

UAE **TAX UPDATE** NEWSLETTER

ISSUE 03 - **June** 2024





INDEX

1. MANAGEMENT COMMITTEE DETAILS	3
2. FROM THE CHAIRMAN	4
3. UAE TAX UPDATES	5
3.1 VAT Public Clarification on Manpower Vs Visa Facilitation Services - Synopsis	5
4. ARTICLES FROM MEMBERS	7
4.1 Attributing Profits to a UAE Permanent Establishment	7
4.2 FEMA FAQs - Gift of Shares of Indian Company between Residents and Non-residents	8
5. INVITATION TO WRITE ARTICLES FROM MEMBERS	11

**FTA Link : For full information on UAE Corporate Tax, refer to - <https://tax.gov.ae/en/legislation.aspx>
and for the FTA Guides, refer to - <https://tax.gov.ae/en/taxes/corporate.tax/corporate.tax.guides.references.aspx>**

DISCLAIMER

The material and information contained herein, prepared by the ICAI (Dubai) Chapter NPIO, are intended for the members of the ICAI (Dubai) Chapter to provide latest updates and insights. It is not intended to be an exhaustive treatment of any subject matter. The ICAI (Dubai) Chapter, by means of this material, is not rendering any professional advice or services. This update should not be relied upon as the sole basis for any decision-making which may affect you, your business, or any third party. This update should neither be regarded as comprehensive nor sufficient for the purposes of any decision-making. The views expressed in this update are solely those of the authors and contributors. The UAE TAX UPDATE Newsletter is a peer-reviewed magazine presented by the ICAI (Dubai) Chapter, and while efforts are made to verify the originality of the content submitted by the authors, the ICAI (Dubai) Chapter or the management committee members do not warrant its accuracy or authenticity and will not be responsible for any decisions taken based on the materials. This newsletter is intended solely for members of the ICAI (Dubai) Chapter and is not intended to be used or sold or re-sold or referred to any party. This magazine shall not be used as a reference point for any decision making.



The Institute of Chartered Accountants of India (Dubai) Chapter NPIO



MANAGING COMMITTEE 2024-25



CA Rajesh Somani
Chairman
+971 50 645 2187



CA Jai Prakash Agarwal
Vice Chairman
+971 52 906 9179



CA Rishi Chawla
Secretary
+971 50 394 6911



CA Dheeraj Ranasaria
Treasurer
+971 55 195 0580

EXECUTIVE MEMBERS



CA Aashna Mulgaonkar
+971 55 552 0871



CA Balaram Vuchidi
+971 50 986 6466



CA Amit Khaitan
+971 55 557 5049



CA Sanjay Gagarani
+971 50 189 2115



CA Dixit Kumar Jain
+971 55 752 1929



From the **CHAIRMAN**

Dear Esteemed Members,

I am delighted to present the third edition of our monthly tax updates newsletter. Building on the success of our previous issues, we continue our commitment to providing you with the most relevant and timely updates in corporate tax and VAT in the UAE.

In this edition, we delve into several key topics that are crucial for staying informed in the ever-evolving tax landscape. Our articles include:

- **VAT Public Clarification on Manpower vs. Visa Facilitation Services:** Understanding the nuances between these services and their VAT implications.
- **Attributing Profits to a UAE Permanent Establishment:** Insightful analysis on how profits are attributed to permanent establishments within the UAE.
- **FEMA FAQs - Gift of Shares of Indian Company between Residents and Non-residents:** Clarifications on the regulations and processes involved.

These articles, contributed by our editorial team and esteemed members, reflect the depth of expertise within our community and underscore our commitment to fostering a collaborative environment for sharing knowledge and best practices.

As we continue to navigate the complexities of tax regulations, our goal remains to equip you with the tools and information necessary for confident decision-making. Staying updated is paramount, and through this newsletter, we aim to support your professional growth and enhance your understanding of the tax landscape.

