of this Law shall not disclose or use the information for any purposes other than those for which the information was obtained, without prejudice to the liability resulting therefrom where necessary. 5. The Authority's board of directors shall issue the regulations and instructions regulating the internal procedures to protect confidentiality of information within the Authority, and the obligations of the Tax Agent in this regard"*[1].

The previous article saves the main right of the taxable person, that will save the privacy of the taxable person and to keep healthy competitive between the businesses in the state. Its good to mention that the legislator did a good job when he mentions in clause (3) that the employees of the Authority shall after cessation of their employment continue to maintain professional confidentiality. Also, its good from the legislator to mention that the board of directors shall issue the regulations and instructions regulating the internal procedures to protect confidentiality of information within the Authority.

[1] United Arab Emirates, The Federal Decree-Law of the United Arab Emirates No. 7 of 2017 on Tax Procedures, Official Gazette No. 616, issued on June 11th 2017, Article 41.

General Conclusion

At the end of the thesis its valuable to discuss the results of implementation the VAT in UAE and the success of legislation to assist implementation the VAT in UAE, after more the two years of implementation the two types of indirect taxes which are VAT and Excise tax its reasonable to evaluate the UAE taxation legislation. Before start that, the problematic of this thesis was summarized in three main points, the first point is the political challenges, economic challenges and social challenge. Will start discussing that, then will evaluate the taxation legislation.

The first challenge was the political challenge or the constitutional challenge, and that was solve it by the UAE constitution which determine the responsibility and the jurisdictions of the federal government which responsible on implementation the federal tax and the domestic government must assist to implementation the federal taxes. After that the cabinet of ministries issued a decision that the revenue of the VAT must be 30% of that for the federal government and the rest for the domestic governments. In the thesis that issue was cover it and explained with details.

The second challenge was the economic issue which means the capability of the business sector to assist implementation the VAT, its obvious that the FTA open the registration for the taxable person who is exceed the threshold. The registration was open at the third quarter in 2017 until May 2018. In addition, there are a number of taxable persons not register in the VAT system with FTA, so the FTA apply the law and charge penalties of that violation, but the challenge was on the small and medium enterprise still the system hard for them. So, my suggestion on that is to change the system of collecting VAT from that enterprise it’s hard for them to implement same rules like what implement on big enterprises. I think implementing the system of estimation is butter of them.

In addition, the legislations of taxation not serving the VAT in regard of continues contracts as it explained in the body of thesis and that made a loss for the private sector and loss from the consumer.

But in general, the economic challenge disappears after two years of implementation the VAT, the reason of that is the FTA was held a lot of awareness and tax clinics in all emirates with answering all questions from the taxable person, in additional the huge number of tax agents assist the enterprises to follow the law and good implementation of law.

The third challenge was the social challenge, in my opinion still that issue not solve which needs to focus on the colleges and universities. I believe that the change must be from the higher education. I suggest to add classes in colleagues and universities for taxation system in UAE.

For the issue of taxation legislation, at the beginning the GCC VAT agreement, I think the system of VAT in GCC need a GCC VAT court which can settle the despites and can explanation the GCC taxation agreements. In addition, the GCC VAT agreement does not include the reduced rates which can implement in future on several essential goods which will assist the poor people (that issue was explain it in body of the thesis).

For the UAE legislation for taxation it's obvious that the legislation in UAE was good and assist to implement the VAT and in general the legislator develops that legislation by adopting the decision of gold and decision of EXPO. It's good to mention that there are some mistakes and disputes between the UAE legislation and GCC agreement and the VAT law with Guidebooks but that in general not a huge issue and that the rule of courts to emend the legislations.

The VAT system is not new in the world and take many years to adopt, develop and spread in the world, and its not fear to compare that VAT system in UAE with other states, but the comparations is only for improving. I think the VAT system in UAE is good for the beginners and its obvious that the FTA try to develop the VAT and not influence on the market.

I believe that the idea of implementation VAT in UAE is good idea to establish other incomes to governments and not depending on revenue of Oil. VAT is a sustainable income for the governments but needs good implementation because bad implementation will impact on the and that will lead to side effects. So, the VAT need perfect implementation with apply the law and prevent all kind of fraud, I believe that the UAE government is solid and can easily implement the VAT with less impact of fraud.

In addition, the trade is developing day after day, so the FTA must look to the update the legislations and the FTA must focus on the online trade which is the future of the trade and that

kind of trade will come definitely. So, in this regard the legislation must amend to follow that update in market.

I believe the future of taxation will linked with the Artificial Intelligence which is the future of the world, perhaps the tax auditing will happen by using the artificial Intelligence. So, in that regards the VAT system must updated with that change, because that technology will used by the taxable person so the FTA must know how to deal with that.

Finally, the implementation of taxation system or indirect system in UAE that means is starting of new era. That means the system of fees must change, and the depending must be on tax not fees, because the tax is more sustainable and transparency comparing with fees.

ANNEXES

ANNEXE NO.1	**Common VAT Agreement of the States of the Gulf Cooperation Council (GCC)**
ANNEXE NO.2	**Federal decree-law No. (8) of 2017 on Value Added Tax**
ANNEXE NO.3	**Federal Decree-law No. (7) of 2017 in Excise Tax**
ANNEXE NO.4	**Federal law No. (7) of 2017 on Tax Procedures**

ANNEXE NO.1

Common VAT Agreement of the States of the Gulf Cooperation Council (GCC)

Common VAT Agreement of the States of the Gulf Cooperation Council (GCC)

The Member States of the Gulf Cooperation Council (GCC), namely:
The United Arab Emirates,
The Kingdom of Bahrain,
The Kingdom of Saudi Arabia,
The Sultanate of Oman,
The State of Qatar, and
The State of Kuwait,
Pursuant to the objectives set out in the Statute of the Gulf Cooperation Council aimed at the importance of developing existing cooperation relations amongst them in various fields;
In line with the objectives of the GCC Economic Agreement of 2001, which seeks to reach advanced stages of economic integration, and develop similar economic and financial legislation and legal foundations amongst member states , and with a desire to promote the GCC economy and proceed with the measures that have been taken to establish economic unity amongst Member States; and
Pursuant to the Supreme Council decision at its 36th meeting (Riyadh – 9-10 December, 2015) with respect to the common imposition by the GCC States of VAT at a rate of 5%, and delegating to the Financial and Economic Cooperation Committee the completion of all the requirements necessary to pass the (Common VAT Agreement of the states of the Gulf Cooperation Council) and signing it. And whereas this Agreement aims to establish a common legal framework for the introduction of a general tax on consumption in the GCC known as (VAT) levied on the import and supply of Goods and Services at each stage of production and distribution.
have agreed to the following:

Chapter One
Definitions and General Provisions
Article 1
Definitions

In the application of the provisions of this Agreement, the following words and expressions shall bear the meanings set forth against each of them unless the context otherwise requires:
Council: Gulf Cooperation Council.
Agreement: The Common VAT Agreement of the States of the GCC.
Tax: Value Added Tax (VAT) imposed on the import and supply of Goods and Services at each stage of production and distribution, including "Deemed Supplies".
Member State: Any country with full membership of the GCC in accordance with the Council's statute. .
GCC Territory: All territories of the GCC Member States.
Local Law: The VAT Law and any relevant legislation issued by each Member State.
Person: Any natural or legal person, public or private, or any other form of partnership.
Taxable Person: A Person conducting an Economic Activity independently for the purpose of generating income, who is registered or obligated to register for VAT in accordance with the provisions of this Agreement.
Economic Activity: An activity that is conducted in an ongoing and regular manner including commercial, industrial, agricultural or professional activities or Services or any use of material or immaterial property and any other similar activity.
Taxable Trader: A Taxable Person in any Member State whose main activity is the distribution of Oil, Gas, Water or Electricity.
Place of Business: The place where a business is legally established, or where its actual management center is located where key business decisions are made if different from the place of establishment.

Fixed Establishment: Any fixed location for a Business other than the Place of Business, in which the business is carried out and is distinguished by the permanent presence of human and technical resources in such a way as to enable the Person to supply or receive Goods or Services.
Place of Residence of a Person: The location of Place of Business or any other type of Fixed Establishment is. In the case of a natural person, if he does not have a Place of Business or Fixed Establishment, it will be his usual place of residence. If a Person has a Place of Residence in more than one State, the place of residence will be considered to be in the place most closely connected with the supply.
Resident Person: A person will be resident in a State if he has a place of residence therein.
Non-Resident Person: A person is not resident in a State if he has no Place of Residence therein.
Supplier: A Person who supplies Goods or Services.
Customer: A Person who receives Goods or Services.
Reverse Charge: A mechanism by which the Taxable Customer is obligated to pay the Tax due on behalf of the Supplier and is liable for all the obligations provided for in this Agreement and the Local Law.
Related Persons: Two or more Persons where one of them has supervisory or directive control over the others in such a way that he has administrative power that enables him to influence the business of the other Persons from a financial, economic or regulatory aspect. This includes Persons who are subject to the authority of a third Person that enables him to control their businesses from the financial, economic or regulatory aspect.
Supply: Any form of supply of Goods or Services for consideration in accordance with the cases provided for in Chapter Two of this Agreement.
Deemed Supply: Anything that is considered a Supply in accordance with the cases provided for in Article 8 of this Agreement.
Input Tax: Tax borne by a Taxable Person in relation to Goods or Services supplied to him or imported for the purpose of carrying on the Economic Activity.
Common Customs Law: The Common Customs Law of the States of the GCC.
First Point of Entry: First customs point of entry through which Goods enter the GCC Territory from abroad in accordance with the Common Customs Law.
Final Destination Point of Entry: Customs point of entry through which Goods enter the Final Destination State within the GCC Territory.
Consideration: Everything collected or to be collected by the Taxable Supplier from the Customer or a third party for the Supply of Goods or Services inclusive of the VAT.
Exempted Supplies: Supplies on which no Tax is charged and for which associated Input Tax is not deducted pursuant to the provisions of the Agreement and Local Law.
Taxable Supplies: Supplies on which Tax is charged in accordance with the provisions of the Agreement, whether at the standard rate or zero-rate, and for which associated Input Tax is deducted in accordance with the provisions of the Agreement.
Intra-GCC Supplies: Supplies of Goods or Services by a Supplier who resides in a Member State to a Customer who resides in another Member State.
Goods: All types of material property (material assets), including water and all forms of energy including electricity, gas, lighting, heating, cooling and air conditioning.
Import of Goods: The entry of Goods into any Member State from outside the GCC Territory in accordance with the provisions of the Common Customs Law.
Export of Goods: Supply of Goods from any Member State to the outside of the GCC Territory in accordance with the provisions of the Common Customs Law.
Competent Tax Administration: The relevant Government entity in each Member State responsible for the administration, collection and enforcement of the Tax.
Deductible Tax: Input Tax that may be deducted from Tax Due on supplies for each Tax Period in accordance with the Agreement and Local Law.
Capital Assets: Material and immaterial assets that form part of a business's assets allocated for long-term use as a business instrument or means of investment.
Tax Period: The period of time for which the Net Tax must be accounted.
Net Tax: Tax resulting from deducting the Deductible Tax in a Member State from the Tax due in that State within the same Tax Period. Net Tax may either be payable or refundable.
Mandatory Registration Threshold: The minimum limit of the value of actual supplies at which the Taxable Person becomes obligated to register for Tax purposes.

Voluntary Registration Threshold: The minimum limit of the value of actual supplies at which the Taxable Person may apply to register for Tax purposes.
Ministerial Committee: The Financial and Economic Cooperation Committee of the Council States

Article (2)
Scope of Tax

The Agreement shall come into effect in the GCC and Tax shall be imposed on the following transactions:
1. Taxable Supplies by a Taxable Person in the Member State Territory.
2. Receipt by a Taxable Customer of Goods or Services supplied to him by a Non-Resident and non-Taxable Person in the Member State in instances where Reverse Tax Mechanism applies.
3. Importation of Goods by any Person

Article (3)
Calculation of Dates

Dates and Timeframes stipulated in the Agreement shall be calculated according to the Gregorian Calendar.

Article (4)
VAT Group

Each Member State may treat the VAT Group as a single Taxable Person in accordance with the rules and conditions it puts in place for that purpose. A VAT Group means two or more Corporate Persons who are Residents of the same Member State.

Chapter Two
Supplies within the Scope of the Tax

Article (5)
Supply of Goods

1. A Supply of Goods means the transfer of ownership of such Goods or the right to dispose of the same as an owner.
2. A Supply of Goods includes the following transactions:
a) disposal of Goods under an agreement that provides for the transfer of ownership of these Goods or the possibility of transferring the same at a date subsequent to the date of the agreement, which shall be no later than the date on which the Consideration is paid in full;
b) granting rights in rem deriving from ownership giving the right to use real estate;
c) compulsory transfer of ownership of the Goods for Consideration pursuant to a decision of the public authorities or by virtue of any applicable law.

Article (6)
Transporting Goods from One Member State to Another

1. A Taxable Person who transports Goods forming part of his assets for the purposes of his business from the place where they are in a Member State to another place in another Member State shall be deemed to have made a Supply of Goods.
2. A transportation of Goods as provided for in subsection 1 above shall not be considered a Supply of Goods if it was done for one of the following purposes:
a) to use the Goods in the other Member State temporarily within the conditions of temporary entry provided for in the Common Customs Law;
b) where the transportation of goods is done as part of another Taxable Supply in the other Member State.

Article (7)
Supply of Services

Any Supply that does not constitute a Supply of Goods under this Agreement shall be considered a Supply of Services.

Article (8)
Deemed Supply

1. A Taxable Person shall be deemed to have made a Supply of Goods when disposing of Goods that form part of its assets in any of the following cases:
a) disposal of Goods, for purposes other than Economic Activity, with or without a Consideration;
b) changing the use of Goods to use for non-taxable Supplies;
c) retaining Goods after ceasing to carry on an Economic Activity; and
d) supplying Goods without Consideration, unless the Supply is in the course of business, such as samples and gifts of trivial value as determined by each Member State.

2. A Taxable Person shall be deemed to have made a Supply of Services in any one of the following cases:
a) use by him of Goods that form part of his assets for purposes other than those of an Economic Activity; and
b) Supplying Services without Consideration.
3. The provisions of this article shall apply if the Taxable Person has already deducted Input Tax related to the
Goods and Services mentioned in this Article.
4. Each Member States may determine the conditions and rules for the implementation of this Article.

Article (9)
Receiving Goods and Services

1. If the Taxable Person in a Member State receives taxable Goods or Services from a Person who is a resident in another Member State, then he shall be deemed to have supplied these Goods or Services to himself and the Supply shall be taxable in accordance with the Reverse Charge Mechanism.
2. If a Taxable Person residing in a Member State receives Services from a person who is not resident in the GCC Territory, then that Person shall be deemed to have supplied these Services to himself and the Supply shall be taxable according to the Reverse Charge Mechanism.

Chapter Three
Place of Supply
Part One
Place of Supply of Goods

Article (10)
Supply of Goods without Transportation

The place of a Supply of Goods that occurs without transportation or dispatch thereof shall be the place where the Goods are located on the date they are placed at the Customer's disposal.

Article (11)
Supply of Goods with Transportation

The place of a Supply of Goods that occurs with transportation or dispatch thereof by the Supplier or to the account of Customer shall be the place where the Goods are located when the transportation or dispatch commences.

Article (12)
Special Case of Internal Supplies with Transportation

1. As an exception to the provisions of Article 11 of this Agreement, the place of supply for an Intra-GCC supply of Goods with transportation or dispatch thereof from one Member State to another shall be in the State in which the transportation or dispatch of the goods terminates in the following cases:
a) if the Customer is a Taxable Person.
b) without prejudice to subsection 2 of this Article, if the Customer is not a Taxable Person and the Supplier is registered or is obligated to be registered in the country where the Customer resides.
2. The place of an Intra-GCC Supply of Goods with transportation or dispatch thereof but without installation or assembly by a Supplier who is registered for Tax purposes in a Member State in favor of a Customer who is not registered for Tax purposes in another Member State shall be the place where the Goods are located on the date the transportation or dispatch begins, provided that the total value of the Supplies of that Supplier during any 12 months period does not exceed an amount of SAR 375,000 or its equivalent in GCC currencies, in the State to which the Supply is provided. In the event that the total value of the supplies exceeds this amount, this shall result in the Supplier registering in that State.
3. If transportation of Goods from one Member State to another cannot be established through compliance with the obligations provided for in Article 6 of this Agreement and the Local Laws, the place of supply shall be where the Goods are located on the date the transportation or dispatch begins.
4. In the event of a Supply of Goods that occurs without transportation or dispatch, and it is later established that transportation or dispatch of such Goods to a Member State took place in the circumstances provided for in subsection 1 of this Article, the State in which the transport or dispatch ends has the right to recover the Tax from the Member State where the transportation or dispatch started in accordance with the Automated Direct Transfer Mechanism in force with Customs or any other mechanism approved by the Ministerial Committee.

Article (13)

Intra-GCC Supplies to Non-Registered Persons

Each Member State has the right to claim from another Member State the tax paid if the value of the Supply exceeds the amount of SAR 10,000 or its equivalent in other currencies of the GCC to individuals and non-registered persons, and the settlement of Tax shall be according to the Customs Duties Automated Direct Transfer Mechanism applicable under the framework of the Customs Union of the GCC. The Ministerial Committee may propose any other mechanisms.

The Member State may also impose Tax on these supplies at its points of entry to such State if no evidence is presented that the Tax was paid in the other Member State.

Article (14)

Supply of Gas, Oil, Water and Electricity

As an exception to the provisions of Articles (10) and (11) of this Agreement:

1. The place of supply for gas, oil and water through the pipeline distribution system and Supply of electricity by a Taxable Person who is established in a Member State to a Taxable Trader established in another Member State shall be the place where the Taxable Trader is established.
2. The place of supply for gas, oil and water through the pipeline distribution system and Supply of electricity to a person who is not a Taxable Trader shall be the place of actual consumption.

Part Two

Place of Supply of Services

Section One

General Principle

Article (15)

Place of Supply of Services

The place of supply for Services provided by a Taxable Supplier shall be the Place of Residence of the Supplier.

Article (16)

Place of Supply of Services between Taxable Persons

As an exception to the provisions of Article 15 of this Agreement, the place of supply for Services provided by a Taxable Supplier to a Taxable Customer shall be the Place of Residence of the Customer.

Section Two

Special Cases

Article (17)

Leasing Means of Transport

As an exception to the provisions of Article 15 of this Agreement, the place of supply for leasing means of transport by Taxable Supplier to a Non-Taxable Customer shall be the location where these means of transport were placed at the Customer's disposal.

Article (18)

Supply of Goods and Passenger Transportation Services

As an exception to the provisions of Article 15 of this Agreement, the place of supply of Services for the transportation of Goods and passengers and related Services shall be the place where transportation begins.

Article (19)

Supply of Real Estate Related Services

1. Real Estate Related Services shall mean those that are closely linked to real estate, including:

a) real estate experts and agent services;

b) granting the right to possess or use real estate;

c) services related to construction work;

2. As an exception to the provisions of Article 15 of this Agreement, the place of supply of Real Estate Related Services shall be where the real estate is located.

Article (20)

Supply of Wired and Wireless Telecommunication Services and Electronically Supplied Services

The place of supply for wired and wireless telecommunication Services and electronically supplied Services shall be the place of actual use of or enjoyment from these Services.

Article (21)

Supply of Other Services

The place of supply for the following Services shall be the place of actual performance:

a) Restaurant, hotel and catering services.

b) cultural, artistic, sport, educational and recreational Services.
c) services linked to transported Goods supplied from a taxable Supplier residing in a Member State to a non-taxable Customer residing in another Member State.

