



UAE Tax Flash

Tax Flash News – Federal Tax Decision No 4 of 2024 amending the FTA’s policy on issuing clarifications and directives

Background

The Federal Tax Authority (FTA) issued Decision No 4 of 2024 (effective from 1 July 2024) amending the FTA’s policy on issuing clarifications and directives (the ‘Decision’).

Article 4 of the Federal Decree-Law No 13 of 2016 on the Establishment of the Federal Tax Authority and its amendments specifies the powers granted to the FTA, wherein it is stated that the FTA shall have jurisdiction over the administration, collection and enforcement of the federal taxes and relevant penalties, to distribute their revenues and to apply the tax procedures applicable in the UAE.

One of the jurisdictions is “issue directives and clarifications necessary for Taxpayers with regard to the limits of their obligations related to the Federal Taxes and Relevant Penalties in accordance with the mechanisms decided by the FTA’s board of directors.”

Clarifications

In the tax procedure guideline on private clarifications dated June 2023, the FTA has clarified that taxpayers may seek guidance from the FTA on specific queries on the application of federal tax laws through the Private Clarification mechanism. In this context, the federal taxes applicable in the UAE are Corporate and Business Tax, Value Added Tax, and Excise Tax.

Article 59 of the Federal Decree Law No 47 of 2022 on the Taxation of Corporations and Businesses (‘UAE Corporate Tax Law’ or ‘UAE CT Law’) states that a Person may make an application to the FTA for a clarification regarding the application of UAE CT Law or the conclusion of an advance pricing agreement with respect to a transaction or an arrangement proposed or entered by the Person. The application shall be made in the form and manner prescribed by the FTA.

1. Private clarifications

Private clarifications are clarifications issued by the FTA in the form of a document stamped and signed by the Director General of the Authority or his delegate or his representative, in relation to specific tax technical matters and for a specific taxpayer, according to a private clarification request application submitted through the form on the FTA 's website along with requisite documents (“the Request”).

FTA’s mechanism of issuing its Decisions in Private Clarifications

The Taxpayer (or its authorized signatory, tax agent, legal representative or the representative member of a tax group) should submit the Request meeting the following requirements:

- a. The Request relates to **federal taxes or relevant penalties**.
- b. A selection is made on whether the Request relates to **one tax** (AED 1,500 per application) or **more than one tax** (AED 2,250 per application), to determine the fee prescribed by the Cabinet Decision No 65 of 2020.
- c. The Request relates to tax legislation as applied to the facts and circumstances of a taxpayer or taxpayers submitting the Request (and **not of any third party**).
- d. The Request contains **minimum information** required for the FTA to determine the response to that Request. A list of minimum information is mentioned in the Decision.

The FTA may also reject to issue a clarification in cases where it considers it is fair and reasonable to do so, including but not limited to the following:

- The answer to the Request was mentioned in a guide or a public clarification issued by the FTA.
- The Request is based on a hypothetical scenario that has not been seriously considered by the applicant.
- The subject of the Request is a matter on which a clarification was previously issued or relating to a tax assessment issued by the FTA.
- The applicant is subject to a tax audit, assessment or inspection by the FTA, and the subject of the Request is related to the matter under tax audit, assessment or inspection.
- If the FTA has reasonable grounds for suspecting that the Request addresses issues that may constitute tax avoidance or tax evasion, including the application of Article 50 of the UAE CT Law regarding the General Anti-abuse Rules or similar provisions under double taxation agreements, where the clarification cannot address the application of that Article.

Further, where the Request includes matters that are not clear in the tax legislation, the Ministry of Finance (MoF) shall be consulted to clarify the established tax policy through presentation to a joint committee consisting of representatives of the FTA and MoF or official correspondence with the MoF.

