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**FEATURE TAXING: NEW ERA FOR BANKS**
Taxation of foreign banks in Dubai

**PROFILE PHARMACEUTICALS**
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**ANY QUESTIONS**
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A ROUND UP OF TAX DEVELOPMENTS ACROSS THE MIDDLE EAST

# OVER AT HQ

Regional HQ tax incentives in Saudi Arabia

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# THE RUSH TO RELOCATE

Recently the Saudi Gazette reported that in the first quarter of 2024 as many as 127 multinational companies had moved their regional headquarters or RHQs to Saudi Arabia. This was a 477% increase compared to levels in 2023.

There are a number of reasons for doing this, including Saudisation regulation exemptions, available grants and subsidies from the Saudi Government, as well as opportunities to participate in government tenders.

However, in this issue we focus on the tax benefits which are available to those who have decided to establish their regional headquarters in Saudi. These include a 30-year exemption on corporate income tax and withholding tax related to headquarters activities. Special Regional Tax Headquarter Regulations (Saudi Arabia Administrative Decision No. 24-1-9/1445) have been issued. The Saudi Authorities are also taking steps to speed up and simplify the steps and procedures which need to be taken by those who wish to establish an RHQ there. They state that 34 previous challenges which had been faced by foreign investors looking to establish themselves in Saudi have now been addressed. However, it is worth noting too that the requirements for eligibility for these special RHQ tax incentives are quite detailed and will need to be complied with on an ongoing basis in order to retain these rights. It is also not a given that those who already have an RHQ in Saudi will automatically have all those requirements in place. What is interesting too is that in the first quarter of 2024, the sector which showed the highest growth in new investment licenses in Saudi was the real estate sector where there has been an increase of 253.3% compared to the previous year. This is a pattern which is also be seen across the GCC. As a result, we also include in this issue an article focusing on key VAT considerations in this sector in Bahrain, Oman, Saudi Arabia and the UAE, and highlight key differences and risk in each of these jurisdictions.

**Claire Melvin** - Editor

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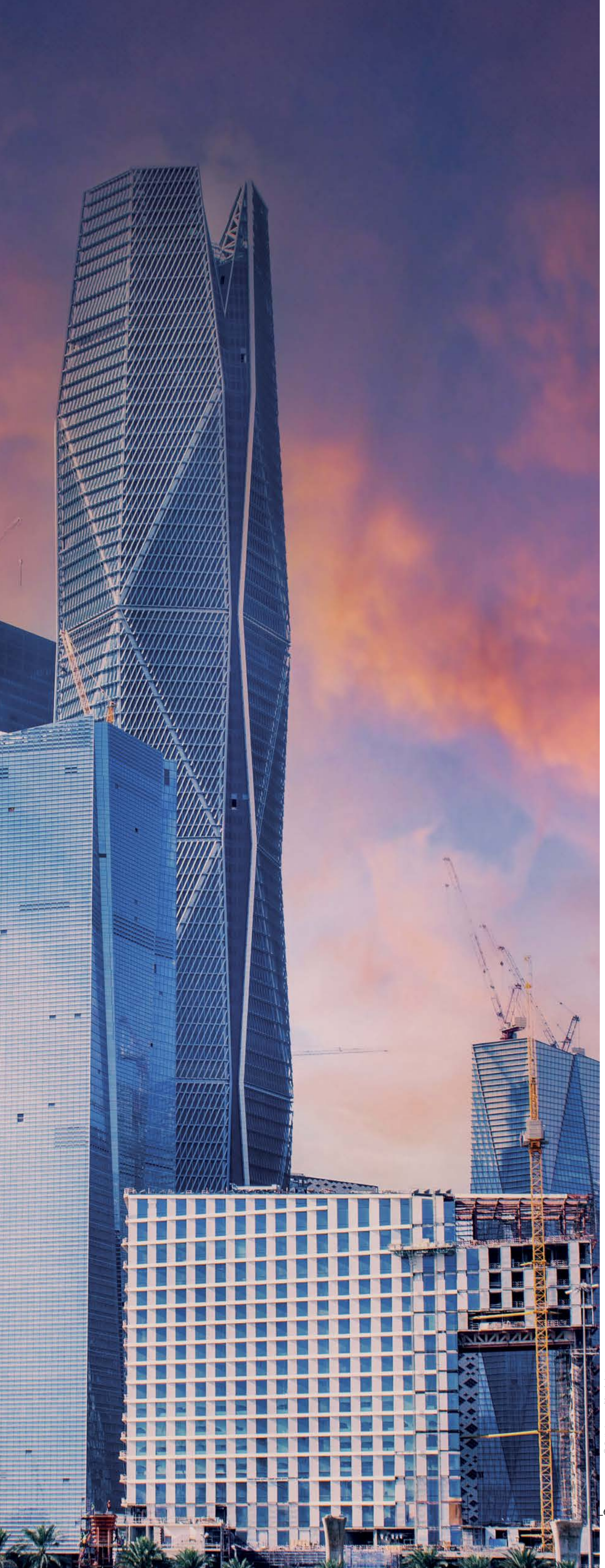
# OVER AT HQ

Sadia Nazir of KPMG in Saudi Arabia explains the tax incentives on offer to companies setting up a Regional (RHQ) there.





