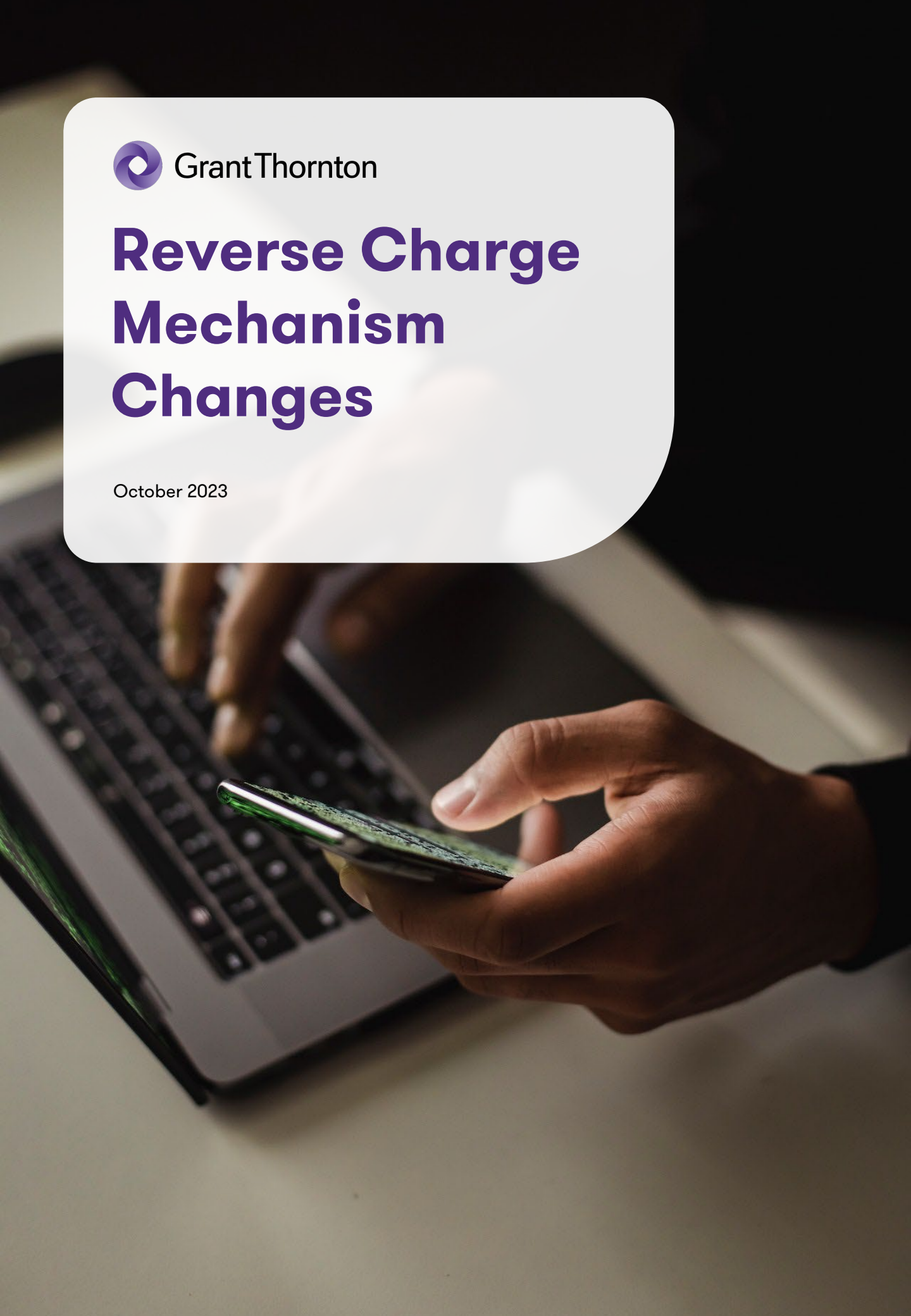




Reverse Charge Mechanism Changes

October 2023



Domestic VAT Reverse Charge on production and distribution of electronic devices in the UAE

With close to six years since the implementation of the Value Added Tax (VAT) in the United Arab Emirates (UAE), businesses have witnessed amendments through changes in VAT Laws, Executive Regulations and the Tax Procedures Laws at a regular interval. These changes have been particularly centered around clarifying the Federal Tax Authority's (FTA) position on certain transactions, providing sector-specific guidance to taxpayers, simplifying the compliance obligations and updating the provisions based on Federal Supreme Court rulings.

Recently, the FTA published Cabinet Decision No. 91 of 2023 to shift the VAT payment and reporting obligations to VAT registered recipients engaged in supply of electronic devices from the UAE – effective 30 October 2023. A VAT Public Clarification (VATP034) was later issued to specify the transactions covered along with obligations for the supplier and recipient of electronic devices.