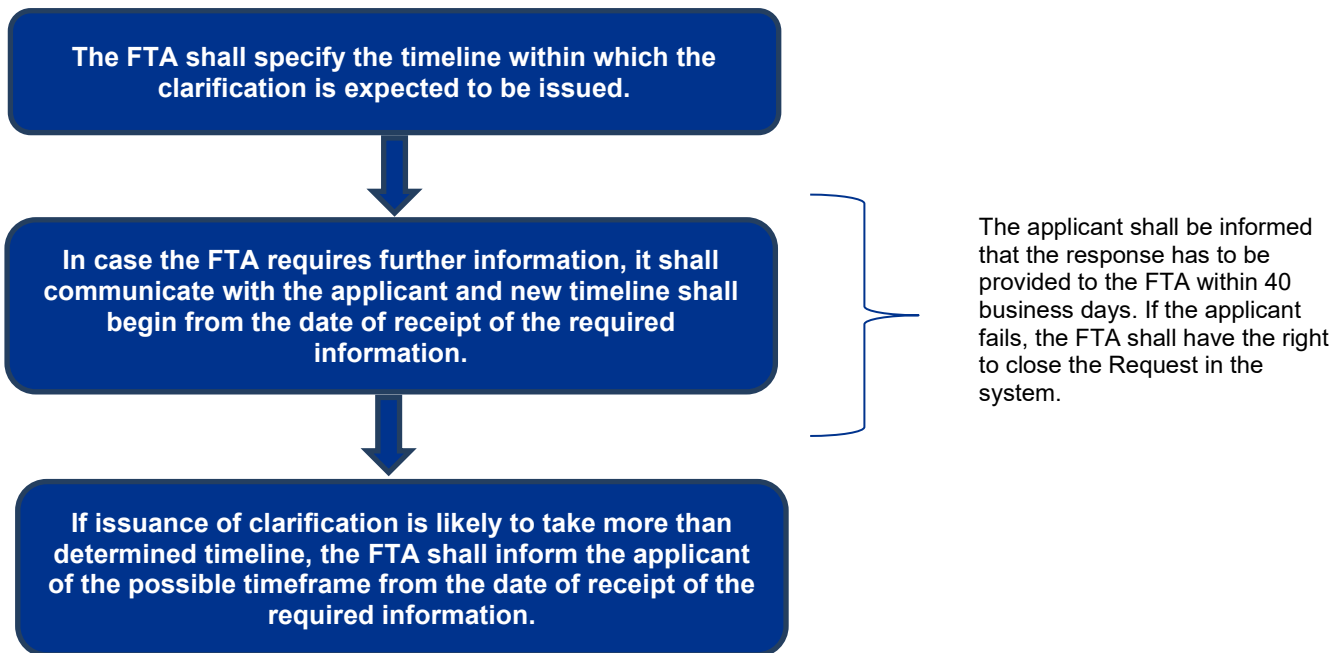
In the case of Requests related to Corporate and Business Tax that are included in the rules of the OECD BEPS Action Five, the FTA shall provide the MoF with a summary of these clarifications every two months, according to a specific form to be sent to the MoF (competent authority for the purposes of exchanging tax information), including the data of the taxable person in accordance with case 4 - "disclosure under international agreements or treaties" of the table annexed to the FTA Decision No 4 of 2021.

Framework of implementing the clarification

Taxpayer's position	The taxpayer shall have the right to rely on the clarification issued by the FTA to ascertain his tax obligation or penalty.
FTA's position	The FTA shall be administratively bound to implement the clarification where the factual circumstances are the same as contained in the Request.
The Persons to whom clarification shall be limited	<ul style="list-style-type: none"> ➤ Concerned taxpayer or taxpayers who have requested clarification. ➤ Concerned group members in case the clarification relates to a tax group. ➤ As an exception in specific cases – specific category of taxpayers where clarification shall be issued for them based on the same facts provided all the members are parties to the same transaction.
Validity of the clarification	<ul style="list-style-type: none"> ➤ Open-ended unless otherwise specified therein (clarification to be lapsed after the end of the specified period). ➤ The clarification shall cease to have effect if the relevant legislation on which it is based is amended. ➤ In all cases, the FTA shall be able to withdraw the clarification if it is considered incorrect, and in that case the concerned taxpayer may act as indicated in the

	<p>clarification until the date of being notified of the withdrawal by the FTA.</p> <p>➤ If the Authority issues a subsequent clarification to the taxpayer on the subject issued earlier, the previous clarification shall cease to have effect from the date of issuance of subsequent clarification and the subsequent decision shall have priority of application to the previous decision.</p>
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Procedure of issuing clarification



If the application is initiated by the applicant on the portal but not submitted within 40 business days from the date of starting the application, the FTA shall send automated email to remind the applicant to complete the draft application. If the application is not submitted based on the above timeline, the FTA shall close the application.