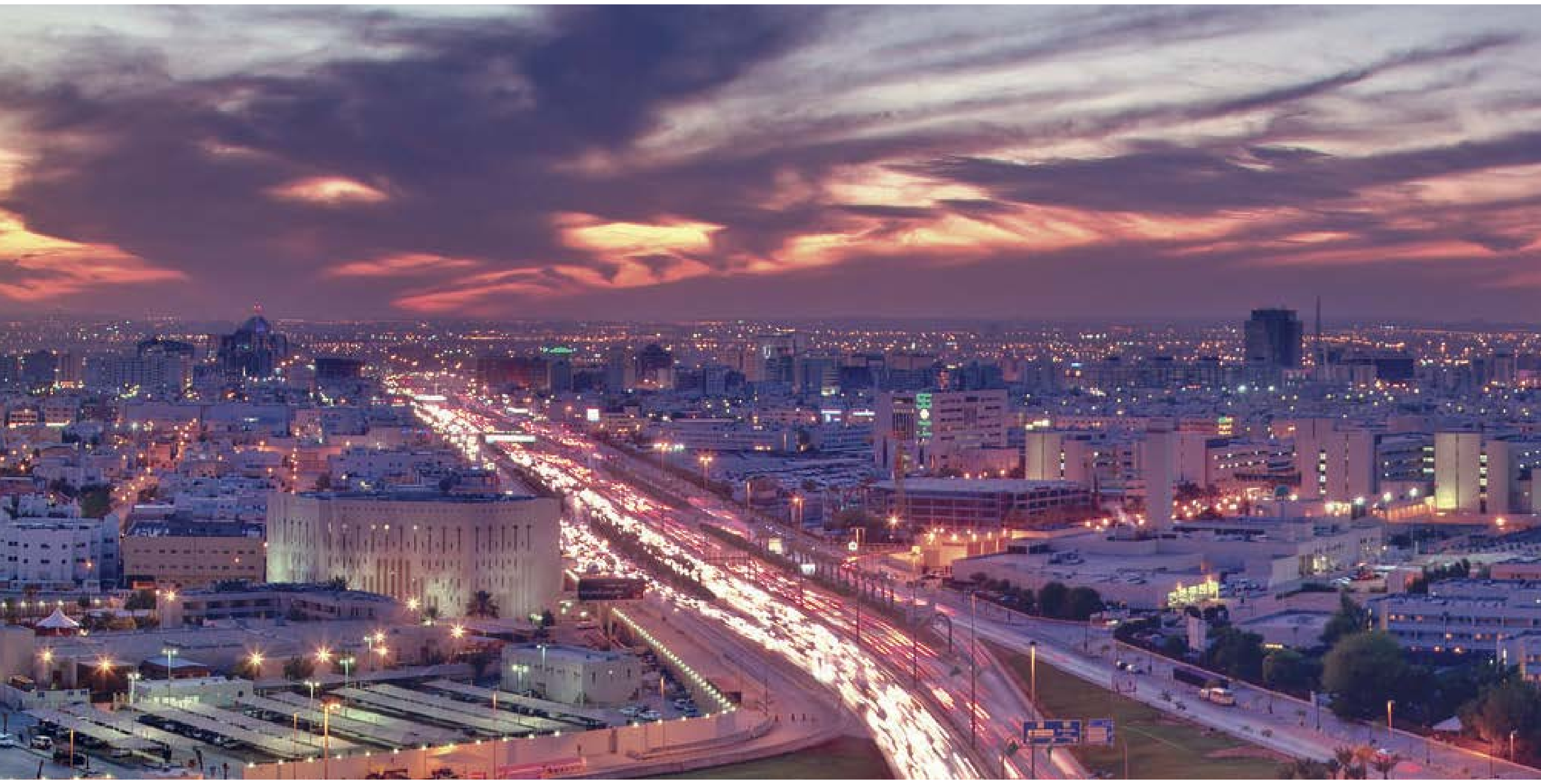


The Regional HQ (RHQ) programme is a pivotal part of Saudi Arabia's Vision 2030, and aligns with its overarching aim to attract more foreign direct investment and develop the non-oil sector there. An RHQ is intended to provide strategic direction, administrative guidance, and internal business support to its branches and affiliates in the MENA region. A key reason so many multinationals are currently interested in setting up an RHQ in Saudi is that without one they can no longer participate in government tenders there. The aim of the scheme is to position Saudi Arabia as the leading commercial, industrial and investment hub for the MENA region, by offering companies a range of benefits and premium support services if they take these steps.

The RHQ programme came into effect on 1 January 2024 and saw global companies being invited to setup and move their headquarters for the MENA region to Saudi Arabia. The Zakat, Tax and Customs Authority (ZATCA) published the rules governing the grant of the 30-year tax relief under the scheme (see Saudi Arabia Administrative Decision No. 24-1-9/1445). There are also a number of other reasons companies may be interested in doing this including Saudi Arabia's strategic location in the Middle East, its skilled workforce, proximity to major markets in Africa, Asia, and Europe, and well-developed logistics infrastructure, including modern ports, airports, and road networks. In addition, the Saudi government is offering a range of investment incentives, including grants, subsidies, and access to land, to attract foreign companies and make it easier for them to establish and grow their operations in the Kingdom. The government has also implemented a number of regulatory reforms which are designed to improve the business environment there including streamlining business registration and visa processes for employees.

## SPECIAL TAX INCENTIVES

There are also now a number of special tax incentives available to companies which operate as an RHQ in Saudi Arabia. They can be exempt from paying tax on income generated from their RHQ's activities and on repatriation of profits to group companies or related persons, reducing their tax burden. In order to qualify for the RHQ programme, an RHQ must have a presence in at least two countries outside of the headquarters jurisdiction and Saudi Arabia. It must also be active in the MENA region, and the HQ must engage in strategic direction, management functions, or support functions through its branches, subsidiaries, or affiliates in the MENA region. If a Multinational Company wishes to participate in the programme they must have obtained an RHQ license from the Invest Saudi MISA portal and begin operations within six months of the license being issued. They must also hire at least 15 full-time employees within one year of receiving their RHQ license; and at least three of these employees must be C-level executives. They must undertake all mandatory RHQ activities specified



## CONSIDERING SETTING UP AN RHQ IN SAUDI?

**Check eligibility**
This includes meeting the the minimum employment requirements and ensuring their the RHQ's activities align with the programme's objectives.

**Develop a business plan**
Develop a comprehensive business plan outlining the RHQ's operations, including investment plans, target markets, and expected economic benefits to Saudi Arabia.

Existing RHQs in Saudi Arabia should also carefully review their operations to ensure they are complying with the new RHQ Programme's rules. This will include verifying their eligibility, maintaining local compliance filing requirements and submitting required reports to the authorites.

by MISA, plus a minimum of three optional RHQ activities; and refrain from conducting any commercial activities through the RHQ. These mandatory activities include business planning, budgeting, monitoring financial performance, preparing marketing strategy for the MENA region, and supporting merger and acquisition activities in the MENA region. The optional activities include human resources, training, accounting, auditing, logistics and supply chain management. The RHQ must also have a physical office in Saudi Arabia which is suitable for the activities it plans to undertake there and the RHQ activities must be conducted and managed in Saudi. Its board of directors' meetings must also be held there. It must also incur operational expenses which correspond with its activities in the Kingdom and generate revenue from the Eligible Activities. They are also required to maintain separate books and records when conducting non-Eligible Activities and income from any non-eligible activities is subject to taxation in accordance with Saudi Arabia's Income Tax Law (Saudi Arabia Cabinet Decision No. 278/1424). These tax benefits are available from the date the RHQ license is granted for the earlier of 30 years or when the entity ceases to be an RHQ. However, this 30-year period is subject to renewal.

**Sadia Nazir**
Head of International Tax- Saudi Arabia, KPMG

### REGISTRATION

In order to register as an RHQ, a company should submit a formal application to the Saudi Arabian General Investment Authority. The set up process has two primary stages - applying for the MISA licence and incorporating the RHQ entity either as a branch office or as a limited liability company in Saudi Arabia. In order to make this process easier for investors, MISA has simplified the procedural requirements for obtaining a license by waiving attestation requirements which generally apply to documents originating outside Saudi Arabia. MISA is also working closely with the Saudi Ministry of Commerce to accelerate the commercial registration process in Saudi. There are no substantial differences on the way this works for an RHQ compared to other types of companies, as an RHQ will need to comply with the various tax compliance obligations for Corporate Income Tax and Zakat purposes.

### INCOME TAX AND WITHHOLDING TAX

Companies operating a RHQ in Saudi Arabia can benefit from a 0% rate on corporate income tax on eligible activities which include all income generated from their RHQ activities, including profits, dividends, and royalties.



They can also benefit from a 0% withholding tax rate on dividends, payments to related persons, and payments to third parties for services essential to the RHQ, provided payments are related to eligible activities which involve the management functions and strategic direction of MENA entities and other RHQ activities, focusing on strengthening the group's profile in the region.

