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Autumn 2022

FEATURE NO ESCAPE?
How GCC Tax Authorities are handling tax evasion

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Halil Erdem of Careem

ANY QUESTIONS
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CRYPTO TAX

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ADVERTISING
Head of Middle East Publishing
Hussain Hadi
hussain.hadi@lexisnexis.co.uk

EDITORIAL
Editor
Claire Melvin
+44 (0) 20 7347 3521
claire.melvin@lexisnexis.co.uk

Deputy Editor
Daniel Emmett-Gulliver
+44 (0) 20 7347 3515
daniel.emmett-gulliver@lexisnexis.co.uk

SUBSCRIBE
To join our free controlled circulation contact Marle Van Sandwyk
marle.vansandwyk@lexisnexis.com

MIDDLE EAST REGIONAL SALES
Benjamin Filaferro
+33 (0) 1 45 58 90 43
benjamin.filaferro@lexisnexis.fr

PRODUCTION
Senior Designer
Jack Witherden

ENQUIRIES
UK
LexisNexis, Quadrant House,
Sutton, Surrey, SM2 5AS
Tel: +44 (0)20 8686 9141 or
Fax: +44 (0)208 212 1988

France
LexisNexis SA,
141 Rue de Javel,
75015, Paris
France
Tel: +33 (0) 1 45 58 90 43

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Mubeen Khadir


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BRAVE NEW WORLD

When Dubai Law No. 4/2022 on virtual assets was issued earlier this year and it was announced a new Dubai Virtual Assets Regulatory Authority was to be established, it was a sign that UAE authorities were serious about making the country a hub and centre of excellence for crypto-currency and virtual assets.

Regulations have also been issued both onshore by the regulators in the UAE Central Bank and the SCA and in the ADGM and DIFC financial freezones on this subject. However, despite the advances in regulation in this area across the UAE, the tax position and likely tax treatment is currently less clear, so as a result we have decided in this issue to take a look at the approaches that may be taken on VAT and Corporate Tax (when it comes in next year in the UAE).

In this respect approaches being taken in other jurisdictions such as the EU and guidance in International Reporting Standards can give some indications, as can existing provisions in GCC legislation such as the GCC VAT Agreement.

However, Dubai Law No. 4/2022 has not been the only recently issued law to provide a sign on the authorities' direction of travel in the UAE. Ministerial Decision No. 386/2022 On the Establishment of the Federal Prosecution for Tax Evasion was also issued at the end of May and is an indication that the tax authorities here in the UAE are as serious about pursuing those looking to evade tax as they are in developing the tax regime. They are not alone in that aim. Authorities in other GCC states including Saudi Arabia and Bahrain have also been taking a whole range of steps to ensure attempts to evade tax are effectively uncovered and penalties are issued.

As a result, we also decided in this issue to look at the differing approaches to tax evasion being taken in practice in the UAE, Saudi and Bahrain, as well as what are the best steps to take where mistakes are unintentionally made to prevent higher penalties being levied.

Thomas Vanhee - Editor in Chief

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CRYPTO TAX

The UAE has taken significant steps to develop a regulatory framework for crypto-currency and virtual assets. **Milos Krstic,** Head of Tax at crypto brokerage Rain and **Thomas Vanhee**, Tax Partner at Aurifer look at how the UAE tax regime in this area may operate.

The UAE aims to attract over 1,000 cryptocurrency businesses in 2022. Accordingly, the UAE Central Bank and the Securities and Commodities Authority (SCA), onshore and freezones (including the Dubai International Financial Centre (DIFC), Abu Dhabi Global Market (ADGM) and Dubai Multi Commodities Centre (DMCC) have been developing new regulatory frameworks. The UAE Central Bank now regulates crypto-assets including digital tokens (e.g. digital currencies, utility tokens or asset-backed tokens). They maintain that crypto-assets are not legal tender, but allow them to be used as a stored value when purchasing goods and services.

The SCA framework applies generally to SCA regulated financial activities in respect of crypto-assets in the UAE, which include promotion and marketing, issuance and distribution, advice, brokerage, custody and safekeeping, fundraising and operating an exchange of crypto-assets.

Currently, the DIFC is only regulating 'Investment Tokens'. Therefore, key cryptocurrencies/stablecoins are unregulated there. However, the ADGM has a comprehensive framework regulating the operation of crypto-asset businesses including virtual-assets - such as non-fiat virtual-currencies, digital-securities, fiat-tokens, and funds, (i.e. derivatives over any digital assets and collective investment funds investing in digital-assets).

The ADGM Financial Services Regulatory Authority (FSRA) also treats virtual assets as commodities. Even though not all virtual assets are specified investments, any market operator, intermediary or custodian must be approved by the ADGM as a Financial Service Permission (FSP) holder for the applicable activity.

The ADGM has also issued a consultation on Decentralised Finance (DeFi), which is a matter becoming central to the blockchain and crypto space.

In Dubai a virtual asset law, Dubai Law No. 4/2022 has been issued.

A new Dubai Virtual Assets Regulatory Authority (VARA), affiliated to the Dubai World Trade Centre (DWTC) has also been established, to act as a hub for


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companies looking to operate in this sector.

The UAE regulatory environment for virtual-assets is quite advanced, although the tax framework for this area in the UAE is comparatively not as mature.

VAT

It will be interesting to see the position that the UAE Federal Tax Authority (FTA) takes on transactions involving cryptocurrencies, crypto-assets, and related services, such as wallets, brokerage, and decentralised finance (DeFi).

Currently, the UAE and GCC VAT laws focus on traditional banking services.

Cryptocurrencies are often treated like fiat-currencies in the VAT treatment of transactions involving their exchange/disposal.

Approaches and definitions used elsewhere, for example, in the EU can give some guidance when interpreting the potential VAT treatment of different types of crypto-assets and related services in GCC countries.

The 2016 GCC VAT Agreement was based on the EU VAT directive version after 2011 but before 2013. However, with the Financial Sector, it allows significant leeway to implement local policies.

Article 36 of the GCC VAT Agreement states that financial services provided by licensed banks and financial institutions are exempt from VAT. Member States can apply fixed refund rates for financial institutions and have full freedom to apply 'any other tax treatment'. In this respect the UAE and the GCC have deviated significantly from the European VAT directive when it comes to the financial sector.