We encourage you to actively engage with this publication by sharing your feedback and contributing articles. Your insights are invaluable and play a crucial role in enriching our collective knowledge. Detailed guidelines for article submissions and feedback are enclosed, and we look forward to your active participation.

Thank you for your continued support and enthusiasm for the ICAI (Dubai) Chapter. Together, we can make this newsletter a cornerstone of knowledge and a valuable resource for all our members.

Warm regards,

CA Rajesh Somani
Chairman
ICAI (Dubai) Chapter NPIO



3 UAE TAX UPDATES

3.1 VAT Public Clarification on Manpower Vs Visa Facilitation Services - Synopsis

The Federal Tax Authority (FTA) issues public clarifications to provide guidance on specific VAT treatments. These clarifications help businesses understand how to apply VAT rules correctly to different types of services. Here, we will go through the key points from the recent clarification VATP038 issued by the FTA regarding manpower services and visa facilitation services – nature of these supplies as well as the application of relevant valuation rules.

Key points from FTA clarification

Manpower Services	Visa Facilitation Services
<p>Definition: Manpower Services involves the identification, recruitment, and hiring of candidates, making employees available to work for another entity.</p>	<p>Definition: Visa Facilitation Services are administrative services to facilitate the employment visa process for employees hired by another entity, without making these employees available to that other entity.</p>
<p>Conditions:</p> <ul style="list-style-type: none"> • Supplier responsible for employment obligations, including salaries and benefits. • Supervision and control by the supplier, including assigning tasks and evaluating performance. • Furthermore, supervision and control also include establishing the nature of each employee’s work and working hours as well as directing and guiding employees. 	<p>Conditions:</p> <ul style="list-style-type: none"> • The employment visa holder (Facilitator) and the customer are part of the same corporate group* but are not part of the same tax group. • The Facilitator’s business activities do not include the supply of manpower. • The Facilitator is not responsible for any of the obligations related to the employee. • The Facilitator sponsors these employees to exclusively work for, and under the supervision and control, of the Customer. <p>Example:</p> <ul style="list-style-type: none"> • Company A provides support services to Company B (part of same corporate group), including bookkeeping, payment processing, collections, and holding employment visas for Company B’s employees. • Company A arranges visa issuance, medical tests, visa



3 UAE TAX UPDATES

3.1 VAT Public Clarification on Manpower Vs Visa Facilitation Services - Synopsis (continued)

	<p>stamping, and Emirates IDs. Company B handles the employee contracts, salary, benefits, and supervision.</p> <ul style="list-style-type: none"> In this case, Company A is considered to be providing visa facilitation services as long as it does not perform a centralized HR function for the corporate group.
<p>Consideration: Includes the full amount received by the employer from the service recipient. This encompasses amounts recharged by the supplier to the customer and amounts paid directly by the customer to the employees (such as salaries and benefits).</p>	<p>Consideration: Consists of any amount charged for the visa facilitation process, including fees for visa services.</p>
<p>Valuation: The value of supply includes the total amount incurred by the customer, including salaries, benefits, and any additional charges related to the services provided by the supplier.</p> <p>Example: If Company A supplies manpower to Company B, Company A must account for output tax on the full value of the supply.</p>	<p>Valuation:</p> <ul style="list-style-type: none"> The consideration for the supply of visa facilitation services is the amount charged for the services which could include the recharge of expenses such as typing fees, medical tests and issuance of employee Emirates IDs. The value of supply in this case excludes the employee's salary, annual flight allowance and any other monetary benefits, as these are the obligation of the customer. <p>Valuation when the Facilitator does not charge a market-related fee:</p> <ul style="list-style-type: none"> If the Facilitator charges a fee that is less than market value and the Customer is not entitled to full input recovery, the value of supply is the market value of the supply. If the Facilitator charges the Customer a fee that is equal to the market value of the supply, the fees charged would be regarded as consideration for the taxable supply of services <p>Valuation when the Facilitator does not charge any fee: If the Facilitator provides the visa facilitation services to its customer for no charge, the supply would constitute a deemed supply unless one of the relevant exceptions applies:</p> <ul style="list-style-type: none"> If no input tax credit related to these services are recovered, these services will fall out of scope of VAT. If input tax credit related to these service are recovered, the output VAT should be paid based on total cost (Direct Cost + Indirect Cost). In instances where the Facilitator is unable to calculate the cost of providing the visa facilitation service, the market value of similar services may be used as an indication for the value of the supply.