## RELEVANT LEGISLATION

**Article 6 of Saudi Arabia Administrative Decision No. 24-1-9/1445**

Regional Headquarters shall register with the Authority in accordance with the procedures prescribed in the relevant Tax and Zakat Laws.

(Source: Lexis Middle East Law)

## TAX TREATIES AND TRANSFER PRICING

RHQs should also be able to claim treaty benefits under any applicable double tax treaties concluded by Saudi Arabia to the extent that he RHQ satisfies the residency criteria under the relevant tax treaty. They will also be subject to Transfer Pricing regulations. However, at present there have been no special transfer pricing rules or guidance released which deal specifically with RHQs. Therefore, at present companies these companies must reference existing transfer pricing regulations in Saudi Arabia and ensure all related party transactions are conducted at arm's length.

It is also important to note RHQs will be required to comply with the economic substance requirements and that RHQs must file an annual report, using a prescribed form with ZATCA according to the procedures specified by it, in order to verifying compliance with the economic substance requirements.

It is likely given the tax incentives which are available to these RHQs, tax authorities in jurisdictions transacting with the RHQ may place a higher degree of scrutiny on the transfer pricing arrangements in this situation due to the potential opportunity for tax arbitrage. In addition, a failure to engage in dealings at arm's length could jeopardise the RHQ's status and license and in turn, disrupt the multinational company's ability to conduct business in Saudi Arabia.

## POTENTIAL PENALTIES

If a RHQ breaches the programmes rules, the Saudi authorities may revoke their exemptions from tax which would mean the company being liable to pay taxes on all its income generated in Saudi. In addition to losing their tax exemption, the company may also be required to pay back taxes for the period during which it was in breach of the rules. Non-compliance with the tax rules can also expose an RHQ to a fine of :100,000 Riyals if the violation is remedied within 90 days from the date of the imposition of the penalty or 400,000 Riyals if the violation is not remedied within 90 days or the RHQ repeats the same violation within three years of the date the initial penalty was imposed, provided the violation is remedied within 90 days.

Breaches which could lead to penalties include failing to meet the minimum employment requirements, engaging in activities which are outside the scope of the RHQ programme or failing to maintain proper accounting records or submit required reports to the authorities.

# TAXING: NEW ERA FOR BANKS

Charles Collett of PwC explains changes on the taxation of foreign banks in Dubai.

Dubai Law No. 1/2024 On the Taxation of Foreign Banks Operating in the Emirate of Dubai came into effect from the date of its publication in the Official Gazette on 8 March 2024.

This new law repeals and replaces Dubai Regulation No. 2/1996 on the collection of tax from the branches of Foreign Banks in the Emirate of Dubai or any other legislation which may contradict it.

However, the rules and procedures detailed in Dubai Regulation No. 2/1996 will still be applied for tax periods that began before Dubai Law No. 1/2024 came into force.

**Charles Collett**
Partner
PWC

## PREVIOUS POSITION

Although, a Federal level income tax was not imposed on most businesses and individuals prior to Federal corporate income tax, at Emirate level the seven individual Emirates were able to implement their own tax policies.

This led to a number of Emirates including Dubai issuing their own tax legislation on companies that operated in specific sectors - including the oil and gas, and the banking sector (in the case of Dubai in the form via Dubai Regulation No. 2/1996).

Foreign banks operating in the UAE through branches are required to pay corporate income tax on their profits generated within the country.

This tax is levied at the Emirate level, and historically, a rate of 20% has been set in several Emirates, including Dubai.

When Federal Decree-Law No. 47/2022 was introduced, although a specific exemption was put in place for extractive activities and non-extractive natural resources businesses (see Article 7 and 8 of Federal Decree-Law No. 47/2022) to ensure businesses in the oil and gas sector did not end up paying both these specific Emirate level taxes and Federal income tax, no equivalent exemption was provided for the branches of foreign banks and it was assumed they would be subject to both the new Federal Corporate Income tax obligations at 9% and the pre-existing sectoral Emirate level tax obligations at 20%.




## APPLICATION

The new law, Dubai Law No. 1/2024 applies to all foreign banks operating in Dubai, including those in special development zones and free zones, apart from foreign banks which are licensed to operate in the DIFC.

## KEY PROVISIONS

This law specifies the principles which govern the calculation of taxable income, tax filing and payments, procedures for the audit of tax filing, voluntary disclosure, and responsibilities and procedures which relate to tax auditing of foreign banks operating in Dubai.

One of the key features of this Law is that foreign banks will be subject to 20% tax on their annual taxable income. Importantly however, this rate may reduce to 11% where foreign banks are subject to corporate income tax in accordance with Federal Law No. 47/2022 on the taxation of corporations and businesses and its amendments where applicable.

This change is a direct response to the introduction of UAE Federal Corporate Income tax as the reduced rate will help foreign banks to pay approximately the same original tax rate of 20% rather than paying 29%.

## CALCULATION OF TAXABLE INCOME

Calculation of the taxable income is covered in Article 5 of Dubai Law No. 1/2024 and takes into account (1) the rules and regulations approved by the Dubai Department of Finance (DOF) in relation to exempt income, unrealised gains or losses, headquarter expenses and regional expenses and (2) the provisions in Federal Decree-Law No. 47/2022 and its related decisions, for matters not covered by the rules and regulations of the DOF for calculating taxable income.

## DOCUMENTATION

The DOF will also require these banks to submit along with their tax return financial statements (which will need to be audited) and associated disclosures; details of the amount of tax due along with related documentation; and details of any tax paid in accordance with Federal Decree-Law No. 47/2022. If all these documents are not supplied the submission will be rejected. In addition, a retention period of seven years has been set for all records and documents.

## RELEVANT LEGISLATION

**Article 7 of Dubai Law No. 1/2024**

(a) If the taxable person finds that the tax return it submitted to the Department or that the tax assessment sent to it by the Department is incorrect, which has led to the payable tax in accordance with the provisions of this Law being calculated at less than it should be, then it shall correct the return submitted by it or correct the data of the tax assessment, by virtue of the voluntary disclosure, and settle the financial difference due, within 30 days from the date of being aware of the same.

(b) If the taxable person finds that the tax return it submitted to the Department or that the tax assessment sent to it by the Department is incorrect, which has led to the payable tax in accordance with the provisions of this Law being calculated at more than it should be, then it may, in this case, submit the voluntary disclosure within 30 days from the date of being aware of the same, provided that it notifies the Department of the appropriate recovery mechanism, either through its bank account or by considering the difference as an advance payment of the due tax for the subsequent tax period.

(c) The voluntary disclosure referred to under paragraphs (a) and (b) of this Article shall be submitted in accordance with the forms and mechanisms approved by the Department in this regard.

(Source: Lexis Middle East Law)

## PENALTIES

Article 15-17 of Dubai Law No. 1/2024 details the penalties which apply for tax evasion under this law. Penalties apply for tax evasion, late payment of tax due and for acts deemed as violations of this law.