The amendment will mean that for certain transactions, the supplier of electronic devices would not be required to charge 5% VAT on domestic sale; instead, the VAT registered recipient would account for VAT under the reverse charge mechanism (RCM); provided certain conditions are met. The existing categories of transactions where domestic RCM also applies is on the supply of crude oil and other specified products and supply of gold and diamond products within the UAE.



What is the change for the businesses operating in distribution of electronic devices?

The VAT registered businesses in the UAE who are engaged in B2B selling of electronic devices would not be required to charge 5% VAT to recipients in the UAE who intend to resell such devices or use in production. The recipient of goods would account for 5% VAT under RCM.

For adopting this process, the supplier would be mandatorily required to obtain a declaration from the recipient which states that the goods procured would be for resell / production and a confirmation on the VAT registration, i.e. TRN should be mentioned in the declaration. The declaration is required prior to undertaking the transaction / supplies, i.e. before the date of supply and it's unclear whether one declaration from recipient of goods for all purchases from a particular supplier would work or separate declarations are required for each supplies which is expected to happen on a recurring basis.

The supplier would be required to keep a record of the declarations along with proof of TRN verification from the FTA portal.

The amendment is expected to improve the cash flow position for the suppliers and the recipients, as the recipient would not be required to pay 5% VAT to the supplier and similarly the supplier would not be required to pay 5% VAT to the FTA. Also, the recipient who purchases goods for exports would no longer be required to apply for a VAT refund with the FTA.

Aside from the favourable cash-flow impact, it appears that the intention to apply for domestic RCM appears to track the B2B sales of electronic devices within UAE and strengthen the FTA's controls to ensure that there is no VAT fraud or an evasion, i.e. selling goods to reseller without accounting and reporting VAT.

To whom the amendment applies

The amendment would apply to the producers and distributors registered for VAT in the UAE and dealing in following products: mobile phones, smart phones, computer devices, tablets and pieces and parts thereof.

The VAT Clarification further mentions the inclusions and exclusions to the above list and it appears that there could be challenges around the classification of the products. There would lot of businesses in sectors such as automotive, lighting and electronics who would be impacted due to the amendment. Each product sold would require an analysis to determine if it would qualify as an electronic device. It is further stated that a separate decision would be issued to specify the criteria to be followed in determining the pieces or parts related to electronic devices.

As a first step, businesses in the UAE should ascertain whether the products sold or purchased can be classified under any of the above categories. For the products which are not covered, the supplier should follow the existing VAT treatment.

If the business is engaged in selling any of the above products, then the products need to be flagged / identified in the accounting system and then the VAT treatment needs to be determined.

How to determine the VAT treatment for sale of electronic devices

When the business customer in the UAE shares the declaration for resale or carrying out manufacturing from the products purchased, then the seller should assign a VAT code in the accounting system so that no VAT is computed. The VAT invoice to be raised should specify clearly that the recipient of goods would be required to account for VAT under RCM. The accounting system should be updated with a new VAT code for such transactions and adding a text on the VAT invoice for the customer to account under RCM. Also, if the retailers selling devices to the recipient for further sale, then the Point of Sale (POS) system should be updated to allow the issuing of a VAT invoice without VAT. For transactions classified under this VAT code, the supplier is not required to report in the VAT return.

From the recipient perspective, apart from issuing the purchase orders, they would be required to issue a declaration as mentioned earlier and so the internal procedures should be updated for issuing documents.

There could be situations where after purchase, the goods are not resold and consumed internally instead. It would be interesting to see whether the FTA in such situation would ask the recipient to reverse the input VAT and whether any obligation would fall back on the supplier.