Understanding the distinction between manpower services and visa facilitation services, as well as their respective VAT treatments, is crucial for businesses that engage in these activities.

* Corporate group requirement, for this purpose, refers to companies operating within the same corporate structure, which includes common ownership of the companies in line with Article 9(2) of the Executive Regulation. If the facilitator and customer are not part of the same corporate group, supply in such a case is treated as a supply of manpower services. If the facilitator and customer are part of the same VAT group, the supply would fall outside the scope of VAT in such cases, considering them as same person.

#For more details, refer to the official public clarification issued by the Federal Tax Authority.



4.1 Attributing Profits to a UAE Permanent Establishment



CA Ajit Jain

Permanent Establishment (PE) is a place of business that through which an enterprise conducts its business wholly or partially. A PE may subsist where there is a branch, management office, workshop or any other fixed place of business. However, it is also possible to have a dependent agent PE when that agent concludes contracts on behalf of principal entity

The UAE Corporate Tax regulations (Article 14) require attributing profit to a PE as if it were a separate and independent enterprise – authorized OECD approach. This approach ensures that PE to be taxed on what it would have earned if it dealt with the rest of the operations at an arm's length. This article provides a practical two-step guide, along with illustrative examples.

Step 1: Functional Analysis

The first step is to conduct a thorough functional analysis to identify the PE's functions, assets, and risks, as a separate and independent enterprise. This delineation is important for accurately attributing profits.

Example: A ForeignCo has a UAE Branch engaged in procurement activities for the head office. The major responsibility of the branch is to source for suppliers, discuss and agree on contracts and place orders. However, the PE does not take title to the goods or earn any sales revenue.

The functional analysis reveals that the branch performs support activities, while ForeignCo handles strategic procurement decisions and bears inventory risk. ForeignCo also handles all sales activities and retains title to the goods. Based on the functional analysis,

the Branch is considered as a PE of the head office and characterised as a procurement support service entity.

Step 2: Determining the arm's length compensation. The next step is to determine the arm's length attribution to the PE, based on the functional analysis.

In our procurement example, the UAE Branch should earn a commission aligned with what an independent agent would receive for similar procurement support activities. A transfer pricing method like the Transactional Net Margin Method (TNMM) can benchmark an arm's length commission range, likely based on a Return on Total Costs profit level indicator.

If the benchmarking analysis shows that independent procurement support agents earn a 5-10% commission on the value of goods purchased. The UAE PE's remuneration should fall within this range, based on its specific functions, assets, and risks.

Key considerations for UAE taxpayers:

- Conduct a PE analysis to identify any unintended PEs and assess profit attribution implications.
- Ensure the PE's books and financial statements reflect the attributed profits.
- Maintain robust TP documentation, including detailed PE functional analysis.

Proper profit attribution ensures a PE is taxed on what it would have earned as a separate entity. UAE taxpayers with PEs or potential PEs should invest in developing a sound profit attribution methodology to minimize tax risks.



4 ARTICLES FROM MEMBERS

4.2 FEMA FAQs - Gift of Shares of Indian Company between Residents and Non-residents



CA Jini Jain

Gift as a mode of transfer is customary between close relatives and friends in India. It is essential to realize that when this gift involves exchange between a resident and non-resident, Foreign Exchange Management Act, 1999 (FEMA) and its various rules and regulations are required to be adhered to.