A taxable person will be considered as having evaded tax if they submit an incorrect tax return and fail to submit a voluntary disclosure on it from the day they become aware of this; refrain from paying the payable tax or differences payable following a tax audit; or if they reduce the actual value of taxable income; manipulate accounting data or submit incorrect, incomplete or forged financial information.

Tax evasion is also considered as having occurred where the taxable person misuses or causes the destruction of any documents or papers prepared by the Department or Authority; destroys or hides documents, data or information they are required to preserve and provide to the Department or Authority; prevent or obstruct an auditor from carrying out their duties, in relation to tax audit or carry out any other act or omission that leads to evading tax in full or in part.

Those classed as having evaded tax in these ways can have a fine equal to twice the amount of the evaded tax levied on them.

Taxpayers will be subject to a 2% monthly penalty in the case of late payment of tax due or payment of any penalty imposed.

In addition, where there has been an administrative violation of the law fines of up to 500,000 AED can be levied and these can also be doubled for repeat violations within two years up to a maximum of AED 1 million.

## TAX AUDITS

Article 8-12 of Dubai Law No. 1/2024 covers tax audits.

In this case, taxpayers should be notified at least five days before the date.

The tax audit results should be submitted within ten days to the DOF from when the tax audit ends. The DOF then has a period of ten days to issue their final assessment and notify the taxpayers of any difference in the tax due they may now have to pay.

Taxpayers also have the right to object to the results of an audit within 20 days from having the results given to them subject to certain documentation and conditions that need to be met.

There is also a statute of limitations of five years for a tax audit. However, this period can be extended to 15 years in the case of tax evasion. This period is calculated from the end of the tax year.

## NEED FOR CLARITY

It should be noted that a literal reading of Dubai Law No. 1/2024 suggests that this new law will apply to tax periods commencing after 8 March 2024. This suggests that where a bank has a December year end, the first applicable tax period would be 1 January to 31 December 2025.

Therefore, the reduced rate of 11% would not apply in 2024 and foreign banks will be subject to 20% Emirate level tax and 9% Corporate tax for the 2024 tax period. At present it is not clear if this is the definitive interpretation, and further clarity is needed on this point.

The law states that the General Director of the DOF will make the necessary decisions to implement the provisions in this law, so it is expected that further clarifications will be issued in due course by DOF on certain aspects of this law.

In addition, if any other transitional rules are required, these will be determined by the General Director of the DOF.

## NEXT STEPS

Foreign banks operating in Dubai will need to assess how Dubai Law No. 1/2024 is likely to impact them going forward.

This Law will not only potentially impact the amount of tax they will need to pay, but also matters such as current and deferred tax accounting for financial statement purposes.

It is worth noting that the Emirate of Sharjah has issued Sharjah Decree-Law No. 2/2023 regarding the tax on foreign banks operating in Sharjah allowing a tax credit to reduce the potential for double taxation on foreign banks operating there.

Whilst the mechanism is different this also aims to help to reduce the tax burden for foreign banks operating in Sharjah.

However, it remains to be seen what action the other Emirates will take on this issue for foreign banks. Overall, this development not only enhances the UAE's attractiveness as a leading financial hub for foreign banks operating in the region but also reinforces its commitment to creating a business-friendly environment that fosters growth and investment in the financial sector.

# WHAT'S CHANGED
## ELECTRONIC INVOICING

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**KEY TAKEAWAYS**
UAE Businesses must assess their readiness for E-Invoicing in terms of people, processes, and systems before implementation in July 2026. Automating invoicing processes can improve efficiency and assist with this change.

### CHANGE

Electronic or E-Invoicing is planned to be rolled out in the UAE from July 2026. At present in the UAE issuing invoices by businesses for VAT taxable supplies can require labour-intensive manual processes, paper records and a significant investment of time and money. When E-Invoicing is rolled out, taxpayers will be able to prepare, transmit, receive, and process tax invoices electronically, thereby lessening the workload for manual processes and VAT return filings. This will also reduce the likelihood of errors in the VAT return, save time, and improve tax transparency. Over 100 countries have a form of E-Invoicing in place.

### RELEVANCY

The UAE Federal Tax Authority (FTA) initially plans to have E-Invoicing for Business to Business (B2B) and Business to Government (B2G) transactions from July 2026. E-Invoicing will be introduced for Business to Customer (B2C) transactions later, but as yet no date has been announced for this. It is anticipated the Decentralised CTC and Exchange (DCTCE) Model will be adopted by the FTA. This allows vendors and customers to exchange electronic invoices directly without having to request prior authorisation from the FTA. The DCTCE model automates the process between the supplier and buyer through the use of a third-party service provider and the FTA extracts the relevant information for tax purposes from the service provider. The DCTCE model draws upon Peppol as its foundation. This approach is commonly known as the '5 corners' model of Peppol. Peppol PINT will probably be adopted, along with the usage of Accredited Service Providers (or e-invoicing agents). The framework integrates the Peppol PINT standard, requiring certified Peppol Access Points for issuers and receivers to verify data and transmit invoices, with the governmental platform acting as an invoice repository. The potential timeline for implementation of E-Invoicing may be:

- development of requirements and certification procedures for service providers – Q3 2024;
- publication of e-Invoice legislation - Q2 2025;
- start of Pilot Phase: December 2025; and
- phased roll-out culminating in first stage launch - July 2026.

Saudi Arabia launched an E-invoicing system on 4 December 2021. It had a two staged approach.

In the first 'Generation' phase, taxpayers had to generate and store tax invoices, simplified tax invoices and respective credit and debit notes through a compliant E-invoicing solution.

Then since the second 'Integration' phase which began on 1 January 2023, technical and business requirements for electronic invoices and electronic solutions have been integrated with the tax authority's systems.

This phase has been rolled out in waves with targeted taxpayer groups having to integrate their systems for issuing electronic invoices and debit and credit notes with the tax authority's systems to share data and information at different times.

The Saudi Arabia's technical E-Invoicing models is different from the DCTCE model to be adopted by the UAE.

However, it is possible the UAE may also adopt a staggered approach for the implementation of E-Invoicing as was done in Saudi Arabia.

### REMEMBER

- UAE taxpayers should review their tax policies and governance, and check with relevant stakeholders to assess their E-Invoicing readiness. This includes looking at the readiness of people, processes, and systems and developing an implementation strategy.
- Taxpayers should check the integrity of their data and the extent of invoicing automation. Before implementing E-Invoicing, they should identify and eliminate manual invoicing procedures.
- Taxpayers should decide whether to employ an E-invoicing solution that is compliant with UAE rules and regulations and compatible with the DCTCE model.