In the UAE, Saudi Arabia, Bahrain and Oman, if financial services providers make money on the basis of a spread, it is VAT exempt. If they are fee-based, they are taxed.

Article 46 of Federal Decree-Law No. 8/2017 refers to financial services as exempt from VAT and relies on the UAE VAT Executive Regulations.

Article 42, 2 of the UAE VAT Executive Regulations refers to 'services connected to dealings in money (or its equivalent)' and lists a number of examples of services which are such exempt financial services.

None of the examples link directly to cryptocurrencies. So, the principle to follow would be that the FTA states that the starting point ought to be that VAT should be charged on financial services where it is 'practicable to do so', though this is sometimes difficult to implement.

Other countries have a relatively broad consensus on the VAT treatment for transactions involving mining virtual currencies, i.e. where the person mining the currency acquires assets in the mining process.

The FTA has no public position on this, but may look at the OECD paper 'Taxing Virtual Currencies: An Overview of Tax Treatments and Emerging Tax Policy Issues' that cited an EU VAT Committee report on Bitcoin, which stated that mining activities should be out of scope of VAT, as there was no direct link between mining remuneration and the activity. In the EU, mining is a service related to currency.

The UAE or Bahrain may decide to exempt mining of cryptocurrencies domestically and therefore make it zero rated when dealing with foreign customers, enabling sellers to recover input VAT.

This might have to change when Bitcoin reaches its capped supply and there is no more mining remaining (so miners may then rely less on block-rewards and more on transaction-fees which may be viewed as taxable financial services in the UAE or Bahrain}.

Holding cryptocurrency should be equivalent to holding an asset. Since holding an asset does not involve a transaction, there should be no VAT impact even if the currency fluctuates.

The main discussions may involve whether cryptocurrency sales and purchases are a service, (therefore, treated as a barter) or are equivalent to using and purchasing money.

RELATED STORY

Dubai Virtual Asset Regulation Law Approved

Dubai Law No. 4/2022 has been approved by the Ruler of Dubai. The Law applies throughout the Emirate, including special development zones and free zones, except for the DIFC. A Dubai Virtual Asset Regulatory Authority will be established. It will have its own legal personality and financial autonomy but will report to the Dubai World Trade Centre Authority (DWTCA). The Authority will be responsible for licensing and regulating the sector across the Emirate. It will also provide a full range of virtual asset services together with the UAE Central Bank and Securities and Commodities Authority. The Law defines the tasks and competencies of the Authority which will be considered the competent body in the Emirate to regulate, supervise and control virtual asset services. The Authority is also responsible for organising and setting the rules and controls which govern the conduct of virtual asset activities. This includes management services, clearing and settlement services and the classification and specification of types of virtual assets.

In the EU, Member States must exempt 'transactions, including negotiation, concerning currency, bank notes and coins used as legal tender.' The European Court of Justice (ECJ) also ruled in C-264/14, Hedqvist that exchange of legal tender against Bitcoin was an exempt service. Bitcoins are treated like fiat-currencies.

The GCC Agreement allows for more policy room, but as the guidance points towards concepts in the EU, this ruling may be relevant. However, not all cryptocurrencies operate like Bitcoin. The UAE Central Bank's Stored Value Facilities Regulations (SVF Regulations) allow crypto-assets to be used as 'stored value' when purchasing goods and services, so that this could be treated like using fiat currencies. A supply of goods and services, subject to VAT remunerated, e.g. by Bitcoin, would be treated like any other supply for VAT purposes with VAT levied on the value of goods or services provided. However, if the UAE decides to treat buyers as rendering a service by paying by cryptocurrencies, the transaction would be treated as a barter, which would be taxable.

With crypto-intermediation services involving crypto exchange, brokerage, and wallet/custodial services providers, the question is will these be treated simply as 'services' or 'financial services'. The EU VAT Committee has stated they should be taxable. However, in the UAE, it could be argued they are financial services as these activities are specifically referred to as Financial activities in the SCA's Crypto Assets Regulations Explanatory Guide.

CORPORATE TAX

Corporate Tax will apply in the UAE for fiscal years starting on and after 1 June 2023.

There was a May 2022 Public Consultation Document (PCD) on Corporate Tax but this did not include any specific references to crypto/virtual-assets. The approach that the FTA takes here will be interesting. Once the Corporate Tax system is in place, the UAE may be tempted to consider income from crypto-transactions as business income.

Corporate Tax typically follows the accounting treatment.

In this context the International Financial Reporting Standards (IFRS) Interpretations Committee has classified holding cryptocurrencies as intangible assets, unless they are held for sale in the ordinary course of business. Cryptocurrencies are treated as inventories with gains or losses taxed as ordinary business income.

Where there are longer holding periods, gains or losses are treated as capital gains.

TRANSFER PRICING

Thomas Vanhee
Aurifer

Milos Krstic
Rain

Currently, the UAE has a light Transfer Pricing framework, with just the requirement for an Ultimate Parent Entity to file a Country-by-Country-Report.

However, as a very international jurisdiction, UAE businesses may adopt an applicable Transfer Pricing framework.

Some large investment funds now invest in crypto as an asset or inflation hedging mechanism or for cross-border payments.

As cryptocurrency adoption increases, multinationals may hold cryptocurrencies and transfer them within their group in exchange for fiat currencies, goods or services. Several Transfer Pricing methodologies might apply.

For example, an analysis may be performed at the level of profitability of entities involved based on their functional analysis and the Group's value chain.

Pure cryptocurrency transactions that could not be justified with profit-based methods would need to use Comparable Uncontrolled Prices. Given the current general volatility of cryptocurrency, traditional benchmarking ranges may not be precise enough. This will be a challenge for Transfer Pricing practitioners. Value-chains will largely revolve around key technologies employed, company branding and distinctive products/service offerings.

Following Transfer Pricing methodologies, the key will be to ensure these functions are appropriately remunerated with higher margins/residual profits.