Residential status under FEMA is the starting point to determine the extent to which the regulations are applicable to a particular transaction entered into by a person. Residential status determines the restrictions and prohibitions under the regulations applicable to various transactions entered into by the individual/entity. Following definitions are important to understand for applicability under the provisions:

- **Non- Resident Indian (NRI)** : NRI is a person resident outside India who is a citizen of India.
- **Overseas Citizen of India (OCI)** : OCI is a person resident outside India who is registered as an Overseas Citizen of India Cardholder under Section 7(A) of the Citizenship Act, 1955.

FEMA provides various benefits to individuals who have or had ties with India even if they are currently Non-resident. To qualify for it, a Non-resident should either hold an Indian passport to be considered as NRI or should hold an OCI card if the Indian Passport has been surrendered.

Since gifting is largely permitted between relatives, one must note that FEMA uses the definition of relative as per Companies Act, 2013 and not Income Tax Act, 1961. **'Relative' means a relative as defined in Section 2(77) of Companies Act, 2013 i.e. members of HUF, husband, wife, father (including step-father), mother (including step-mother), son (including step-son), son's wife, daughter, daughter's husband, brother (including step-brother) and sister (including step-sister).**

1. What is the difference between investment on repatriation basis and non-repatriation basis?

NRIs/OCIs have an option to invest into the shares of an Indian Company on repatriation basis or non-repatriation basis. Investment on repatriation basis means an investment, sale or maturity proceeds of which (net of taxes), are eligible to be repatriated out of India. In case of investment on non-repatriation basis, the proceeds cannot be freely repatriated outside India. Investment on non-repatriation basis is treated at par with domestic investment.

2. What are the provisions for gift of shares of Indian company between resident and non-resident?

Provisions relating to gift of shares as covered in Foreign Exchange Management (Non-Debt Instruments) Rules, 2019 have been summarized as under:



4.2 FEMA FAQs - Gift of Shares of Indian Company between Residents and Non-residents (continued)

Sr. No.	Donor/Giver	Donee/Recipient	Permissibility	Reporting & Sector caps applicable
1	Person resident outside India	Resident or NRI/OCI who will hold on <i>non-repatriation</i> basis	Automatic	Only reporting, sectoral caps would not apply
2	Person resident outside India	Person resident outside India	Automatic subject to condition ¹	Not applicable
3	NRI/OCI holding on <i>non-repatriation</i> basis	Resident or NRI/OCI holding on <i>non-repatriation</i> basis	Automatic	Not applicable
4	Resident or NRI/OCI holding on <i>non-repatriation</i> basis	Person resident outside India	Prior RBI Approval subject to conditions	Reporting & sectoral caps will apply

¹ Prior Government approval is needed if the company is engaged in a sector which requires Government approval.

3. What are the conditions for gift of shares of Indian company by a resident to a non-resident including NRI/OCI?

As mentioned above, gift of shares by a resident to a non-resident including NRI/OCI is only with prior RBI approval and subject to conditions. All the following conditions are required to be complied with:

- Donee is eligible to acquire such shares under the Rules
- The gift does not exceed 5% of the paid up capital of the Indian company or each series of debentures or each mutual fund scheme on cumulative basis by a single person to another single person
- The applicable sectoral cap² in the Indian company is not breached by such gift
- The donor and the donee should be relatives as described above
- The value to be transferred by the donor together with any shares transferred to any person residing outside India as gift during the financial year does not exceed INR equivalent of USD 50,000;
- Such other conditions that may be prescribed as considered necessary in public interest by the Central Government.
- Sectoral cap is the specified % upto which FDI is allowed in the sector Eg. In Multi-brand retail trading, the sectoral cap is 51%.