# TAX NEWS ROUND-UP

COVERING RECENT KEY DEVELOPMENTS – REGION-WIDE

UAE

## REGISTRATION TIMELINES

The Federal Tax Authority (FTA) has clarified the registration timelines which apply to those subject to corporate income tax. There are a range of deadlines which apply to different categories of resident and non-resident corporates subject to corporate tax. Corporations which were incorporated or otherwise established or recognised before 1 March 2024 must submit their tax registration application for Corporate Tax based on the month of their licence issue. However, for a corporate that did not hold a licence as of 1 March 2024, the application deadline is 31 May 2024. If a taxable corporate held an expired licence on 1 March 2024, the reference for submission would still be based on the month their original licence was issued. For those with multiple licences, the deadline is determined by the earliest issue date, considering the year of issue of the licence. Those incorporated or otherwise established on or after 1 March 2024, must submit a tax registration application within three months of their date of incorporation, establishment, or recognition. In addition, those who are recognised under foreign legislation but managed and regulated in the UAE must submit a tax registration application within three months from the end of their financial year. Juridical persons who were non-resident persons prior to 1 March 2024, but have a permanent establishment in the UAE, must submit a tax registration application within nine months from the date of existence of that permanent establishment (which is defined as when their permanent establishment is recognised for UAE Corporate Income Tax purposes). Non-residents who had any connection or presence in the UAE before 1 March 2024 must submit their application by 31 May 2024. Those that are non-resident on or after 1 March 2024 but have a permanent establishment in the UAE must submit a tax registration application within six months from the date the permanent establishment exists. This is a clarification which neither ends or seeks to amend current legislative provisions which means its implementation date is from 1 March 2024 unless stated otherwise. Failure to comply will lead to a penalty of 10,000 AED.

## FREEZONE GUIDANCE

The UAE Federal Tax Authority (FTA) has released a Corporate Income Tax Guide on Free Zone Persons (CTGFZP1) on its portal. The guide provides extensive examples and clarifications on the special 0% corporate income tax rate which can potentially be available to Freezone Persons under certain conditions. It provides an overview of the conditions required for a Free Zone Person to be a Qualifying Free Zone Person and benefit from the 0% rate and the activities considered as both Qualifying Activities and Excluded Activities for a Qualifying Free Zone Person. A key clarification is that where goods are being distributed from a Designated Zone (DZ) in order to be considered a qualifying activity, the goods do not need to physically enter the UAE. This includes third-country trading (via high sea sales) and goods purchased by a Freezone company in a DZ exported from the mainland. The processing of goods is also broadly defined, and includes activities beyond traditional manufacturing, where the item undergoes a process but still remains essentially the same. It also clarifies that investing for yourself, for example in order to manage excess cash, would be considered financing to related parties and would qualify as a qualifying activity. In addition, QFZPs do not need to prepare separate financial statements for their qualifying income and other income.

## RESTRUCTURING

The UAE Federal Tax Authority (FTA) has published a Corporate Income Tax Guide on the Business Restructuring Relief. Business Restructuring Relief is designed to eliminate the Corporate Income Tax impact of certain transactions such as mergers and de-mergers which have taken place as part of business restructuring or reorganisation, so they can occur in a tax-neutral way. The Guide explains transactions covered by the relief, conditions which apply, the consequences of electing for this Relief, and circumstances when it can be clawed back. Interactions with other UAE Corporate Income Tax provisions are also considered. A key point to note is that unused tax losses incurred by the transferor in tax periods before the restructuring transaction can be carried forward are considered tax losses of the transferee subject to if specified conditions are met. However, unused Net Interest Expenditure cannot be transferred to the transferee if Business Restructuring Relief applies. It is also worth noting that a transaction can qualify for 'Qualifying Group Relief' as well as the 'Business Restructuring Relief', but will have to satisfy the prescribed conditions under both the relief provisions including claw-back provisions.

BAHRAIN

## INCREASED INSPECTIONS

According to reports in local newspapers the Bahrain National

## TAX TREATY UPDATE

**Qatar:** Qatar has signed an income tax agreement with Saudi Arabia.
**Qatar:** The Ivory Coast's Council of Ministers have approved a tax treaty with Qatar.
**UAE:** Benin's National Assembly has approved the Income Tax Treaty with the UAE.
**UAE:** The UAE and Qatar have signed an Income tax agreement.
**Saudi Arabia:** The Saudi Arabian Council of Ministers has approved a new tax treaty with the Slovak Republic, which was finalised in 2023.
**Saudi Arabia:** Saudi Arabia and Croatia have finalised negotiations on an income and capital tax treaty.

Bureau for Revenue (NBR) has increased efforts on ensuring businesses there are complying with VAT and Excise regulations, including the Digital Stamps Scheme. In the first quarter of 2024 NBR has conducted over 343 visits to businesses which focused on compliance and raising awareness of the VAT and Excise regulations. As a result 36 VAT-related violations were identified and administrative fines were imposed under the VAT Law. These violations included failures to comply with invoice requirements, display VAT-inclusive pricing, and visibly display VAT certificates. Cases of VAT and Excise evasion were also uncovered.

## ECONOMIC SUBSTANCE RULES

The Bahrain Ministry of Industry and Commerce (MOIC) have issued a decision stating that they will not be accepting auditor postponement letters relating to the audited financial statements of entities which are subject to the Economic Substance Rules (ESR). As a result, it is important these entities prepare their audited financial statements within the six month deadline, in order for them to be submitted and accepted before the ESR Annual Return deadline. Audited financial statements need to be submitted on the MOIC online portal before 30 June 2024. The entity's Commercial Registration (CR) also needs to be free of other violations and be renewed and active when the audited financials are submitted. The ESR Annual Returns are then submitted to MOIC on the International Tax Information Exchange System (CITIES).

SAUDI ARABIA

## DESTROYING GOODS

The Zakat, Tax and Customs Authority (ZATCA) has issued guidelines which detail the procedures, requirements, and obligations for licensing facilities which are designated for destroying goods and the recovery of excise tax paid on non-consumable excise goods in Saudi Arabia. Excise registrants who have previously paid excise tax on non-consumable goods, for example, contaminated, damaged, or nearly expired items, are eligible for a tax refund. To obtain this , the registrants must first obtain approval for the goods' destruction. This involves transporting the goods to a tax warehouse where customs duties and taxes are suspended or to a licensed destruction facility.

Registrants then submit an application to ZATCA, with evidence the goods were non-consumable, proof they had entered into the warehouse, and other relevant details. Destruction requests must be submitted within 12 months from the date the goods have been released for consumption in Saudi Arabia, and the excise tax value must be at least 3, 000 Riyals. After ZATCA approval registrants have 60 days to destroy the goods. Refunds can be offset against future tax liabilities or the money can be deposited into a specified bank account.

## DUTY FREE

The Zakat, Tax and Customs Authority (ZATCA) have issued an update on duty free shopping. Travellers can now obtain exemptions on customs duties and taxes for purchases made at duty-free shops in the arrival halls of all land, sea, and air customs ports. The new regulation permits duty-free purchases of up to 3,000 Riyals per traveller but only applies to goods intended for personal use. They can also purchase up to 200 cigarettes duty-free. Under the previous rules (Saudi Arabia Ministerial Decision No. 710/1444) duty-free shops could be set up at both arrival and departure halls. However, the duty and tax exemptions only applied if the goods were taken outside Saudi Arabia or transferred to other duty-free shops.