Part Three
Place of Import
Article (22)
Place of Import

1. The place of import for Goods shall be the State of the First Point of Entry.
2. When Goods are placed under customs duty suspension under the Common Customs Law immediately upon entry into the GCC Territory, then the place of import shall be in the Member State where these Goods were released from the duty suspension status.

Chapter Four
Tax Due Date
Article (23)
Date of Tax Due on Supplies of Goods and Services

1. Tax becomes due on the date of the supply of Goods or Services, the date of issuance of the tax invoice or upon partial or full receipt of the Consideration, whichever comes first, and to the extent of the received amount.
2. The date of supply provided for in subsection 1 of this Article shall be as follows:
a) the date on which the Goods were placed at the Customer's disposal in connection with supplies of Goods without transportation or dispatch;
b) the date on which transportation or dispatch of Goods began in connection with supplies of Goods with transportation or dispatch;
c) the date on which the assembly or installation of Goods was completed in connection with supplies of Goods with assembly or installation;
d) the date on which the performance of the service was completed;
e) the date of occurrence of any of the events referred to in Article 8 of this Agreement.
3. As an exception to the provisions of subsections 1 and 2 of this Article, in connection with supplies of a repetitive nature leading to the repetitive issuance of invoices or payment of Consideration, the Tax is due on the payment date specified in the invoice or the date of actual payment, whichever comes first, and at least once in every period of 12 consecutive months.
4. Each Member State may determine the date on which Tax becomes due with regard to supplies not referred to in the foregoing subsections of this Article.

Article (24)
Tax Due Date on Import

Tax becomes due on the date of importing Goods into the Member State, subject to the provisions of Article 39 related to cases of Tax suspension upon import and Article 64 related to the mechanism for paying Tax Due in relation to the import.

Chapter Five
Calculation of Tax
Article (25)
Tax Rate

1. Tax shall be applied at the standard rate of 5% of the value of the Supply or the value of Imports, unless this Agreement provides for an exemption or the zero-rate on such supplies.
2. Without prejudice to the obligations provided for under this Agreement and the Local Laws, published prices in the local market for Goods and Services must include VAT.

Article (26)
Value of Supply of Goods and Services

1. The fair market value is the amount at which Goods or Services can be dealt in in an open market between two independent parties under competitive conditions determined by each Member State.
2. The value of a Supply shall be the value of Consideration less the Tax and includes the value of the non-cash portion of the Consideration determined according to the fair market value.
3. The value of the Supply shall include all the expenses imposed by the Taxable Supplier on the Customer, the fees due as a result of the Supply and all the Taxes including Excise Tax, but excluding VAT.

4. In the case of a Deemed Supply and transportation of Goods from one Member State to another, the value of the Supply shall be the purchase value or cost. If the purchase value or cost cannot be determined, then the fair market value shall apply.
5. Each Member State shall determine the conditions and provisions for adjusting the value of the Supply between Related Persons.
6. The value of the Supply is reduced by the following amounts:
a) discounts in prices and deductions granted to the Customer;
b) the value of subsidies granted by the Member State to the Supplier;
c) amounts paid by the Taxable Supplier in the name of and to the account of the Customer. In this case, the Taxable Supplier may not deduct Tax paid on these expenses.
7. If any of the components of the value of the Supply is expressed in a foreign currency, it shall be converted into the local currency based on the official exchange rate applied in the Member State on the Tax Due date.
8. Each Member State may determine the value of the Supply in certain cases not referred to in this Article.

Article (27)
Adjustment of Tax Value

A Taxable Person may adjust the value of the Tax imposed upon any of the following events taking place at a date later than the Supply date:
1. Total or partial cancellation or rejection of a Supply;
2. Reduction of the Supply value;
3. Total or partial non-collection of the Consideration in accordance with the conditions applicable to bad debts in each Member State.

Article (28)
Value of Imported Goods

1. The value of imported Goods will be the customs value determined in accordance with the Common Customs Law plus Excise Tax, Customs duty and any other imposts apart from VAT.
2. For Goods temporarily exported outside the GCC Territory for completion of manufacturing or repair thereof abroad, these Goods shall be taxed when reimported on the basis of value added to them as provided for in the Common Customs Law.

Chapter Six
Exceptions
Article (29)
Rights of States to Exempt Certain Sectors or Tax at the Zero-Rate

1. Each Member State may exempt or tax at zero-rate the following sectors in accordance with the conditions and provisions set by that Member State:
a) Education sector;
b) Health sector;
c) real estate sector; and
d) local transport sector.
2. Each of the Member States may subject its oil, oil derivatives and gas sector to Tax at zero-rate in accordance with the conditions and provisions set by each Member State.

Article (30)
Exceptions to Payment of Tax in Special Cases

Each Member State may exclude the following categories from paying Tax upon receipt of Goods and Services in that State, and each Member State may allow these Persons to reclaim Tax borne upon receipt of the Goods and Services in accordance with the conditions and rules determined by that Member State. These categories include:
- Government bodies specified by each State;
- Charities and Public Benefit Establishments specified by each State;
- Exempted companies under international event hosting agreements;
- Citizens of the Member State when constructing their homes for private use;
- Farmers and fishermen who are not registered for Tax.

Article (31)
Supply of Foodstuffs, Medicines and Medical Equipment

I: Food Items:
All food items shall be subject to the standard Tax rate. Member States may apply the zero-rate on food items mentioned in a unified list of Goods approved by the Financial and Economic Cooperation Committee.

II: Medicines and Medical Equipment:
Medicines and medical equipment shall be subject to the zero-rate in accordance with unified provisions proposed by the Committee of Ministers of Health and approved by the Financial and Economic Cooperation Committee.

Article (32)
Intra-GCC and International Transportation

The following transportation transactions shall be subject to Tax at zero-rate:
1. Goods and passenger transport from one Member State to another and the supply of transport-related Services;
2. International Goods and passenger transport from and to the GCC Territory and the supply of transport-related Services.

Article (33)
Supply of Means of Transport

Each Member State may apply the zero-rate to the following supplies:
1. Supply of sea, land and air means of transport allocated to the transportation of Goods and passengers in return for a fee for commercial purposes;
2. Supply of Goods and Services related to the supply of the means of transport mentioned in subsection 1 of this Article allocated to the operation, repair, maintenance or conversion any of these means or for the requirements of the means of transport or their cargo or passengers;
3. Supply of rescue airplanes, rescue boats and aid by land and sea and boats allocated to sea fishing.

Article (34)
Supplies to Outside the GCC Territory

1. The following supplies shall be subject to the zero-rate:
a) the export of Goods outside the GCC Territory;
b) supply of Goods to a customs duty suspension situation as provided for in the Common Customs Law and the supply of Goods within customs duty suspension situations;
c) re-export of moveable Goods that have been temporarily imported into the GCC Territory for repairs, refurbishment, conversion or processing as well as the Services added to these Goods.
d) supply of Services by a Taxable Supplier residing in a Member State for a Customer who does not reside in the GCC Territory who benefits from the service outside the GCC Territory in accordance with the criteria determined by each of the Member States, except for the cases provided for in Articles 17 to 21 of this Agreement that determine the place of supply as being in a Member State.
2. The supply of Goods and Services out of the GCC Territory shall be subject to the zero-rate when such supply is exempt from Tax inside the Member State.

Article (35)
Supply of Investment Gold, Silver and Platinum

1. For the purposes of this Article, Gold, Silver or Platinum shall be considered as an investment when the metal is at a purity level not less than 99% and tradable on the Global Bullion Exchange.
2. The supply of investment gold, silver and platinum shall be subject to the zero-rate.
3. The first supply after extraction of gold, silver and platinum shall be subject to the zero-rate.

Article (36)
Financial Services

1. Financial Services performed by banks and financial institutions licensed under the laws in force in each Member State shall be exempt from Tax. Banks and financial institutions may reclaim Input Tax on the basis of the refund rates determined by each State.
2. As an exception to subsection 1 of this Article, each State may apply any other tax treatment to financial Services.

Article (37)
Taxation of Supplies of Used Goods

Each Member State may determine the conditions and provisions for the imposition of Tax on the supply of used Goods by the Taxable Person based on the profit margin.

Chapter Seven

Exceptions on Import

Article (38)

Exemptions on Import

The following shall be exempt from Tax:

1. Import of Goods if the supply of these Goods in the final destination country is exempted from Tax or subject to Tax at zero-rate.
2. Importation of the following Goods that are exempted from customs duty under the Common Customs Law:

a) diplomatic exemptions;

b) military exemptions;

c) Imports of used personal luggage and household appliances which are brought by citizens residing abroad and foreigners who are coming to reside in the country for the first time.

d) Imports of requisites for non-profit charity organizations if these are exempted from Tax under Article 30;

e) Imports of returned Goods.

3. Personal luggage and gifts accompanied by travelers as specified by each Member State.
4. Requisites for people with special needs as specified by each Member State.

Article (39)

Suspension of Tax

Tax shall be suspended on imports of Goods that are placed under a customs duty suspension situation in accordance with the conditions and provisions provided for in the Common Customs Law. Each Member State has the right to link the suspension of Tax to the provision of security for the value of the Tax.

Chapter Eight

Persons who are Obligated to Pay Tax

Article (40)

General Principle

1. The Taxable Person is obligated to pay Tax due on taxable supplies of Goods and Services to the Competent Tax administration in the Member State in which the place of supply is located.
2. Any Person that states a Tax amount on any invoices issued by him becomes obligated to pay this Tax amount to the Competent Tax Administration in the Member State in which the place of supply is located.

Article (41)

Customer Obligated to Pay Tax According to the Reverse Charge Mechanism

1. If the place of supply for Goods or Services is in a Member State where the Supplier is not a resident, then the Taxable Customer residing in that Member State shall be obligated to pay the Tax Due.
2. Tax Due under subsection 1 of this Article shall be paid pursuant to a tax return or independently as determined by each Member State.

Article (42)

Person Obligated to Pay Tax in respect of Import

The Person appointed or acknowledged as an importer pursuant to the Common Customs Law shall be obligated to pay Tax due on imports.

Article (43)

Joint Liability

1. A Person who willfully participates in violating any of the obligations provided for in this Agreement and the Local Law shall be jointly liable with the Person obliged to pay the Tax and any other amounts due as a result of the violation.
2. Each Member State may determine other instances of joint liability other than those provided for in this Article.

Chapter Nine

Deduction of Tax

Article (44)

Tax Deduction Principle

1. The Taxable Person may deduct from the Tax Due and Payable by him in a Member State the value of Deductible Tax borne in the same State in the course of making Taxable Supplies.
2. The right to make a deduction arises when a Deductible Tax is due pursuant to this Agreement.

3. A Customer who is obligated to pay Tax pursuant to the reverse charge mechanism may deduct Deductible Tax related thereto provided that he has declared the Tax Due under Article 41 (2) of this Agreement.
4. Each Member State shall determine the terms and provisions for Tax deduction.

Article (45)

Restrictions on Input Tax Deductions

Input Tax that has been borne cannot be deducted in either of the following cases:
1. If it is for purposes other than Economic Activities as determined by each Member State;
2. If it is paid on Goods that it is prohibited to deal in in the Member State according to applicable laws.

Article (46)

Proportional Deduction

1. If Input Tax is related to Goods and Services used to make Taxable Supplies and non-Taxable Supplies, then Input Tax cannot be deducted save within the limits of the proportion referable to the Taxable Supplies.
2. Each Member State may determine the methods of calculating the deduction rate and the conditions for treating the value of non-deductible Input Tax as zero.

Article (47)

Adjustment of Deductible Input Tax

1. A Taxable Person must adjust the value of Input Tax deducted by him when receiving Goods or Services supplied that are more or less than the value of the Input Tax deduction available to him, as a result of changes in the determining factors for Deductible Tax, including:
a) cancellation or rejection of a Supply;
b) reduction of the Supply Consideration after the date of the Supply;
c) non-payment of the Supply Consideration, whether in whole or in part according to Article 27(3) of this Agreement;
d) changing the use of Capital Assets.
2. The Taxable Person is not required to adjust the Input Tax in any of the following cases:
a) where the Taxable Person establishes loss, damage or theft of the supplied Goods in accordance with the conditions and provisions applicable in each Member State.
b) where the Taxable Person uses the supplied Goods as samples or gifts of insignificant value as specified in Article 8 (1)(d) of this Agreement.

Article (48)

Conditions for Exercising the Right of Deduction

1. For purposes of exercising the right of deduction, the Taxable Person must hold the following documents:
a) the Tax Invoice received pursuant to the provisions of this Agreement;
b) the customs documents proving that he imported the Goods in accordance with the Common Customs Law.
2. Each Member State may allow the Taxable Person to exercise the right of deduction in the event that a Tax Invoice is not available or does not meet the requirements provided for in this Agreement, provided that the value of Tax due can be established by any other means.

Article 49

The Right to Deduct Input Tax Paid Prior to the Date of Registration

1. A Taxable Person may deduct Input Tax paid on Goods and Services supplied to him prior to the date of his registration for Tax purposes after meeting the following requirements:
a) Goods and Services are received for the purpose of making Taxable Supplies;
b) Capital Assets were not fully depreciated before the date of registration;
c) Goods were not supplied prior to the registration date;
d) Services were received within a specific period of time prior to the date of registration as determined by each Member State;
e) the Goods and Services are not subject to any restriction related to the right to make a deduction stated in this Agreement.
2. For the purposes of applying this Article, Input Tax shall be deductible for Capital Assets in accordance with the net book value of the assets as on the date of registration as specified by each Member State.

Chapter Ten

Obligations
Part One
Registration
Article 50
Mandatory Registration

1. For the purposes of implementing this Agreement, a Taxable Person shall be obliged to register if :
a) he is resident in any Member State;
b) the value of his annual supplies in that Member State exceeds or is expected to exceed the Mandatory Registration Threshold.
2. The Mandatory Registration Threshold shall be SAR 375,000 (or its equivalent in the GCC State currencies). The Ministerial Committee has the right to amend The Mandatory Registration Threshold after it has been in force for three years.
3. A non-resident of a Member State shall be required to register in that State regardless of his business turnover if he is obliged to pay Tax in that State under this Agreement. Registration can be done directly or through the appointment of a tax representative with the consent of the Competent Tax administration. The tax representative shall take the place of the Non-Resident Person in all its rights and obligations provided for in this Agreement, subject to the provisions of Article 43(2) of this Agreement.
4. A Taxable Person who makes only zero-rated supplies may request to be excluded from the Mandatory Registration requirement for Tax purposes in accordance with the conditions and provisions determined by each Member State.

Article 51
Voluntary Registration

1. A Person who is not required to be registered under Article 50(1) of this Agreement who resides in any Member State may request to be registered therein, provided that the value of his annual supplies in that Member State is not less than voluntary registration threshold.
2. A Member State may allow the registration provided that the annual expenses of a person who is not obliged to register in that State exceed the Voluntary Registration Threshold in accordance with the conditions and rules determined by that State.
3. The Voluntary Registration Threshold is 50% of the Mandatory Registration Threshold.

Article 52
Calculating the Value of Supplies

1. For the purposes of applying the provisions of this Agreement, the value of annual supplies is calculated on the basis of any of the following:
a) total value of supplies – excluding exempted supplies – made by the Taxable Person at the end of any month plus the previous eleven months;
b) total value of supplies – excluding exempted supplies – expected to be made by the Taxable Person at the end of any month plus the following eleven months or in accordance with the criteria and specified period determined by each Member State.
2. Total value of supplies consists of the following:
a) the value of Taxable supplies except for the value of Capital Assets Supply;
b) the value of Goods and Services supplied to the Taxable Person who is obliged to pay Tax pursuant to the provisions of this Agreement;
c) the value of Intra-GCC Supplies where the place of supply is in a Member State other than the State where the Taxable Supplier resides and these supplies would have been taxable in the State where the Supplier resides had the place of supply been located in that State.
3. Each Member State may determine the conditions and provisions for the aggregation of the business revenue of Related Persons who conduct similar or related activities and register each of them mandatorily on the basis of the total business revenue.

Article 53
Tax Identification Number (TIN)

When registering for Tax purposes in any of the Member States, each Member State shall allocate a TIN for the Taxable Person provided that The Ministerial Committee shall determine the provisions for issuing the TIN.

Article 54

Deregistration

1. A Taxable Person who is registered for Tax purposes must apply for deregistration in any of the following cases:

a) cessation of carrying on of the Economic Activity;

b) cessation of making Taxable Supplies;

c) if the value of the Taxable Person's supplies falls below the Voluntary Registration Threshold pursuant to the provisions of Article (51) of this Agreement.

2. The Taxable Person may apply for deregistration if the total annual revenue of its business falls below the Mandatory Registration Threshold but exceeds the Voluntary Registration Threshold.

3. For the purposes of applying items (b) and (c) of the first paragraph and the second paragraph of this Article, each Member State may determine a minimum period to keep the Taxable Person registered for Tax purposes as a condition of deregistration.

4. Each Member State may determine the conditions and provisions necessary to reject an application for the deregistration of a Taxable Person or to deregister him in cases other than those provided for in the first and second paragraphs of this Article.

5. The Tax Authority shall notify the Taxable Person of his deregistration and the effective date of the same.

Part Two

Tax Invoice

Article 55

Issuance of the Tax Invoice

1. The Taxable Person must issue a Tax Invoice or similar document in the following cases:

a) Supply of Goods or Services including a Deemed Supply as provided for in Article 8 of this agreement;

b) Full or partial receipt of Consideration prior to the supply date.

2. Each Member State may except the Taxable Person from issuing the invoices provided for in this Article

for exempted supplies, provided these do not pertain to Intra-GCC Transactions between Member States.

3. Subject to the provisions of Article 56 of this Agreement, each Member State may allow the Taxable Person to issue summary tax invoices, each including all the supplies of Goods and service made in favour of a single Customer that were taxable over a period of one month.

4. For the purposes of applying this Agreement, the Member States must accept the invoices in form, whether issued on paper or electronically, in accordance with the conditions and procedures determined by each Member State.

Article 56

Contents of the Tax Invoice

1. Each Member State must determine the contents of the Tax Invoice and the period within which it must be issued, provided that The Ministerial Committee shall determine the minimum details required to be included in the tax invoice. Each Member State may allow for the issuance of simplified invoices in accordance with the conditions and rules determined by it.

2. Tax invoices can be issued in any currency, provided that the value of the Tax is written in the currency of the Member State where the place of supply is located based on the official currency exchange rate in force in that State as on the Tax due date.

Article 57

Amendment of Invoices (Credit Notes)

A Taxable Person who adjusts the Supply Consideration must include this adjustment in a document (credit or debit note "Tax Invoice") correcting the original Tax Invoice. This document shall be treated in the same way as the original Tax Invoice according to the procedures determined by each Member State.

Article 58

Special Provisions

1. A taxable Customer who receives Goods or Services supplied to him from a Taxable Supplier may issue Tax Invoices provided that the Supplier consents and the Tax Invoice is marked as a self-issued invoice with the approval of the Competent Tax administration. In this event, a self-issued invoice shall be treated as an invoice issued by the Supplier.

2. A Taxable Person may engage the assistance of others to issue Tax Invoices on his behalf with the approval of the Competent Tax Administration and provided that all the obligations provided for in this Agreement and the Local Law are fulfilled.