Directives

1. Administrative Exceptions

The FTA may grant administrative exceptions in certain situations whenever the conditions and controls stipulated in the tax legislation are met. These exceptions are explained in the VAT guide on administrative exceptions and the Excise Tax guide on administrative exceptions, both dated June 2023, and they relate to the following topics, for the purpose of this Decision:

Exceptions under VAT:

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

Exceptions under Excise Tax:

- evidence proving the export of goods.

FTA's mechanism of issuing Administrative Exception Decisions

The FTA has clarified the conditions that must be met by the applicant to be able to review the administrative exception requests, as follows:

- The request must be submitted by 1) the authorized signatory or the registrant himself in the case of a natural person, 2) the tax agent appointed by the registrant, 3) the legal representative appointed by the court, or 4) the non-taxable person conducting business for the purposes of excise tax.

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

- A list of information that should be provided with the request have been clarified in the Decision.

The FTA may reject the request for any of the following reasons:

- if the above conditions are not met, or
- if the request for the administrative exception is outside the scope of the jurisdictions granted to the FTA under the tax legislation.

Framework of implementing the Administrative Exception Decisions

The FTA is committed to apply the administrative exception decision issued to the applicant, as long as the facts and information provided in the request remains unchanged.

If an exception is granted, the decision will be valid for a period of **3 years** from the date of its issuance unless the provisions of the tax legislation that is the subject of the decision are repealed or amended. In such case, the decision shall cease on the effective date of the repeal or amendment.

Procedure of issuing Administrative Exceptions

The procedures mentioned for issuing the Clarifications (please refer above) should also apply to the administrative exception decisions.

2. Input Tax Apportionment

Article 55 of the Cabinet Decision No 52 of 2017 on the Executive Regulations of the Federal Decree Law No 8 of 2017 on Value Added Tax, and its amendments (the 'VAT Regulations') stated the conditions and mechanism for input VAT apportionment for the purpose of VAT. Whereas a standard apportionment method can be used for the purpose of input VAT recovery, however, where such method is not appropriate, the FTA allows the use of an alternative special apportionment methods.

FTA's mechanism of issuing Input Tax Apportionment Decisions

The FTA has clarified the conditions that must be met by the applicant to be able to review the input tax apportionment requests, as follows:

- it specified the parties that can submit the input tax apportionment request.
- the applicant must be able to demonstrate that the requested alternative method is more appropriate than the standard method and will lead to achieving fair and reasonable results with regard to the recovery of input tax.

Framework of implementing the Input Tax Apportionment Decisions

The FTA is committed to apply the input tax apportionment decision issued to the applicant, as long as the facts and information provided in the request remains unchanged.

If the decision is approved, it shall be effective from the first tax period beginning after the issuance of the decision. Further, the applicant must use the alternative method for a period of two or four years, depending on the approved method.

The FTA notes that the alternative method represents the taxable person's actual use, which does not change for a number of years unless the taxable person's business changes. Accordingly, the FTA will request the applicant to recalculate the adjustments related to the actual use for a number of previous

years (**up to three years**). As for the tax years preceding those three tax years, the method used by the applicant is acceptable provided that it is fair and reasonable.

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

Procedure of issuing Input Tax Apportionment Decisions

The procedures mentioned for issuing the Clarifications (please refer above) should also apply to the input tax apportionment decisions.

3. Advance Pricing Agreements

Based on Article 59 of UAE CT Law, a Person may make an application to the FTA in relation to the conclusion of an advance pricing agreement with respect to a transaction or an arrangement proposed or entered into by the Person.

The start date for receiving applications for advance pricing agreements and procedures related to the submission of applications and the issuance of agreements will be announced in Q4 of 2024.

The way forward

- It is of prime importance that legislation, guides, clarifications, and other legislative material are thoroughly carried out before filing an application to the FTA for clarifications, administrative exceptions, and input tax apportionments. This would help in determining whether the case of the applicant is reasonable for obtaining a favorable response from the FTA.
- The applicant should duly file the minimum information required by the FTA with the request to comply with the requirements. Further, it is advisable that the applicant also collates the information/documents required by the FTA to avoid any delay and closure of the Request without issuance of clarification.

How KPMG can help

KPMG has a dedicated team specialized in corporate tax, transfer pricing and VAT that can help clients in:

- Evaluating the case; preparing and filing an application for private clarifications, administrative exceptions, and input tax apportionments; and submitting any further information to the FTA.
- Advancing pricing agreement procedures.

KPMG has a dedicated Corporate Tax team that will be delighted to help you assess the impact of the updated legislation in your operations and activities.

Contact us

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