TURKEY

## CUSTOMS AND DUTIES

A Presidential Decree has been issued in Turkey which shows the country has decided to impose additional customs duties of 40% on car imports from China. A minimum of $7,000 per vehicle, has been set. However, according to the Presidential Decree, this minimum customs duty will apply even if the 40% duty on the imported car's price would be less than $7,000. The change will come into effect from 7 July 2024. This follows an earlier move by Turkey in 2023 to impose additional duties on electric car imports from China and introduce regulations on electric car maintenance and servicing.

## IN BRIEF

**UAE:** After signing a comprehensive economic partnership agreement to liberalise trade with South Korea the UAE Intends to abolish all customs duties on car imports from there within 10 years...

**Saudi Arabia:** The Council of Economic and Development Affairs has commissioned a study to examine challenges faced by non-profit institutions on customs duties, VAT, fees, and financial charges...

**UAE:** The UAE Federal Tax Authority (FTA) has published CTGFIFM1 a Corporate Income Tax Guidade on Investment Funds and Investment Managers on its online portal....

**Saudi ArabiaL** The Zakat, Tax, and Customs Authority (ZATCA) has announced amendments to the Real Estate Transaction Tax (RETT) Implementing Regulations which came in with immediate effect..

**Saudi Arabia:** The 11th Implementation Wave of the e-invoicing scheme is to start on 1 November 2024...

**Qatar:** According reports by PwC the Qatari General Tax Authority (GTA) has started issuing large numbers of presumptive tax assessments for reasons including failing to respond to GTA enquiries within the required deadlines, failure to submit tax returns in time and where the auditor's opinion on financial statements is not an unqualified one...

**Turkey:** Turkey is considering imposing a tax on investment profits in stocks and digital assets as part of measures to tackle their budget deficit...

EGYPT

## FREEZONE PLANS

Egypt has announced plans to double the number of public free zones in the country which will see 11 new zones added to the existing nine. The zones will be developed in partnership between the Urban Communities Authority and the Investment and Free Zones Authority. Egypt has both public and private sector free zones. Public zones include various investment projects, and the state provides the necessary infrastructure. Private zones will only have one project in them. Projects in these zones are exempt from customs duties, taxes, VAT, and other fees. These projects are instead subject to an annual fee of around 1% of the value of goods entering or leaving the region for the project.

# FOCUS ON REAL ESTATE

The real estate market across the GCC is continuing to boom and investors are increasingly active in this sector. While all types of tax need to be considered when looking to invest, one of the most pressing issues is the impact of VAT and other indirect taxes on property acquisition. Bahrain, Oman, Saudi Arabia and the UAE have all implemented VAT and have different approaches when it comes to residential property, commercial property, and undeveloped land.

## RESIDENTIAL PROPERTY

Residential property includes apartments, houses, villas and similar buildings which are used as permanent dwellings. It is important to note there are some variations in the definitions for this type of property in the four GCC countries and some very different VAT treatments. In some of the jurisdictions communal dwellings such as nursing homes are also classed as residential property for VAT purposes. For example, the UAE lists accommodation for students or school pupils, the armed forces and police, orphanages, nursing homes and rest homes as qualifying as residential buildings. However, short term accommodation, including hotels and other holiday accommodation but also in some cases, serviced apartments are generally excluded. Therefore, it is important not to assume just because a particular property type is classed as residential in one GCC state it will be in another.

The four GCC states have also each taken a very different approach to the taxation of residential property. For example, in the UAE the first sale or lease of a residential property, within three years of its completion, is zero-rated and any subsequent sale or letting is exempt. Oman also applies different VAT treatments to the first and subsequent sales of residential property. There the first sale is subject to VAT at the standard rate of 5% but subsequent sales, and lettings are exempt from VAT.

Bahrain takes a completely different approach and all sales, leasing and letting of residential real estate are exempt from VAT.

Saudi Arabia also treats sales and lettings as being exempt from VAT. However, sales in Saudi Arabia are subject to Real Estate Transfer Tax (RETT) at 5%, although there are some exemptions. RETT was introduced in October 2020 and prior to then residential sales in Saudi were subject to VAT at the standard rate. It should also be noted as a result of the VAT exemption which applies, Bahraini and Saudi Arabian sellers and developers can potentially face irrecoverable VAT costs. To reduce this cost, Bahrain allows zero-rating for new construction and Saudi Arabia has a special VAT recovery scheme which applies to Real Estate developers.

## COMMERCIAL PROPERTY

Commercial real estate is essentially any buildings or infrastructure that cannot be classed as residential property, so offices, factories, warehouses, shops and showrooms are clearly commercial property. However, in other cases, it can be helpful to go back to the definition of residential property in the relevant country to identify exclusions from the residential classification, which by default, are then treated as commercial. For example, hotels, hostels and similar properties are generally excluded from the residential classification, and it may be necessary to consider whether the building provides 'permanent' residential accommodation. Once again it is essential to check the relevant local laws and not just assume the same approach across the GCC. The VAT treatment of commercial property tends to be more straightforward than residential property. In Oman and the UAE, sales and letting will be subject to VAT at the standard rate. In Saudi Arabia sales are exempt (but subject to RETT at 5%) and lettings are subject to VAT at 15%. Bahrain treats both commercial property sales and lettings as exempt from VAT.

## UNDEVELOPED LAND

As with the other two categories, there are slight variations in definition between the four GCC countries but broadly, undeveloped or what is sometimes referred to as bare land is land that has no completed or partly completed man-made structures on it. If the land includes anything of this sort, it will be necessary to check the local VAT law to determine the VAT treatment.

Bahrain, Oman, the UAE and Saudi Arabia all treat bare land sales as exempt from VAT. However, in Saudi Arabia, the sale will be subject to RETT at 5%.

## TRANSFER OF GOING CONCERN

All four GCC countries have also special rules for the transfer of a business and its assets (or part of the business) to be treated as VAT free. This is often referred to as a transfer of going concern (TOGC). Generally, in order for this to apply the purchaser must continue the business in the same way as the previous owner, they must be registered for VAT, and if the sale involves only part of the business, that part must be capable of separate operation. Each of the three countries has its own detailed conditions for this scheme.

The sale of a property (or a portfolio of properties) which is let and generates rental income, can qualify for this relief. In effect, in this situation the property is seen as a complete business so, subject to meeting all the local conditions to be classes as a transfer as a going concern, there will be no VAT on the sale. This could be a significant benefit for a purchaser in the UAE and Oman, where the sale would otherwise be subject to VAT.

## SUMMARY

| Country | Residential | Commercial | Bare land | TOGC possible? |
|---|---|---|---|---|
| Bahrain | Exempt | Exempt | Exempt | N/A |
| Oman | 5% | Exempt | Exempt | Yes |
| Saudi Arabia | Exempt from VAT. Sales subject to RETT at 5%. | Exempt from VAT. Lettings at 15%. Sales subject to RETT at 5%. | Exempt from VAT. Sales subject to RETT at 5%. | N/A |
| United Arab Emirates | 1) 0% for first sale or lease within three years of completion 2) Other sales or lettings exempt. | 5% sales and letting | Exempt | Yes |

## PLACE OF SUPPLY

The 'place of supply' for real estate will always be the place where the property is located. This means that if a commercial property is sold in say, the UAE, VAT will be chargeable irrespective of where the purchaser is actually located. Therefore, no relief is available for overseas buyers who purchase property in these four GCC countries.