Part Three

Retention of Tax Invoices, Records and Accounting Documents

Article 59

Retention Period for Tax Invoices, Records and Accounting Documents

Without prejudice to any longer period stipulated under the laws of the Member State, Tax Invoices, books, records and accounting documents shall be retained for a period not less than five years from the end of the year to which the invoices, books, records and accounting documents relate. This period shall be extended to fifteen years for the retention of Tax Invoices, books, records and documents pertaining to real estate.

Part Four

Tax Period and Tax Returns

Article 60

Tax Period

Each Member State must determine its own tax period or periods, and provided that no tax period shall be less than one month.

Article 61

Submission of Tax Returns

Each Member State shall determine the timeframes, conditions and rules for submission of Tax Returns by a Taxable Person for each tax period, provided that The Ministerial Committee shall determine the minimum data required to be included in the tax return.

Article 62

Amending the Tax Return

Each Member State shall determine the conditions and provisions that allow a Taxable Person to amend a Tax Return that has already been submitted.

Part Five

Payment and Refund of Tax

Article 63

Payment of Tax

Each Member State shall determine the timeframes, conditions and provisions for payment of Net Tax Due by the Taxable Person.

Article 64

Payment of Tax on Imports

1. Tax due on imported Goods shall be paid at the First Point of Entry and deposited in a special tax account, and transferred to the final Destination State according to the Customs Duties Automated Direct Transfer Mechanism in force within the framework of the GCC Customs Union; the Ministerial Committee may propose any other mechanisms.
2. Each Member State may, in accordance with the conditions and provisions determined by it, allow a Taxable Person to defer payment of Tax due on Goods imported for the purposes of the Economic Activity and to declare the same in his Tax Return. Tax due that has been deferred and declared shall be deductible according to the provisions of this Agreement.

Article 65

Tax Refunds

Each Member State shall determine the conditions and provisions for allowing a Taxable Person to request a refund of net deductible Tax or request to carry it forward to subsequent tax periods.

Chapter Eleven

Special Treatments of Tax Refunds

Article 66

Tax Refunds for Persons residing in the GCC Territory

Taxable Persons in any Member State may request the refund of Tax paid in another Member State in accordance with the conditions and rules determined by the Financial and Economic Cooperation Committee.

Article 67

Tax Refunds for Non-Residents in the GCC Territory

Each Member State may allow Persons who are not resident in the GCC Territory to request tax refunds for Taxes paid in it if all the following requirements are met:
1. The Non-Resident Person does not supply Goods or Services for which it is required to pay Tax in any Member State;
2. The Non-Resident Person is registered for Tax purposes in his country of residence, if such country applies a VAT system or a similar tax system;
3. The Tax is borne by a Person who is not resident in any Member State for the purposes of his Economic Activity.

Article 68
Tax Refunds for Tourists

1. Each Member State may apply a Tax Refund system for tourists pursuant to the conditions and provisions determined in its Local Law.
2. For the purpose of applying this Article, a tourist shall be defined as any natural person who meets all of the following requirements:
a) He is not a resident of the GCC Territory;
b) He is not a crew member on the flight or aircraft leaving a Member State.

Article 69
Tax Refunds for Foreign Governments, International Organizations and Diplomatic Bodies and Missions

1. Each Member State shall determine the conditions and provisions for granting foreign governments, international organizations and diplomatic, consular and military bodies and missions the right to reclaim Tax borne for Goods and Services in the Member State in application of international treaties or the condition of reciprocity.
2. Each Member State may apply the zero-rate to supplies of Goods and Services in favor of foreign governments, international organizations, and diplomatic, consular and military bodies and missions within the conditions and rules determined by each State.

Chapter Twelve
Exchange of Information among Member States

Article 70
Exchange of Information

1. The Tax Administration in the Member States shall exchange information relevant to the implementation of the provisions of this Agreement, or information related to the administration or enforcement of Local Laws related to VAT.
2. Without prejudice to the provisions of international agreements to which the Member State is a party, the information obtained by the Tax Administration shall be treated as confidential information in the same manner as the information obtained under the local laws of that administration, and shall be disclosed only to persons or entities (including the courts and administrative authorities) concerned with Tax assessment, collection, enforcement
, or bringing judicial claims or determining appeals relating thereto or supervising the above. Such persons or authorities may not use the information obtained save for those purposes, and may disclose such information in judicial rulings in public courts or in judicial decisions. Regardless of the foregoing, the information obtained by the Tax Administration may be used for other purposes when the laws of both States permit its use for such other purposes, and the Tax Administration in the state that provides the information permits such use.
3.The provisions of paragraphs (1) and (2) of this article may not, under any circumstances, be interpreted in a manner that results in any Member State being obliged to.
a) Implement administrative measures contrary to the regulations and administrative practices in that State or in another Member State
b) Provide information, which is not obtainable under normal administrative regulations or directives in that State or in another Member State
c) Provide information that would lead to the disclosure of any secret relating to trade, business or industry, or commercial or professional secrets, or trade processes or information the disclosure of which would violate public policy (public order).
4. If a Member State requests information under this Article, the other Member State shall employ its own procedures for collecting the required information, notwithstanding that the other State may not need this information for its own taxation purposes. The obligation set forth in the preceding sentence shall be

subject to the restrictions contained in paragraph (3), but in no case may these restrictions be interpreted as permitting a Member State to decline to provide information on the sole ground that it has no local interest in it.
5. Under no circumstances shall the provisions of paragraph (3) be interpreted as allowing a Contracting State to decline to provide information on the sole ground that the information in question is held by a bank or any other financial institution or an authorized person, or a person acting as a proxy or in a trustee capacity or on the grounds that the information is linked to interests pertaining to ownership by any person.

Article 71
Electronic Service Systems

1.Each Member State shall create an electronic Services system for the purposes of complying with requirements related to Tax. The GCC Secretariat General shall take the necessary measures to establish a tax information center, and to operate a central website or electronic system to follow up the information related to Internal Supplies and the exchange of this information between the concerned Tax authorities in the Member States; provided that the website or electronic system of the tax information center must include at least the following information:
a) the TIN for both the Supplier and the Customer;
b) the number and date of the Tax Invoice;
c) a description of the transaction;
d) the consideration for the transaction.
2. If the information recorded by each of the Supplier and the Customer corresponds, each of them shall be given a confirmation number that must be retained for Tax audits performed by the concerned Tax authority and for the
purpose of ascertaining that this information corresponds with that provided in Tax returns and other relevant information provided pursuant to the provisions of this Agreement.
3. The system must be reliable and secure and must not allow the Supplier or the Customer access to any information other than that to which they are permitted to have access.
4. The concerned Tax authority in each Member State shall have a right of access to the information related to Internal Supplies between Taxable Persons registered for Tax purposes.
5. The System shall allow the follow-up of proof of transfer of Goods to the country of Final Destination.

Article 72
Cooperation between Member States

1. The Member States may, upon a proposal from the Secretary General of the Gulf Cooperation Council to the Ministerial Committee, take the necessary measures related to administrative cooperation among them, especially in the following areas:
a) exchange of information needed to determine Tax accuracy based on the request of each Member State;
b)
c) b- agreeing to synchronized auditing procedures and participating in audits performed by any Member State pursuant to the approval of the concerned States.
d) c- assisting in the collecting of Tax and taking the necessary procedures related to collection.
2. Subject to the provisions of international agreements to which the Member State is party, each Member State shall obligate its employees not to disclose or use information they receive in the course of their work from another Member State for any other purposes not related to their functions. Each Member State may determine the penalties that apply in the event of violation.

Chapter Thirteen
Transitional Provisions
Article 73

Each Member State must provide in its Local Law transitional provisions dealing with the following aspects at least:
1. Tax shall be due on supplies of Goods and Services and on imports of Goods as from the date the Local Law comes into effect in the Member State.
2. Each Member State shall determine timelines for registering Taxable Persons obliged to be registered on the date the Local Law comes into effect.

3. Notwithstanding any other provision in this Agreement, should an invoice be issued or Consideration paid before the date of application of the Local Law or prior to the registration date and the Supply occurred after such date,
then each Member State may ignore the date of the invoice or payment and consider the Tax due date to be the date of the Supply.
4. The provisions of subsection 3 of this Article shall apply to Intra-GCC Supplies between a Taxable Supplier residing in a Member State and a Customer in another Member State.
5. With regard to continuing supplies that are partially performed before the date on which the Local Law comes into force or before the registration date and partially after such date, then Tax shall not be due on the part performed before the date of coming into force or of the registration.

Chapter Fourteen
Objections and Appeals
Article 74
Objections and Appeals

Each Member State shall determine the conditions and provisions for allowing objections to decisions of the Competent Tax Administration. This includes the right of recourse to the competent local courts in each Member State.

Chapter Fifteen
Closing Provisions
Article 75
Interpretation

The Ministerial Committee shall have jurisdiction to consider matters related to the application and interpretation of this Agreement and its decisions shall be binding on the Member States.

Article 76
Dispute Resolution

Member States shall strive to amicably resolve any disputes that may arise amongst them pertaining to this Agreement, and they may by agreement, if a settlement as aforesaid is not possible, refer the dispute to arbitration in accordance with rules of arbitration to be agreed.

Article 77
Amendments

This Agreement may be amended upon the approval of all Member States and upon the proposal of any of them, and the coming into force of such amendments shall be subject to the same procedures provided for in Article (79) of this Agreement..

Article 78
Coming Into Force

This Agreement shall be adopted by the GCC Supreme Council and shall be ratified by Member States in accordance with their constitutional procedures..
1. This Agreement shall be treated as coming into force from the deposit of the ratification document by the second Member State at the General Secretariat of the GCC.
2. Each Member State shall take the necessary internal procedures to issue a Local Law to implement the provisions of this Agreement, including setting the policies and procedures necessary for the implementation of the Tax in a manner consistent with the provisions of this Agreement..
3. Each Member State that has not implemented its Local Law shall remain outside the scope of implementation of this Agreement until such Local Law becomes effective..
This Agreement is executed in Arabic on on 27/2/1438 Hijri, corresponding to 27/11/2016, in one original copy deposited at the General Secretariat of the GCC, and one copy of the original shall be delivered to each of the Member States that are party to this Agreement. .
The United Arab Emirates
…….....
The Kingdom of Bahrain
…….....
The Kingdom of Saudi Arabia
…….....
The Sultanate of Oman
…….....

The State of Qatar
…….....
The State of Kuwait
…….....

ANNEXE NO.2

Federal decree-law No. (8) of 2017 on Value Added Tax

We, Khalifa bin Zayed Al Nahyan, President of the United Arab Emirates,
Having reviewed the Constitution,
– Federal Law No. (1) of 1972 on the Competencies of the Ministries and Powers of the Ministers
and its amendments;
– Federal Law No. (11) of 1981 on the Imposition of a Federal Customs Tax on Imports of Tobacco and its derivatives, and its amendments;
– Federal Law No. (26) of 1981 regarding the Commercial Maritime Law, and its amendments;
– Federal Law No. (5) of 1985 promulgating the Civil Transactions Law, and its amendments;
– Federal Law No. (3) of 1987 promulgating the Penal Law, and its amendments;
– Federal Law No. (10) of 1992 promulgating the Law of Evidence in Civil and Commercial Transactions, and its amendments;
– Federal Law No. (11) of 1992 promulgating the Law on Civil Procedures, and its amendments;
– Federal Law No. (18) of 1993 promulgating the Commercial Transactions Law, and its amendments;
– Federal Law No. (8) of 2004 on Financial Free Zones;
– Federal Law No. (1) of 2006 on Electronic Commerce and Transactions;
– Federal Law No. (2) of 2008 in respect of The National Societies and Associations of Public Welfare;
– Federal Law No. (1) of 2011 on the State's Public Revenues;
– Federal Law No. (8) of 2011 on the Reorganisation of the State Audit Institution;
– Federal Decree-Law No. (8) of 2011 on the Rules of the Preparation of the General Budget and
Final Accounts;
– Federal Law No. (4) of 2012 on the Regulation of Competition;
– Federal Law No. (12) of 2014 on the Organisation of the Auditing Profession;
– Federal Law No. (2) of 2015 on Commercial Companies;
– Federal Decree-Law No. (13) of 2016 on the Establishment of the Federal Tax Authority;
– Federal Law No. (7) of 2017 on Tax Procedures; and
– Pursuant to what was presented by the Minister of Finance and approved by the Cabinet,
Have issued the following Decree-Law:

Title One
Definitions
Article (1)
Definitions

In the application of the provisions of this Decree-Law, the following words and expressions shall have
the meanings assigned against each, unless the context otherwise requires:
State: United Arab Emirates
Minister: Minister of Finance
Authority: Federal Tax Authority
Value Added Tax: A tax imposed on the import and supply of Goods and Services at each stage of

production and distribution, including the Deemed Supply.
Tax: Value Added Tax (VAT).
GCC States: all countries that are full members of The Cooperation Council for the Arab States of the
Gulf pursuant to its Charter.
Implementing States: The GCC States that are implementing a Tax law pursuant to an issued legislation.
Goods: Physical property that can be supplied including real estate, water, and all forms of energy as
specified in the Executive Regulation of this Decree-Law.
Services: Anything that can be supplied other than Goods.
Import: The arrival of Goods from abroad into the State or receipt of Services from outside the State.
Concerned Goods: Goods that have been imported, and would not be exempt if supplied in the State.
Concerned Services: Services that have been imported, where the place of supply is in the State, and
would not be exempt if supplied in the State.
Person: A natural or legal person.
Taxable Person: Any Person registered or obligated to register for Tax purposes under this Decree-Law.
Taxpayer: Any person obligated to pay Tax in the State under this Decree-Law, whether a Taxable Person
or end consumer.
Tax Registration: A procedure according to which the Taxable Person or his Legal Representative
registers for Tax purposes at the Authority.
Tax Registration Number (TRN): A unique number issued by the Authority for each Person registered
for Tax purposes.

Registrant: The Taxable Person who has been issued with a TRN.
Recipient of Goods: Person to whom Goods are supplied or imported.
Recipient of Services: Person to whom Services are supplied or imported.
Importer: With respect to importing Goods, it is the Person whose name is listed as the importer of the
Goods on the date of Import for customs clearance purposes. With respect to Services, it is the Recipient
of these Services.
Taxable Trader: A Taxable Person in the Implementing States, whose main activity is the distribution of
water and all types of energy as specified in the Executive Regulation of this Decree-Law.
Tax Return: Information and data specified for Tax purposes and submitted by a Taxable Person in
accordance with a form prepared by the Authority.
Consideration: All that is received or expected to be received for the supply of Goods or Services,
whether in money or other acceptable forms of payment.
Business: Any activity conducted regularly, on an ongoing basis and independently by any Person, in any

location, such as industrial, commercial, agricultural, professional, service or excavation activities or
anything related to the use of tangible or intangible properties.
Exempt Supply: A supply of Goods or Services for Consideration while conducting Business in the State,
where no Tax is due and no Input Tax may be recovered, except according to the provisions of this Decree-
Law.
Taxable Supply: A supply of Goods or Services for a Consideration by a Person conducting Business in
the State, and does not include Exempt Supply.
Deemed Supply: Anything considered as a supply and treated as a Taxable Supply according to the
instances stipulated in this Decree-Law.
Input Tax: Tax paid by a Person or due from him when Goods or Services are supplied to him, or when
conducting an Import.
Output Tax: Tax charged on a Taxable Supply and any supply considered as a Taxable Supply.
Recoverable Tax: Amounts that were paid and may be returned by the Authority to the Taxpayer pursuant
to the provisions of this Decree-Law.
Due Tax: Tax that is calculated and charged pursuant to this Decree-Law.
Payable Tax: Tax that is due for payment to the Authority.
Tax Period: A specific period of time for which the Payable Tax shall be calculated and paid.
Tax Invoice: A written or electronic document in which the occurence of a Taxable Supply is recorded
with details pertaining to it.
Tax Credit Note: A written or electronic document in which the occurence of any amendment to a
Taxable Supply that reduces or cancels the same is recorded and the details pertaining to it.
Government Entities: Federal and local ministries, government departments, government agencies,
authorities and public institutions in the State.
Charities: Societies and associations of public welfare not aiming to make a profit that are listed within a
Cabinet Decision issued at the suggestion of the Minister.
Mandatory Registration Threshold: An amount specified in the Executive Regulation of this Decree-
Law; if exceeded by the value of Taxable Supplies or is anticipated to be exceeded, the supplier shall
apply for Tax Registration.
Voluntary Registration Threshold: An amount specified in the Executive Regulation of this Decree-
Law; if exceeded by the value of Taxable Supplies or taxable expenses or is anticipated to be exceeded,
the supplier may apply for Tax Registration.
Transport-related Services: Shipment, packaging and securing cargo, preparation of Customs

documents, container management, loading, unloading, storing and moving of Goods, or any another
closely related services or services that are necessary to conduct the transportation services.
Place of Establishment: The place where a Business is legally established in a country pursuant to the
decision of its establishment, or in which significant management decisions are taken and central
management functions are conducted.
Fixed Establishment: Any fixed place of business, other than the Place of Establishment, in which the
Person conducts his business regularly or permanently and where sufficient human and technology
resources exist to enable the Person to supply or acquire Goods or Services, including the Person's
branches.
Place of Residence: The place where a Person has a Place of Establishment or Fixed Establishment, in
accordance with the provisions of this Decree-Law.
Non-Resident: Any person who does not own a Place of Establishment or Fixed Establishment in the
State and usually does not reside in the State.
Related Parties: Two or more Persons who not separated on the economic, financial or regulatory level,
where one can control the others either by Law, or through the acquisition of shares or voting rights.
Customs Legislation: Federal and local legislation that regulate customs in the State.
Designated Zone: Any area specified by a Cabinet Decision issued at the suggestion of the Minister, as a
Designated Zone for the purpose of this Decree-Law.
Export: Goods departing the State or the provision of Services to a Person whose Place of Establishment
or Fixed Establishment is outside the State.
Voucher: Any instrument that gives the right to receive Goods or Services against the value stated thereon
or the right to receive a discount on the price of the Goods or Services. Vouchers do not include postage
stamps issued by the Emirates Post Group.
Activities conducted with Sovereign Capacity: Activities conducted by Government Entities in their
sole competent capacity, with or without Consideration.
Capital Assets: Business assets designated for long-term use.
Capital Assets Scheme: A scheme whereby the initially recovered Input Tax is adjusted based on the
actual use during a specific period.
Administrative Penalties: Amounts imposed upon a Person by the Authority for breaching the provisions
of this Decree-Law or Federal Law No. (7) of 2017 on Tax Procedures.
Administrative Penalties Assessment: A decision issued by the Authority concerning any Administrative Penalties due.
Excise Tax: A tax imposed on specific Goods.

Tax Group: Two or more Persons registered with the Authority for Tax purposes as a single taxable
person in accordance with the provisions of this Decree-Law.

Title Two
Tax Scope and Rate
Article (2)
Scope of Tax

Tax shall be imposed on:
1. Every Taxable Supply and Deemed Supply made by the Taxable Person.
2. Import of Concerned Goods except as specified in the Executive Regulation of this Decree-Law.

Article (3)
Tax Rate

Without prejudice to the provisions of Title Six of this Decree-Law, a standard rate of 5% shall be imposed
on any supply or Import pursuant to Article (2) of this Decree-Law on the value of the supply or Import
specified in the provisions of this Decree-Law.

Article (4)
Responsibility for Tax

The Tax imposed shall be the responsibility of the following:
1. A Taxable Person who makes any supply stipulated in Clause (1) of Article (2) of this Decree-
Law.
2. The Importer of Concerned Goods.
3. The Registrant who acquires Goods as stated in Clause (3) of Article (48) of this Decree-Law.

