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FEATURE GRAPPLING WITH GRIEVANCES
Tax grievance procedures in Oman

PROFILE CONGLOMERATE
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ANY QUESTIONS
What is the latest on VAT in Qatar and Kuwait?

A ROUND UP OF TAX DEVELOPMENTS ACROSS THE MIDDLE EAST

SO THAT IS ZAKAT

Zakat Regulations in Saudi Arabia

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DEVELOPING REGIMES

What is interesting at present across the GCC is the way in which the tax regimes are continuing to develop. There have been some recent major changes including Bahrain's legislation on Domestic Minimum Top-Up tax but we are also seeing a greater emphasis on clarifying the detail.

For example, areas which might have been briefly mentioned in original legislation are now having to be fleshed out and in recent months we have seen the tax authorities issue and update a whole host of manuals and guidance documents providing additional details and clarifications on the specific approaches which need to be taken, as well as more procedural matters like the mechanics of filing on portals.

One of the sectors where this has had an impact has been the charity sector in the UAE, where there is now additional information on both the approach from a corporate income tax and VAT perspective, which we cover in two articles in this issue.

As additional detail is issued and taxpayers have had more time to get to grips with the regimes, raising queries and complaints with the authorities will also happen more frequently, which may explain why the UAE has recently issued new legislation on its clarification regime and there has been legislation on the tax grievance committee in Oman.

One other area where we have recently seen the tax regime evolve has been on Zakat in Saudi Arabia, where the Implementing Regulations on Zakat collection which were issued back in 2019 have been repealed and replaced by a new set of regulations.

As a result there have been significant changes to the way Zakat is calculated but also to who is subject to pay Zakat in Saudi Arabia, as well as to what happens when there is a temporary or permanent cessation of activities, which we cover in this issue.

Claire Melvin - Editor

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SO THAT IS ZAKAT

Essam Rajab of Andersen explains key changes to the way Zakat is calculated and administered in Saudi Arabia following the issue of new regulations.

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“On 22 March 2024 the Saudi Zakat, Tax and Customs Authority (ZATCA) announced a new Zakat Implementing Regulation was being issued by Saudi Arabia Ministerial Decision No. 1007/1445,” states Essam Rajab. “These regulations have repealed and replaced the previous Zakat regulations Saudi Arabia Ministerial Decision No. 1007/1440 which were issued on 14 March 2019, its amendments, and all previous resolutions, directions and circulars on zakat collection, as well as any provisions which contradict what is stated in the new Regulation except if the Zakat, Tax and Customs Authority, following the taxpayer’s request, applies the provisions of the regulations referred to in the Resolution to the fiscal years beginning before 1 January 2024.”

“Saudi Arabia Ministerial Decision No. 1007/1445 has 128 Articles and includes all the rules related to the collection of Zakat,” Rajab continues. “These include rules on calculating discretionary taxpayers’ Zakat liabilities, rules on calculating Zakat for financing activities, the rules on collecting Zakat from investors in investment funds and the rules which cover associations which are not subject to Zakat collection.”

“The Regulations include all the rules on the collection of Zakat which have previously been issued by Ministerial Decisions which were independent of the regulations,” Rajab explains. “These include for example, the rules on arbitrary calculation of Zakat. They also cover the rules on when an owned taxpayer is not subject to an endowment for the collection of Zakat and on when national societies, associations and training units for collection Zakat are not subject to collection.”

KEY CHANGES

“One of the main changes is that a non-resident Saudi or GCC individual permanent establishment is no longer subject to payment of Zakat in Saudi Arabia,” Rajab states. “Article 4 of Saudi Arabia Ministerial Decision No. 1007/1445 provides a definition of resident.”

“There are also now Zakat exemptions in Article 7 of Saudi Arabia Ministerial Decision No. 1007/1445 which apply to charities, trust and non-for-profit organisations or companies which are providing public benefit services if they comply with specific terms and conditions,” Rajab adds. “However, it should be noted that under Article 8 of Saudi Arabia Ministerial Decision No. 1007/1445 a decision exempting a Taxpayer from Zakat collection can be cancelled by the Authorities if the Taxpayer provides incorrect information or fails to comply with the exemption provisions, and re-assess the basis of the information available to them.”

“Another interesting change in these regulations are the rules which apply where there is either a permanent or temporary cessation of activities,” Rajab adds. “These are covered in Article 11 and 12 of Saudi

Arabia Ministerial Decision No. 1007/1445."

"It should also now be noted that Zakat is determined at the year end and is based on the Saudi and/or GCC ownership percentage," Rajab states. "As a result changes to ownership or to the Zakat payer's legal form which happened during the year will not be taken into consideration, see Article 11-14 of Saudi Arabia Ministerial Decision No. 1007/1445."

WHAT IS ZAKAT?

Zakat: The Islamic Obligation of Charity

Zakat (which means that which purifies) is the third of the five pillars of Islam and is considered a religious obligation for all Muslims who meet the necessary wealth criteria. A 2.5% (or 1/40th) Zakat is paid every year on the total of a Muslim's savings and wealth above what is known as the 'nisab'. Despite being a religious obligation, there are cases in which Zakat is mandated and collected by the State, including in Kuwait and Saudi Arabia. In Saudi Arabia, Zakat is collected by the Zakat, Tax and Customs Authority (ZATCA).

ZAKAT BASE COMPUTATION

"These regulations have also introduced a new method of making Zakat base computations," Rajab states. "Additions and deductions from the Zakat base are as per the year end closing balances in the financial statements, see Article 17 of Saudi Arabia Ministerial Decision No. 1007/1445."

"Previously, additions to the Zakat base were based on lesser of the Year-end closing or opening balance. While deductions from the Zakat base were as per the Year-end closing balances of the financial statements."

"However, it is important to note the maximum Zakat base a Zakat payer can be liable to pay is the equity as per the year-end closing balances in the financial statements," Rajab adds.

Essam Rajab
Head of Tax & Zakat Department
Zakat & Taxation, Andersen

EQUITY

"Saudi Arabia Ministerial Decision No. 1007/1445 provides for special treatment of equity for zakat calculation purposes," Rajab states.

