VAT Public Clarification  
Public Transportation  

Issue  
Article 34 of Cabinet Decision No. 52 of 2017 on the Executive Regulations of the Federal Decree-Law No. 8 of 2017 on Value Added Tax ("VAT Executive Regulations") states the means of transport which qualify for zero-rating under Clause 4 of Article 45 of the Federal Decree-Law No. 8 of 2017 on Value Added Tax ("VAT Law").  

One such qualifying means of transport includes the supply of a bus or train that is designed or adapted to be used for public transportation of 10 or more passengers.

This Public Clarification shall discuss the definition of 'public transportation' and its interpretation for the purposes of identifying those buses or trains which qualify to be supplied at the zero rate under this provision.

For the avoidance of doubt, this Public Clarification impacts upon the VAT liability of the supply of the vehicles themselves, and does not affect the VAT liability of transportation services supplied under Clause 2 of Article 45 of the VAT Law (i.e. international transport of passengers and goods, which is zero-rated) or under Clause 4 of Article 46 of the VAT Law (i.e. local passenger transport.

وتشمل إحدى وسائط النقل المؤهلة توريد حافلة أو قطار مصمم أو تم تهيئتها ليستخدم في النقل العام لعدد (10) أو أكثر من الركاب.

يتناول هذا التوضيح العام مناقشة تعريف مصطلح "النقل العام" وتوضيحه لأغراض تحديد الحافلات أو القطارات المؤهلة ليتم توريدها بنسبة الصفر وفقاً لهذا الحكم.

ولا زيادة أي ليس، فإن هذا التوضيح العام سيؤثر على المعاملة الضريبية لـ توريد المركبات ذاتها ولئن يؤثر على المعاملة الضريبية لخدمات النقل التي يتم توريدها وفقاً للبنك (2) من المادة (45) من قانون ضريبة القيمة المضافة (أي النقل الدولي للركاب والسلع الذي يخضع لالنسبة الصفر) أو وفقاً للبنك (4) من المادة (46) من قانون ضريبة القيمة المضافة (أي خدمات النقل المحلي للراكب المعفاة من ضريبة القيمة المضافة).
services, which is exempt from VAT). The conditions for applying the zero-rate or exemption to such transport services are covered in Article 33 and Article 45 of the Executive Regulations respectively.

Summary

Only buses or trains which are designed or adapted 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 the zero-rating provisions. Such means of transport shall therefore be subject to the standard rate of VAT.

Whether or not the original supply of the means of transport qualified for zero rating has no impact on the VAT liability of any charges made for the supply of transportation services. The VAT liability of supplying transportation services shall be determined based on whether the transportation is local (and therefore exempt from VAT) or international (and therefore zero rated).
Detailed discussion

Public transportation

Clause 3 of Article 34 of the Executive Regulations states that the one of the categories of a means of transport which shall qualify for zero rating is as follows:

A supply of a bus or train that is designed or adapted to be used for public transportation of 10 or more passengers.

Clause 3 of Article 34 requires that the vehicle is actually used for public transportation, as well as being designed or adapted for such.

It is also necessary to consider the meaning of means of transport used for ‘private transportation’ of individuals, which the FTA interprets as:

All means of transportation used to transport a specific group of people under contracts.

In contrast, means of transport used for ‘public transportation’ shall be interpreted by the FTA as:

All means of mass transportation used to transport all individuals without specifying any category.

The difference between the two forms of transportation therefore means that public transportation should be available for all individuals without exception. Public transportation would not include transportation which is only available to a specific category of user.

\[\text{توضيح للنظام} \quad \text{النقل العام}

\text{حدد البند (3) من المادة (34) من اللائحة التنفيذية إحدى فئات وسائط النقل المؤهلة لنسبة الصفر وهي:}

\text{تورد حافلة أو قطار مصمم أو تم تهيئته ليستخدم في النقل العام لعدد (10) أو أكثر من الركاب.}

ووفقاً للبند (3) من المادة (34)، يجب أن تُستخدم واسطة النقل فعلياً لأغراض النقل العام، وبالإضافة لذلك يجب أن يكون قد تم تصميمها أو تهيئتها خصيصاً لهذه الأغراض.