Title Three
Supply
Chapter One
Supply of Goods and Services
Article (5)
Supply of Goods

The following shall be considered a supply of Goods:
1. Transfer of ownership of the Goods or the right to use them to another Person according to what
is specified in the Executive Regulation of this Decree-Law.
2. Entry into a contract between two parties entailing the transfer of Goods at a later time, pursuant
to the conditions specified in the Executive Regulation of this Decree-Law.

Article (6)
Supply of Services

A supply of Services shall be every supply that is not considered a supply of Goods, including any
provision of Services specified in the Executive Regulation of this Decree-Law.

Article (7)
Supply in Special Cases

As an exception to what is stated in Articles (5) and (6) of this Decree-Law, the following shall not be
considered a supply:

1. The sale or issuance of any Voucher unless the received Consideration exceeds its advertised
monetary value, as specified in the Executive Regulation of this Decree-Law.
2. The transfer of whole or an independent part of a Business from a Person to a Taxable Person for
the purposes of continuing the Business that was transferred.

Article (8)

Supply of more than one component

The Executive Regulation of this Decree-Law shall specify the conditions for treating a supply made of
more than one component for one price, whether such components are Goods or Services or both.

Article (9)

Supply via Agent

1. The Supply of Goods and Services through an agent acting in the name of and on behalf of a
principal is considered to be a supply by the principal and for his benefit.
2. The Supply of Goods and Services through an agent acting in his name is considered to be a direct
supply by the agent and for his benefit.

Article (10)

Supply by Government Entities

1. A Government Entity is regarded as making a supply in the course of business in the following
cases:
a. If its activities are conducted in a non-sovereign Capacity.
b. If its activities are in competition with the private sector.
2. A Cabinet Decision shall be issued at the suggestion of the Minister determining the Government
Entities and their activities that are considered as conducted in a Sovereign Capacity and instances
where its activities are considered not in competition with the private sector.

Chapter Two

Deemed Supply

Article (11)

The Cases of Deemed Supply

The following cases shall be considered as Deemed Supply:
1. A supply of Goods or Services, which constituted the whole assets of a Taxable Person or a part
thereof, but are no longer considered to be as such, provided that the supply was made without Consideration.
2. The transfer by a Taxable Person of Goods that constituted a part of his business assets from the
State to another Implementing State, or from the Taxable Person’s business in an Implementing
State to his Business in the State, except in the case where such transfer:
a. Is considered as temporary under the Customs Legislation.
b. Is made as part of another Taxable Supply of these Goods.
3. A supply of Goods or Services for which Input Tax may be recovered but the Goods or Services

were used, in part or whole, for purposes other than Business, and such supply shall be considered
as deemed only to the extent of the use for non-business purposes.
4. Goods and Services that a Taxable Person owns at the date of Tax Deregistration.

Article (12)

Exceptions for Deemed Supply

A supply is not considered as deemed in the following cases:
1. If no Input Tax was recovered for the related Goods and Services.
2. If the supply is an Exempt Supply.
3. If the recovered Input Tax has been adjusted for the Goods and Services pursuant to the Capital
Assets Scheme.
4. If the value of the supply of the Goods, for each Recipient of Goods within a 12-month period,
does not exceed the amount specified in the Executive Regulation of this Decree-Law, and the Goods were supplied as samples or commercial gifts.
5. If the total Output Tax due for all the Deemed Supplies per Person for a 12-month period is less
than the amount specified in the Executive Regulation of this Decree-Law.

Title Four

Tax Registration and Deregistration

Article (13)

Mandatory Tax Registration

1. Every Person, who has a Place of Residence in the State or an Implementing State and is not
already registered for Tax, shall register in the following situations:
a. Where the total value of all supplies referred to in Article (19) exceeded the Mandatory Registration Threshold over the previous 12-month period.
b. Where it is anticipated that the total value of all supplies referred to in Article (19) will exceed the Mandatory Registration Threshold in the next thirty (30) days.
2. Every Person, who does not have a Place of Residence in the State or an Implementing State and
is not already registered for Tax, shall register for Tax if he makes supplies of Goods or Services,
and where no other Person is obligated to pay the Due Tax on these supplies in the State.
3. The Executive Regulation of this Decree-Law shall specify the time limits that a Person has to
inform the Authority about his liability to register for Tax and the effective date of Tax Registration.

Article (14)

Tax Group

1. Two or more persons conducting Businesses may apply for Tax Registration as a Tax Group if all
of the following conditions are met:
a. Each shall have a Place of Establishment or Fixed Establishment in the State.
b. The relevant persons shall be Related Parties.
c. One or more persons conducting business in a partnership shall control the others.
2. The Executive Regulation of this Decree-Law will determine the instances where the Authority
may reject the application to register a Tax Group.

3. Any Person conducting Business is not allowed to have more than one Tax Registration Number,
unless otherwise prescribed in the Executive Regulation.
4. If Related Parties do not apply for Tax Registration as a Tax Group under Clause (1) of this Article,
the Authority may assess their relation based on their economic, financial and regulatory practices
in business and register them as a Tax Group if their relation was proved thereto according to the
controls and Conditions specified by the Executive Regulation of this Decree-Law.
5. The Authority may deregister the Tax Group registration in accordance with this Article as per the
conditions specified in the Executive Regulation of this Decree-Law.
6. The Authority may make changes to the Persons registered as a Tax Group by adding or removing
Persons as requested by the Taxable Person or in accordance with the instances mentioned in the
Executive Regulation.

Article (15)
Registration Exceptions

1. The Authority may except a Taxable Person from mandatory Tax Registration upon his request if
his supplies are only subject to the zero rate.
2. Anyone excepted from Tax Registration according to Clause (1) of this Article shall inform the
Authority of any changes to his Business that would make him subject to Tax under this Decree-
Law pursuant to the time limits and procedures determined in the Executive Regulation of this Decree-Law.
3. The Authority shall have the right to collect any Due Tax and Administrative Penalties for the
period of exception where that Taxable Person was not entitled to the exception.

Article (16)
Tax Registration of Governmental Bodies

Government Entities which shall be determined in a Cabinet Decision issued under Clause (2) of Article
(10) of this Decree-Law, shall apply for Tax Registration and may not be Deregistered unless by a Cabinet
Decision at the suggestion of the Minister.

Article (17)
Voluntary Registration

Any Person who is not obligated to apply for Tax Registration according to this Chapter may apply for
Tax Registration in the following cases:
1. If he proves, at the end of any given month, that the total value of supplies referred to in Article
(19) of this Decree-Law or the expenses which are subject to Tax and were incurred during the
previous 12-month period, has exceeded the Voluntary Registration Threshold.

2. At any time that he anticipates that the total value of supplies stipulated in Article (19) of this
Decree-Law or the expenses which are subject to Tax that will be incurred, will exceed the Voluntary Registration Threshold during the coming 30-day period.

Article (18)

Tax Registration for a Non-Resident

A Non-resident Person may not take the value of Goods and Services imported into the State to determine
whether he is entitled to apply for Tax Registration if the calculation of Tax for such Goods or Services is
the responsibility of the Importer pursuant to Clause (1) of Article (48) of this Decree-Law.

Article (19)

Calculating the Tax Registration Threshold

To determine whether a Person has exceeded the Mandatory Registration Threshold and the Voluntary
Registration Threshold, the following shall be calculated:
1. The value of Taxable Goods and Services.
2. The value of Concerned Goods and Concerned Services received by the Person unless covered by
Clause (1) of this Article.
3. The value of the whole or relevant part of Taxable Supplies that belong to said Person if he has,
wholly or partly, acquired a Business from another Person who made the supplies.
4. The value of Taxable Supplies made by Related Parties pursuant to the cases stated in the Executive Regulation of this Decree-Law.

Article (20)

Capital Assets

The supply of Capital Assets belonging to the Person shall not be taken into account to determine whether
a Person in Business exceeds the Mandatory Registration Threshold or Voluntary Registration Threshold.

Article (21)

Tax De-Registration Cases

A Registrant shall apply to the Authority for Tax Deregistration in any of the following cases:
1. If he stops making Taxable Supplies.
2. If the value of the Taxable Supplies made over a period of (12) consecutive months is less than the
Voluntary Registration Threshold and said Registrant does not meet the condition stipulated in
Clause (2) of Article (17) of this Decree-Law.

Article (22)

Application for Tax De-Registration

A Registrant may apply to the Authority for Tax Deregistration if the value of his Taxable Supplies during
the past (12) months was less than the Mandatory Registration Threshold.

Article (23)

Voluntary Tax De-registration

A Registrant under Article (17) may not apply for Tax Deregistration within (12) months of the date of

Tax Registration.

Article (24)

Procedures, Controls and Conditions of Tax Registration and De-registration

The Executive Regulation of this Decree-Law shall determine the procedures, controls and conditions for
Tax Registration, Tax deregistration and rejection of applications for Tax Registration and Deregistration
as stipulated in this Title.

Title Five
Rules Pertaining to Supplies
Chapter One
Date of Supply

Article (25)

Date of Supply

Tax shall be calculated on the date of supply of Goods or Services, which shall be the earliest of any of
the following dates:
1. The date on which Goods were transferred, if such transfer was under the supervision of the supplier.
2. The date on which the Recipient of Goods took possession of the Goods, if the transfer was not
supervised by the supplier.
3. Where goods are supplied with assembly and installation, the date on which the assembly or
installation of the Goods was completed.
4. The date on which the Goods are Imported under the Customs Legislation.
5. The date on which the Recipient of Goods accepted the supply, or a date no later than (12) months
after the date on which the Goods were transferred or placed under the Recipient of Goods disposal, if the supply was made on a returnable basis.
6. The date on which the provision of Services was completed.
7. The date of receipt of payment or the date on which the Tax Invoice was issued.

Article (26)

Date of Supply in Special Cases

1. The date of supply of Goods or Services for any contract that includes periodic payments or consecutive invoices shall be the earliest of any of the following dates, provided that it does not
exceed one year from the date of the provision of such Goods and Services:
a. The date of issuance of any Tax Invoice.
b. The date payment is due as shown on the Tax Invoice.
c. The date of receipt of payment.
2. The date of supply, in cases where payment is made through vending machines, shall be the date
on which funds are collected from the machine.
3. The date of Deemed Supply of Goods or Services shall be the date of their supply, disposal, change
of usage or the date of Deregistration, as the case may be.
4. The date of a supply of a voucher shall be the date of issuance or supply thereafter.

Chapter Two
Place of Supply
Article (27)
Place of Supply of Goods

1. The place of supply of Goods shall be in the State if the supply was made in the State, and does
not include Export from or Import into the State.
2. The place of supply of installed or assembled Goods if exported from or imported into the State
shall be:
a. In the State if assembly or installation of the Goods was done in the State.
b. Outside the State if assembly or installation of the Goods was done outside the State.
3. The place of supply of Goods that includes Export or Import shall be as follows:
a. Inside the State in the following instances:
1) If the supply includes exporting to a place outside the Implementing States.
2) If the Recipient of Goods in an Implementing State is not registered for Tax in the state of destination, and the total exports from the same supplier to this state does not exceed the mandatory registration threshold for said state.
3) The Recipient of Goods does not have a Tax Registration Number in the State, and the total exports from the same supplier in an Implementing State to the State exceeds the Mandatory Registration Threshold.
b. Outside the State in the following instances:
1) The supply includes an Export to a customer registered for Tax purposes in one of the Implementing States.
2) The Recipient of Goods is not registered for Tax in the Implementing State to which export is made, and the total exports from the same supplier to this Implementing State exceeds the mandatory registration threshold for said state.
3) The Recipient of Goods does not have a Tax Registration Number and the Goods are Imported from a supplier registered for Tax in any of the Implementing States from which import is made, and the total imports from the same supplier to the State do not exceed the Mandatory Registration Threshold.
4. Goods shall not be treated as exported outside the State and then reimported if such Goods are
supplied in the State and this supply required that the Goods exit and then re-enter the State according to the instances specified in the Executive Regulation of this Decree-Law.

Article (28)
Place of Supply of Water and Energy

1. The supply of water and all forms of energy specified in the Executive Regulation of this Decree-
Law through a distribution system, shall be considered as done in the Place of Residence of the
Taxable Trader in case the distribution was conducted by a Taxable Person having a Place of Residence in the State to a Taxable Trader having a Place of Residence in an Implementing State.
2. The supply of water and all forms of energy specified in the Executive Regulation of this Decree-
Law through a distribution system, shall be considered to have occurred at the place of actual consumption, if distribution was conducted by a Taxable Person to a Non-Taxable Person.

Article (29)
Place of Supply of Services
The place of supply of Services shall be the Place of Residence of the Supplier.
Article (30)
Place of Supply in Special Cases
As an exception to what is stipulated in Article (29) of this Decree-Law, the place of supply in special
cases shall be as follows:
1. Where the Recipient of Services has a Place of Residence in another Implementing State and is
registered for Tax therein, the place of supply shall be the Place of Residence of the Recipient of
Services.
2. Where the Recipient of Services is in Business and has a Place of Residence in the State, and the
Supplier does not have a Place of Residence in the State, the place of supply shall be in the State.
3. For the Supply of Services related to Goods, such as installation of Goods supplied by others, the
place shall be where said Services were performed.
4. For the Supply of means of transport to a lessee who is not a Taxable Person in the State and does
not have a TRN in an Implementing State, the place shall be where such means of transport were
placed at the disposal of the lessee.
5. For the Supply of restaurant, hotel, and food and drink catering Services, the place shall be where
such Services are actually performed.
6. For the Supply of any cultural, artistic, sporting, educational or any similar services, the place shall
be where such Services were performed.
7. For the Supply of Services related to real estate as specified in the Executive Regulation of this
Decree-Law, the place of supply shall be where the real estate is located.
8. For the Supply of transportation Services, the place of supply shall be where transportation starts.
The Executive Regulation of this Decree-Law shall specify the place of supply for transportation
Services if the trip includes more than one stop.
Article (31)
Place of Supply of Telecommunication and Electronic Services
1. For telecommunications and electronic Services specified in the Executive Regulation of the
Decree-Law, the place of supply shall be:
a. In the State, to the extent of the use and enjoyment of the supply in the State.
b. Outside the State, to the extent of the use and enjoyment of the supply outside the State.
2. The actual use and enjoyment of all telecommunications and electronic Services shall be where
these Services were used regardless of the place of contract or payment.

Chapter Three
Place of Residence
Article (32)
Place of Establishment

The Place of Residence of the supplier or Recipient of Services shall be as follows:
1. The state in which the Person's Place of Establishment is located or where he has a Fixed Establishment, provided that he does not have a Place of Establishment or owns a Fixed Establishment in any other state.
2. The state in which the Person's Place of Establishment is located or where he has a Fixed Establishment that is the most closely related to the supply if he has a Place of Establishment in
more than one state or has Fixed Establishments in more than one state.
3. The state in which the usual Place of Residence of the Person is located if he does not have a Place
of Establishment or a Fixed Establishment in any state.

Article(33)
The Agent

The Place of Residence of an agent shall be regarded as the Place of Residence of the principal in the
following two cases:
1. If the agent regularly exercises the right of negotiation and enters into agreements in favor of the
principal.
2. If the agent maintains a stock of Goods to fulfil supply agreements for the principal regularly.

Chapter Four
Value of Supply
Article (34)
Value of Supply

The value of supply of Goods or Services for Consideration shall be as follows:
1. If the entire Consideration is monetary, the value of the supply shall be the Consideration less the
Tax.
2. If all or part of the Consideration is not monetary, the value of the supply is calculated as the
overall monetary part plus the market value of the non-monetary part of the Consideration, and
shall not include the Tax.
3. For Services received by the Taxable Person who is obligated to calculate the Tax in accordance
with Clause (1) of Article (48) of this Decree-Law, the value of the supply shall be equal to the
market value of the consideration without addition of the Tax on that supply.
4. If the Consideration is related to matters other than the supply of Goods or Services, the value of
the supply shall be equal to the part of the Consideration that is related to such supply as stated in
the Executive Regulation of this Decree-Law.
The Executive Regulation of this Decree-Law shall specify the rules to determine the market value.

Article (35)
Value of Import

The Import value of Goods consists of:
1. The customs value pursuant to Customs Legislation, including the value of insurance, freight and
any customs fees and Excise Tax paid on the Import of the Goods. Tax shall not be included in
the Value of the Supply.
2. If it is not possible to determine the value pursuant to Clause (1) of this Article, the value shall be
determined based on alternate valuation rules stated in the applicable Customs Legislation.

Article (36)
Value of Supply for Related Parties

As an exception to Articles (34) and (35) of this Decree-Law, the value of the supply or Import of Goods
or Services between Related Parties shall be considered equal to the market value if the following
conditions are met:
1. The value of the supply is less than the market value.
2. If the supply is a Taxable Supply and the Recipient of Goods or Recipient of Services does not
have the right to recover the full Tax that would have been charged to such supply as Input Tax.

Article (37)
Value of Deemed Supply

As an exception to Articles (34) and (35) of this Decree-Law, the value of the supply in the case of a
Deemed Supply when the Taxable Person purchases Goods or Services to make Taxable Supplies but
does not use those Goods or Services for that purpose, will be equal to the total cost incurred by the
Taxable Person to make this Deemed Supply of Goods or Services.

Article (38)
Tax-Inclusive Prices

For Taxable Supplies, the advertised price shall include the Tax. Instances where prices do not include the
Tax shall be determined by the Executive Regulation of this Decree-Law.

Article (39)
Value of Supply in case of Discount or Subsidies

When discounts are made before or after the Date of Supply or subsidies provided by the State to the supplier for that supply, the value of the supply shall be reduced in proportion to such discounts or subsidies.
The Executive Regulation of this Decree-Law shall specify the conditions and restrictions for calculating
the Tax when the discount is made.

Article (40)
Value of Supply of Vouchers

The value of supply of a Voucher is the difference between the consideration received by the supplier of

the Voucher and the advertised monetary value of the Voucher.

Article (41)

Value of Supply of Postage Stamps

The value of supply for postage stamps that allow the user to use postal services in the State shall be the
amount shown on the stamp.

Article (42)

Temporary Transfer of Goods

If Goods are transferred temporarily from the domestic market into a Designated Zone or outside the State
for completing the manufacturing or repair in order to re-import them into the State, the value of the supply
when re-Imported shall be the value of the Services rendered.

Chapter Five
Profit Margin

Article (43)

Charging Tax based on Profit Margin

1. The Registrant may, in any Tax Period, calculate and charge Tax based on the profit margin earned
on the Taxable Supplies as specified in the Executive Regulation of this Decree-Law and not based
on the value of these supplies, and shall notify the Authority of the same.
2. The Executive Regulation of this Decree-Law shall specify the conditions to be met for the application of the provisions of this Article.

Title Six
Zero Rates and Exemptions
Chapter One
Zero Rate

Article (44)

Supply and Import Taxable at Zero Rate

The supply and Import of Goods and Services specified in this Chapter made by a Taxable Person shall
be a Taxable Supply subject to the zero rate.