"As a result allocations and the like are treated as equity and added to the closing balance, unless they are an end-of-service benefit, statutory leave or similar which are instead treated as non-current liabilities."

"In addition, shareholders' credit loans, except in the case of listed companies, are treated this way when the conditions in Article 30 of Saudi Arabia Ministerial Decision No. 1007/1445 are not met," Rajab adds.

"This is also the case with owners' credit loans in single shareholder or sole proprietor companies," Rajab continues. "In addition, dividends which have not yet been transferred to a shareholders' bank account will also be treated as equity for zakat calculation purposes."

"However, distributable profits, including the profits for the year are not added to the Zakat base, unless it can be proven to the authorities that the distribution has been made in order to reduce the Zakat base," Rajab states.

"Realised and unrealised profits, irrespective of their presentation in the zakat payer's financial statements will also be treated as equity."

"However, carried forward losses and treasury stocks in the year end closing balances in the accounts will reduce the equity amount," Rajab explains.

"In addition, this is also the case for treasure stocks which are part of employee stock option plans if certain conditions are met."

"It should also be noted that any real estate project which is under development and classified as a non-current asset that is sold after completion, unless available for sale in its current condition, of if its cost of sale exceeds 25% of its annual value in the financial statements (which is calculated on each single project) will be treated this way."

"Previously, this was 25% of its sales and investments," Rajab adds.

"A unit holder in an investment fund may also be able to claim their investment in certain conditions."

RELEVANT LEGISLATION

Article 8 of Saudi Arabia Ministerial Decision No. 1007/1445
The Authority may cancel the decision exempting from Zakat collection in the event that the Taxpayer provides incorrect information or fails to comply with the exemption provisions, and re-assess on the basis of the information available with it, along with informing the Taxpayer of the grounds for cancelling the decision.

(Source: Lexis Middle East Law))

ZAKAT ADJUSTMENTS

"Article 63 of Saudi Arabia Ministerial Decision No. 1007/1445 covers acceptable expenses when calculating the adjusted net profit or the adjusted net loss," Rajab states.

"One of the significant changes here is that capital expenditure, provisions made during the year and Zakat and tax paid are all considered deductible tax."

"In addition, an authorised external auditor who is a Saudi national will no longer be required to provide a certificate in order to accept a bad debt write off, if the debt being written off does not exceed 1% of the Zakat payer's revenue or in final bankruptcy cases," Rajab continues.

PROCEDURAL CHANGES

"However, it is not just calculations, allowances and adjustments where there have been changes, there have also been important changes to the Zakat procedures," Rajab states.

"For example, the way in which an amendment is made to the Zakat return after discovering an error has changed," Rajab adds.

"Different approaches are taken where the correct revenue amount is greater or lesser than the amount in the return."

"Article 103 of Saudi Arabia Ministerial Decision No. 1007/1445 covers this procedure." Rajab continues. "The taxpayer can file an application with the Authority to amend the Zakat Declaration."

"If the Authority then approves this application the Taxpayer who maintains the accounts must amend the Zakat Declaration within 30 days."

"If they do not they will have to re-submit the amendment application to the Authority," Rajab adds.

"In addition, if the aim of the application is to reduce the amount of Zakat which is due, these applications will also have to be filed through the Zakat Tax and Customs Authority (ZATCA)'s electronic system. It should also be noted that the application for amending the Zakat Declaration must be filed before the Zakat Assessment is issued."

"A final important point is that the statutory limitation period for zakat liabilities has also now been extended to 10 years, where a zakat return has not been submitted," Rajab continues.

"In addition, the new retention period for Zakat books and records is also now 10 years."

GRAPPLING WITH GRIEVANCES

A new Ministerial Decision has brought in changes to the way tax grievances are handled in Oman. Zain Satardien and Ellen Ray of Hourani & Partners explain the impact this and other recent alterations to the system will have on those disputing the Tax Authority position there.

“Oman Ministerial Decision No. 143/2024 Forming the Tax Grievance Committee, has now repealed and replaced Oman Ministerial Decision No. 113/2020 which previously covered how tax grievances were dealt with in Oman,” states Zain Satardien. “It sets out the membership of this committee and comes on the heels of number of significant changes to the way in which tax grievances are handled in Oman.”

PREVIOUS APPROACH

“It was not until after the Income Tax Law (Oman Sultani Decree No. 28/2009), the Excise Tax Law (Oman Sultani Decree No. 23/2019) and the Value Added Tax Law (Oman Sultani Decree No. 121/2020) provided for the formation of a grievance committee and procedure for taxpayers to contest decisions of the Oman Tax Authority (OTA) that there was any suggestion of a formalised grievance process in Oman, which taxpayers could use to challenge tax assessments or administrative decisions,” states Ellen Ray.

“OTA Decisions were considered final, and there was minimal recourse for those who believed they had been unfairly assessed.“

Zain Satardien
Counsel, Hourani & Partners

“However, the actual details of how that system would work were not provided for until Oman Ministerial Decision No. 113/2020 and Oman Decision No. 57/2021 were issued,” Satardien continues.

“Ministerial Decision No. 113/2020 was intended to provide taxpayers with a structured route to challenge tax authority decisions in a timely and impartial manner,”

Ray adds. "The Committee's remit with the grievance procedures were later outlined in Oman Decision No. 57/2021 on the Issuance of the Regulation to Regulate the Work of the Tax Grievances Committee."

"These two decisions created a modern, transparent tax grievance system in Oman," Satardien states. "The Omani Tax Grievance Committee examines grievances against decisions issued by the Chairman of the Tax Authority in relation to tax assessments or administrative penalties under the Income Tax, the Excise Tax, and VAT laws. It can also take on any other competencies which might be assigned to it by law."

"Oman Decision No. 57/2021 has set out in further detail the processes Oman Sultani Decree No. 28/2009, Oman Sultani Decree No. 23/2019 and Oman Sultani Decree No. 121/2020 had mentioned," Ray adds. "A key focus has been on transparency and the right to be heard. Taxpayers have the right to access all documents used in making the assessment, defend their arguments and respond to OTA arguments which helps them to build a case if they feel assessments or penalties are incorrect."

