

VAT Memorandum

To: Noon AD Holdings Ltd. ("Noon")

7 June 2018

From: EY Consulting LLC ("EY")

Noon – UAE Zero-Rating of Exported Goods

I. VAT Export Documentation Requirements - UAE

Marketplace Scenario:

1. Seller lists products on Noon's website as a Marketplace seller.
2. When customer in KSA places an order from Noon's website, the seller is notified.
3. Noon issues an export invoice (this is not a financial invoice, but it is an invoice used for customs purposes) on behalf of the seller to the end customer in KSA.
4. For instance, if the product is listed at a value of SAR 105 on Noon's website, the export invoice will be SAR 100 with an additional note saying 5% KSA tax to be added.
5. When the goods reach the KSA border, 5% VAT is applied at the port and is paid by the logistics partners.
6. SAR 105 is collected from the customer out of which SAR 5 is reimbursed to the logistic partners for the VAT they have already paid at the KSA port.
7. As it is an export transaction for the seller, the zero-rated invoice raised to the customer should be sufficient for the seller to prove that the sale can be zero rated, however, additional documentation (Commercial Evidence e.g. Airway bill) should also be required to prove to the authorities that goods were actually exported out of the UAE.
8. An issue surrounds the Airway Bill, which Noon has mentioned that it cannot contain the names of individual sellers as one shipment may contain products from multiple sellers and the total of the Airway Bill may not match with the invoice amount.

Noon requests that EY clarifies the following points:

- a. Since DHL is paying VAT to KSA Customs, the UAE seller is not liable to pay VAT to KSA authorities.

EY Response:

Yes, the UAE seller exporting goods to KSA is not the liable person to account for KSA VAT since DHL is the importer of record and will pay import VAT at the time of importation.

- b. List of Documents mentioned in points No. 7 & 8 above are sufficient to justify to the Federal Tax Authority that goods were exported out of the UAE and sellers can claim back input VAT paid for goods.

Yes, goods exported from the UAE are subject to VAT at the zero-rate (0%) if accompanied by the proper export documentation. The list of documents mentioned in points No. 7 & 8 above (i.e. Official Evidence and Commercial Evidence) are sufficient to prove to the authorities that goods were exported, so long as the documents are in accordance with Article 30(4) and 30(5) of the Executive Regulations.

From a customs perspective, note that the Customs Authority has also released Customs Notice No. (7/2017) pertaining to Procedures for Proving Exportation of Goods for VAT Purposes. This is pursuant to the requirements of the FTA to facilitate procedures of proving exportation of goods through Customs exit points for VAT purposes. Article 1 of Customs Notice no. (7/2017) mentions that to prove exportation of the goods outside the country, the following procedures are required:

1. Issuing a customs declaration in accordance with customs procedures applicable for proving export of goods outside the country.
2. Issuing authenticated Customs Exit/Entry Certificate.
3. Actual examination (inspection) of goods (in terms of description, type, quantity, weight, country of origin, etc.)

In relation to point No. 8 above, as previously mentioned to Noon in various discussions and emails, the seller's individual information and details of the goods are required for proof of export, in accordance with Article 30(5) of the Executive Regulations. Noon has proposed to supplement the Airway Bill with a "Manifest Document" which would reference the Airway Bill and include the individual seller's personal details, including Tax Registration Number, along with adequate details of goods each seller is supplying. Article 30(6) of the Executive Regulations states that "The Authorities may specify alternative forms of evidence according to the nature of the Export or the nature of the Goods being exported". Since the FTA has yet to provide guidance on the E-Commerce industry, and due to constraints of Noon's marketplace business practices, we understand under Article 30(6) that a shipping Manifest Document to be an acceptable supplement to the Airway Bill in order to meet the zero rating documentation requirements set out in Article 30(5) of the Executive Regulations. The Manifest Document must include a proper reference code which links it to the Airway Bill. In addition, the Manifest Document should meet all requirements set out in Article 30(5) of the Executive Regulations, as mentioned

earlier. Noon should provide sellers with copies of all customs documents in a timely manner in order to ensure sellers hold sufficient records in case of an FTA audit.

In addition to the Manifest Document attachment to the Airway Bill, it would also be prudent for Noon to setup a procedure where sellers issue a delivery instruction note to Noon to ship goods on the seller's behalf. This would provide a link between Noon being the exporter and the seller actually making the zero-rated supply. This could be as simple as an email but should make the link between the seller's sale, and the export made by Noon. In addition, Noon should state clearly on the invoice used to ship the goods that it is shipping the goods on behalf of a seller, and it is not the legal owner of the goods.

Please note that this has not been confirmed with the FTA.

Moreover, in a marketplace scenario, the VAT reporting obligation does not lie with Noon since Noon is not the owner of the goods. The supplier will be the liable person to account for and report VAT, if it were applicable.