4.2 FEMA FAQs - Gift of Shares of Indian Company between Residents and Non-residents (continued)

4. What are the reporting requirements in case of gift of shares of Indian company?

In case reporting is applicable to the transaction of gift of shares, Form FC-TRS must be filed online on the FIRMS portal with the specified documentation within 60 days of the said transaction. The onus of reporting is on the transferor or transferee resident in India or the person resident outside India holding shares on non-repatriable basis, as the case may be.

CONCLUSION

To conclude, if one feels there is an ambiguity in interpreting the law in a particular case, one can surely seek RBI's approval before entering into the transaction as non-compliance could lead to adverse consequences. One should also be mindful of taxability of such gifts in India as well as foreign country.

GLOSSARY

FCRA Foreign (Contribution) Regulation Act, 2010

LRS Liberalised Remittance Scheme

RBI Reserve Bank of India





5. INVITATION TO WRITE ARTICLES FROM MEMBERS

Dear Members,

We invite contributions from Chartered Accountants who are members of the Chapter to share insightful articles on Corporate Tax, Value Added Tax and Excise Tax matters for our newsletter.

Please submit your articles by clicking on the link <https://icaidubai.org/articles>

Kindly adhere to the following guidelines:

Intellectual Property Responsibility: The articles/ writeups/ views shared are from your own research and you should take full responsibility that it does not breach any copyright, patent or any other IP or any other types of rights.

Content Guidelines: The article should not contain any objectionable contents including but not limited to such as taboo topics like religion, politics, culture and sex.

Editorial Modification: The author should not have an objection if the Managing Committee makes any changes to the shared articles/ writeups/ views to make it fit for the purpose of inclusion in the Journal/ Newsletter/ Publication of the ICAI Dubai Chapter.

Author Attribution: The articles/ writeups/ view is selected for publication, only the author name with photo will be published in the Newsletter/ Journal/ Publication in which its being published.

Publication Decision: The submission of articles/ writeups/ views does not create an/any obligation on/to the Managing Committee of the ICAI Dubai Chapter to publish it or to make it as part of their any publication. The decision of the Managing Committee will be final and binding on the author.

Submission Deadline: Submit the complete article with relevant information by the 25th of the month to be considered for publication in the upcoming newsletters.

We look forward to receiving your contributions, which will enrich our newsletter with valuable insights and updates. Please use the above mentioned link for submitting your article. For any clarifications please contact below persons,

CONTACT PERSONS

CA Balam Vuchidi
balaram.vuchidi@icaidubai.org

CA Aashna Mulgoankar
aashna.mulgaonkar@icaidubai.org





The Institute of Chartered Accountants of India (Dubai) Chapter NPIO



Our Gratitude

TITLE SPONSOR



BNW DEVELOPMENTS
بي ان دبليو للتطوير العقاري

PRINCIPAL SPONSORS



INVESTING IN THE FUTURE



POWER OF SIMPLICITY



LU LU



PLATINUM SPONSORS



Audit | Tax | Advisory | Risk | Technology



AUDIT | TAX | ADVISORY



emirates chartered accountants group

INSURANCE

Partner



TRAVEL

Partner



BANKING

Partner



VALUATION

Partner



INSTITUTIONAL

Partner



MAGAZINE

Partner



MEDIA

Partner



ICAI (Dubai) Chapter NPIO UAE TAX UPDATE Newsletter Team

EDITORIAL TEAM

CA Balam Vuchidi
+971 50 986 6466

CA Aashna Mulgaonkar
+971 55 552 0871

CA Dixit Kumar Jain
+971 55 752 1929



A black spiral-bound notebook is the central focus, lying on a light-colored wooden desk. To its left, a fountain pen with a gold nib and black barrel is partially visible. In the bottom right corner, an orange calculator is shown, with buttons for 'C/CE', 'MRC', 'M-', and 'OFF' clearly visible. The background includes a green plant with long, pointed leaves in a white pot. The overall scene is brightly lit, creating a professional and organized atmosphere.

UAE
TAX
UPDATE
NEWSLETTER

ISSUE 03 - **June** 2024