Ellen Ray
Professional Support Lawyer, Hourani & Partners

"The Tax Grievance Committee has provided a more predictable and transparent process for challenging tax assessments, as those who believe they have been unfairly assessed can present their case before an impartial body in a more efficient way that is less costly than litigation and has been particularly welcome to individuals and SMEs," Satardien explains.

2024 CHANGE

"Oman Ministerial Decision No. 143/2024

KEY STAGES

Submission
Three copies of the grievance must be submitted to the Committee Secretariat within 45 days of receiving the disputed decision

OTA Review
Within seven days of receiving the grievance it is sent to the OTA

OTA Response
OTA send their reponse to the Committee within 30 days

Review by Technical Expert
The Committee's technical expert provides the Committee with a report

Session
OTA and objector (or their representative) can attend the relevant Committee session

Decision
Committee makes their decision

Appeal of Committee Decision
Objector has the right to further appeal the Committee decision

has built on the framework which was established in 2020 and 2021," Satardien states. "A new five member Tax Grievance Committee has been established which has ensured the continuation of this structured Tax Grievance process in Oman."

FILING A GRIEVANCE

"As the legislation currently stands individuals and corporate entities in Oman are eligible to file a grievance if they believe a tax assessment, penalty, or administrative decision has been incorrectly issued," Ray explains.

"The scope of these grievances covers a broad range of tax disputes, including direct tax assessments, withholding taxes, VAT, excise tax and penalties for late payments."

"The objection must be submitted to the Committee's Secretariat in writing with three copies," states Satardien.

"It must include the subject of the grievance, justifications, relevant evidence, and any documents which support the validity of the grievance."

PROCEDURE

"A key point to note is that taxpayers must submit their grievances within 45 days of receiving the decision they wish to contest," Ray explains. "This is important because if this deadline is missed it can result in the grievance being dismissed."

"Within seven days of receiving a grievance, the Secretariat must submit a copy to the OTA," Satardien continues. "The OTA must then provide their response to the Committee within 30 days. The Committee's technical expert will then review the grievance file and may request additional supporting documents."

"Within seven days of receiving the file, the expert has to provide the Committee with a report which includes details of the extent to which the conditions under the law for accepting the grievance have been met; a summary of the subject matter, including the objector's requests and justifications; the OTA's response and justifications; and the expert's technical opinion on the subject of the grievance."

COMMITTEE REVIEW

"The Committee then considers the grievance at its next session," Ray states. "The objector and OTA are notified of the session date at least seven days in advance."

"An OTA representative and the objector (or their representative) also have the right to attend the session," Satardien adds. "In addition, they can provide statements and clarifications, and submit evidence."

"The session must follow general litigation principles, which include allowing each party access to the documents submitted by the other, and allowing each party to present their defence and respond to the other party's defence. All sessions are also confidential."

NEXT STEPS

"After each party presents their case, the Committee may decide to confirm, reduce or cancel the tax assessment," Ray explains. "Decisions of the Committee are decided by a majority vote, and the Chairman has a casting vote in the event of a tie."

"Both parties must be notified of the decision within seven days of its issue," Satardien states. "However, those making objections should note that any disputed taxes still remain payable pending the Committee decision unless the objector has also submitted a postponement request within 30 days of submitting their grievance."

"An objector may submit a request to postpone payment of the tax they are objecting to either in whole or in part."

FURTHER APPEALS

"The objector has the right to appeal the Committee's decision within a further 45 days," states Ray.

"However, if they fail to file an appeal on the Committee's decision within 45 days, that decision will be considered final."

"Objectors are also able to further appeal Committee decisions by filing a suit with the Oman Court of First Instance where it will be decided by a panel of three judges," Satardien adds.

"However, it should be noted that use of reconciliation and arbitration is prohibited."

> "ANY DISPUTED TAX STILL REMAINS PAYABLE PENDING THE GRIEVANCE COMMITTEE'S DECISION.

"Oman's tax grievance system has evolved significantly since the Tax Grievance Committee was first introduced in 2020," states Satardien.

"The reforms which were introduced in Oman Decision No. 57/2021 then refined the system, making it more efficient, transparent, and accessible to taxpayers."

"This latest Decisions shows the authorities in Oman are continuing to support this approach," Ray adds.

"With Oman on the verge of becoming the first GCC state to introduce personal income tax and as it continues to modernise its tax administration, this grievance system will play a crucial role in ensuring that taxpayers have a fair and impartial mechanism for resolving disputes."

Azizah Al Tamimi also contributed to this article.

WHAT'S CHANGED
CHARITIES AND VAT

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KEY TAKEAWAYS
Charities may have mixed activities with different VAT treatments. They must also carefully determine their VAT registration obligation and VAT reporting requirements.

CHANGE

The Federal Tax Authority (FTA) has published an updated list of Charities in the UAE that qualify as a 'Designated Charity' which means they can benefit from VAT relief. To formalise the updates, several Cabinet Decisions have been issued by the UAE government.

RELEVANCY

To be recognised as a Designated Charity, a charity must:

- 1) be approved by the Ministry of Community Development to carry out a charitable activity in the UAE as a designated charity, or 2) established as a charity under Federal or Emirate Decree, or 3) otherwise licensed to operate as a designated charity by an agency of the Federal or Emirate Governments authorised to grant such licences, with its objectives including, e.g. advancing health, education, public welfare, religion, culture, science, and similar activities;
- operate within the terms of any approval, licence or other authorisation granted by the aforementioned bodies in respect of its charitable activities;
- operate on a not-for-profit basis; and
- be funded primarily by grants or donations.

To be approved by the Ministry of Community Development, a Charity must only perform the charitable activity it has been licensed to perform. It must not be involved in undertaking trading activities and must be managed by 'fit and proper persons'.

To benefit from the special VAT rules charities must register for VAT. Designated Charities are not subject to the usual VAT registration thresholds. A newly approved Designated Charity is formally announced by a UAE Government Cabinet Decision.