Article (45)

Supply of Goods and Services that is Subject to Zero Rate

The Zero rate shall apply to the following Goods and Services:
1. A direct or indirect Export to outside the Implementing States as specified in the Executive Regulation of this Decree-Law.
2. International transport of passengers and Goods which starts or ends in the State or passes through
its territory, including Transport-related Services.
3. Air passenger transport in the State if it is considered an “international carriage” pursuant to Article
(1) of the Warsaw Convention for the Unification of Certain Rules Relating to International Carriage by Air 1929.
4. Supply of air, sea and land means of transport for the transportation of passengers and Goods as
specified in the Executive Regulation of this Decree-Law.
5. Supply of Goods and Services related to the supply of the means of transport mentioned in Clause

(4) of this Article and which are designed for the operation, repair, maintenance or conversion of
these means of transport.
6. Supply of aircrafts or vessels designated for rescue and assistance by air or sea.
7. Supply of Goods and Services related to the transfer of Goods or passengers aboard land, air or
sea means of transport pursuant to Clauses (2) and (3) of this Article, designated for consumption
on board; or anything consumed by any means of transport, any installations or addition thereto or
any other use during transportation.
8. The supply or Import of investment precious metals. The Executive Regulation of this Decree-
Law shall specify the precious metals and the standards based on which they are classified as being
for investment purposes.
9. The first supply of residential buildings within (3) years of its completion, either through sale or
lease in whole or in part, according to the controls specified in the Executive Regulation of this
Decree-Law.
10. The first supply of buildings specifically designed to be used by Charities through sale or lease
according to the controls specified in the Executive Regulation of this Decree-Law.
11. The first supply of buildings converted from non-residential to residential through sale or lease
according to the conditions specified in the Executive Regulation of this Decree-Law.
12. The supply of crude oil and natural gas.
13. The supply of educational services and related Goods and Services for nurseries, preschool, school
education, and higher educational institutions owned or funded by Federal or local Government,
as specified in the Executive Regulation of this Decree-Law.
14. The supply of preventive and basic healthcare Services and related Goods and Services according
to what is specified in the Executive Regulation of this Decree-Law.

Chapter Two
Exemptions
Article (46)
Supply Exempt from Tax

The following supplies shall be exempt from Tax:
1. Financial services that are specified in the Executive Regulation of this Decree-Law.
2. Supply of residential buildings through sale or lease, other than that which is zero-rated according
to Clauses (9) and (11) of Article (45) of this Decree-Law.
3. Supply of bare land.
4. Supply of local passenger transport.
The Executive Regulation of this Decree-Law shall specify the conditions and controls for exempting the
supplies mentioned in the preceding clauses of this Article.

Chapter Three
Single and Mixed Supplies
Article (47)
Supply of More Than One Component

The Executive Regulation of this Decree-Law will specify the controls to determine the tax treatment of
any supply composed of more than one component for a single price, where each component is subject to
a different tax treatment.

Chapter Four
Specific Obligations to Account for Tax
Article (48)
Reverse Charge

1. If the Taxable Person imports Concerned Goods or Concerned Services for the purposes of his
Business, then he shall be treated as making a Taxable Supply to himself, and shall be responsible
for all applicable Tax obligations and accounting for Due Tax in respect of these supplies.
2. As an exception to Clause (1) of this Article, in case the final destination of the Goods when
entering the State is another Implementing State, the Taxable Person shall pay the Due Tax on Import of Concerned Goods pursuant to the mechanism specified by the Executive Regulation of
this Decree-Law.
3. If a Registrant makes a Taxable Supply in the State to another Registrant of any crude or refined
oil, unprocessed or processed natural gas, or any hydrocarbons, and the Recipient of these Goods
intends to either resell the purchased Goods as crude or refined oil, unprocessed or processed natural gas, or any hydrocarbons, or use these Goods to produce or distribute any form of energy,
the following rules shall apply:
a. The Registrant making the Supply shall not charge Tax on the value of the supply of the Goods referred to in this paragraph.
b. The Recipient of the Goods shall calculate the Tax on the value of the Goods supplied thereto and shall be responsible for all applicable Tax obligations and for calculating the Due Tax in respect of such supplies.
4. The provisions of Clause (3) of this Article shall not apply in any of the following situations:
a. Where, before the Date of Supply, the Recipient of Goods has not provided a written confirmation to the supplier that his acquisition of the Goods is for the purpose of resale.
b. Where, before the Date of Supply, the Recipient of Goods has not provided a written confirmation to the supplier that he is a Registrant and the supplier has not verified the Tax Registration of the Recipient of Goods by means approved by the Authority.
c. Where the Taxable Supply would be subject to Tax at the rate of 0% in accordance with Clause (1) of Article (45) of this Decree-Law.
d. Where the Taxable Supply includes a supply of Goods or Services other than the Goods referred to in Clause (3) of this Article.
5. Where a Recipient of Goods of any crude or refined oil, unprocessed or processed natural gas, or

any hydrocarbons confirms in writing to the supplier that he is a Registrant for the purposes of applying Clause (3) of this Article, the following shall apply:
a. The supplier shall not be liable for calculating the Tax in relation to the supply unless he was aware or supposed to be aware, that the Recipient was not a Registrant at the Date of Supply.
b. The Recipient shall be liable for the calculation of any Due Tax in respect of the supply.
6. If the supplier mentioned in paragraph (a) of Clause (5) of this Article is supposed to be aware that
the Recipient of Goods was not registered at the Date of Supply, the supplier and the Recipient of
Goods shall be jointly and severely liable for any Due Tax and relevant penalties in respect of the
supply.
7. The Executive Regulation of this Decree-Law shall specify:
a. Conditions and instances where the mechanism in Clause (1) of this Article applies.
b. Additional obligations related to record keeping for Tax calculated according to the mechanism in Clause (1) of this Article.

Article (49)
Import of Concerned Goods

A person not registered for Tax shall pay Due Tax on Import of Concerned Goods from outside the
Implementing States on the date of Import pursuant to the payment mechanism specified by the Executive
Regulation of this Decree-Law.

Chapter Five
Designated Zones

Article (50)
Designated Zone

A “Designated Zone” that meets the conditions specified in the Executive Regulation of this Decree-Law
shall be treated as being outside the State.

Article (51)
Transfer of Goods in Designated Zones

1. Goods may be transferred from one Designated Zone to another Designated Zone without any Tax
becoming due.
2. The Executive Regulation of this Decree-Law shall specify the procedures and conditions for the
transfer of Goods from and to a Designated Zone as well as the method of keeping, storing and
processing such Goods therein.

Article (52)
Exceptions for Designated Zone

As an exception to Article (50) of this Decree-Law, the Executive Regulation of this Decree-Law shall
specify the conditions under which the Business conducted within the Designated Zones will be regarded
as being conducted in the State.

Title Seven
Calculation of Due Tax

Chapter One
Due Tax for a Tax Period
Article (53) Calculation of Payable Tax

The Payable Tax for any Tax Period shall be calculated as being equal to the total Output Tax payable
pursuant to this Decree-Law and which has been done in the Tax Period less the total Recoverable Tax by
said Taxable Person over the same Tax Period.

Article (54)
Recoverable Input Tax

1. The Input Tax that is recoverable by a Taxable Person for any Tax Period is the total of Input Tax
paid for Goods and Services which are used or intended to be used for making any of the following:
a. Taxable Supplies.
b. Supplies that are made outside the State which would have been Taxable Supplies had they been made in the State.
c. Supplies specified in the Executive Regulation of this Decree-Law that are made outside the State, which would have been treated as exempt had they been made inside the State.
2. Where Goods are imported by a Taxable Person through another Implementing State and the
intended final destination of those Goods was the State at the time of Import, then the Taxable Person shall be entitled to treat the Tax paid in respect of Import of Goods into the Implementing
State as Recoverable Tax subject to conditions specified the Executive Regulation of this Decree-
Law.
3. Where Goods were acquired by a Taxable Person in another Implementing State and then moved
into the State, the Taxable Person shall be entitled to treat the Tax paid in respect of the Goods in
the Implementing State as Recoverable Tax subject to the conditions specified in the Executive
Regulation of this Decree-Law.
4. A Taxable Person shall not be entitled to recover any Input Tax in respect of Tax paid in accordance with Clause (2) of Article (48) of this Decree-Law.
5. The Executive Regulation of this Decree-Law shall specify the instances where Input Tax is excepted from being recovered.

Article (55)
Recovery of Recoverable Input Tax in the Tax Period

1. Taking into consideration the provisions of Article (56) of this Decree-Law, the Recoverable Input
Tax may be deducted through the Tax Return relating to the first Tax Period in which the following
conditions have been satisfied:
a. The Taxable Person receives and keeps the Tax Invoice as per the provisions of this Decree-Law, provided that the Tax Invoice includes the details of the supply related to such Input Tax, or keeps any other document pursuant to Clause (3) of Article (65) of this Decree-Law in relation to the Supply or Import on which Input Tax was paid.
b. The Taxable Person pays the Consideration for the Supply or any part thereof, as specified

in the Executive Regulation of this Decree-Law.
2. If the Taxable Person entitled to recover the Input Tax fails to do so during the Tax Period in which
the conditions stated in Clause (1) of this Article have been satisfied, he may include the Recoverable Tax in the Tax Return for the subsequent Tax Period.

Article (56)

Input Tax Paid before Tax Registration

1. A Registrant may recover Recoverable Tax incurred before Tax Registration on the Tax Return
submitted for the first Tax Period following Tax Registration, which has been paid for any of the
following:
a. Supply of Goods and Services made to him prior to the date of Tax Registration.
b. Import of Goods by him prior to the date of Tax Registration.
Provided that these Goods and Services were used to make supplies that give the right to Input Tax
recovery upon Tax Registration.
2. As an exception to the provisions of Clause (1) of this Article, Input Tax may not be recovered in
any of the following instances:
a. The receipt of Goods and Services for purposes other than making Taxable Supplies.
b. Input Tax related to the part of the Capital Assets that depreciated before the date of Tax Registration.
c. If the Services were received more than five years prior to the date of Tax Registration.
d. Where a Person has moved the Goods to another Implementing State prior to the Tax Registration in the State.

Article (57)

Recovery of Tax by Government Entities and Charities

A Cabinet Decision shall be issued at the suggestion of the Minister determining the Government Entities
and Charities entitled to recover the full amount of Input Tax paid by them, except for:
1. Tax excluded from recovery as specified in the Executive Regulation of this Decree-Law.
2. Tax paid for Goods and Services used to perform exempt supplies.

Chapter Two

Apportionment and Adjustment of Input Tax

Article (58)

Calculating the Input Tax that may be Recovered

The Executive Regulation of this Decree-Law shall specify the method in which the Input Tax that may
be recovered is calculated, if Input Tax is paid for Goods or Services during a specific Tax Period to make
supplies that allow recovery under Article (54) and others that do not allow recovery, or for activities
conducted that are not in the course of doing the Business.

Article (59)

Conditions and Mechanism of Input Tax Adjustment

The Executive Regulation of this Decree-Law shall specify the conditions and mechanism for adjusting
Input Tax in the following cases:

1. If the Taxable Person attributes the Input Tax, either fully or partially, to make Taxable Supplies,
but changed the use, or the intended use, of those Goods or Services prior to making the Taxable
Supplies.
2. If the Taxable Person attributes the Input Tax, either fully or partially, to make Exempt Supplies,
or for activities that do not fall within the conduct of Business, but changed the use or the intended
use of the Goods or Services related to the Input Tax prior to making Exempt Supplies.

Chapter Three
Capital Assets Scheme
Article (60)
Capital Assets Scheme

1. If a Capital Asset is supplied or imported by a Taxable Person, the latter shall assess the period of
use of such asset and make the necessary adjustments to the Input Tax paid pursuant to the Capital
Assets Scheme.
2. A Taxable Person shall keep the records related to Capital Assets for at least ten years.
3. The Executive Regulation of this Decree-Law shall specify the following:
a. Capital Assets subject to the provisions of this Decree-Law and their estimated useful life.
b. The method of adjusting Capital Assets and the periods for which adjustments should be made.
c. Instances where the period for keeping records of Capital Asset records is extended.

Chapter Four
Adjustment of Tax after the Supply Date
Article (61)
Instances and Conditions for Output Tax Adjustments

1. A Registrant shall adjust Output Tax after the date of supply in any of the following instances:
a. If the supply was cancelled.
b. If the Tax treatment of the supply has changed due to a change in the nature of the supply.
c. If the previously agreed Consideration for the supply was altered for any reason.
d. If the Recipient of Goods or Recipient of Services returned them to the Registrant in full or in part and the Consideration was returned in full or in part.
e. If the Tax was charged in error.
2. Paragraph (e) of Clause (1) of this Article shall not apply where the place of supply was treated by
the supplier at the Date of Supply as being subject to Clause (1) of Article (27), but, as a result of
a movement of the Goods, it turned out that it should have been treated as a supply under paragraph
(b)(1) of Clause (3) of the same.
3. In order to adjust the Output Tax any of the following conditions shall be met:
a. If the Output Tax amount charged on the supply stated in the Tax Invoice does not match the Tax that should actually be charged on the supply as a result of any of the events mentioned in Clause (1) of this Article.
b. If the Registrant submits a Tax Return for the Tax Period during which the supply occurred and an amount was incorrectly calculated as being the amount of Output Tax due for this

supply as the result of any of the events mentioned in Clause (1) of this Article.

Article (62)

Mechanism for Output Tax Adjustment

The Output Tax shall be adjusted according to the following:

1. If the Output Tax due for the supply exceeds the Output Tax calculated by the Registrant, the Registrant shall issue a new Tax Invoice for the additional amount of Tax and calculate the additional Tax due for the Tax Period during which such an increase was identified.
2. If the Output Tax calculated by the Registrant exceeds the Output Tax which should have been charged on the supply, the Registrant shall issue a Tax Credit Note according to the provisions of this Decree-Law.

Article (63)

Adjustment due to the Issuance of Tax Credit Notes

Without prejudice to Clause (2) of Article (62) of this Decree-Law, if the Registrant issues a Tax Credit Note to correct Output Tax charged to the Recipient of Goods or Recipient of Services, the Tax stated in the Tax Credit Note shall be considered as:

1. A reduction of the Output Tax for the Registrant of this Tax Credit Note.
2. A reduction of the Input Tax by the Recipient of Goods or Recipient of Services for the Tax Period during which the Tax Credit Note was received.

Article (64)

Adjustment for Bad Debts

1. A Registrant supplier may reduce the Output Tax in a current Tax Period to adjust the Output Tax paid for any previous Tax Period if all of the following conditions are met:
   a. Goods and Services have been supplied and the Due Tax has been charged and paid.
   b. Consideration for the supply has been written off in full or part as a bad debt in the accounts of the supplier.
   c. More than six (6) months has passed from the date of the supply.
   d. The Registrant supplier has notified the Recipient of Goods and the Recipient of Services of the amount of Consideration for the supply that has been written off.
2. The Registrant Recipient of Goods or Recipient of Services shall reduce the Recoverable Input Tax for the current Tax Period related to a supply received during any previous Tax Period where the Consideration has not been paid and all of the following conditions are met:
   a. The registered supplier reduced the Output Tax as stated in Clause (1) of this Article and the Recipient of Goods and the Recipient of Services has received a notification from the supplier of the Consideration being written off.
   b. The Recipient of Goods and Recipient of Services received the Goods and Services and the relevant Input Tax was deducted.
   c. The Consideration was not paid in full or in part for the supply for over (6) six months.
3. The reduction stated in Clause (1) and (2) shall be equal to the Tax related to the Consideration which has been written off according to paragraph (b) of Clause (1) of this Article.

Chapter Five
Tax Invoices
Article (65)
Conditions and Requirements for Issuing Tax Invoices

1. A Registrant making a Taxable Supply shall issue an original Tax Invoice and deliver it to the
Recipient of Goods or Recipient of Services.
2. A Registrant making a Deemed Supply shall issue an original Tax Invoice and deliver it to a
Recipient of Goods or Recipient of Services if available or keep it in his records if there is no Recipient of Goods or Recipient of Services.
3. The Executive Regulation of this Decree-Law shall specify the following:
a. Data to be included in the Tax Invoice.
b. The conditions and procedures required to issue an electronic Tax Invoice.
c. Instances where the Registrant is not required to issue and deliver a Tax Invoice to the Recipient of Goods or the Recipient of Services.
d. Instances where other documents may be issued in place of the Tax Invoice as well as the conditions thereof and the data to be included therein.
e. Instances where another Person may issue a Tax Invoice on behalf of the registered supplier.
4. Any Person who receives an amount as Tax pursuant to any document issued by him shall pay this
amount to the Authority even if it is not due.

Article (66)
Document of Supplies to an Implementing States

Without prejudice to Article (65) of this Decree-Law, each Registrant who supplies Goods or Services
considered as supplied in any of the Implementing States, shall provide the Recipient of Goods and
Recipient of Services with a document that includes all the information that must be included in the Tax
Invoice and any other information as specified in the Executive Regulation of this Decree-Law, provided
that this document is not labelled “Tax Invoice” and does not include any Tax charged.

Article (67)
Date of Issuance of Tax Invoice

The Registrant shall issue a Tax Invoice within 14 days as of the date of supply as stated in Article (25)
of this Decree-Law.

Article (68)
Rounding on Tax Invoices

For the purpose of stating the Tax due on a Tax Invoice, the Executive Regulation of this Decree-Law
shall specify the method of calculation and stating the total amount to be paid if the Tax is less than one
fils of a UAE Dirham.

Article (69)
Currency Used on Tax Invoices

If the supply is in a currency other than the UAE Dirham, then for the purposes of the Tax Invoice, the

amount stated in the Tax Invoice shall be converted into the UAE Dirham according to the exchange rate
approved by the Central Bank at the date of supply.

Chapter Six
Tax Credit Notes
Article (70)
Conditions and Requirements for Issuing Tax Credit Note

1. The Registrant shall issue an original Tax Credit Note when a reduction of Output Tax occurs in
relation to any supply made by him according to Clause (2) of Article (62) of this Decree-Law and
deliver the same to the Recipient of Goods or Recipient of Services.
2. When making a Deemed Supply, the Registrant shall issue an original Tax Credit Note when a
reduction occurs to the Output Tax in relation to such supply according to Article (61) of this Decree-Law and shall keep the same in his records.
3. The Executive Regulation of this Decree-Law shall specify the following:
a. Basic data that should be included in the Tax Credit Note in instances where the Taxable Person is required to issue this Note.
b. The conditions and procedures required for the issuance of an electronic Tax Credit Note.
c. Instances where the Registrant is not required to issue and deliver a Tax Credit Note to the Recipient of Goods or the Recipient of Services.
d. Instances where other documents may be issued in place of the Tax Credit Note as well as conditions for the issuance of such document and the data to be included therein.
e. Instances where another Person may issue a Tax Credit Note on behalf of the registered supplier.

Title Eight
Tax Period, Tax Returns, Payment and Reclaiming of Tax

Chapter One
Tax Period
Article (71)
Duration of Tax Period

The Executive Regulation of this Decree-Law shall specify the Tax Period for which the Taxable Person
shall calculate and pay Tax as well as the exceptional circumstances in which the Authority may amend
the Tax Period.

Chapter Two
Tax Returns and Tax Payment
Article (72)
Submission of Tax Returns

1. The Taxable Person shall submit the Tax Return to the Authority at the end of each Tax Period
within the time limits and according to the procedures specified in the Executive Regulation of
this Decree-Law declaring all supplies made and received during that Tax Period.
2. A Cabinet Decision shall be issued upon the recommendation of the Minister, determining the
Government Entities that may submit simplified Tax Returns to the Authority.

Article (73)

Payment of Tax

The Executive Regulation of this Decree-Law shall specify the time limits and procedures for payment of
Tax stated as payable in the Tax Return according to the provisions of this Decree-Law.