THE ROAD AHEAD

During the 30 days we were drafting this article the Bitcoin value fluctuated from $19,942 to $24,506. So even though cryptocurrency has now received mainstream attention, it retains some of the characteristics of the 'wild west'. There are companies from other countries which have already moved their operations to the UAE or Bahrain because their own country has either banned cryptocurrency completely (as is the case in the People's Republic of China), or have not facilitated an encouraging business environment for it as is the case in India. What is most important is the intention being taken by the authorties and it is good to see some encouraging steps have already been taken by both the UAE and Bahrain to attract entrepreneurs.

As both these countries iron out their regulatory and tax policies on cryptocurrencies, there will certainly be a lot more dynamism in this space in both countries.

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NO ESCAPE?

First came the taxes but now perhaps inevitably tax authorities across the GCC are beginning to also think about tax evasion. **Mohamed ElBaghdady** of Habib Al Mulla & Partners, **Anas Salhieh** of MMJS Consulting and **George Campbell** of Keypoint explain the different approaches being taken by tax authorities in Saudi Arabia, the UAE and Bahrain to tackle this problem.

"The UAE Tax Procedures Law, Federal Law No. 7/2017 defines tax evasion as the use of illegal means resulting in the reduction of the amount of the due tax, non-payment thereof, or a refund of a tax that a person does not have the right to have refunded under any tax law," states Mohammed ElBaghdady. "From our experience the UAE tax authority (the Federal Tax Authority or FTA) is generally active in pursuing tax evasion cases. A body called the Federal Prosecution for Tax Evasion crimes is being established following the issue of Ministerial Decision No. 386/2022. We have also seen very significant assessments for penalties being issued after audits of up to 2.5 Billion AED in some cases. The FTA has also issued Administrative Execution Orders against some taxpayers."

"The position is similar in Saudi Arabia," adds Anas Salhieh. "Since around 2018, the Saudi Zakat, Tax, and Customs Authority (ZATCA) has been transformed from being a reactive to a proactive authority. As a result of this, ZATCA has taken a number of steps to limit and eliminate tax evasion. As well as initiatives to allow corrective actions by tax evaders, serious action has also been taken against tax evaders, and electronic channels have been created to allow anyone to report tax evasion."

"The merger of the Tax and Customs authorities in Saudi in 2021 has also led to more scrutiny of taxpayers," Salhieh continues. "The link between these two authorities will make it easier to identify more tax evasion cases as the authorities will have more access to information. ZATCA already has access to the records of most of the governmental entities (including the Central Bank, Ministry of Labour and GOSI) and these records make detection of tax evasion easy."

"In Bahrain the position is a little different," states George Campbell. "The definition of tax evasion is broad and includes violations such as failure to register for VAT within 60 days of the applicable deadline but we are yet to see any large-scale public prosecutions or investigations, into the evasion of taxes. However, traditional forms of taxation are quite new in Bahrain. For example, VAT only came in here in 2019 but Bahrain is a signatory to the OECD BEPS framework, which will ultimately require a minimum rate of corporate income tax to be introduced for Bahrain establishments of Multinational Enterprises."

"Tax is still at a nascent stage here in Bahrain but the authorities and taxpayers are becoming more sophisticated, so the unearthing of significant tax mistakes and potential evasion cases is on the horizon,"

Campbell adds. "To date however tax evasion cases in the public domain here have mainly focused on smaller traders for violations such as selling cigarettes without paying applicable excise tax, rather than large and complex fraud cases. Although, on a related note following the recent VAT rate increase the authorities closed several businesses, again, mostly smaller businesses for profiteering."

AUTHORITY ACTION

"In the UAE a special court was established in 2020 to review tax evasion and money laundering cases," states ElBaghdady. "In addition, in May 2021 the Federal Supreme Court decided in its first criminal tax evasion case that the taxpayer was liable for a penalty of 500% of the tax amount. The court is also due to consider other tax evasion cases within the next few months."

"In Saudi, in the past years, there have been several cases where the ZATCA has applied tax evasion penalties to different business for a range of reasons including not disclosing revenue, non-cooperation with auditors, submitting contradicting information, misleading auditors, concealment, falsifying documents and incorrect reporting," Salhieh adds. "There have been articles published detailing taxpayer complaints about ZATCA's aggressive application of the tax laws. It is our understanding that the Authority has been merely taking the necessary steps to prevent tax evasion and stringent procedures are needed to ensure compliance."

"We are also seeing increased use of technology being used to fight evasion in Saudi," Salhieh continues. "For example, e-invoicing was recently introduced to limit tax evasion and black market activity. Once the taxpayers' accounting systems are completely integrated with ZATCA's systems, ZATCA will have more insights into all the transactions concluded by them. In addition, with the technological transformation of Saudi under the vision 2030, it is expected that ZATCA will be cooperating with the Saudi Authority for Data and Artificial Intelligence (SADAIA) or Artificial Intelligence Services providers on the introduction of Artificial Intelligence technology which will assist in audits, identify any tax

RELATED LEGISLATION

UAE Federal Ministerial Decision No. 386/2022

The Federal Prosecution for Tax Evasion Crimes shall be competent to act and initiate criminal proceedings before the competent federal court concerning tax evasion offenses in the UAE, as provided for in the following laws:

1. Federal Law No. 7/2017 on Tax Procedures;
2. Federal Decree-Law No. 7/2017 on Excise Tax; and
3. Federal Decree-Law No. 8/2017 on Value-Added Tax.

(Source: Lexis Middle East Law)

George Campbell
Head of Tax
keypoint

Mohamed ElBaghdady
Senior Associate, Dispute Resolution
Habib Al Mulla & Partners

Anas Salhieh
Partner
MMJS Consulting

evasion, flag suspicious transactions, report any inconsistency in the reporting, and ensure maximisation of taxpayer compliance."

"In Bahrain the authorities appear to take the view that prevention is better than cure, so the National Bureau of Revenue (NBR) regularly issues and regularly updates VAT guidance, to help taxpayers comply, and explicitly encourages taxpayers to act prudently, where there is any uncertainty," states Campbell. "However, Bahraini taxpayers are also subject to frequent requests for information from the NBR, usually financial statements, trial balances and relevant VAT accounting data to allow the authorities to reconcile against amounts reported on the VAT return. Where differences exist, there are further interrogations of taxpayers by the tax authority, after which they are either resolved, or assessments and penalties issued. We have seen some large assessments in the course of our work, but these have all been resolved as civil matters, and treated as unintentional errors."