BENEFITS

The sale or lease of buildings to Designated Charities is subject to zero-rating for VAT if it is the first supply of the building and the building is used for the relevant charitable purpose. If these conditions are not met, the supply or lease of the building is subject to 5% VAT unless it is a residential building. This relief gives Designated Charities a cash flow advantage when buying or leasing new buildings.

Designated Charities are also subject to special rules for recovery of VAT on expenses. For example, they may recover VAT on their expenses without making any taxable supplies. VAT recovery is only restricted for Designated Charities when the expense is used for exempt supplies or without a business purpose. Non-business use includes entertainment, accommodation expenses, or personal use of assets by employees, e.g. company vehicles or mobile phones.

Designated Charities making VAT exempt supplies are subject to special input VAT apportionment rules. They must determine the expenses wholly attributable to activities allowing VAT recovery and wholly to exempt activities. Mixed expenses that cannot be attributed to a specific activity must be apportioned. The apportionment is determined by the percentage of wholly attributable supplies that gives right to recovery compared with the total of wholly attributable expenses. Annual adjustments must be made in the first tax period after the tax year by comparing the VAT apportionment based on the whole year data versus each tax period. Designated Charities, unlike ordinary VAT registrants, do not appear to be eligible for any special apportionment methods.

REMEMBER

- An activity by a Charity is VAT-free if there is no charge for goods/services. If charged, it is subject to VAT. Where there is a 'deemed supply' (charity recovered VAT but supplied without charge), 5% VAT on cost value applies.
- A Charity may be subsidised by third party grants or donations. No VAT applies on a grant or donation if the grantor is not entitled to any benefit in return.
- Special VAT rules apply for Designated Charities, giving them benefits for VAT recovery on expenses and for the purchase or lease of new buildings.

TAX NEWS ROUND-UP

COVERING RECENT KEY DEVELOPMENTS – REGION-WIDE

UAE

PRIVATE CLARIFICATION FEE REFUNDS

Federal Administrative Decision No. 5/2024 On Refund of Fees of Private Clarification Requests came into effect on 1 August 2024. This Decision states the Federal Tax Authority (FTA) will refund fees for a private clarification request in a number of specific circumstances.

These include if the applicant withdraws the request within two business days of submission, if the request has been submitted by someone who is not registered and does not relate to tax registration and if the applicant is subject to a tax audit at the time of the request.

Refunds will also be possible if the request involves procedures after an FTA decision, the submission duplicated one by the same applicant on the same subject or if it involves a subject which is currently under review for a legislative amendment in coordination with the Ministry of Finance (MoF).

It has also been clarified in Federal Administrative Decision No. 4/2024 that the clarification requests may be denied if they have already been addressed in either existing guides or public clarifications; they are based on hypothetical scenarios, relate to issues that have already been clarified or if they involve taxpayers who are currently under audit or inspection.

TAX MANUAL UPDATES

The UAE Federal Tax Authority (FTA) has updated four of its Corporate Income Tax (CIT) Manuals which explain specific provisions in Federal Decree-Law No. 47/2022. These include the Corporate Tax Self-Registration Manual which provides a step by step guide on and registering for Corporate Income Tax via the EmaraTax portal. There have also been changes to the Edit Corporate Tax Bank Details Manual which helps registered taxpayers update their bank details on the EmaraTax portal. The Amend Taxable Person Details Manual which assists those wishing to update their Taxable Person details on the portal has also been changed as has the Amend Corporate Tax Registration Manual which gives instructions to registered tax payers on how to modify their registration details.

DUBAI

VOLUNTARY DISCLOSURES

Dubai Customs have implemented an extensive Voluntary Disclosure System (VDS) under Dubai Customs Policy No. 58/2024 with effect from 8 July 2024. The VDS allows previous errors in customs declarations to be rectified without facing severe penalties. The measure is based on Article 141 of the GCC Common Customs Law, and permits partial or full exemption from customs fines if businesses voluntarily disclose violations before Dubai Customs detects them. However, any undisclosed violations which are discovered later would be dealt with separately by Dubai Customs. The Dubai Customs's Customs Audit Department is responsible for administering the scheme. These disclosures can be submitted on the Dubai Customs Portal. The relevant customs duties must also be settled within 30 days of receiving the financial claim notification or the disclosure will be void.

TAX TREATY UPDATE

GCC: The GCC has signed a joint statement with Indonesia to begin negotiations on a free trade agreement.
UAE: Negotiations have begun between Eswatini (formerly known as Swaziland) and the UAE on a possible income and capital tax treaty.
Saudi Arabia: The Saudi Council of Ministers of Saudi Arabia have authorised a Double Tax Treaty to be signed with Kuwait.
Oman: Egypt's Council of Ministers have approved a Double Tax Treaty with Oman.
Saudi Arabia: Iran and Saudi have reached an agreement on the draft text of a Double Tax Treaty between the two countries.
Kuwait: Kuwait Decree-Law No. 7/2024 On Approving an Agreement Between the Government of the State of Kuwait and the Government of the UAE to Avoid Tax Evasion in Relation to Income and Capital Taxes and to Prevent Tax Evasion and Tax Avoidance has been issued.

SAUDI ARABIA

VAT AMENDMENTS

Saudi Arabia's Zakat, Tax and Customs Authority (ZATCA) has launched a consultation on changes to the VAT regulations. The consultation ended on 17 September 2024. The proposals cover areas including the provisions in Article 10-11 of Saudi Arabia Administrative Decision No. 3839/1438 on group registration and applications to form a VAT group. There are also proposals to broaden ZATCA's powers to cancel a VAT group registration or exclude a specific member from a VAT group either from a past or future date. Proposed changes have also been put forward to Article 13 of Saudi Arabia Administrative Decision No. 3839/1438 on deregistration. Amendments are also proposed on a range of areas including on transfer of an economic activity and the provisions in Article 47 of Saudi Arabia Administrative Decision No. 3839/1438 which cover persons who are liable to pay tax in special circumstances.