## SPECIAL RELIEFS

Overall, there is nothing in the VAT laws of any of these four GCC countries that should prove a significant disincentive to investment in real estate there. However, as can be seen, the subtle differences in the way VAT is applied in each of these jurisdictions can have a significant impact on VAT cost and cashflow.

There are a large number of specific detailed issues which can impact property transactions in these four jurisdictions, and it is not possible to cover all these VAT issues here. When making a purchase of this type it may also be necessary to consider specific reliefs. For example, there are some VAT reliefs for property in freezones in Oman and relief for Relevant Charitable Buildings in the UAE. There are also some special rules which apply to specific individuals, in certain circumstances. It is also important to note that in addition to VAT, other statutory fees and levies may be payable on real estate transactions, and direct taxes can also have an impact.

This article was written by Brian Conn and Ashish Athavale of BDO.

# TAX PROFESSIONAL PROFILE
## HEAD OF TAX OPERATIONS – PHARMACEUTICALS

# Pre-emptive Compliance

Amedeo Aragona, Head of Tax Operations at Norvatis Middle East explains how having a proactive approach to tax audits can help mitigate risk and avoid costs.

### BACKGROUND

I am a Qualified Chartered Tax Accountant from Italy and have 23 years of post-qualification experience in a host of areas including corporate, international and M&A tax, transfer pricing, VAT, Excise Duties, Customs Duties, and the management of tax audits in Europe, the Middle East, and Africa. I have also previously worked in a range of sectors including rail and metro transport systems, in the information technology, oil and gas and healthcare sectors. I am currently the Head of Tax Operations for the Middle East and Africa region with Norvatis Middle East.

### YOUR COMPANY

Novartis is a global pharmaceutical company which is listed on the NYSE and the Swiss Exchange SIX. Although, we are head-quartered in Basel, Switzerland, we have a presence in 140 countries including the six GCC countries, Egypt, the Levant, Turkey and Iran. In the GCC, importation and sale of medicines are heavily regulated, and we follow a core policy called 'Doing Business Ethically' which means complying with all applicable aspects of both local and international laws and regulations and aiming for full compliance at all times.

### YOUR ROLE

As Head of Tax Operations for the Middle East and Africa (MEA), I am responsible, in line with HQ Group Tax, for the leadership, management, and execution of the MEA tax planning strategy, which covers various different countries and international tax.

Myself and my team, who are spread across the region from Casablanca to Riyadh, execute the tax strategy, oversee all M&A transactions, provide technical tax advice on all functional tax areas, and lead transformation initiatives which have been identified by the tax function. As a key player, I drive the strategic direction of an inclusive, globally integrated, finance-focused, and functionally connected tax organisation for the Middle East and Africa region, overseeing all relevant aspects of taxation across countries from end to end. This role was created in 2019, and involves representing our company and working with policymakers, fiscal authorities, industry associations, the tax director community, and other



external stakeholders on specific tax matters. I have built and maintain close working relationships across various corporate and business functions throughout the company in order to facilitate timely, accurate tax filings and execute the tax strategy. I have to ensure tax outcomes are aligned with our global tax strategy and comply with local laws and international standards such as OECD/BEPS.

I also make sure tax technology initiatives we are working on align with the tax strategy and vision. This includes our data and technology strategy, solutions and software implementation, and that they follow all regional compliance rules and regulations.

When guidelines are issued by our HQ Group Tax, I am responsible for the implementation and the application of a consistent governance framework across the tax function here. I also monitor MEA legal and policy developments which are impacting the regional entities from a tax perspective, assess their relevance, quantify impact, provide summaries and recommendations on risks, opportunities, and measures, and communicate them to local, regional and global functions. Pro-activeness is the mantra myself and my team practice, and is shared and supported by the MEA Finance community which has prioritised tax. We recognise the potential disruptive impact of tax issues and the valuable opportunities we have to positively contribute to our company's bottom line through prompt, customised risk assessment and management. Regional tax authorities have shown different degrees of understanding of the tax rules, different maturity levels with existing tax

## PRACTITIONER PERSPECTIVE

Dhana Pillai
DP Taxation

*Dhana Pillai of DP Taxation examines VAT audits in Oman and the UAE.*

Tax audits are a critical aspect of tax administration, ensuring compliance and safeguarding the integrity of the tax system. Both Oman and the UAE conduct VAT audits on a random not periodic basis, before the end of the limitation period.

VAT was introduced in Oman at a standard rate of 5% on 16 April 2021 and the Oman Tax Authority (OTA) is now responsible for the administration and enforcement of VAT, which includes conducting tax audits to ensure compliance. In Oman, there is a five year transaction limitation period for VAT audits. Taxpayers are typically notified in advance of an impending audit. The notice provides an indication of the audit scope and period under review. Businesses are required to provide a VAT audit file containing the VAT returns reconciled with the general ledger, including tax invoices, purchase records, and other relevant documents which support their VAT returns. The OTA may conduct on-site audits, review physical records and also verify business operations. Post-audit, the OTA issues an assessment outlining any discrepancies and potential penalties. In order to withstand scrutiny during audits, businesses should maintain records and documentation in the format requested by the OTA. Some large companies in Oman and the UAE have the practice of conducting regular compliance reviews using practising firms, and make sure they have prepared and maintained their records in the audit format in order to identify and rectify potential issues before a possible audit. If discrepancies are found as a result of OTA's audit, regularising compliance may involve filing voluntary disclosures or settling penalties. In Oman, businesses are able to appeal against the result of audits. However, our advice to clients is to only appeal if there are substantial grounds and evidence to contest the audit findings. Regular compliance reviews are also recommended. In the UAE, VAT was introduced on 1 January 2018, at a standard rate of 5%. The Federal Tax Authority (FTA) oversees VAT administration there, including audits to ensure compliance. The FTA will inform businesses of an upcoming audit, and will specify the scope and required documentation. In the UAE, companies other than real estate companies can have transactions within the last five years audited. The audit period for real estate companies there is for transactions within the last seven years. Businesses must maintain comprehensive records in the FTA Audit File (FAF) format, including VAT returns, sales and purchase invoices, and other relevant documents. If a business uses a tax solution, the tax technology must also comply with the Business Requirements Document (BRD) issued by the FTA for VAT purposes. In the UAE, on-site audits involve a thorough examination of records and business activities. One of the critical issues when filing VAT returns in the UAE (because there are seven Emirates) is the correct place of supply. We have seen cases during audits there where businesses which have filed VAT returns promptly and paid VAT on time, have faced issues because they have been found to have paid VAT to the wrong emirate. This potential problem (which is not an issue in Oman) creates a problem in the UAE as each Emirate receives a share of the VAT collection. Businesses can also appeal against audit findings in the UAE but here again it is also only advisable to pursue an appeal if there is compelling evidence and substantial grounds to challenge the audit results.