Chapter Three
Carrying forward the Excess of Recoverable Tax and Tax Recovery
Article (74)
Excess Recoverable Tax

1. With the exception of what will be stipulated in the Executive Regulation of this Decree-Law, the
Taxable Person shall carry forward any excess Recoverable Tax to the subsequent Tax Periods
and offset such excess against Payable Tax or any Administrative Penalties imposed under this
Decree-Law or Federal Law No. (7) of 2017 on Tax Procedures in subsequent Tax Periods until
such excess is fully utilised, in the following cases:
a. If the Taxable Person's Recoverable Input Tax set forth in this Decree-Law exceeds the Output Tax payable for the same Tax Period.
b. If the Tax paid to the Authority by the Taxable Person exceeds the Payable Tax according to the provisions of this Decree-Law, other than in the instance mentioned in paragraph (a) of Clause (1) of this Article.
2. If there remains any excess for any Tax Period after being carried forward for a period of time, the
Taxable Person may apply to the Authority to reclaim the remaining excess. The Executive Regulation of this Decree-Law shall specify the time limits, procedures and mechanisms of returning any remaining excess to the Taxable Person.

Chapter Four
Other Provisions on Recovery of Tax
Article (75)
Tax Recovery in Special Cases

The Authority may according to the conditions, restrictions and procedures specified in the Executive
Regulation of this Decree-Law, return Tax paid for any supply received by or Import carried out by any
of the following:
1. A citizen of the State in respect of the Goods and Services related to the construction of a new
residence that is not part of the Person's Business.
2. A Non-Resident, who is not a Resident of an Implementing State and conducts a Business and is
not a Taxable Person.
3. A Non-Resident, for Goods supplied to him in the State and that will be exported.
4. Foreign governments, international organisations, diplomatic bodies and missions according to
treaties that the State is a party to.
5. Any Persons or classes listed in a Cabinet Decision issued at the suggestion of the Minister.

Title Nine
Violations and Penalties
Article (76)

Administrative Penalties Assessment

Without prejudice to the provisions of Federal Law No. (7) of 2017 on Tax Procedures, the Authority shall issue an Administrative Penalty Assessment to the Person and notify the Person of the same within five (5) business days as of the date of issuance in any of the following cases:

1. Failure by the Taxable Person to display prices inclusive of Tax according to Article (38) of this Decree-Law.
2. Failure by the Taxable Person to notify the Authority of applying Tax based on the margin according to Article (43) of this Decree-Law.
3. Failure to comply with the conditions and procedures related to keeping the Goods in a Designated Zone or moving them to another Designated Zone.
4. Failure by the Taxable Person to issue the Tax invoice or an alternative document when making any Supply.
5. Failure by the Taxable Person to issue a Tax Credit Note or an alternative document.
6. Failure by the Taxable Person to comply with the conditions and procedures regarding the issuance of electronic Tax Invoices and electronic Tax Credit Notes.

Article (77)

Tax Evasion

If it is proven that a Person who is not a Registrant acquires Goods referred to in Clause (3) of Article 48 of this Decree-Law, claiming that he is a Registrant, he shall be considered as having committed Tax Evasion and shall be subject to the penalties provided for in Federal Law No. (7) of 2017 on Tax Procedures.

Title Ten

General Provisions

Article (78)

Record-keeping

1. Without prejudice to the provisions related to record-keeping stated in any other law, the Taxable Person shall keep the following records:

a. Records of all supplies and Imports of Goods and Services.
b. All Tax Invoices and alternative documents related to receiving Goods or Services.
c. All Tax Credit Notes and alternative documents received.
d. All Tax Invoices and alternative documents issued.
e. All Tax Credit Notes and alternative documents issued.
f. Records of Goods and Services that have been disposed of or used for matters not related to Business, showing Taxes paid for the same.
g. Records of Goods and Services purchased and for which the Input Tax was not deducted.
h. Records of exported Goods and Services.
i. Records of adjustments or corrections made to accounts or Tax Invoices.
j. Records of any Taxable Supplies made or received in accordance with Clause (3) of Article 48 of this Decree-Law, including any declarations provided or received in respect of those Taxable Supplies.

k. A Tax Record that includes the following information:
1) Due Tax on Taxable Supplies.
2) Due Tax on Taxable Supplies pursuant to the mechanism in Clause (1) of Article (48) of this Decree-Law.
3) Due Tax after the error correction or adjustment.
4) Recoverable Tax for supplies or Imports.
5) Recoverable Tax after the error correction or adjustment.
2. The Executive Regulation of this Decree-Law shall specify the following:
a. Time limits, restrictions and conditions for keeping the records listed in Clause (1) of this Article.
b. Restrictions and procedures regarding the maintenance of the confidentiality of the records that may be accessed by the Authority in the case of Government Entities mentioned under Clause (2) of Article (72) of this Decree-Law.

Articles (79)
Stating the Tax Registration Number

The Taxable Person or any other Person authorised in writing by him shall state the Tax Registration Number on each Tax Return, notification, Tax Invoice, Tax Credit Note, and any other document related to Tax or correspondence as required under this Decree-Law or said Federal Law No. (7) of 2017 on Tax Procedures.

Title Eleven
Closing Provisions
Article (80)
Transitional Rules

1. If the supplier receives Consideration or part thereof or issues an invoice for Goods or Services before the Decree-Law comes into effect, the date of supply shall be the same as the effective date of the Decree-Law in the following instances if they occur after the effective date of the Decree-Law:
a. Transfer of Goods under the supervision of the supplier.
b. Placing the Goods at the recipient's disposal.
c. The completion of assembly or installation of the Goods.
d. The issuance of the customs declaration.
e. The acceptance by the Recipient of Goods of the supply.
2. If a contract has been concluded prior to the enforcement of this Decree-Law, regarding a supply to be wholly or partly made after the effective date of this Decree-Law, but such contract does not contain clauses related to Tax on the supply, it shall be treated as per the following:
a. The Consideration shall be considered inclusive of Tax if chargeable according to this Decree-Law.
b. Tax shall be calculated on the supply regardless of whether it has been taken into account when determining the Consideration for the supply.
3. The Executive Regulation of this Decree-Law shall set forth special provisions related to the

implementation of this Decree-Law where a contract has been concluded before the effective date
of the Decree-Law but the supply under the contract is wholly or partly made after the effective
date of this Decree-Law.

Article (81)

Revenue Sharing

Tax revenues and Administrative Penalties set forth in the provisions of this Decree-Law shall be subject
to sharing between the Federal Government and the Emirates Governments based on the provisions of
Federal Decree-Law No. (13) of 2016 On the Establishment of the Federal Tax Authority.

Article (82)

Executive Regulation

The Cabinet shall issue the Executive Regulation of this Decree-Law at the suggestion of the Minister.

Article (83)

In case of absence of a special provision in this Decree-Law, the provisions of Federal Law No. (7) of
2017 on Tax Procedures shall be applied.

Article (84)

Cancellation of Conflicting Provisions

Any text or provisions contrary to or inconsistent with the provisions of this Decree-Law shall be
abrogated.

Article (85)

Effective Date of this Decree-Law and its Application

This Decree-Law shall be published in the Official Gazette and shall come into effect as of January 1,
2018.

Khalifa bin Zayed Al Nahyan
President of the United Arab Emirates
Issued by us at the Presidential Palace in Abu Dhabi
On: 1 /12/1438 H.
Corresponding to: 23/ 8 /2017

ANNEXE NO.3

Federal Decree-law No. (7) of 2017 in Excise Tax

We, Khalifa bin Zayed Al Nahyan, President of the United Arab Emirates,
Having reviewed the Constitution;
Federal Law No. (1) of 1972 on the Competencies of the Ministries and Powers of the Ministers and its amendments;
Federal Law No. (11) of 1981 on the Imposition of a Federal Customs Tax on Imports of Tobacco and its derivatives and its amendments;
Federal Law No. (26) of 1981 on the Commercial Maritime Law and its amendments;
Federal Law No. (5) of 1985 promulgating the Civil Transactions Law and its amendments;
Federal Law No. (3) of 1987 promulgating the Penal Law and its amendments;
Federal Law No. (10) of 1992 promulgating the Law of Evidence in Civil and Commercial Transactions and its amendments;
Federal Law No. (11) of 1992 promulgating the Law on Civil Procedures and its amendments;
Federal Law No. (18) of 1993 promulgating the Commercial Transactions Law and its amendments;
Federal Law No. (8) of 2004 on the Financial Free Zones;
Federal Law No. (1) of 2006 on Electronic Commerce and Transactions;
Federal Law No. (2) of 2008 on the National Societies and Associations of Public Welfare;
Federal Law No. (15) of 2009 on Combating Tobacco;
Federal Law No. (1) of 2011 on the State's Public Revenues;
Federal Law No. (8) of 2011 on the Reorganisation of the State Audit Institution;
Federal Decree-Law No. (8) of 2011 on the Rules of the Preparation of the General Budget and Final Accounts;
Federal Law No. (4) of 2012 on the Regulation of Competition;
Federal Law No. (12) of 2014 on the Organisation of the Auditing Profession;
Federal Law No. (2) of 2015 on Commercial Companies;
Federal Decree-Law No. (13) of 2016 on the Establishment of the Federal Tax Authority;
Federal Law No. (7) of 2017 on Tax Procedures; and
Pursuant to what was presented by the Minister of Finance and approved by Cabinet,

Have issued the following Decree-Law:

Chapter One
Definitions
Article (1)

In the application of the provisions of this Decree-Law, the following words and expressions shall have the meanings assigned against each, unless the context otherwise requires:

State: United Arab Emirates.
Minister: Minister of Finance.
Authority: Federal Tax Authority.
Tax: Excise Tax.
Excise Goods: Goods that will be determined as being subject to Tax by a Cabinet Decision upon the recommendation of the Minister.
Import: The arrival of Goods from abroad into territory of the State.
Export: The departure of Goods from the territory of the State.
Person: A natural or legal person.
Taxable Person: Any Person registered or obligated to register for Tax purposes under the provisions of this Decree-Law
Designated Zone: Any fenced area intended to be a free zone that cannot be entered or exited except through a designated road, and any area designated by the Authority as being subject to the supervision of a Warehouse Keeper, in accordance with the Executive Regulation of this Decree-Law.
Warehouse Keeper: Any Person approved and registered at the Authority to supervise a Designated Zone in accordance with the Executive Regulation of this Decree-Law.
Tax Registration: A procedure whereby the Taxable Person or his Legal Representative registers at the Authority for Tax purposes.
Tax Registration Number (TRN): A unique number issued by the Authority for each Person registered for Tax purposes.
Registrant: The Taxable Person who has been issued with a TRN.
Importer: The Person whose name appears for customs clearance purposes as the importer of the Excise Goods on the date of Import.
Tax Return: Information and data specified for Tax purposes and submitted by the Taxable Person in accordance with the form prepared by the Authority.
Business: Any activity conducted regularly, on an ongoing basis and independently by any Person, in any location, which involves or may involve trading in Excise Goods.

Refundable Tax: Amounts that have been paid and that the Authority may return to the Person pursuant to the provisions of this Decree-Law.
Due Tax: Tax that is calculated and imposed pursuant to the provisions of this Decree-Law.
Payable Tax: The Due Tax that is due for payment to the Authority.
Deductible Tax: The Tax that has been paid, or considered as have been paid, by a Taxable Person.
Tax Period: A specific period of time for which the Payable Tax shall be calculated and paid.
Administrative Penalties: Amounts imposed upon a Person by the Authority for violating the provisions of this Decree-Law or Federal Law No. (7) of 2017 on Tax Procedures.
Administrative Penalties Assessment: A decision issued by the Authority in relation to the Administrative Penalties due.
Stockpiler: The Person who owns Excise Goods and cannot demonstrate that such goods had been previously subject to Tax pursuant to the conditions stated in the Executive Regulation of this Decree-Law.
Customs Legislation: Federal and local legislation that regulates customs in the State.
The Implementing States: The States of the Gulf Cooperation Council that apply the Tax Law pursuant to an issued legislation.
Tax Evasion: The Person's use of illegal means, resulting in the reduction of the amount of the Due Tax, non-payment thereof, or a refund of a tax that the Person did not have the right to have refunded under the provisions of this Decree-Law.

Chapter Two
Implementation, Scope and Calculation of Tax

Article (2) - Implementation and Scope of Tax

1. The provisions of this Decree-Law shall apply to the Excise Goods specified by a Cabinet Decision at the suggestion of the Minister.
2. Tax shall be imposed on the following activities related to Excise Goods:
a. Production of Excise Goods in the State, where such production was in the course of doing business.
b. Import of Excise Goods.
c. Release of Excise Goods from a Designated Zone.
d. Stockpiling of Excise Goods in the State, where such Stockpiling was in the course of doing business.

Article (3)
Tax Calculation

A Cabinet Decision shall be issued at the suggestion of the Minister to determine the tax rates that shall be imposed on Excise Goods and the method of calculating the Excise Price, provided that the tax rate shall not exceed (200%) of the Excise Price of the Good.

Article (4)
Tax Obligations

1. The Due Tax shall be the responsibility of:

a. The Person who conducts any of the activities mentioned in clause (2) of Article (2) of this Decree-Law;

b. The Person involved in any of the activities mentioned in clause (2) of Article (2) of this Decree-Law, in the event the Person who conducted the activity has failed to meet his obligation to pay the Tax, pursuant to what is specified in the Executive Regulation of this Decree-Law;

c. The Warehouse Keeper, in the case of the release of Excise Goods from a Designated Zone, and where the Payable Tax has not been previously paid, pursuant to what is specified in the Executive Regulation of this Decree-Law.

2. The following are excluded from the provisions of clause (1) of this Article:

a. The Person who imports Excise Goods of value less than that specified in the Customs Legislation, if such Excise Goods are accompanied by the Person within the frame of an international voyage and are used for non-commercial purposes.

b. A Stockpiler in case the conditions specified in the Executive Regulation of this Decree Law are met.

Chapter Three
Tax Registration and Deregistration
Article (5)
Tax Registration

1. A Person shall be prohibited from conducting any activities that fall within clause (2) of Article (2) of this Decree-Law before registration thereof for Tax purposes in accordance with the provisions of this Article.
2. Without prejudice to the provisions of clause (1) of this Article, the Person liable for the Due Tax according to Article (4) of this Decree-Law shall apply to the Authority for Tax Registration as set forth in Federal Law No. (7) of 2017 on Tax Procedures, within 30 days as of the end of any month during which the Person carries out or intends to carry out activities mentioned in Article (2) of this Decree-Law, or from the effective date of this Decree-Law, whichever is later.
3. The Executive Regulation of this Decree-Law shall determine the effective date of the Tax Registration referred to in this Article.

Article (6)
Exceptions from Registration

1. The Authority may except a Person from Tax Registration, if the Tax is due under paragraphs (b) and (c) of clause (2) of Article (2) of this Decree-Law, and he can demonstrate to the Authority that he will not regularly Import Excise Goods, pursuant to what is specified in the Executive Regulation of this Decree-Law.
2. Anyone excepted from Tax Registration according to clause (1) of this Article shall inform the Authority of any changes to his circumstances that would make him subject to Tax under the provisions of this Decree-Law, within the timeframe and in accordance with the procedures stated in the Executive Regulation of this Decree-Law.
3. The Authority shall collect any Due Tax and Administrative Penalties from the Person excepted from registration under clause (1) of this Article.

Article (7)
Tax Deregistration

A Registrant shall apply to the Authority for Tax Deregistration if he is no longer liable for the Tax under Article (4) of this Decree-Law within the timeframe specified in the Executive Regulation of this Decree-Law.

Article (8)
Registration as a Warehouse Keeper

1. Any Person operating or intending to operate a Designated Zone shall apply for registration as a Warehouse Keeper pursuant to what is specified in the Executive Regulation of this Decree-Law.
2. The Executive Regulation of this Decree-Law shall specify the effective date of registration referred to in this Article.
3. A Person shall not act as a Warehouse Keeper before his registration in accordance with this Article.

Article (9)

The Procedures, Controls and Conditions of Tax Registration and Tax Deregistration

The Executive Regulation of this Decree-Law shall determine the procedures, controls and conditions of Tax Registration, Tax deregistration, and rejection of application for Tax Registration and Tax Deregistration.

Chapter Four
Rules Pertaining to Tax Payment and Tax Exemption
Article (10)
Tax Calculation Date

Tax shall be calculated as per the following dates:

1. The date of Import of Excise Goods.
2. The date on which the Excise Goods were acquired by the Stockpiler, and if such acquisition has happened before the effective date of this Decree-Law, the date of calculating tax shall be the effective date of this Decree-Law.
3. With the exception of the two cases mentioned in clauses (1) and (2) of this Article, Tax shall be calculated based on the date on which Excise Goods were released for consumption pursuant to what is specified in the Executive Regulation of this Decree-Law.

Article (11)
Inclusion of the Tax in the Advertised Price

The advertised prices of Excise Goods shall be inclusive of the Tax. Instances where prices do not include the Tax will be determined by the Executive Regulation of this Decree-Law.

Article (12)
Tax Exemption

1. Excise Goods that are exported shall be exempt from tax.
2. The Executive Regulation of this Decree-Law shall specify the controls and conditions for exemption mentioned in clause (1) of this Article.

Chapter Five
Designated Zones
Article (13)
Designated Zone

1. A “Designated Zone” which fulfils the conditions specified in the Executive Regulation of this Decree-Law shall be treated as being outside the State for Tax purposes.
2. By way of exception to the provisions of clause (1) of this Article, the Executive Regulation of this Decree-Law shall specify the conditions under which the Business conducted within the Designated Zones shall be treated as being conducted in the State.

Article (14) – Transfer of Excise Goods in Designated Zones

1. Excise Goods may be transferred from one Designated Zone to another without being subject to Tax.
2. The Executive Regulation of this Decree-Law shall specify the controls and conditions of the transfer of goods from and to a Designated Zone as well as the mechanism of preserving, storing and processing such Excise Goods therein.

Chapter Six
Calculation of Due Tax
Article (15)
Tax Calculation

The Payable Tax owed by a Taxable Person shall be calculated for any Tax Period as the Due Tax from the Taxable Person for such Tax Period less the total Deductible Tax as calculated under provisions of Article (16) of this Decree-Law.

Article (16)
Deductible Tax

1. The Deductible Tax consists of the following:

a. The Tax paid on Excise Goods which have been exported;

b. The Tax paid on Excise Goods which have become a component of another Excise Good which is, or will become, subject to tax;

c. Amounts paid to the Authority in error.

2. The Executive Regulation of this Decree-Law shall specify the conditions and controls for deducting the Tax mentioned in clause (1) of this Article.

Chapter Seven
Tax Period, Tax Return and Tax Payment
Article (17)
Tax Period

The Executive Regulation of this Decree-Law shall specify the Tax Period and the exceptional circumstances under which the Authority may amend the Tax Period.

Article (18)
Tax Return

The Taxable Person shall submit a Tax Return to the Authority at the end of each Tax Period within the timeframes and in accordance with the procedures specified in the Executive Regulation of this Decree-Law.

Article (19)
Payment of Tax

1. The Taxable Person shall settle the Payable Tax appearing in the Tax Return on the same date of submitting the Tax Return under Article (18) of this Decree-Law in accordance with the procedures specified by the Authority.
2. Any Person excepted from registration under clause (1) of Article (6) of this Decree-Law shall pay the Due Tax when importing Excise Goods.

Chapter Eight
Carrying Forward Excess Refundable Tax
Article (20)
Excess Refundable Tax

1. The Taxable Person shall carry forward any excess Refundable Tax to the subsequent Tax Periods and offset such excess against the Payable Tax or any Administrative Penalties imposed under this Decree Law or Federal Law No. (7) of 2017 on Tax Procedures in subsequent Tax Periods until full depletion of such excess , in the following cases:
a. If the Taxable Person's Deductible Tax set forth in Article (16) of this Decree-Law exceeds the Due Tax for the same Tax Period;
b. If the Tax paid to the Authority by the Taxable Person exceeds the Payable Tax according to the provisions of this Decree-Law.
2. If any excess remains for any Tax Period after being carried forward for a period of time, the Taxable Person may submit an application to the Authority for a refund of the remaining excess, in accordance with the timeframes and procedures specified by the Executive Regulation of this Decree-Law.