TRIAL PRODUCTS

The Saudi Ministry of Industry and Mineral Resources has launched a Customs Exemption Service for Experimental Production through the Sanaee platform to support industrial establishments which have obtained an industrial license during the construction phase. These companies will be able to establish a tax group. This service will exempt raw materials used in experimental production from customs duties, up to specified quantities during this phase. The service will support industrial establishments in research and development activities, experimental production, training employees on production operations and lines, and on the quality testing of materials.

CUSTOMS DUTY SUSPENSION

Amendments to the tax regulations in Saudi Arabia are to make changes on the supply of goods in situations where there is a customs duty suspension. A zero rated rate will apply, provided the tax is due on release of the goods at the end of the suspension. In addition, when goods exit a customs duty suspension situation outside the GCC, they will be treated in the same way as exported goods.

OMAN

PERSONAL INCOME TAX

Oman's Shura Council has forwarded the draft Personal Income Tax (PIT) law to the State Council there. The proposed PIT will target Omani nationals taxed with net global income above USD 1 million and foreign nationals on income above USD 100,000. Expected tax rates range between 5% and 9% for foreign nationals, but there will be a flat rate of 5% for Omanis who are above the thresholds. However, at present the exact rates and implementation details are still to be finalised.

BAHRAIN

DOMESTIC MINIMUM TOP UP TAX

Bahrain has announced the introduction of a Domestic Minimum Top-Up Tax which will be targeted at multinational group companies operating there. The new tax is set to come into effect on 1 January 2025. As a result Bahrain Decree-Law No. 11/2024 Regarding the Implementation of Tax on Multinational Enterprises has been issued. It will apply to multinational group entities with a consolidated group turnover of more than EUR 750 million for at least two of the four immediately preceding tax years. The rules on calculating the Effective Tax Rate (ETR) and Top-Up Tax closely align with the Pillar Two/GloBE Model Rules. The legislation incorporates all optional safe harbours from the GloBE Rules, including the Transitional Country by Country (CbCr) Safe Harbour and the Simplified Calculation Safe Harbour.

As Bahrain has not previously had corporate Income Tax a definition of tax residency based on the place of incorporation or effective management has also been included.

TURKEY

SETTLEMENT CHANGES

Turkey Law No. 7524/2024 on Amendments to Tax Laws, Certain Laws and Turkey Decree No. 375 was published in the Official Gazette there in August. Changes in this law include a number which have been made to the Tax Procedural Law. As a result original tax amounts can no longer be subject to settlement, and settlement applications will only be possible if they relate to tax loss penalties, irregularity fines and special irregularity fines of over 23,000 Turkish Lira. In addition, the original tax amount can still be subject to a lawsuit in cases of settlement for the penalties and fines. The previous provisions prior to these amendments will apply to taxes and penalties for which the taxpayer is expecting a settlement date for a settlement application made before the publication of Turkey Law No. 7524/2024; if the settlement date had been appointed but the meeting had not yet been conducted; if the settlement date was postponed for any reason; or the settlement application period had not lapsed.

EGYPT

CAPITAL GAINS TAX

The Egyptian Investment Ministry is understood to be studying several proposals on capital gains tax on stock exchange transactions. In May 2024, it was announced that the Capital Gains Tax which had been suspended would finally take effect starting from the March/April 2025 tax season. There have been reports that Egypt could be considering abolishing capital gains tax on stock exchange transactions very shortly.

IN BRIEF

UAE: The Federal Tax Authority is exploring the use of AI for managing the country's tax system...

Saudi Arabia: A tourist tax refund scheme has been launched...

Bahrain: The Bahrain National Bureau for Revenue (NBR) has published updated versions of the VAT General Guide and VAT Financial Services Guide...

Saudi Arabia: The Zakat, Tax and Customs Authority (ZATCA) has extended its tax amnesty on penalties for late tax payment, filing and registration until 31 December 2024...

UAE: The UAE Federal Tax Authority has stated it will be possible to pay administrative tax fines in instalments...

Kuwait: Kuwait Decree-Law No. 6/2024 On the Exchange of Information for tax purposes has been issued...

Turkey: As a result of Turkey Law No. 7524/2024 payments by intermediary service providers and e-commerce intermediary service providers, subject to Turkey Law No. 6563/2015, to service providers and electronic service providers involving activities carried out under the law will come under the scope of tax withholding with effect from 1 January 2025...

Kuwait: The Finance Ministry has sent warnings to three companies on the need to prepare books and accounting records in line with the Income Tax Law (Kuwait Decree No. 3/1955)...

Saudi Arabia: New customs service fees will apply from 6 October 2024...

UAE: A Public Clarification on First Tax Period of a Juridical Person (CTP003) has been issued by the Federal Tax Authority (FTA)...

Ajman: Ajman Law No. 3/2024 On Taxation of Foreign Banks Operating in the Emirate of Ajman has been issued...

Turkey: The tax loss penalty for those who engage in commercial, agricultural, or professional activities without having obtained the required taxpayer status has been increased by 50%...

Saudi Arabia: The criteria for the 16th group for E-Invoicing has now been issued by the Zakat, Tax and Customs Authority (ZATCA)..,

FOCUS ON PUBLIC BENEFIT

The UAE is known globally for its philanthropic activities and programmes providing assistance to the less fortunate. It is ranked ninth in the global list of most generous countries in the Charities Aid Foundation (CAF) World Giving Index. In order to encourage and support these philanthropic activities, the UAE Corporate Tax Law Federal Decree-Law No. 47/2022 provides a number of specific exemptions including to Public Benefit Entities (PBEs) which meet certain specific conditions.

CORPORATE INCOME TAX EXEMPTIONS

In early 2022, when the UAE Ministry of Finance released the Public Consultation on the introduction of the UAE Corporate Tax regime it acknowledged that PBEs played an important role by taking shared responsibility with the Government for the promotion of social or public welfare, or communal or group interests. As a result, Federal Decree-Law No. 47/2022 went on to confer 'Exempt Person' status to PBEs that meet all the following conditions making them Qualifying Public Benefit Entities (QPBEs).