"We have also noticed an increase in the frequency of those information requests within our own client base, and understand that this happening across the wider economy. Although at the moment on-site audits continue to be the exception, rather than the rule, and are reserved for the larger and more complex businesses. That said the NBR is recruiting tax talent from the local market and specialists to assess taxpayer risk. This sort of risk profiling may lead to more detailed and targeted VAT audits, with the potential for large discrepancies to be unearthed and where discrepancies are deliberate more potential tax evasion prosecutions."

LENIENCY

"In the UAE we have also seen some degree of leniency, and legislation being put in place to reduce fines and make settlement easier," states ElBaghdady.

"For example, Cabinet Decision No. 49/2021, amended Cabinet Decision No. 40/2017, so that administrative penalties imposed but unpaid before the effective date were reduced to only 30% of the total unpaid penalty, if the unsettled penalty was imposed as a result of Cabinet Decision No. 40/2017; the unsettled penalty was imposed in full before the effective date of 28 June 2021; and the taxpayer had paid the tax in full by 31 December 2021 even if tax amount was payable before 28 June 2021."

"Cabinet Decision No. 49/2021 was then amended again to extend the deadline for settling the outstanding payable taxes, and the 30% of administrative penalties, to 31 December 2022. The FTA also stated that if the three conditions were met, the FTA may at the end of 2022 waive the balance of the unsettled penalties (i.e. 70% of penalties imposed). In addition, Cabinet Decision No. 105/2021 has enabled tax payers to apply to pay imposed penalties in instalments and for the penalties to be reduced or waived and a committee is currently reviewing a number of these applications."

LESSONS FOR TAXPAYERS

"In Bahrain individuals convicted of tax evasion, can receive a prison sentence of between three and five years, and a fine of up to three times the tax due," states Campbell. "These penalties can be doubled if the offence is repeated within three years from the date of conviction. The fine for legal persons is also double that for natural persons, if tax evasion is committed in its name, on its behalf or for its benefit. However, the NBR may accept reconciliation in tax evasion cases, before judgment is handed down, if the tax and minimum applicable fine is paid."

"Honesty is the best policy," states Campbell. "Mistakes should be notified to the NBR, as soon as practically possible. VAT errors of less than 5,000 Dinars can be declared in the next available VAT return, but amounts above this will need a correction to be made to the original return(s). Provided an amended return disclosing the error is submitted within 30 days of discovery, the tax paid, and the NBR has not initiated an audit of the relevant tax period, no penalties will be imposed, because of the correction."

"The advice in Saudi in terms of tax evasion is it is important taxpayers keep proper documentation justifying every regular or extraordinary transaction concluded," states Salhieh. "It is also important that these documents are supported with a proper understanding from the responsible employees or representatives to avoid any contradictions."

"In Saudi those who evade taxes can face additional financial burdens. For example, a penalty of 25% can be levied on unpaid taxes when evading income taxes and those who evade VAT may have to pay up to three times the revenues."

"Those who evade taxes can also face non-financial burdens including but not limited to, having a longer statute of limitations of 10 years (or more) and being flagged as an evader on the ZATCA system."

"Having tax professional support (either internally or externally) will also help avoid aggressive positions, incorrect reporting, and misunderstanding of authorities," Salhieh continues. "In addition and as a precautionary measure, the taxpayers may want to undertake tax health checks which can help identify any past non-compliance or errors. Then if these are identified, corrective measure should be taken, which may include a revision of returns or payment of any additional taxes or delay fines."

TAX NEWS ROUND-UP

COVERING RECENT KEY DEVELOPMENTS – REGION-WIDE

UAE

VAT REGISTRATION CASE

The UAE Federal Supreme Court has ruled that a taxpayer who made a mistake with their VAT registration but had still reported their output VAT should not have to pay late payment penalties just because they had not registered.

The case involved individuals who held property jointly as partners. A partner with whom some of the real estate was held was not initially added under their VAT number. However, later a second VAT number was requested that was to include this partner. The court ruled that tax procedures were not an end in themselves, but rather a means to achieve the law's goal of collecting the legally due tax. In the past the courts would have taken a more formal approach. An individual registered for VAT purposes is a different taxpayer than a joint venture (whether it is incorporated or not), partnership they are part of, or a company that person owns.

INDIAN EXPORTS

The UAE Economy Ministry has called on exporting companies in the UAE to apply for preferential certificates of origin when exporting goods and products to India. Preferential certificates enable exporting companies to benefit from exemptions and customs reductions on exported goods, in line with the Comprehensive Economic Partnership Agreement which now exists between the UAE and India. The Ministry has explained that application of preferential certificates in export and import can increase opportunities for exporters and importers to access Indian markets through preferential customs duties, as 90% of goods and products exchanged between the two countries are now subject to zero customs duties, and some other products are subject to reduced customs duties.

VAT AND GOLD

The UAE Federal Tax Authority (FTA) has isssued a public clarification (VATPO29) on the application of VAT on gold making services. The supply of the gold itself (or a product mainly consisting of gold), which meets the conditions of Cabinet Decision No. 25/2018, will be subject to the special reverse charge mechanism which applies to (pure) gold and silver, supplied to a taxable customer. However, if the charge for making the item is embedded in the price, this will constitute a single composite supply (provided that certain conditions are met) and will follow the treatment of the main supply. The clarification does not make any statements on the import of pure gold (which is zero-rated), or on retail sale.

In addition, Saudi Arabia's Zakat, Tax and Customs Authority (ZAKTCA) has also issued a clarification on VAT treatment of gold. VAT will be imposed on gold in Saudi Arabia if its purity level is under 99%. However, if its purity level is 99% or more, it will be zero-rated for VAT purposes. It will also only be tradable in the global bullion market. In addition, VAT of 15% will be applied to gold jewellery when it is sold by a VAT registered person

DUBAI

CUSTOMS GUIDE

Dubai Customs has published a customs guide for travellers on its website. The guide explains the baggage customers can carry. It also provides details of prohibited items. There is also information on goods which are exempt from customs duties and taxes, as well as on excess baggage fees and how they are collected.