إنه من الضروري أيضاً النظر في تعريف وسائل النقل المستخدمة لـ "النقل الخاص" للأشخاص، والذي توضحه الهيئة الاتحادية للضرائب بأنه:

\[\text{كل وسائط النقل المستخدمة لنقل مجموعة محددة من الأفراد بموجب عقود.}

وفي المقابل، توضح الهيئة الاتحادية للضرائب بأن وسائل النقل المستخدمة لـ "النقل العام" هي:

\[\text{كل وسائل النقل الجماعي التي تستخدم لنقل الأفراد بدون تحديد أي فئة من الأشخاص.}

ومما سبق يتبين لنا أن الفرق بين مصطلح النقل العام والنقل الخاص هو أن النقل العام يجب أن يكون متاحاً لجميع الأفراد بدون استثناء، كما أنه لا يشمل النقل المخصص لفئة محددة من المستخدمين.
As a result, only those buses or trains which are openly available for use by any person without exception should be considered to be designed or adapted for public transportation and may therefore qualify to be supplied at the zero rate.

If a bus or train is designed or adapted for a specific class or group of people, or is only available for use by a specific class or group of people, it shall be considered to be designed or adapted for use for private transportation. As a result, the supply of those vehicles shall be subject to VAT at the standard rate.

Features of public transportation
In order to determine whether a bus or train is designed or adapted for use for public transportation the FTA considers the following factors would be indicative, amongst others:

- Features exist which allow passengers to pay for the transportation or to indicate they possess a ticket e.g. a payment booth, ticket scanner or device to take payment;

- There is branding either within or outside the vehicle advertising the transport service, indicating the transportation is available to all;

- There is branding or other features indicating regulation of the means of transport by the entity regulating public transportation in the Emirate of operation;
• There is evidence that the means of transport is required to comply with certain provisions or specifications, or there is a requirement to pay for a specific test determined by the entity regulating public transportation in the Emirate of operation, before being approved for use to transport passengers;

• Features exist which allow the placement of advertising materials by third parties on or within the means of transport;

• The intended use of the means of transport is to transport members of the public without exception or limitation to a specific group.

Application to specific circumstances

Based on the above, the following means of transport shall not be considered to be used for public transportation and the supply of such means shall be subject to VAT at the standard rate:

• School buses;

• Buses used to transport groups of employees or workers to or from a place of work;

• Shuttle buses used to transport hotel guests to other locations e.g. a mall, airport, park, or other tourist attraction.

The examples above are not considered to be used for public transportation on the basis that their use is restricted to one particular group of people, rather than the general public, for example, school students, employees of a business or hotel guests.

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VAT liability of transportation services

As mentioned above, the VAT treatment of the means of transport when purchased does not determine the VAT treatment of any supply of transport services made using that vehicle.

Clause 2 of Article 45 of the VAT Law states that the international transport of passengers and goods which starts or ends in the UAE, or passes through the UAE, shall be zero-rated. As a result, any VAT incurred on costs directly related to the provision of such international transport services should be recoverable in full, subject to the normal input tax recovery conditions.

Clause 4 of Article 46 of the VAT Law and Article 45 of the Executive Regulations state that any supply of local passenger transport shall be exempt from VAT where the supply is of local passenger transport services in a qualifying means of transport by land, water or air from a place in the UAE to another place in the UAE.

For the purposes of the exemption, one of the qualifying means of transport listed includes a motor vehicle, including a taxi, bus, railway train, tram, mono-rail or similar means of transport, designed or adapted for transport of passengers.

Given the definition of “qualifying means of transport” under Article 45 of the Executive Regulations requires only that the vehicle is designed or adapted for transport of passengers,
rather than for public transportation, Article 45 is to be interpreted broadly as including the transport of any passengers, whether a defined group or otherwise.

VAT incurred on costs which directly relate to the provision of exempt local transport services are not recoverable. Therefore, where local transport is made for a charge to a defined group of people, rather than the general public, any VAT incurred on the costs of purchasing the means of transport, fuel etc. in order to provide that service is not recoverable.