- The Entity test: the PBE must be established and operated for either exclusively religious, charitable, scientific, artistic, cultural, athletic, educational, healthcare, environmental, humanitarian, animal protection or other similar purposes, or be a professional entity, chamber of commerce, or a similar entity operated exclusively for the promotion of social welfare or public benefit.
- The Activity test : The PBE must not conduct a Business or Business Activity, except if these activities are directly related to or are aimed at fulfilling the purpose for which the entity was established.
- The Assets test : The PBE's income or assets must be used exclusively in the furtherance of the purpose for which it was established, or for the payment of any associated necessary and reasonable expenditure incurred.
- The No personal benefit conditions: No part of the PBE's income or assets may be payable to, or otherwise available, for the personal benefit of any shareholder, member, trustee, founder, or settlor that is not itself a QPBE, Government Entity or Government Controlled Entity.
- The Listing test: In order for a PBE which meets the conditions to become a QPBE it should also be listed in a Cabinet Decision issued at the suggestion of the Minister.

If a PBE meets all of these conditions it may be considered as a QPBE for Federal Decree-Law No.

47/2022 purposes and as a result:

- the entity will be classified as an Exempt Person for UAE Corporate Income tax purposes and will not be liable for Corporate Income tax on any of its income if it continues to fulfil all the criteria for exemption throughout the Tax Period.
- a Taxable Person making donations, grants or gifts to a QPBE can claim a deduction for those donations, grants or gifts. No deduction is available to a Taxable Person on donations, grants or gifts made to an entity which is not a QPBE.

REGISTRATION OF A QPBE

Although detailed guidelines on the exemption process for QPBEs are expected, at present there seems to be a lack of clarity on the appropriate Government Entity with which the application would need to be initially made. For instance, in the case of a university operating in Dubai, it is not clear whether the application would need to be pursued with the Ministry of Education or the Knowledge and Human Development Authority. The Ministry of Finance is yet to prescribe the form and manner of submission of the QPBE application with the relevant Government Entity.

WIDELY ACCESSIBLE

The Ministry of Finance (MoF) Corporate Income Tax Guide explains that for an activity to be for public benefit, the benefit must be for, or be widely accessible to, the general public or where the benefit is restricted to a sufficiently large section of the public, and any such restriction must be based on specific characteristics related to the entity's worthy purpose. Where the entity's purpose would only be for the private benefit of a few individuals rather than the whole or a sufficiently large section of the public, the entity may not qualify as an exempted QPBE. Although this requirement does not appear to come from the law, this distinction could be critical in analysing an entity's 'public benefit' objective.

BUSINESS ACTIVITIES

The Corporate Income Tax Guide on QPBEs issued by the Federal Tax Authority (FTA) explains a PBE must operate exclusively for the promotion of social welfare or public benefit or should operate as a professional entity, chamber of commerce or a similar entity. This condition should also be read along with the Activity Test. Essentially, a PBE that operates exclusively for promotion of public benefit can also carry on a business that is directly related to these public benefit activities. Any business activity that is not directly related to the public benefit activities carries the risk of breaching the QPBE exemption conditions. It is quite common for Public Benefit Entities to earn incidental income for activities such as rental of campus grounds for sports to third parties or of unused laboratory equipment for research. Even though these funds are typically used or reinvested in their overall operations and to achieve their purpose, these activities must be analysed on a case-by-case basis to determine whether any business element is involved.

DISSOLUTION OF A QPBE

Federal Decree-Law No. 47/2022 does not explicitly restrict PBEs from generating profits. The 'No personal benefit conditions' is also expected to impact the ability of an PBE to distribute profits to their shareholders even when the entity is dissolved. The MoF CT Guide seems to suggest that any remaining funds in a QPBE at the time of dissolution would need to be transferred either to another QPBE, a Government Entity or a Government Controlled Entity. This effectively deters businesses from using PBEs for profit-making ventures. Certain jurisdictions levy an exit charge on the transfer of assets or funds from an exempt PBE to a non-PBE. Under Federal Decree-Law No. 47/2022, such an asset transfer in a particular year could result in the PBE losing out on the QPBE exemption from the beginning of that year without any specific exit charge levy.

SALARIES AND REIMBURSEMENTS

The 'No personal benefit condition' does not appear to prevent the payment of salaries or reimbursement of expenditure to Persons and their Connected Persons who are involved in the establishment or operation of the entity, provided the expenditure is necessary and priced at arm's length. Therefore, although a QPBE may be considered an Exempt Person, it may still need to undertake a transfer pricing benchmarking exercise with respect to remuneration to Connected Persons to demonstrate these payments are at arm's length.

PHILANTHROPIC ACTIVITIES STRUCTURE

Many UAE businesses have carried out their philanthropic activities either through their commercial entities or in other ways. It may be worth these businesses considering carving out any public benefit activities into a separate entity which could then pursue the QPBE exemption. If these businesses continue their existing structure, any expenses incurred for these philanthropic activities may potentially be non-deductible when calculating their taxable income. The QPBE provisions under the UAE CT Law are aligned with similar exemption provisions in other jurisdictions (e.g. Article 501 of the USA Internal Revenue Code, Section 12 of the Indian Income Tax Act of 1961, and Section 30 of the South African Income Tax Act 58 of 1962).

Once the application process is streamlined, the QPBE provisions under the UAE CT Law could be beneficial to the PBEs operating in the UAE. Entities seeking to opt for the exemption must comprehend and fulfil the specified conditions annually.

This article was written by David van der Berg, Tax Partner and Gargesh VN, Tax Director with contributions from Tapan Gandhi and Daryn Blake, PwC UAE.

TAX PROFESSIONAL PROFILE

DIRECTOR OF INTERNAL AUDIT – CONGLOMERATE

Compliance and Support

Naveen Sharma, a Chartered Accountant who works as Director of Internal Audit at Oasis Investment Company LLC (Al Shirawi Group), explains his work and the support he has been giving to the wider tax profession in the UAE.