SAUDI ARABIA

VAT REFUND

The Board of Directors of the Zakat, Tax and Customs Authority (ZAKTCA) has approved rules and procedures for VAT refunds by licensed real estate developers. Under the new rules, in order to be eligible for the refund, the real estate must be owned by the real estate developer according to official documents, when the refund request is submitted. While in terms of real estate investment funds, the property must be stored with the fund's assets custodian, who is appointed as custodian in line with Capital Market Authority regulations and instructions.

CUSTOMS DUTY INCREASES

Customs duties are being increased in Saudi Arabia in order to try to encourage more businesses to set up manufacturing and production facilities there. As a result production originating outside Saudi Arabia will now be subject to higher duty rates. Saudi amended their origin rules in 2021 and these amended rules still apply despite this change. They had increased duties on a number of products in 2020 which also still apply. The new customs duty rates came into effect from 12 June 2022 and apply to 99 line items as a result of

TAX TREATY UPDATE

Qatar: The Democratic Republic of Congo has approved a double taxation treaty with Qatar for further approval by the Congolese Parliament.
Qatar: An amending protocol has been signed to the Qatar-Guernsey double taxation treaty.
Qatar: A double taxation treaty has been signed with the Czech Republic.
UAE: The Chilean Senate has approved a double taxation treaty with the UAE.
Egypt: Egypt and Qatar have signed a Memorandum of Understanding (MoU) on joint cooperation between the countries and the conclusion of a Double Taxation Treaty.

Saudi Arabia Cabinet Decision No. 59334/1443. A number of foodstuffs are affected, as there is a desire to protect the local agricultural sector. In addition, a number of types of fish are on the list, as are gallus chickens, tomatoes, onions, carrots, cucumbers, eggplants, capsicum, zucchini, and other types of vegetables, as well as various types of herbs such as parsley and coriander. There are also changes for olive oil, lemon juice, grape juice, mango juice, guava juice, and carrot juice, as well as a number of chemicals, parts for vehicles, aircrafts, space vehicles or ships, tractors, and telephone cables.

QATAR

TRANSFER PRICING PENALTY CHANGE

Qatar Decision No. 4/2020 On the Transfer Pricing Declaration and the Submission of the Master File and the Local File has been amended by Qatar Decision No 10/2022 which was issued in June. As a result of the change Article 11 of Qatar Decision No. 4/2020 now states in line with the provisions of Article 24 of Qatar Law No. 24/2018 (the Qatari Income Tax Law), financial penalties stipulated in Article 23(4) of Qatar Law No. 24/2018 will also apply to violations related to obligations to submit Masters File and Local Files. This is a financial penalty of 20,000 Riyals.

OMAN

IMPORT AND EXPORT VAT

The Omani Tax Authority has issued a VAT guide for those involved in the import and export of goods and services. The import of goods is considered a separate event from the supply of those goods, which requires an independent VAT treatment. In addition, agents who are responsible for paying import VAT at customs on behalf of non-taxable persons are not allowed to claim it as input VAT. Import of goods into Oman must also be declared in the Bayan statement and the VAT due (if not deferred) is collected through the Bayan portal. It should also be noted that goods which are temporarily exported from Oman must be re-declared at the point of re-import and the VAT must be assessed based on the value added to these goods.

KUWAIT

FOREIGN COMPANIES

Authorities have confirmed that foreign companies which operate in Kuwait but do not have a permanent establishment there are not exempt from income tax. This is also the case for foreign companies whose term of work is less than a year but are likely to continue their business there. These companies will be subject to the tax rules in line with provisions in double taxation avoidance agreements.

TURKEY

CASH REPATRIATION

As a result of Article 50 of Turkey Law No. 7417/2022 and Turkey Law No. 31887 a new cash repatriation regulation has been issued in Turkey and a provisional Article 15 has been added to the Turkish Corporate Tax Law. The new regulation came into force on 5 July 2022. As a result, real or legal persons must notify banks or intermediary institutions of money, gold, foreign currency, securities and other capital market instruments they own abroad until 31 March 2023. Assets within this remit can be used to pay off loans obtained from banks or financial institutions abroad and recorded in legal books as of the effective date of the regulation until 31 March 2023. In such cases, as long as they are deducted from legal book records, they will be able to benefit from this new regulation without having to have the assets used to pay the debt being brought to Turkey. If capital advances registered in legal books as of the effective date of the regulation are met by bringing money, gold, foreign currency, securities and other capital market instruments abroad to Turkey before the coming into force of this regulation, the provisions in the regulation can be benefitted from, provided the advances are deducted from the legal book records up until 31 March 2023 at the latest.

IN BRIEF

Qatar: The Cabinet has approved a draft Ministerial Decision on tax and customs exemptions for hosting the FIFA World Cup Qatar 2022 and a Ministerial Decision with additional refund cases for excise tax...

Qatar: Qatar Ministerial Decision No. 2/2022 on distinctive labels to be put on excise goods has been issued...

UAE: Cabinet Decision No. 63/2022 which implements the ratification of the agreement between the UAE and US on FATCA has been issued...

Saudi Arabia: The Zakat, Tax and Customs Authority (ZAKTCA) has amended the executive regulations for the real estate transaction tax..

UAE: The deadline for Reporting Financial Entities to file FATCA and Common Reporting Standards (CRS) Reports was extended to 20 July 2022...

UAE: Public Clarification EXTP007 on deficient or missing Excise Goods and the process for their destruction within a Designated Zone has been issued by the Federal Tax Authority (FTA)...

Turkey: The President has approved a Decree imposing an extra 10% in customs duties on electric vehicles imported from countries Turkey does not have a customs union and fair trade agreement with...

Bahrain: The National Bureau for Revenue has introduced a digital stamp scheme to ensure effective implementation of Excise Tax...

REMOTE WORKING

As a result of Turkey Presidential Decree No. 5806 the remote working rate used for the income withholding tax incentive, for those in technology development zones and Research and Development (R&D) or Design Centres has increased. The period which can be spent outside the centres is measured by number of staff or total working hours. The Decree has increased the rate from 50% to 75% until 31 December 2023. To benefit from the exemption, incentive and promotions in relevant legislation, 25% of R&D and support staff must work at the related zones and centres or R&D and support staff must spend 25% of their total monthly working hours in the zones and centres.