The FTA also uses VAT audits to detect, investigate, and penalise companies and individuals which are conducting money transactions and filing VAT returns with input and output VAT. The FTA can issue VAT assessments disallowing input VAT if entries are not supported by invoices, which can result in having to pay huge output VAT payments and added penalties. In the UAE, each bank transaction must now be accounted for, and the FTA closely scrutinises the use of VAT returns to support money transactions.

Therefore, the FTA is not only checking on VAT compliance but also taking steps against misuse of VAT legislation for suspicious transactions.

audit procedures, as well as different levels of self assertiveness when it comes to their approach and how they interpret the regulations. That is why I believe it is so important to have a tax control framework, and carry out frequent internal mock tax audits, to ensure a constant review of our tax compliance and assessment of the tax implications of our business transactions. If there is a problem, we want to know about it as soon as possible so we can swiftly correct it and fully comply with the countries' laws.

My experience in managing tax audits since 2008, across three different continents, has helped me gain a good insight into the tax authorities' perspectives and expectations, which I use. I believe having a proper Tax Audit file, for each entity, and each year is essential, so you are never be caught off guard when requests are raised by the tax authorities. I also believe multinational companies can play a key role in developing a new relationship with the authorities. This should be a relationship based on mutual trust and understanding, but involve the development of the cooperative compliance initiatives which are currently flourishing all around the world, for example, in countries including Italy, Australia and the UK. My advice to all tax practitioners working for medium to large organisations, is that they focus on keeping their 'house in order' as you never know what the tax authorities will require and when they will require it. Rather than working in a fire-fighting mode, pro-actively preparing for when that moment comes will make a huge difference in terms of the resources needed and the added value you can provide to your company in terms of risk mitigation and cost avoidance.

# ANY QUESTIONS?

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## Is VAT payable on Board Member services

Mohamed El Baghdady of Habib Al Mulla looks at changes to UAE guidance on VAT treatment of Board Members' services.

The VAT treatment of services provided by natural persons who are Board Members to companies in the UAE has recently been clarified in revised guidance issued by the Federal Tax Authority (FTA) in Public Clarification VATP037 which replaces the previous FTA guidance on this subject found in VATP031.

### ARTICLE 3 AMENDMENT

This is an area where there has been a lot of confusion in the past. The confusion stems from a change to Article 3 of Cabinet Decision No. 52/2017 (the VAT Executive Regulation), which was brought in by Cabinet Decision No. 99/2022. Before this amendment, services provided by directors, whether by individuals or legal entities, were subject to VAT if they were regularly, ongoing, and independently provided. Directors were required to register for VAT if the total value of their taxable supplies and imports exceeded the mandatory registration threshold. This amendment added a new clause stating that the functions of a member of a company board of directors, performed by a natural person who was appointed as such, for any government entity or private sector establishment, would not be considered a supply of services. Before this change, which came into force on 1 January 2023, services provided by board members in the UAE to the company where they were appointed to the Board of Directors were generally subject to VAT at the standard rate of 5%.

### GUIDANCE CHANGE

The new Guidance states services provided by a board member will not be considered to be a taxable supply, and will therefore be exempt from VAT, if two conditions are met. The first point clarified is that the services must be provided by a natural person. Here it is important to note, the FTA has clarified that if a business delegates an individual to act as a director for another business in the name of that business, the condition will not be met, and the supply will be treated as a business-to-business transaction subject to VAT. This means the exclusion does not extend to services provided by legal persons, even if they delegate an individual to act as the director. Although it should be noted it is uncommon to see corporate directorships in the UAE. Secondly, the individual must be appointed as a director on the board of any government or private entity.

A key point included in the new guidance is that there are detailed transitional provisions which apply to the Article 3 change. The VAT treatment for the provision of services by a Board of Directors' member will depend on the date on which the supply of services took place. The date of supply is assessed by looking at Article 25-26 of Federal Decree-Law No. 8/2017 (the UAE VAT law). If the provision of services is a supply of services from a UAE VAT perspective, Article 25(6) and (7) of Federal Decree-Law No. 8/2017 will be used to find out the date of supply. It should be noted there are a few specific cases where the date of supply is determined instead by Article 26 of Federal Decree-Law No. 8/2017. If the date of supply is before 1 January 2023, the pre-Article 3 amendment approach will apply. If it is after then the new approach will apply. Those who have submitted returns using the wrong approach will have to rectify the error with the authorities using the usual method.

### REGISTRATION IMPLICATIONS

It is also worth noting that members of Boards of Directors will also need to carefully assess their VAT registration and de-registration obligations. Members of Boards of Directors who were previously registered for VAT because of board member services may find they need to de-register if they no longer meet the minimum requirements for continued VAT registration now that their supply of these services could be exempt.

### PROVISION OF OTHER SERVICES BY DIRECTORS

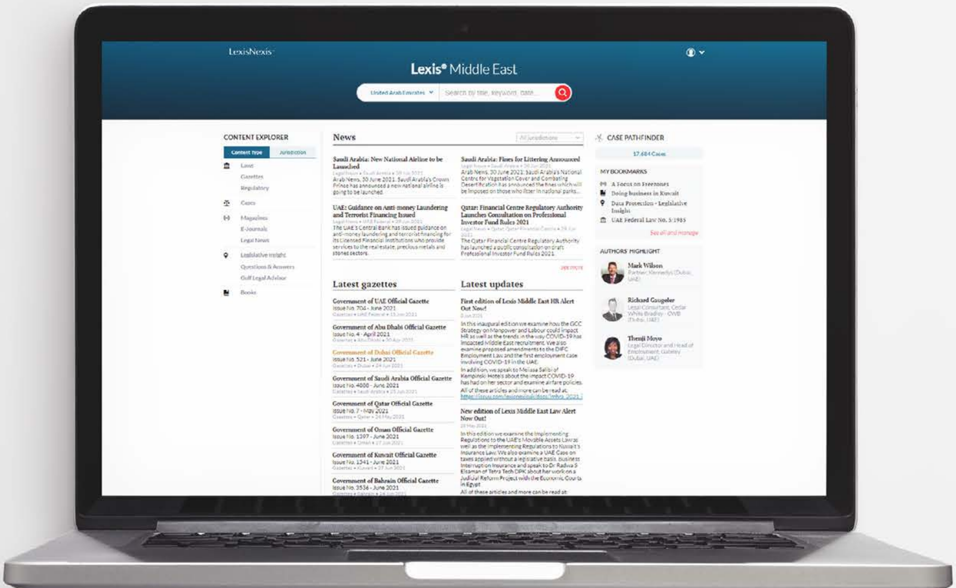
It should also be noted that this exemption applies to the services provided by the member of the Board of Directors, as such. It does not apply to other services that individual may provide to the company, if they meet the conditions in the VAT legislation.

So, for example, if a member of the board of directors also rents property to the company, these supplies, which go beyond their services as a member of the Board of Directors could still be subject to VAT. However, functions performed by an individual as a member of a sub-committee within the main Board of Directors are similarly excluded from VAT.

Marwan Alnooryani, Senior Tax Associate, Habib Al Mulla co-authored this article.


Contributor

Mohamed El Baghdady, Partner, Habib Al Mulla

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