BACKGROUND

I was born and raised in India but Dubai has been my home for over 25 years. I am a Chartered Accountant who qualified with the Institute of Chartered Accountants of India (ICAI) but I have also qualified as a Company Secretary with the Institute of Company Secretaries of India (ICSI) and as a Chartered Financial Analyst (CFA) with the CFA Institute. In addition, I have a range of US qualifications and am a Certified Public Accountant (CPA), Certified Internal Auditor (CIA), and a Certified Information Systems Auditor (CISA). In addition, I have a Diploma in Investment Development Banking and the Qualified Advanced Communicator Bronze (ACB) and Advanced Competent Leader (ACL) qualifications from Toastmasters International. I was also one of the first Chartered Accountants in the UAE to receive a Golden Visa.

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YOUR COMPANY

I am the Director of Internal Audit at Oasis Investment Company LLC (Al Shirawi Group) one of the largest and most heavily diversified family-owned business conglomerates in the UAE. The Al Shirawi Group has been operating for over six decades through over 30 subsidiaries in a range of sectors, including real estate, manufacturing, trading, and services. Our business which operates in the UAE and Canada and has over 10,500 employees.

YOUR ROLE

As the Director of Internal Audit my role includes leveraging my expertise in finance, auditing, risk management, taxation, and automation to safeguard the company's assets and ensure compliance with regulatory requirements. I oversee the internal audit function, conduct risk assessments, and provide strategic guidance to enhance operational efficiency and mitigate potential risks. Additionally, I focus on ensuring compliance with corporate tax and VAT regulations across the Gulf countries, and keeping the company prepared for the implementation of upcoming tax frameworks like Pillar 2. By driving automation initiatives, I ensure more accurate and efficient auditing and financial processes, positioning the company for long-term success in an evolving regulatory environment.

SUPPORTING THE TAX PROFESSION

In addition to my 'day job', I am also involved in developing support for the tax profession in the UAE and across the Gulf region. I am the Co-founder and Chairman of the Taxation Society in the UAE, the only professional association dedicated to UAE taxation. The Taxation Society is a professional membership body that provides training and networking opportunities to its members. Our aim is to provide theoretical, practical, and policy understanding of the UAE and Gulf tax and compliance regimes, including customs regulations.

Our members represent a wide range of roles, including business owners, bankers, CFOs, trust officers, accountants, lawyers, auditors, tax professionals, and others with a practical interest in taxation and compliance.

Education is a core part of our mission, and we regularly host conferences, workshops, and seminars to further the understanding of both UAE and Gulf

PRACTITIONER PERSPECTIVE

Dhana Pillai
Managing Director
DP Taxation

Dhana Pillai of DP Taxation examines the Participation Exemption Regime in the UAE.

The Participation Exemption has become a pivotal feature of the UAE's corporate income tax regime, enhancing the country's appeal as an international business hub and a holding company regime.

At its core, the Participation Exemption is designed to prevent double taxation of income derived in the form of dividend, interest and capital gains and make the jurisdiction attractive for establishing holding companies.

The Netherlands and some OECD countries were the pioneers of Tax Neutrality regimes which allow Resident Taxable persons to benefit from reduced tax obligations on specific income types upon meeting certain criteria. This framework is crucial for businesses that operate internationally, as it reduces cases where profits are taxed at the subsidiary level and then again when distributed to the parent company or on the sale of shares in the subsidiary.

The exemption not only lowers tax liabilities but also aligns with the UAE's broader economic objectives, as by reducing the tax burden it encourages reinvestment.

In practice, this exemption allows UAE-resident companies to exclude foreign income - such as dividends, capital gains, and foreign exchange gains - from their taxable income, if they meet the criteria. The exemption applies automatically to income derived from Participating Interests, which indicate a substantial, long-term ownership stake in another entity. To qualify a minimum of 5% ownership in the foreign entity is required and the acquisition cost of the ownership interest must be over AED 4 million. This is a low threshold compared to other jurisdictions. In Saudi, for example, a higher ownership threshold of 10% is needed.

The Participating Interest must be held for at least 12 uninterrupted months and the foreign entity must be subject to a corporate tax rate of at least 9%. The ownership must also confer at least 5% of profits and liquidation proceeds and no more than 50% of the entity's assets should consist of non-qualifying ownership interests.

Companies must diligently monitor their foreign subsidiaries, as any changes in status can impact exemption. They must also maintain comprehensive documentation, including ownership records and tax residency certificates, to substantiate their claims.

Other GCC states have similar exemptions however, Bahrain provides exemptions for dividends and capital gains from both local and foreign subsidiaries, as long as the income has been previously taxed. Qatar and Oman do not have this exemption.

This exemption is helpful as by excluding certain types of foreign income from taxation, companies can significantly reduce their overall tax burden. It can also streamline the tax reporting process, enabling businesses to focus on growth and investment. However, companies which wish to use it will need to spend time and money in ensuring compliance with detailed eligibility criteria. For example, companies have to keep abreast of any changes in the status of their foreign subsidiaries, as this can jeopardise exemption eligibility. The main pitfalls when applying for the Participation Exemption are that insufficient documentation or misunderstandings of the tax law on eligibility can result in denied claims or penalties.

In addition, to mitigate these risks, businesses should implement robust tax compliance frameworks, conduct regular audits, and maintain meticulous records. Engaging with tax experts can also ensure they can navigate the complexities of the exemption effectively.

The Participation Exemption is a valuable tool for businesses operating in the UAE, providing significant tax benefits although it does demand careful attention to compliance requirements. The Participation Exemption regime in the UAE is a significant development that offers substantial benefits to businesses operating in the region. It aligns with the country's efforts to attract foreign investment and establish itself as a global business hub.

taxation, as well as customs regulations.

INFORMATION AND GUIDANCE

I have been pleased by the efforts of the UAE Federal Tax Authority in issuing guidance and bulletins on its website to help clarify and explain various tax positions. It is crucial for UAE tax professionals to stay updated with these developments.

Through my work with the Taxation Society, I have been committed to providing the UAE business community with broader access to detailed tax information and resources.

To support this, I have authored two books on UAE taxation. The first, UAE Corporate Tax: A Beginner's Guide, is designed for business professionals seeking an introduction to how corporate income tax operates in the UAE.