FOCUS ON CUSTOMS DUTY & E-COMMERCE

As a result of COVID 19, e-commerce businesses have grown globally in recent years.

The UAE acts as commercial hub for many of those e-commerce businesses involved in trading of goods from across the world. In addition, e-commerce businesses also move goods from both the mainland UAE and freezones in the UAE to other GCC countries, including Saudi Arabia. However, from a customs duty perspective importing goods into the UAE and then moving them to Saudi or back from Saudi to the UAE can be quite challenging, specifically in the case of returns of goods.

IMPORTING GOODS INTO THE UAE MAINLAND

Generally, the import of most foreign goods into the UAE mainland area is subject to 5% customs duty depending on the associated HS code. In order to import goods through an e-commerce business, a B2B commercial importer of record is responsible for the completion of customs formalities and the payment of associated customs duties in the UAE mainland area. The B2C individual customer will usually act as the importer of record and receive the shipment of goods at the doorsteps along with the invoice and packing list. In these cases, courier companies complete the customs formalities on behalf of the individual customers. However, if goods are returned by an individual customer, they can be stored in the business' warehouse in the UAE mainland area to avoid the double payment of customs duties on re-importation into the country.

FROM THE UAE MAINLAND TO OTHER GCC COUNTRIES

Based on the GCC Common Customs Law, the imported goods can then be moved further from the UAE mainland area to GCC countries without payment of customs duties under the statistical export declaration by providing evidence that customs duty has been paid at the first entry point in the UAE mainland area. However, if goods are moving between the UAE and Saudi Arabia, there may be an additional customs duty payment required in Saudi Arabia due to the higher rates of applicable customs duties there.

FROM UAE FREEZONES TO SAUDI ARABIA

The position is also different when foreign goods are initially imported into one of the UAE free zone areas such as Jebel Ali Free Zone Area (JAFZA) rather than mainland UAE, as these zones are not subject to customs duty.

As a result customs duty is applicable at the first entry point in the UAE mainland area on import of goods from the free zone to the local area.

Where an e-commerce business is established in a UAE free zone area, such as JAFZA and wishes to export their goods further into another GCC country such as Saudi Arabia, the customs duties are then levied in Saudi Arabia based on the goods' associated HS code.

RETURNED GOODS

A problem can arise if the customs formalities have been completed in Saudi Arabia and goods are then delivered to an end B2C individual customer who then returns the goods for any reason. In these cases complications arise because of the prior payment of customs duties. The questions include which party will absorb the cost of customs duties and how will the physical storage of goods be managed?

Based on our practical Customs experience in the region, there could be a number of possible options to address these challenges. Considering these options in advance will help businesses avoid loss from the payment of customs duties for the returned goods and from re-payment of customs duties on re-importation for example, from Saudi Arabia to a UAE free zone and then re-import back into Saudi Arabia:

POSSIBLE OPTIONS

1. The returned goods can be stored in an associated warehouse of e-commerce business or logistics services or courier companies located in Saudi Arabia instead of routing them back to the UAE free zone area. Then the company waits for another order of the same goods from an individual customer in Saudi Arabia and ship them directly from the Saudi based warehouse to the new individual customer.
2. The e-commerce business enters into a contractual relationship with local retail stores so that in cases where there are returned goods, those local stores are able to display and sell the returned goods in their own premises.
3. The e-commerce business initially exports the goods to Saudi Arabia in small rather than large batches. If the value of the batch is USD 267 or 1,000 Riyals or less they will then be able to use the low value principle which ultimately eliminates the need to pay customs duties when importing goods into Saudi Arabia.
4. Depending on the value of the returned goods and the cost of repaying customs duties on their reimportation to a UAE freezone it may be more cost effective to discard the goods in Saudi Arabia.
5. The e-commerce businesses can shift and/or share the cost of import duties with the end customers located in Saudi Arabia. However, caution is needed in cash on delivery (COD) cases where individual customers may not agree to pay whilst returning the goods.

Options 1, 2 and 4 which are listed above could also be of benefit to e-commerce businesses which are established in the UAE free zones as a means of easing the general administrative burden in terms of compliance with inventory reconciliation of returned goods.

OTHER SAUDI CONSIDERATIONS

In addition, to the points detailed here on moving goods from either the UAE mainland or a UAE freezone, and re-importing them when a customer makes a return, it is recommended that businesses should consider all the applicable local Saudi rules and regulations on imports, and make sure that they are complied with. This will include obtaining the necessary approvals and having them in place if required for the smooth customs clearance of goods in Saudi Arabia.

This article is based on a practice note included in the Gulf Legal Advisor Collection, in Lexis Middle East Law written by Dr. Atia Hussain, Assistant Prof. Department of Accounting, University of Sharjah, UAE and Former Manager Global Trade, EY Middle East, Dubai.

TAX PROFESSIONAL PROFILE
SENIOR MANAGER GLOBAL TAX STRATEGY – TECH

Tax-i please

Halil Erdem, Senior Manager Global Tax Strategy at Careem talks about the need for harmonisation in various areas of tax.

ABOUT YOU AND YOUR BUSINESS

I have a bachelor's degree in Dutch Law, a master's in International and European Tax Law from the University of Amsterdam. and a post master's in European VAT from Maastricht University. I also recently completed the Association of Taxation Technicians-UK UAE, Saudi Arabia, Bahrain and Oman VAT Compliance diplomas and the ADIT paper on European VAT from the Chartered Institute of Taxation-UK. I am Senior Manager Global Tax Strategy for Careem in the MENA region. This means I am responsible for international tax, transfer pricing, economic substance, corporate tax and indirect taxes. I work closely with our business stakeholders on a range of tax matters including new products, new initiatives and M&A deals. I am also responsible for preparing impact assessments and implementing plans for various new initiatives. Managing relationships with tax authorities and work on tax audits are also important parts of my work.