Article (21)
Tax Refunds in Special Cases

The Authority may refund the Tax based on a refund application submitted thereto to the following:
1. Foreign governments, international organisations and diplomatic bodies and missions, on condition of reciprocity, for Tax paid in the course of their official activities and in accordance with the conditions, controls and procedures specified in the Executive Regulation of this Decree-Law.
2. The Person who is registered in any Implementing State should he pay the Due Tax in the State and then export the Excise Goods to an Implementing State in accordance with the conditions, controls and procedures specified in the Executive Regulation of this Decree-Law.
3. Any other Persons or categories determined by a Cabinet Decision at the suggestion of the Minister.

Chapter Nine
Violations and Penalties
Article (22)
Administrative Penalties Assessment

Notwithstanding the provisions of Federal Law No. (7) of 2017 on Tax Procedures, the Authority shall issue an Administrative Penalty Assessment to the Taxable Person,

and notify the latter of the same within five business days from the date of issuance, if the Taxable Person committed any of the following violations:
1. Failure by the Taxable Person to display prices inclusive of Tax according to provisions of Article (11) of this Decree-Law.
2. Failure to comply with the conditions and procedures related to the transfer of Excise Goods from a Designated Zone to another and the mechanism of preserving, storing and processing such Excise Goods.
3. Failure by the Taxable Person to provide the Authority with the price lists of Excise Goods produced, imported or sold thereby, as specified in the Executive Regulation to this Decree-Law.

Article (23)
Instances of Tax Evasion

Notwithstanding the instances of Tax Evasion referred to in Federal Law No. (7) of 2017 on Tax Procedures and the Penalties mentioned therein, a Person shall be deemed to have committed Tax Evasion if he conducts any of the following acts:
1. Bringing or attempting to bring Excise Goods into or out of the State without payment of the relevant Due Tax in part or in full.
2. Producing, transferring, acquiring, storing, transporting or receiving Excise Goods the Due Tax of which was unpaid with the intention of avoiding the payment of Due Tax.
3. Placing false distinguishing marks on Excise Goods, contrary to the provisions of clause (2) of Article (25) of this Decree-Law, with the intent of evading the payment of Due Tax or receiving unlawful refunds.
4. Submitting any false, counterfeit or unreal documents, returns or records, with the intent of evading the payment of Due Tax or receiving unlawful refunds.

Chapter Ten
General Provisions
Article (24)
Record-Keeping and Evidential Requirements

1. Without prejudice to the provisions related to record-keeping stipulated in any other law, the Taxable Person shall keep the following records:
a. Records of all produced, imported or stockpiled Excise Goods;
b. Records of exported Excise Goods and evidence of such Export;
c. Records of stock levels, including details of lost or destroyed items;
d. A Tax Record that includes the following information:
1) Due Tax on imported Excise Goods.
2) Due Tax on produced Excise Goods
3) Due Tax on Excise Goods that have been stockpiled
4) Deductible Tax according to the provisions of Article (16) of this Decree-Law.
2. The Council of Ministers shall specify, at the suggestion of the Minister, the Excise Goods that should be marked to indicate that Tax has been paid on them as well as the requirements conditions and procedures related to the marking of such goods.

3. The Executive Regulation of this Decree-Law shall specify the timeframes, conditions, and provisions for retention of records listed in clause (1) of this Article.

Articles (25)
Stating the Tax Registration Number

The Taxable Person, or any other Person authorised in writing by the Taxable Person, shall state the Tax Registration Number on all correspondence and dealings with the Authority, Tax Returns and any document related to Tax.

Chapter Eleven
Final Provisions

Article (26)
Executive Regulation

The Council of Ministers shall issue the Executive Regulation of this Decree-Law at the suggestion of the Minister.

Article (27)
Revenue Sharing

Revenue from Tax and Administrative Penalties collected in accordance with the provisions of this Decree-Law shall be subject to sharing between the Federal Government and the Emirates' Governments based on the provisions of Federal Decree-Law No. (13) of 2016 on the Establishment of the Federal Tax Authority

Article (28)

In the absence of any special provision in this Decree-Law, the provisions of Federal Law No. (7) of 2017 on Tax Procedures shall apply.

Article (29)
Abrogation of Conflicting Provisions

Any provision contrary to or inconsistent with the provisions of this Decree-Law shall be abrogated.

Article (30)
Publication and Application of the Decree-Law

This Decree-Law shall be published in the Official Gazette and will come into effect on 1 October 2017.

Khalifa bin Zayed Al Nahyan
President of the United Arab Emirates
Issued by us in the Presidential Palace in Abu Dhabi

ANNEXE NO.4

Federal law No. (7) of 2017 on Tax Procedures

This is as unofficial translation

1

Federal Law No. (7) of 2017 on Tax Procedures

We, Khalifa bin Zayed Al Nahyan, President of the United Arab Emirates,

Having reviewed the Constitution,

– Federal Law No. (1) of 1972 on the Competencies of the Ministries and Powers of the Ministers and its amendments;

– Federal Law No. (5) of 1975 on the Commercial Register;

– Federal Law No. (11) of 1981 on the Imposition of a Federal Customs Tax on Imports of Tobacco and its derivatives and its amendments;

– Federal Law No. (5) of 1985 promulgating the Civil Transactions Law and its amendments;

– Federal Law No. (3) of 1987 promulgating the Penal Law and its amendments;

– Federal Law No. (10) of 1992 promulgating the Law of Evidence in Civil and Commercial Transactions and its amendments;

– Federal Law No. (11) of 1992 promulgating the Civil Procedure Law and its amendments;

– Federal Law No. (35) of 1992 promulgating the Penal Procedure Law and its amendments;

– Federal Law No. (18) of 1993 promulgating the Commercial Transactions Law;

– Federal Law No. (17) of 2004 on the Combat of Commercial Concealment;

– Federal Law No. (1) of 2006 on Electronic Commerce and Transactions;

– Federal Decree-Law No. (11) of 2008 on Human Resources in the Federal Government and its amendments;

– Federal Law No. (1) of 2011 on the State's Public Revenues;

– Federal Law No. (6) of 2012 on the Organisation of the Translation Profession;

– Federal Law No. (12) of 2014 on the Organisation of the Auditing Profession;

– Federal Law No. (2) of 2015 on Commercial Companies;

– Federal Decree-Law No. (9) of 2016 on Bankruptcy;

– Federal Decree-Law No. (13) of 2016 on the Establishment of the Federal Tax Authority; and

Pursuant to what was presented by the Minister of Finance and approved by the Cabinet, the Federal National Council and Federal Supreme Council,

We hereby issue the following Law:

Title One

Definitions and Scope of Application of the Law

Article (1)

Definitions

In the application of the provisions of this Law, the following words and expressions shall have the meanings assigned against each, unless the context otherwise requires:

State: United Arab Emirates

Minister: Minister of Finance.

Authority: Federal Tax Authority.

Director-General: Director-General of the Authority.

Committee: Tax Disputes Resolution Committee.
Competent Court: The Federal court within whose jurisdiction the Authority's Head Office or Branch is
located.
Tax: Any federal tax administered, collected and enforced by the Authority.
Tax Law: Any Federal Law pursuant to which a Federal Tax is imposed.
Person: A natural or legal person.
Business: Any activity conducted in an ongoing, regular and independent manner by any Person and in
any location, such as an industrial, commercial, agricultural, professional, vocational or service activity,
the drilling activities or anything related to the use of material or non-material property.
Taxable Person: A Person who is subject to Tax under the provisions of the relevant Tax Law.
Taxpayer: Any Person who is obligated to pay Tax in the State under the Tax Law, whether such person
is a Taxable Person or an end consumer.
Tax Return: Information and data specified for Tax purposes and submitted by a Taxable Person in
accordance with the form prepared by the Authority.
Tax Period: A specified period of time for which the Payable Tax shall be calculated and paid.
Tax Registration: A procedure by which a Taxable Person or his Legal Representative registers with the
Authority for Tax purposes.
Tax Registration Number (TRN): A unique number issued by the Authority for each Person registered
for Tax purposes.
Registrant: A Taxable Person who has been granted a TRN.
Legal Representative: The manager of a company or a guardian or custodian of a minor or an
incapacitated person, or the bankruptcy trustee appointed by the court for a company that is in bankruptcy,
or any other Person legally appointed to represent another Person.
Due Tax: Tax that is calculated and imposed under the provisions of any Tax Law.
Payable Tax: Tax that has become due for payment to the Authority.
Administrative Penalties: Monetary amounts imposed upon a Person by the Authority for breaching the
provisions of this Law or the Tax Law.
Refundable Tax: Amounts that have been paid and that the Authority may return, in whole or in part, to
the Taxpayer pursuant to the relevant Tax Law, require to use for the payment of amounts due or
Administrative Penalties or require to carry forward to future Tax Periods depending on the nature of the
refund, according to the Tax Law.
Tax Assessment: A decision issued by the Authority in relation to the Payable Tax or Refundable Tax.
Administrative Penalties Assessment: A decision issued by the Authority concerning any Administrative Penalties due.

Notification: A notification sent to the concerned Person or his Tax Agent or Legal Representative of any
decisions issued by the Authority through the means stated in this Law and its Executive Regulation.
Voluntary Disclosure: a form prepared by the Authority pursuant to which the Taxpayer notifies the
Authority of an error or omission in the Tax Return, Tax Assessment or Tax Refund application in
accordance with the provisions of the Tax Law.
Register: The Register of Tax Agents.
Tax Agent: Any Person registered with the Authority in the Register, who is appointed on behalf of
another Person to represent him before the Authority and assist him in the fulfilment of his Tax obligations
and the exercise of his associated tax rights.
Tax Audit: A procedure undertaken by the Authority to inspect the commercial records or any
information or data related to a Person conducting Business.
Tax Auditor: Any member of the Authority's staff appointed as a Tax Auditor.
Tax Evasion: The use of illegal means resulting in the reduction of the amount of the Due Tax, nonpayment
thereof, or a refund of a tax that a person does not have the right to have refunded under any Tax
Law.

Article (2)
Scope of Application of the Law

The provisions of this Law shall apply to the tax procedures related to the administration, collection and
enforcement of taxes by the Authority.

Article (3)
Objectives of the Law

This Law aims to achieve the following:
1. Regulation of the mutual rights and obligations between the Authority and the Taxpayer and any other
Person dealing with the Authority;
2. Regulation of the common procedures and rules applicable to all Tax Laws in the State.

Title Two
Tax Obligations
Chapter One
Keeping Accounting Records and Commercial Books

Article (4)
Record Keeping

Any Person conducting any Business shall keep Accounting Records and Commercial Books of his
Business and any Tax-related information as determined by the Tax Law and maintain the same according
to the controls that will be specified by the Executive Regulation of this Law.

Article (5)
Language

1. Each Person shall submit the Tax Return, data, information, records and documents related to the Tax
and that he is required to submit to the Authority in Arabic as determined by the provisions of the Tax
Law.
2. The Authority may accept data, information, records, and documents related to Tax in any other
language, provided that the Person provides the Authority with a translated copy of any of them into
Arabic at his expense and responsibility, if so requested, and in accordance with the Executive Regulation of this Law.

Chapter Two
Tax Registration
Article (6)
Tax Registration, Tax De-registration and Amendment of Data related Thereto

1. A non-registered Taxable Person or any other Person who has the right to register shall apply for
registration under the relevant provisions of the Tax Law.
2. A Registrant shall:
a. Include his TRN in all correspondence and transactions with the Authority or with others in accordance with the provisions of the Tax Law.
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b. Inform the Authority, as per the form prepared by the latter, of the occurrence of any circumstance
that might require the amendment of information related to his Tax record kept by the Authority,
within 20 business days from the occurrence of such circumstance.
c. Apply for de-registration in accordance with the relevant provisions of the Tax Law.
3. The Executive Regulation of this Law will specify the procedures for Tax Registration, de-registration,
and amendment of the Tax registration data with the Authority.
4. The governmental entities concerned with licensing businesses shall notify the Authority within a time
limit of a maximum (20) business days from the date of issuance of any licence of the fact and according to the provisions of the Executive Regulation of this Law.

Article (7)
The Legal Representative

Any Person appointed as a Legal Representative of a Taxable Person or his funds or his inheritance shall
inform the Authority within 20 business days from the date of his appointment, and according to the
procedures that will be specified in the Executive Regulation of this Law.

Chapter Three
Tax Obligations
Article (8)
Tax Return Preparation and Submission

1. Each Taxable Person shall:
a. Prepare the Tax Return for each Tax Period for each Tax within the time limit of registration in
accordance with the Tax Law.

b. Submit the Tax Return to the Authority in accordance with the provisions of this Law and the Tax
Law.
c. Settle any Payable Tax as specified in the Tax Return or any Tax Assessment within the timeframe
specified in this Law and the Tax Law.
2. Any incomplete Tax Return submitted to the Authority shall be treated as not having been accepted
by it if it does not include the basic information determined by the Tax Law.
3. Each Taxable Person is responsible for the accuracy of the information and data in the Tax Return and
in all his correspondence with the Authority.
4. Each Taxpayer shall settle any Administrative Penalties prescribed within the period of time specified
in this Law and the Tax Law.

Article (9)
Allocating Payable Tax Upon Settlement

1. A Taxable Person shall, when paying any amount to the Authority, specify the type of Tax and the
relevant Tax Period to which the amount relates; the Authority shall allocate the payment accordingly.
2. If a Taxable Person makes any payment without specifying the type of Tax or the Tax Period, the
Authority shall have the right to allocate the full amount or part thereof according to the mechanism
that will be determined in the Executive Regulation of this Law.
3. If a Taxable Person pays more than the Payable Tax amount, the Authority shall have the right to
allocate the difference to a subsequent Tax Period, unless such Taxable Person submits a refund
application in accordance with the provisions of this Law.
4. If a Taxable Person pays less than the Payable Tax amount, the provisions of Title Three, Chapter
Four of this Law shall apply.

Chapter Four
Voluntary Disclosure

Article (10)
Voluntary Disclosure

1. If a Taxable Person becomes aware that a Tax Return submitted by him to the Authority or a Tax
Assessment sent to him by the Authority is incorrect, which resulted in calculating the Payable Tax
according to the Tax Law at a value that is less than it should have been, the Taxable Person shall, in
this case, apply to correct such Tax Return by submitting a Voluntary Disclosure within the time limit
specified in the Executive Regulation of this Law.
2. If a Taxpayer becomes aware that a Tax refund application that he has submitted to the Authority is

incorrect, which resulted in calculating the refund to which he is entitled according to the Tax Law, at
a value that is more than it should have been, he shall, in this case, apply to rectify the Tax refund
application by submitting a Voluntary Disclosure within the time limit specified in the Executive
Regulation of this Law.
3. If a Taxable Person becomes aware that a Tax Return submitted by him to the Authority or a Tax
Assessment sent to him by the Authority are incorrect, which resulted in calculating the Payable Tax
according to the Tax Law at a value that is more than it should have been, he may, in this case, apply
to rectify such a Tax Return by submitting a Voluntary Disclosure.
4. If a Taxpayer becomes aware that a Tax refund application that he has submitted to the Authority is
incorrect, which resulted in calculating a refund amount to which he is entitled according to the Tax
Law at a value that is less than the it should have been, he may, in this case, apply to rectify the Tax
refund application by submitting a Voluntary Disclosure.

Title Three
Tax Procedures
Chapter One
Notification
Article (11)
Methods of Notification

1. The Authority shall notify a Person of any decisions or procedures through the address stated in the
correspondence between the Authority and that Person.
2. The Authority shall notify a Taxable Person through the address stated in the Tax Return, unless the
Authority is informed of an address change by the Taxable Person, his Legal Representative or his
Agent.
3. In all cases, a Person shall be treated as having been notified of any decision and as having received
any correspondence if it appears that the Authority has sent the notification and correspondence
according to the provisions of Clauses (1) and (2) of this Article.
4. The Executive Regulation of this Law shall specify the means used for Notifications and correspondence.

Chapter Two
Tax Agent
Article (12)
Register of Tax Agents

A Register of Tax Agents shall be established at the Authority. For each Tax Agent there will be a file
containing everything related to his professional conduct.

Article (13)
Tax Agents Registration

It is not permitted for any Person to practise the profession of a Tax Agent in the State unless he is listed in
the Register and licensed for this purpose by the Ministry of Economy and the competent local authority.

Article (14)
Conditions of Registration in the Register

1. Whoever wishes to be listed in the Register shall fulfil the following conditions:
a. To be of good conduct and behaviour and have never been convicted of a crime or misdemeaour
prejudicial to honour or honesty, notwithstanding that he may have been rehabilitated.
b. To hold an accredited qualification from a recognised university or institute showing his specialisation and practical experience as specified in the Executive Regulation of this Law.
c. To be medically fit to perform the duties of the profession.
d. To hold a professional indemnity insurance contract.
2. A Tax Agent shall notify the Authority of any period during which he ceases to practise his profession
as a Tax Agent in case of any impediment, and he can request to resume his practice when such
impediment ceases to exist.
3. The Executive Regulation of this Law shall specify the procedures for listing a Tax Agent in the
Register and the rights and obligations of the Tax Agent before the Authority and the Person.

Article (15)
Appointment of a Tax Agent

1. A Person may appoint a Tax Agent to act in his name and on his behalf with regard to his tax affairs
before the Authority, without prejudice to that Person's responsibility before the Authority.
2. The Authority may not deal with any Tax Agent regarding any Person if such Person informs the
Authority that his agency engagement has ended or that the Tax Agent has been dismissed.

Article (16)
Person's Records with the Tax Agent

1. The Tax Agent shall, upon the Authority's request, provide it with all the information, documents,
records and data required for any Person represented thereby.
2. The Authority may view the records of any Person available with his Tax Agent and may rely on them
for the purposes of Tax Audit, even after the expiry of the agency engagement or the dismissal of the
Tax Agent.

Chapter Three
Tax Audits
Article (17)
The right of the Authority to perform a Tax Audit

1. The Authority may perform a Tax Audit on any Person to verify the extent of that Person's compliance
with the provisions of this Law and the Tax Law.

2. The Authority may perform the Tax Audit at its office or the place of business of the Person subject
to the Tax Audit or any other place where such Person conducts Business, stores goods or keeps
records.
3. If the Authority decides to perform a Tax Audit at the place of Business of the Person subject to the
Tax Audit or any other place where such Person conducts his Business, stores goods or keeps records,
the Authority shall inform him at least five business days prior to the Tax Audit.
4. By way of exception to Clause (3) of this Article, the Tax Auditor has the right of entry to any place
where the Person subject to the Tax Audit conducts his Business, stores goods, or keeps records, and
as the case may be, it will be temporarily closed in order to perform the Tax Audit for a period not
exceeding 72 hours without prior notice in any of the following cases:
a. If the Authority has serious grounds to believe that the Person subject to the Tax Audit is participating or involved in Tax Evasion in respect to this Person or another Person;
b. If the Authority has serious grounds to believe that not temporarily closing the place where the
Tax Audit is conducted will hinder the conduct of the Tax Audit;
5. If the Person who has been given advance notice of the Tax Audit under Clause (3) of this Article
attempts to hinder the Tax Auditor's access to the place where the Tax Audit is to be performed. In
all cases provided for in Clause (4) of this Article, the Tax Auditor shall obtain the prior written consent
of the Director-General; and if the place to be accessed is a place of residence, then a permit from the
Public Prosecutor shall also be obtained.
6. Places closed under this Article shall be reopened after the lapse of 72 hours, unless the Authority
obtains a permit from the Public Prosecutor to extend the closure period for a similar period prior to
the expiry of the preceding 72 hours.
7. A criminal case may be initiated only upon an application from the Director-General.
8. The Executive Regulation of this Law shall determine the necessary procedures related to the Tax
Audit.