Meanwhile, the second book, UAE Corporate Tax: Decoding the 3 Ps (Permanent Establishment, Place of Effective Management, Participation Exemption), is a more specialist publication. It delves into these three key tax concepts through 50 case studies and scenarios, incorporating the OECD Model Tax Convention (MTC).

While this book primarily focuses on the UAE's interpretation and application of these three concepts, I have also compared these approaches to the OECD MTC, contrasting the two in order to aid understanding of international tax law nuances and their UAE application.

ANY QUESTIONS?

What is the latest on VAT in Qatar and Kuwait?

Rami Alhadhrami of BDO Kuwait looks at Qatar and Kuwait's delay in implementing VAT despite the GCC VAT Agreement.

In 2016 the GCC members states signed the GCC VAT Framework Agreement which set out the key principles of the GCC VAT system. The original intention was all GCC states would implement VAT.

Saudi Arabia and the UAE implemented VAT in January 2018 and it was introduced in Bahrain in January 2019 followed by Oman in April 2021.

Kuwait and Qatar are currently the only two GCC member states yet to implement it.

POTENTIAL IMPLICATIONS

From a fiscal perspective, by delaying VAT implementation Qatar and Kuwait are missing out on a stable tax revenue stream which could help diversify their fiscal revenue.

According to a International Monetary Fund (IMF) report, a VAT rate of 5% could bring in revenue of up to 1½percent of Qatar's GDP.

In addition, VAT implementation leads to comprehensive information gathering by tax authorities which can also make it easier for them to introduce and administer other taxes. This could have been particularly helpful for Kuwait which has plans to introduce a Business Profit Tax soon.

Although the GCC VAT Agreement stipulated that all the six GCC countries would commit to implementing VAT, it remains to be seen how Saudi Arabia, the UAE, Oman and Bahrain will respond if VAT remains off the table in Kuwait and Qatar in the coming years.

The absence of VAT in Qatar and Kuwait may enhance the demand for certain goods and services there.

CHALLENGES

In Kuwait there has generally been strong opposition to the idea of introducing VAT in the oil-rich country. Some economists there have called for wider financial reform instead including privatisation, reduction and reallocation of government subsidies and the issue of a public debt law to stimulate the economy and improve the State's budget.

Meanwhile in Qatar concerns have been raised on the appropriate timing for introducing VAT in view of rising inflation, coupled with the high energy prices. Implementing VAT for the first time would also require significant investments in IT infrastructure and resources by the tax authorities in Kuwait and Qatar and would require work to be done on raising public awareness of the tax.

Another question has been the current status of the GCC Agreement – which in Article 25 stated the tax would be applied at the standard rate of 5% of the value of the Supply or the Value of the Imports, unless the agreement provided for an exemption or a zero rate on such supplies. While all the four GCC countries that have already introduced VAT initially complied with the 5% rate stated in the GCC VAT Agreement, Saudi Arabia later increased its standard rate to 15% and in 2022 Bahrain increased its standard VAT rate to 10%. Therefore, concerns have been raised over these deviations from the rate stipulated in the GCC VAT Agreement and what this might mean for the agreement.

SECTORAL APPROACHES

The GCC VAT Framework Agreement also provided policy options across various sectors, including but not limited to real estate, health, education, local transportation, oil and gas and the financial sector.

The GCC states which have already implemented VAT have adopted a variety of regimes in these areas based on their specific needs. For example, on the Real Estate sector the four states which have implemented VAT have all applied different VAT treatments. However, to the best of our knowledge, to date Kuwait and Qatar have not made any explicit policy decisions on the VAT treatment of any particular sector where the optional tax policy is available under the GCC VAT Agreement.

PLANS

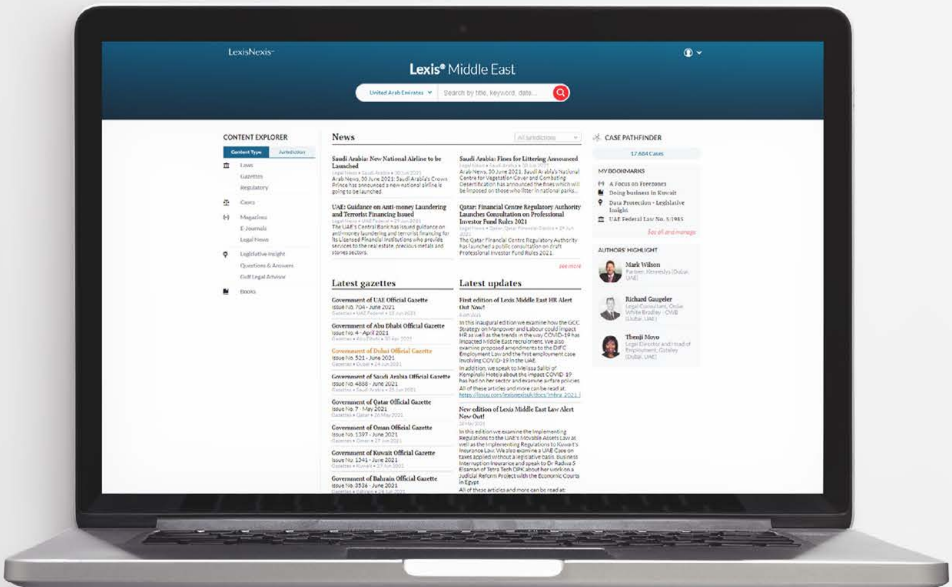
Qatari authorities do appear to be still supporting the implementation of VAT there but are waiting for the appropriate time to do this, particularly in view of the current inflation rate.

In April 2023, the Qatari Prime Minister stated no date has been set yet for the implementation of VAT. In Kuwait there has been less information on the VAT plans there. The government's four year plan did not include VAT as part of its agenda. Instead, the focus in Kuwait has been on the introduction of excise tax and a broader corporate income tax regime, including the issue of Pillar-two legislation.

Given the uncertainty around the timing and next steps on VAT implementation in Qatar and Kuwait, businesses operating there may wish to include a clause in their contracts which would enable them to charge VAT where they are obliged to do so under local tax regulation.

Contributor

Rami Alhadhrami. Partner - Tax & Regulatory Services, BDO Kuwait



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