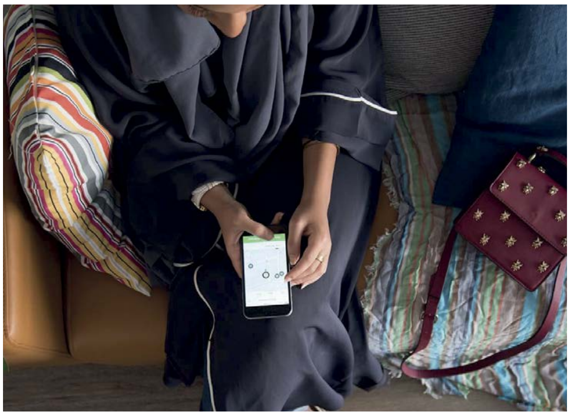
Careem was established in 2012 and was acquired by Uber in 2020. We operate in over 80 cities in 10 countries. We started out as a ride-hailing platform but are now a one stop application for everyday needs in the Middle East, Africa and South Asia regions, so are continuously partnering with various new service providers who offer new products and services via our platform. We are also expanding the services which are available through our platform to include mass transportation, delivery, payments and partner services as the region's everyday Super App.

TRANSFER PRICING AND COMPLIANCE

I advise in principle on all taxes but am currently focusing slightly more on Transfer Pricing. There are a number of developments in this area and various jurisdictions are introducing new Transfer Pricing regulations on an ongoing basis. My role is not only to make sure all related party transactions are at arm's length but also that contemporaneous Transfer Pricing documentation is in place so can be easily shared with tax authorities during tax audits. I also work on compliance obligations including compliance with the Economic Substance Regulations and Country-by-Country Reporting.

TAX AND TECHNOLOGY

We are seeing an increasing global trend of tax authorities increasingly leveraging tax technology to



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support the collection of indirect taxes. A perfect example of this has been the implementation of e-invoicing rules in Saudi Arabia and there are also initiatives in Egypt. These rules, require information to be shared on a real time basis with the tax authorities. This provides Governments with a more efficient way of auditing and enforcing tax compliance. While these changes are understandable from the tax authority's point of view, the challenging part for businesses is that we have differing requirements coming from various tax authorities, so companies are having to repeatedly invest a lot of resources in understanding and complying with these new requirements from tax authorities, which can be a huge burden for taxpayers.

As a result, I would like to see the GCC countries working more closely together on this area and doing their best to align their tax policies where possible. For example, it is likely all GCC countries will eventually implement some sort of e-invoicing rules and it would decrease the compliance burden for taxpayers if all the GCC countries worked together and came up with one set of requirements.

LESSONS TO LEARN

I have found there are big differences in my job here in the Gulf from a tax perspective and my previous job in my home jurisdiction. In the EU, I advised many companies on cross-border and domestic tax matters. The biggest difference was the ease of communication with the tax authorities in the EU, especially in the Netherlands. For taxpayers like us who want to ensure tax compliance and certainty, having a tax authority which it is easy to connect with and which is facilitating is very welcome.

PRACTITIONER PERSPECTIVE

Sanjeev Fernandez
Indirect Tax Practice Partner, Saudi Arabia
EY

Sanjeev Fernandez, an EY MENA Partner, leading their Indirect Tax practice in Saudi Arabia and member of the EY global e-invoicing steering committee talks about e-invoicing developments in Saudi Arabia and the region.

E-invoicing represents a significant development in the digital transformation of tax authorities. While e-invoicing requirements are unique in each country, most fall within two broad models.

The first is the clearance model which mandates the submission of invoice data for approval by the tax authority before circulation.

The second is the post-audit model where the tax authority obtains invoice data for review after the transaction.

The clearance model appears to be favoured by many tax authorities globally, as they look to use this model of e-invoicing as a measure for reducing the amount of uncollected VAT revenue or the VAT gap and improve the overall VAT compliance of businesses.

Under the clearance model, tax authorities have visibility of invoice data in real or near-real time. This increased visibility of the underlying invoice data of businesses, enables the tax authorities to apply advanced analytics to drive real-time reviews and undertake more granular, data-based audit activity.

There are also many benefits of e-invoicing for businesses that can impact a range of stakeholders across an organisation. Successful implementation of e-invoicing can be leveraged to automate the VAT compliance process and reporting. E-invoicing can also help drive a broader finance transformation by unlocking process efficiencies and improved cash flows, eliminating human intervention and errors, as well as driving down operating costs due to automation. In addition, the elimination of paper-based invoices can support businesses in reducing their carbon footprint.

However, while there can be e-invoicing benefits for a range of stakeholders, the impact of not properly implementing e-invoicing can also be substantial for businesses. For example, inadequate implementation can result in e-invoices not being approved by the tax authority, leading to consequential business disruptions and cash flow challenges associated with delays in issuing approved e-invoices to customers, as well as increased effort being required to fix invoice errors.

In the MENA region, Saudi Arabia has been the latest country to adopt e-invoicing and in line with global trends, is implementing the clearance model.

E-invoicing is compulsory for all resident taxpayers in Saudi Arabia and is being implemented in two phases. The first phase came into force on 4 December 2021 and required businesses to generate invoices in an electronic format.

The second phase will be rolled out in waves from 1 January 2023 and will require businesses to integrate with the tax authority's platform to transmit e-invoices for clearance. Participants in the first phase will generally be those businesses in Saudi Arabia with a taxable turnover of more than three billion Riyals in the 2021 calendar year.

Under the clearance model being adopted in Saudi Arabia, businesses will be required to transmit invoice data for full tax invoices covering most business-to-business and business-to-Government invoices, in real-time, to the tax authority's central platform. For simplified invoices, which include business-to-consumer invoices, these must be reported to the tax authority's central platform within 24 hours of the transaction taking place.

In addition to the e-invoicing changes in Saudi Arabia, Egypt is also currently working on implementing e-invoicing. E-invoicing was first rolled out in Egypt in November 2020 for large businesses and continues to be implemented in phases. Like Saudi Arabia, Egypt has implemented the clearance model of e-invoicing.

As Saudi Arabia and Egypt are in the process of implementing e-invoicing, other countries in the MENA region are also gauging business readiness for this change. Although details are yet to be announced, it is likely other countries in the region will consider the clearance model, as a result of the global push to digitalise tax administration and improve overall VAT compliance. It is expected a number of countries in the MENA region will implement e-invoicing in the next two to three years.