Article (18)
The Right of the Authority to Access the Original Records or Copies Thereof During a Tax Audit

While conducting a Tax Audit, the Tax Auditor may obtain the original records or copies thereof, or take
samples of the stock, equipment or other assets from the place at which the Person subject to the Tax Audit
conducts his business or which are in his possession, or may seize them in accordance with the rules that
shall be specified in the Executive Regulation of this Law.

Article (19)
Timing of the Tax Audit

A Tax Audit will be conducted during the official working hours of the Authority. In cases of necessity,
a Tax Audit may be exceptionally conducted outside of these times by a decision of the Director-General.

Article (20)
New Information Surfacing after a Tax Audit

The Authority may audit any issue previously audited if new information that might impact the outcome
of the Tax Audit surfaces, provided that the Tax Audit procedures apply in accordance with the provisions
of this Law and its Executive Regulation.

Article (21)
Cooperation during the Tax Audit

Any Person subject to a Tax Audit, his Tax Agent or Legal Representative shall facilitate and offer
assistance to the Tax Auditor to enable him to perform his duties.

Article (22)
The Rights of The Person who is Subject to Tax Audit

The person subject to tax audit shall have the right to:
1. Request the Tax Auditors to show their job identification cards.
2. Obtain a copy of the Tax Audit Notification.
3. Attend the Tax Audit which takes place outside the Authority.
4. Obtain copies of any original paper or digital documents seized or obtained by the Authority during
the Tax Audit, according to what is specified in the Executive Regulation of this Law.

Article (23)
Notification of the Tax Audit Results

1. The Authority shall inform the Person subject to Tax Audit of the final results of the Tax Audit within
the time limit and according to the procedures specified in the Executive Regulation of this Law.
2. The Person subject to the Tax Audit may view or obtain the documents and data on which the
Authority based its assessment of Due Tax according to the provisions specified in the Executive
Regulation of this Law.

Chapter Four
Tax Assessment and Administrative Penalties Assessment

Article (24)
Tax Assessments

1. The Authority shall issue a Tax Assessment to determine the Payable Tax and notify the Taxable
Person within five business days of its issuance, in any of the following cases:
a. The failure of the Taxable Person to apply for registration within the timeframe specified by the
Tax Law.

b. The failure of the Registrant to submit a Tax Return within the timeframe specified by the Tax
Law.
c. The failure of the Registrant to settle the Payable Tax stated as such on the Tax Return that was
submitted within the time limit specified by the Tax Law.
d. The submittal of an incorrect Tax Return by the Taxable Person.
e. The failure of the Registrant to account for Tax on behalf of another Person when he is obligated
to do so under the Tax Law.
f. In case of a shortfall in the Payable Tax as a result of a Person's Tax Evasion, or as a result of a
Tax Evasion in which such Person was involved.
2. The Authority may issue an estimated Tax Assessment if it has not been possible to determine the
amount of Tax deemed to be a Payable Tax or the Refundable Tax that has not been due to be refunded,
as the case may be.
3. The Authority may amend a Tax Assessment that was estimated, based on new information that
surface after the issuance of said estimation. It shall notify the concerned Person of these amendments
within (5) five business days from the date of amendment.
4. The Executive Regulation of this Law shall specify the information or data that shall be included in
the Tax Assessment.

Article (25)
Administrative Penalties Assessment

1. The Authority shall issue an Administrative Penalties Assessment for a Person and notify him within
(5) five business days for any of the following violations:
a. The failure of the Person conducting Business to keep the required records and other information
specified in this Law and the Tax Law.
b. The failure of the Person conducting Business to submit the data, records and documents related
to Tax in Arabic to the Authority when requested.
c. The failure of the Taxable Person to submit a registration application within the timeframe specified in the Tax Law.
d. The failure of the Registrant to submit a deregistration application within the timeframe specified
in the Tax Law.
e. The failure of the Registrant to inform the Authority of any circumstance that requires the amendment of the information pertaining to his tax record kept by the Authority.
f. The failure of the Person appointed as a Legal Representative for the Taxable Person to inform the
Authority of his appointment within the specified timeframe, in which case, the penalties will be
due from the Legal Representative's own funds.

g. The failure of the Person appointed as a Legal Representative for the Taxable Person to file a Tax
Return within the specified timeframe, in which case the penalties will be due from the Legal Representative's own funds.
h. The failure of the Registrant to submit the Tax Return within the timeframe specified in the Tax
Law.
i. The failure of the Taxable Person to settle the Payable Tax stated in the submitted Tax Return or
Tax Assessment he was notified of, within the timeframe specified in the Tax Law.
j. The submittal of an incorrect Tax Return by the Registrant.
k. The voluntarily disclosure by the Person of errors occurring in the Tax Return, Tax Assessment or
Refund Application pursuant to Article 10 (1) and (2) of this Law.
l. The failure of the Taxable Person to voluntarily disclose errors in the Tax Return, Tax Assessment
or Refund Application pursuant to Article 10 (1) and (2) of this Law before being notified that he
will be subject to a Tax Audit.
m. The failure of the Person conducting Business to facilitate the work of the Tax Auditor in violation
of the provisions of Article (21) of this Law.
n. The failure of the Registrant to calculate Tax on behalf of another Person when the registered
Taxable Person is obligated to do so under the Tax Law.
o. Any other violation for which a Cabinet Decision is issued.
2. The Executive Regulation of this Law shall specify the information and data that must be included in
the Administrative Penalties Assessment.
3. The Cabinet shall issue a resolution that specifies the Administrative Penalties for each of the
violations listed in Clause (1) of this Article. Such Administrative Penalties shall be no less than 500
Dirhams for any violation and shall not exceed three times the amount of Tax in respect of which the
Administrative Penalty was levied.
4. The imposition of any Administrative Penalty pursuant to the provisions of this Law or any other law
shall not exempt any Person of his liability to settle the Due Tax in accordance with the provisions of
this Law or the Tax Law.

Chapter Five
Penalties
Article (26)
Tax Evasion Penalties

1. Without prejudice to any more severe penalty applicable under any other law, a prison sentence and
monetary penalty not exceeding five times the amount of evaded Tax or either of the two, shall be
imposed on:

a. a Taxable Person who deliberately fails to settle any Payable Tax or Administrative Penalties.
b. a Taxable Person who deliberately understates the actual value of his Business or fails to consolidate his related Businesses with the intent of remaining below the required registration threshold.
c. a Person who charges and collects amounts from his clients claiming them to be Tax without being registered.
d. a Person who deliberately provides false information and data and incorrect documents to the Authority.
e. a Person who deliberately conceals or destroys documents or other material that he is required to keep and provide to the Authority.
f. a Person who deliberately steals, mis-uses or causes the destruction of documents or other materials that are in the possession of the Authority.
g. a Person who prevents or hinders the Authority's employees from performing their duties.
h. a Person who deliberately decreases the Payable Tax through Tax Evasion or conspiring to evade Tax.

2. The imposition of a penalty under the provisions of this Law or any other Law shall not exempt any Person from the liability to pay any Payable Tax or Administrative Penalties under the provisions of this Law or any Tax Law.

3. The competent court shall impose Tax Evasion penalties against any Person who is proven to have been directly involved or instrumental in Tax Evasion pursuant to said Federal Law No. (3) of 1987.

4. Without prejudice to Clause (2) of this Article, any Person who is proven to have been directly involved or instrumental in Tax Evasion pursuant to Clause (3) of this Article shall be jointly and severally liable with the Person whom he has assisted, to pay the Payable Tax and Administrative Penalties pursuant to this Law or any other Tax Law.

Title Four
Objections
Chapter One
Application for Reconsideration
Article (27)
Procedures for Application for Reconsideration

1. Any Person may submit a request to the Authority to reconsider any of its decisions issued in connection to him, in whole or in part, provided that reasons are included, within 20 business days from him being notified of the decision.

2. The Authority shall review a request for reconsideration if it has fulfilled the requirements and issue

its justified decision within 20 business days from receipt of such application. The Authority shall
inform the applicant of its decision within five business days as of the issuance thereof.

Chapter Two
Objections to the Committee
Article (28)
Tax Disputes Resolution Committee

1. One or more permanent committee shall be formed known as the "Tax Disputes Resolution Committee", chaired by a member of the judicial authority and two expert members registered in the
register of tax experts to be appointed by a decision by the Minister of Justice in coordination with the
Minister.
2. A Cabinet Decision shall be issued regarding the Committee's bylaws, the remuneration of its
members, and the procedures followed thereby.

Article (29)
Jurisdictions of the Committee

The Committee shall have jurisdiction to:
1. decide in respect of objections submitted regarding the Authority's decisions on applications for
reconsideration.
2. decide in respect of applications for reconsideration that were submitted to the Authority and yet, the
Authority has not made a decision in their regard according to the provisions of this Law.
3. any other jurisdictions entrusted to the Committee by the Cabinet.

Article (30)
Procedures for Submitting Objections

1. An objection regarding the Authority's decisions on applications for reconsideration shall be submitted
within 20 business days from the date of Notification.
2. An objection submitted to the Committee shall not be accepted in the following instances:
a. if a reconsideration request has not been previously submitted to the Authority.
b. if the Tax and Penalties subject of the objection have not been settled.

Article (31)
Procedures of the Committee

1. The Committee shall review the objection submitted thereto and make a decision within 20 business
days from receipt of the objection.
2. The Committee may extend the period for deciding on the objection for no more than 20 additional
business days after the end of the time limit specified in Clause (1) of this Article if it sees that there
are reasonable grounds for the purpose of deciding on the objection.
3. The Authority shall inform the Person submitting the objection of its decision within five business
days as of its issuance.
4. The Committee's decision on the objection shall be deemed as final if the total amount of the Due Tax
and Administrative Penalties determined accordingly does not exceed 100,000 Dirhams.

5. In no case may Tax disputes be brought before the Competent Court if an objection has not been first
submitted to the Committee.

Article (32)
Enforcement of the Committee's Decision

Final decisions issued by the Committee regarding disputes which do not exceed 100,000 Dirhams shall
be deemed as executory instruments pursuant to this Law, while final decisions of disputes exceeding
100,000 Dirhams shall be deemed as executory instruments if they were not challenged before the
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Competent Court within 20 business days from the date of rejection of the objection and shall be enforced
through the execution judge at the Competent Court pursuant to the Civil Procedure Law in the State.

Chapter Three
Challenge before Courts
Article (33)
Challenge Procedures before Courts

1. Without prejudice to the provisions of Article (32) of this Law, the Authority and a Person may
challenge any of the Committee's decisions before the Competent Court within 20 business days from
the date of notification of the objector thereof.
2. Challenges may be made to the Competent Court in the following instances:
a. An objection to the whole or part of the decision of the Committee.
b. Non-issuance of a decision by the Committee regarding an objection submitted to it in accordance
with the provisions of this Law.

Title Five
Refund and Collection of Tax
Chapter One
Refund of Tax
Article (34)
Application for Tax Refund

A Taxpayer may apply for a refund of any Tax he has paid if he is entitled to a refund under the Tax Law
and it appears that the amount he has paid is in excess of the Payable Tax and Administrative Penalties,
pursuant to the procedures specified in the Executive Regulation of this Law.

Article (35)
Tax Refund Procedures

1. The Authority shall offset the amount applied to be returned against any other Payable Tax or
Administrative Penalties due from the Taxpayer who has applied for the refund pursuant to the Tax
Return or Tax Assessment issued by the Authority before refunding any amount relating to a particular
tax.

2. The Authority may decline to refund the amounts mentioned in Clause (1) of this Article if it finds
that there are other disputed Tax amounts that are due in relation to that Person or according to a
decision of the Competent Court.
3. The Authority shall issue a Tax refund under this Article pursuant to the procedures and provisions
specified in the Executive Regulation of this Law.

Chapter Two
Tax Collection
Article (36)
Collection of Payable Tax and Administrative Penalties

If a Taxable Person fails to settle any Payable Tax or Administrative Penalties within the specified
timeframe under this Law and the Tax Law, the following measures shall be taken:
1. The Authority shall send the Taxable Person a notice to pay the Payable Tax and Administrative
Penalties within 20 business days as of the date of Notification.
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2. If the Taxable Person fails to make payment after being notified pursuant to Clause (1) of this Article,
the Director-General shall issue a decision obligating the Taxable Person to settle the Payable Tax and
Administrative Penalties which shall be communicated to him within five business days from the
issuance of the decision, accompanied by the Tax Assessment and Administrative Penalties Assessment.
3. The decision of the Director-General regarding the Tax Assessment and Administrative Penalties
Assessment shall be deemed as an executory instrument for the purposes of enforcement through the
execution judge at the Competent Court.

Chapter Three
Settlement and Collection of Tax and Administrative Penalties in Special Cases
Article (37)
Obligations of the Legal Representative

The Legal Representative shall continue to submit the required Tax Returns to the Authority on behalf of
the Taxable Person.

Article (38)
Responsibility of Settlement in the Case of a Partnership

If multiple Persons participate in a Business that does not have an independent legal personality, each of
them shall be jointly and severally liable towards the Authority for any Payable Tax and Administrative
Penalties related to such Business.

Article (39)
Tax and Administrative Penalties Settlement in Special Cases

1. In cases of death, the Payable Tax shall be paid as follows: 1.

a. For the Payable Tax owed by a natural Person prior to the date of death, payment shall be made
from the value of the elements of the legacy or income arising thereof prior to its distribution among the heirs or legatees.
b. If it appears following the distribution of the legacy that a Payable Tax is still outstanding, legal
recourse shall be taken against the heirs and legatees for the payment of such outstanding tax, unless a Clearance Certificate has been obtained from the Authority for the legacy representative
or any of the heirs.
2. Payable Tax and Administrative Penalties imposed on a Taxable Person lacking capacity, or who is
absent or missing, or of unknown place of residence, or the like, shall be paid by their Legal Representative from the funds and assets of such Taxable Person.
3. Payable Tax and Administrative Penalties imposed on a Taxable Person who is an incapacitated person
shall be paid by their Legal Representative from the funds and assets of such Taxable Person.

Article 40

Settlement of Tax in Bankruptcy Case

1. The appointed Trustee shall communicate with the Authority to be informed of the Due Tax or of its
intention to perform a Tax Audit for specific tax period (s).
2. The Authority shall notify the Trustee of the amount of the Due Tax or of the Tax Audit within 20
business days after being notified by the Trustee.
3. The Trustee may object or appeal against the estimate of the Authority or settle the Due Tax.
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4. The Executive Regulation shall specify the procedures of communication with the Authority,
grievance, objection and settlement of Due Tax.

Title Six

General Provisions

Chapter One

Confidentiality

Article (41)

Professional Confidentiality

1. Employees of the Authority shall not disclose information that they have obtained or to which they
have had access to in their capacity as employees or by reason of such capacity during their employment, save as specified or defined in accordance with the Executive Regulation of this Law.
2. In all cases provided for in Clause (1) of this Article, disclosure may be made only with the approval
of the officers authorised by the Authority’s board of directors, in accordance with the Executive
Regulation of this Law.
3. The employees of the Authority shall, after cessation of their employment, continue to maintain

professional confidentiality, and shall not disclose information that they have obtained or to which
they have had access to in their capacity as employees or by reason of such capacity, unless otherwise
requested by the judicial authorities and in accordance with the Executive Regulation of this Law.
4. Any person who has obtained information pursuant to the provisions of this Law shall not disclose or
use the information for any purposes other than those for which the information was obtained, without
prejudice to the liability resulting therefrom where necessary.
5. The Authority's board of directors shall issue the regulations and instructions regulating the internal
procedures to protect confidentiality of information within the Authority, and the obligations of the
Tax Agent in this regard.

Chapter Two
Timeframes and Lapse of Time

Article (42)
Statute of Limitation

1. Except in cases of proven Tax Evasion or non-registration for Tax purposes, the Authority may not
conduct a Tax Assessment after the expiration of five years from the end of the relevant Tax Period.
2. In case Tax Evasion is proven, the Authority may conduct a Tax Assessment within 15 years from the
end of the Tax Period in which the Tax Evasion occurred.
3. In cases of non-registration for Tax purposes, the Authority may conduct a Tax Assessment within 15
years from the date on which the Taxable Person should have registered.

Article (43)
The Authority's Right to Claim

The Payable Tax and Administrative Penalties of which the Taxable Person has been notified do not lapse
with time and the Authority may claim them at any time.

Article (44)
Time Limit for Tax Obligations

In case a period of time is not specified for the performance of any obligations or any other procedure in
this Law or the Tax Law, the Authority shall grant the Taxable Person a period commensurate with the
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nature of the obligation or procedure of not less than five business days and not more than 40 business
days from the date of the event giving rise to obligation or the conduct of the procedure.

Article (45)
Calculation of Time limits

In all events, the following rules shall be observed when calculating time limit:
1. The day of notification or the day of occurrence of the event by reason of which the time limit arose

shall not form part thereof.
2. If the last day of the time limit coincides with a public holiday, the time limit shall be extended to the
first business day thereafter.

Article (46)

Reduction of Administrative Penalties or Waiving Therefrom

If the Authority imposes an Administrative Penalty on any Person for violating the provisions of this Law
or the Tax Law, the Authority may reduce or waive such Administrative Penalty if the Person produces
evidence justifying the reason for his failure to comply, pursuant to the controls specified in the Executive
Regulation of this Law.

Article (47)

Calendar

Time limits and due dates provided for in this Law and the Tax Law shall be calculated according to the
Gregorian calendar.

Chapter Three
Closing Provisions

Article (48)

Proving the Accuracy of Data

The burden of proving the accuracy of the Tax Return falls upon the Taxable Person, and the burden of
proving cases of Tax Evasion falls upon the Authority.

Article (49)

Conflict of Interest

All Authority's employees are prohibited from performing or participating in any tax procedures related
to any Person in the following cases:
1. The existence of a kinship up to the fourth degree between the employee and said person.
2. The existence of a common interest between the employee and said Person or between any of their
relatives up to the third degree.
3. If the Director-General decides that the employee should not perform any tax procedures related to
that Person due to any case of conflict of interest.

Article (50)

Judicial Officers

The Director-General and Tax Auditors appointed by a decision of the Minister of Justice in agreement
with the Minister shall have the capacity of Judicial Officers in recording violations of the provisions of
this Law, the Tax Law or the decisions issued in implementation thereof.

Article (51)

Authority's Fees

The Cabinet shall, according to a suggestion by the Minister, issue a decision specifying the fees due in
implementation of the provisions of this Law and its Executive Regulation.

Article (52)

Abrogation of Conflicting Provisions

All provisions contrary to or inconsistent with the provisions of this Law shall be abrogated.

Article (53)

Executive Regulation

The Cabinet shall, according to a suggestion by the Minister, issue the Executive Regulation of this Law
within 6 months as of the issuance of this Law.

Article (54)

Publication and Application of this Law

This Law shall be published in the Official Gazette and shall come into effect 30 days from the date of its
publication.

Khalifa bin Zayed Al Nahyan

President of the United Arab Emirates

Issued by us at the Presidential Palace in Abu Dhabi

On: 16 Ramadan 1438 H.

Corresponding to: 11 June 2017

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