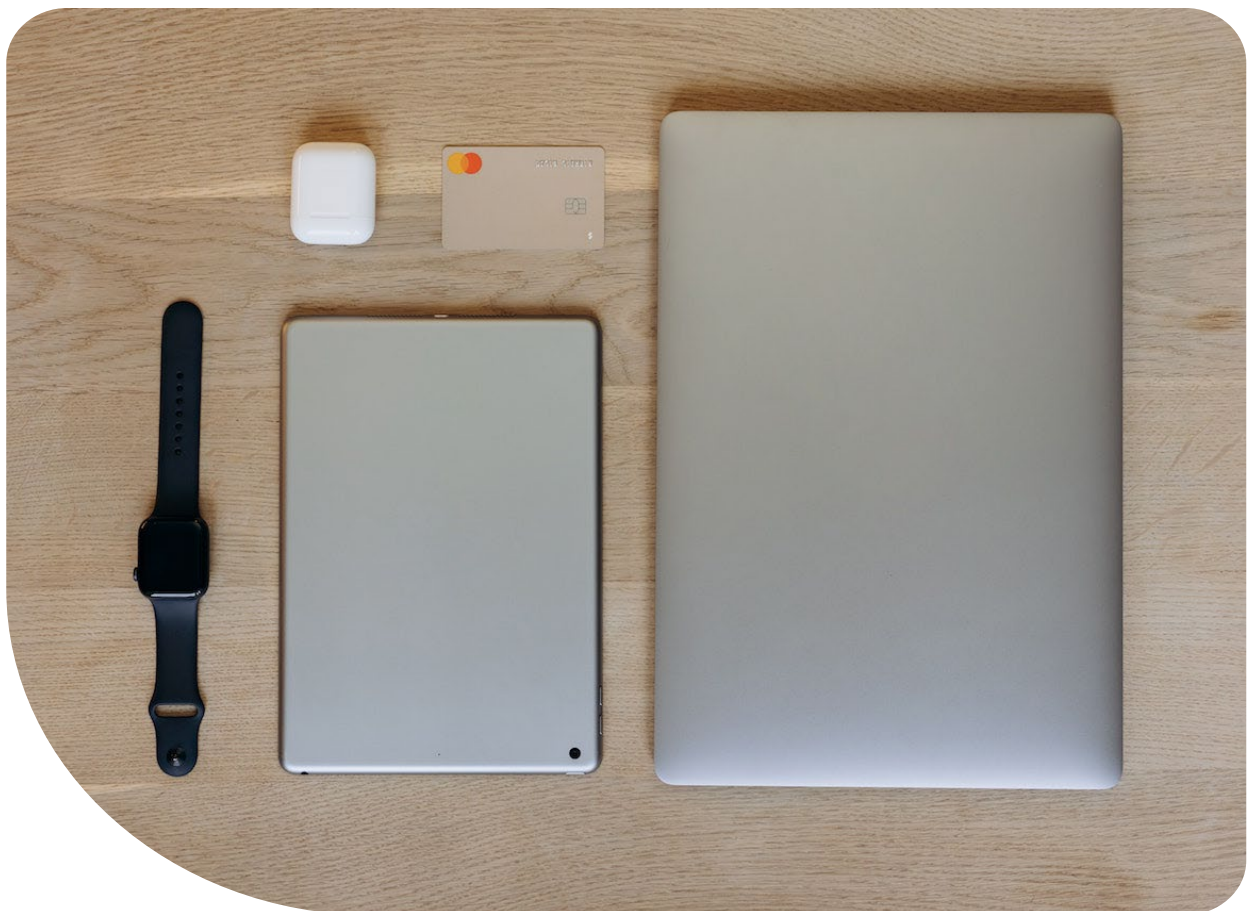


Also, the FTA has mentioned that if the recipient doesn't share the declaration, then the supplier would be required to charge 5% VAT - this may lead to potential VAT cost for the recipient as the recipient's input VAT would be blocked from recovery. The FTA's assumption in such cases is that the goods purchased would not be used for business purposes, i.e. resell or production. It would mean that to avoid 5% VAT cost, the FTA has enforced the recipients of electronic devices to follow the RCM process if there is an intention to resell or produce electronic devices.

The second category would be businesses in the UAE who would purchase the electronic devices for self-consumption, providing them to employees for sale / use, etc. In such cases the seller should use the existing tax code and charge 5% VAT. An interpretation emerges that the recipient may not be able to claim input VAT despite that the goods would be used for business purposes and there could be a policy for mobile phones usage which restricts to business use only. An alternative view could be that input VAT should be allowed if the electronic devices are used towards providing taxable supplies. It would be interesting to see how the amendment would impact the position based on the clarification on mobile phones usage for the employees' business use. It is expected that the FTA would clarify this position as it may have an adverse impact on domestic suppliers since the businesses can directly import the electronic devices from outside the UAE and would then be allowed to claim input VAT in full.

Another category would be where the customers are located outside the UAE. In such cases, if the seller receives the official and commercial evidence for exports then the tax code for zero-rating should be used. Again, if the evidence is not available, then the supplier should charge 5% VAT or seek an exception to allow using alternate documents/seek additional time for exports.

The amendment would have a significant impact on traders in the UAE who are selling/buying electronic devices as specific procedures in terms of declarations, record-keeping, invoicing and so forth need to be followed to ensure that 5% VAT isn't a cost in the supply-chain.



Speak to our experts

We have a diverse team with international experience from multiple Tax jurisdictions outside the GCC. Our team will bring fresh challenges and insights as well as extensive cumulative knowledge and experience.



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