Given the potential cost of non-compliance and the complexity of the clearance model requirements that we see in the region, it is important businesses allow sufficient time to implement a compliant e-invoicing system and perform rigorous testing before they go-live.

Having a detailed project plan in place will allow businesses to implement a comprehensive and structured roadmap for implementation of this change, which will enable the business to establish the necessary resources and technical capabilities to support deployment in a timely manner. With e-invoicing likely to become more common in MENA, it will also be important for businesses operating in the region not only to consider their operations in Saudi Arabia and Egypt, but also to start planning for possible roll-outs of e-invoicing in other countries here.

Governments want taxpayers to comply with their tax obligations and expect that tax penalties promote compliance.

There is nothing wrong with that. However, tax is new to most taxpayers in the GCC and there are many grey areas when implementing the new rules. It is an environment where taxpayers can make genuine mistakes, so I would like to see the tax authorities taking a holistic view and applying penalties less strictly than they are described in the law or having less harsh penalties. It would also be great to see a GCC supreme tax court being set up here similar to the European Court of Justice which has been established to decide how these laws should be interpreted.

ANY QUESTIONS?

WHAT DO I DO IF VAT RATES CHANGE?

As Saudi Arabia and Bahrain have increased VAT rates, and further changes could be coming in Saudi, what steps should taxpayers take to mitigate the impact of such changes?

Since 2018, four of the six GCC countries have introduced VAT. Initially, a standard VAT rate of 5% on supplies of goods and/or services was agreed under the Unified GCC VAT Agreement, which is one of the lowest standard VAT rates applied globally.

However, since then economic and financial challenges have impacted state revenues, which have led to some member states making changes to their VAT rates. For example, Saudi Arabia increased its VAT rate from 5% to 15% with effect from 1 July 2020 and Bahrain increased its rate from 5% to 10% with effect from 1 January 2022. However, rate decreases are also potentially possible, as Saudi Arabia's finance minister has stated the rate increases they put in place in 2020 which were as result of the economic effect of low oil prices at the time could be reversed.

VAT INCREASES

Although a VAT rate increase may appear to be a simple change in VAT rates, businesses need to consider the various other implications. They will have to closely analyse any transitional provisions to make sure they understand them. They may also need to make changes to their IT systems. In addition, there could be legal considerations and cash flow implications for their business. They may have to provide training or spread awareness of the VAT rate change to impacted staff and external stakeholders to make sure they are aware of the impact of a VAT rate increase on their business. Generally, when a VAT rate increase is announced, there is usually also a transitional window period of one year or so during which supplies of goods and/or services may continue to be charged at earlier VAT rates, subject to specified conditions. When Saudi Arabia and Bahrain introduced their VAT rate increases, a transitional window of one year was given. Specific guidance on these transitional provisions is normally released once the VAT rate increase is announced. Businesses should study this guidance and analyse the impact on them of these transitional provisions. One of the key factors to consider when there is a VAT rate increase is the date on which the contract for supply of goods and/or services was signed. If the contract was signed before the date the VAT rate increase was announced, supplies under this contract are likely to be allowed to be charged at earlier VAT rates during the transitional window period. This may extend to say one year from the effective date of increase or date of expiry/ termination of contract, whichever is earlier. However, if the contract was signed on or after the date of announcement of the rate increase, generally supplies made under that contract are likely to be charged at the increased VAT rate, except if supplies were made during the period between the date of the announcement and the effective date of increase. Configuration changes and enhancements to IT systems including associated documentation will also need to be made to factor in the VAT rate increase. It is also worth businesses assessing potential automation opportunities for transitional rules. It is necessary to make sure that contract clauses take into account the future changes in VAT rates whether these are rate increases or decreases. The company could also potentially have contracts in place which make it legally binding in some cases to apply a specific VAT rate throughout a specific period and if the legal terms of the contract are not flexible enough to handle this, it could mean the business facing additional VAT-related costs. The impact on cash flows as a result of a VAT rate increase should also be assessed. In this respect businesses which are in a net VAT refund position may feel a greater impact.

VAT DECREASES

When it comes to VAT rate decreases, many of the steps which need to be taken are the same as those which are taken when rates increase. For example, transitional provisions and their impact will still have to be assessed, and changes may be needed to IT systems.

WHAT'S NEXT?

Although Saudi Arabia and Bahrain have changed their VAT rates, and Saudi may do so again, at present there is no indication from either the UAE or Oman that they have plans for VAT rates increases in the near future. The key point for businesses is to look out for such change announcements in the press and as soon as they hear them to start thinking about the impact of the rate change on their business and prepare for implementing the change, as soon as guidance is released by the relevant tax authority. The concession window which is generally provided from the date of the announcement until the effective date of rate change can be tight and it can be difficult to mitigate risks associated with taxpayers taking advantage of the VAT rate change.

This article was co-written by Gaurav Kapoor, Tax Director - PwC Oman and Kanval Ashar, Senior Manager - Indirect Taxes, PwC Oman.

Contributor
Darcy White
Tax Partner - PwC Oman

ALCHEMY SEARCH

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Alchemy Search is a dedicated, regional specialist in Tax recruitment.

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With the everchanging tax landscape, it is an exciting time for the tax recruitment market which has already started to boom and the demand of tax professionals has increased, with a particular focus on International Tax, Transfer Pricing and soon Corporate Tax, with the announcement of Corporate Tax to be implemented in the UAE on financial years commencing 1 June 2023.

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If you are interested in relocating to the Middle East, especially from Europe and the US, please get in touch with Conor and Pooja on their details provided below

Meet the team

Conor and Pooja both specialise in Tax recruitment, based out of UAE but covering the GCC market. They have a very good network with Tax professionals from all levels from Consultants to Partners and Heads of Taxes.

CONOR MCHUGH ACCA
FOUNDER
cmchugh@alchemysearch.ae

POOJA BHATT ACA
CONSULTANT
pbhatt@alchemysearch.ae

Alchemy Search
The Executive Centre, The Offices 3, One Central,
World Trade Center, P.O. Box 9573 Dubai – UAE
+971 (0)4 526 3264| alchemysearch.ae