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GULF TAX

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FEATURE **TAKING THE RETT APPROACH**
Saudi Real Estate Transfer Tax changes

PROFILE **KUWAIT**
Rami Alhadhrami of BDO in Kuwait (Al Nisf & Partners)

ANY QUESTIONS
Does the UAE now have income tax?

A ROUND UP OF TAX DEVELOPMENTS ACROSS THE MIDDLE EAST

TAX TIME

UAE Corporation Tax

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THE TIME FOR TAX

If you began your career outside the GCC region, particularly in a higher tax jurisdiction, one of the big changes you may have experienced when moving here, was probably the fact you no longer had to consider tax implications to such a large extent when making business decisions. Gradually that has been changing however.

In the last couple of years, we first saw the GCC agreement back in 2015 to introduce VAT. Then individual GCC countries, including the UAE, Saudi, Bahrain and Oman began taking steps to implement it.

Since then there have been all manner of changes to the way GCC countries deal with everything from customs duties to international taxation. Tax authority procedures, investigations and appeals have become important to understand in this jurisdiction. The GCC is no longer a tax-light zone and perhaps nothing has underlined that fact more clearly than the UAE's announcement at the start of this year of its plans to introduce Corporation Tax in 2023.

Tax has now become something that needs to be duly factored into business decisions here too. There are new developments coming thick and fast which businesses need to keep up with and understand from jurisdictions across the GCC and also the wider MENA region. The truth is that it is not an easy thing to do. I am proud to be the Editor in Chief of this new magazine, in conjunction with Lexis Middle East. Our aim is to help businesses in the region do just that - gain that understanding, with the help of our advisory board, who come from a range of industries, organisation types, jurisdictions and sectors and are already providing us with insights into the tax issues which really matter. We hope you find this first issue interesting and helpful, and if you would like to make sure you receive your own free electronic copy going forward, contact our subscription coordinator Marle Van Sandwyk at marle.vansandwyk@lexisnexis.com.

Thomas Vanhee - Editor in Chief

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Does the UAE now have income tax?

TIME FOR TAX

Following the announcement by the UAE authorities that corporate income tax would be launched in 2023, **Thomas Vanhee** of Aurifer explains what needs to be done now to be ready for this groundbreaking change.

"On 31 January 2022, 51 years after the founding of the UAE, a historic statement was made by the authorities - corporate income tax is to be introduced," states Thomas Vanhee. "In a watershed moment, the Ministry of Finance (MOF) announced the UAE will introduce a Federal Corporate Income Tax on business profits. The authorities hope this will help cement the UAE's position as a world-leading hub for business and investment, meet international standards for tax transparency, prevent harmful tax practices and help accelerate the UAE's development and transformation in order to achieve its strategic objectives."

"It means in a relatively short time the UAE has gone from being an almost no tax environment in 2016 to, what in 2023 will be a light tax environment. During this time we have seen the foundation of the UAE's Federal Tax Authority (FTA), the introduction of Excise Tax and VAT, Economic Substance Regulations being issued and in 2023, the UAE will have Corporate Income Tax," Vanhee adds.

"At present we do not have detailed legislation on the new Corporate Income Tax (which is currently expected in summer 2022), but the MOF and FTA have issued FAQs and press releases on the subject."

"This Corporate Income Tax will apply on the worldwide adjusted accounting net profits of a UAE business," states Vanhee. "An exemption will apply for taxable profits up to 375,000 AED in order to support small businesses and startups."

"The standard statutory tax rate will be 9% which as this is a low tax rate, will mean the UAE will continue to be highly competitive at a global level. However, a different tax rate will apply to Multinational Enterprises (MNEs) within the scope of 'Pillar Two' of the OECD Base Erosion and Profit Shifting project. MNEs with consolidated global revenues over EUR 750m (3.15 billion AED) will be subject to different tax rates. Corporate Income Tax will apply to Free Zone businesses," Vanhee adds.

Thomas Vanhee
Aurifer

"However, tax holidays will continue to be granted to businesses established within UAE free zones which comply with all regulatory requirements and do not conduct business with the UAE mainland. Free Zone businesses in a VAT Designated Zone are allowed to sell to the mainland, provided the buyer is the importer of record. Additionally, earning passive income from the mainland is allowed, and

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groups with their HQ in a Free Zone, can transact with mainland entities, but the expenses will not be deductible for tax purposes."

"There will be no withholding tax on domestic and cross border payments," Vanhee explains. "So foreign investors who do not carry on business in the UAE will in principle not be subject to corporate tax. Banking operations will be subject to corporate income tax, even though some may already be subject to the Emirate corporate tax at a rate of 20%. We will have to wait to find out more on how this legislation will interact, given the federal nature of corporate income tax."

"It is also important to note, the FAQs have suggested that licensed activities are subject to corporate income tax, even though they could be conducted by natural persons, so there may be some important scoping issues to consider going forward."

"The new UAE regime will come into effect for financial years starting on or after 1 June 2023," Vanhee states. "Businesses will become subject to UAE corporate tax from the beginning of their first financial year that starts on or after 1st June 2023. However, the timeline for the implementation of the Pillar Two requirement is still uncertain. The original agreement included a 2023 deadline for Pillar Two but the world's largest trade bloc, the EU has not yet decided on the implementation date deadline, so implementation of Pillar Two may not coincide with the introduction of UAE Corporate Income Tax. In addition, foreign taxes will be allowed to be credited against UAE corporate tax payable. There will also be beneficial transfer of losses and utilisation rules."

EXEMPTIONS

"It is important to note a number of categories of income will not be subject to Corporate Income Tax," states Vanhee. "These include capital gains and dividends received by UAE businesses from qualifying shareholding. A qualifying shareholding is currently proposed to be defined as an ownership interest in a UAE or foreign company of at least 5% and for a foreign subsidiary, it has to be subject to a CIT rate in that foreign jurisdiction of at least 9%. This exemption is often called a participation exemption and it favours the incorporation of holding businesses in the UAE. There is currently no minimum holding period proposed. In addition, qualifying intragroup transactions (presumably under the fiscal consolidation regime) and restructurings (presumably tax neutral mergers) will be exempt too," states Vanhee. "This exemption is important for large groups, who will be able to consolidate their tax positions. So if

WHAT TO LOOK OUT FOR...

When the Corporation Tax Law is published, look out for details on:

- Extent non business expenses
- Interest deduction limitations
- Conditions participation exemption
- Clarifications on the Free Zone regime
- Any special regimes, e.g. for transparent partnerships, collective investment vehicles or investment trusts
- Confirmation application of the Federal Tax Procedure Law (Federal Law No. 7/2017)
- Transitional provisions
- Anti-avoidance rules, e.g. on rep offices used for commercial purposes
- Existence exit tax
- Extent of Permanent Establishments (PEs) and profit allocation rules

there are both loss making and profit making businesses in a group they can offset these. While tax neutral mergers, usually allow businesses to merge, demerge and restructure in a tax neutral way, so any taxation on potential capital gains related to the transaction is deferred to a later stage. In addition, income from the extraction of natural resources (relevant for the oil and gas industry) is exempt as this income will remain subject to Emirate level corporate taxation. This is because of the importance to individual Emirates of taxes paid by oil and gas businesses. The MOF FAQs have also clarified that businesses engaged in real estate management, construction, development, agency and brokerage activities will be subject to UAE Corporate Income Tax. So there will not be any exemptions or special regimes which apply to the real estate sector, in the same way as zero rates and exemptions apply for VAT," Vanhee explains. "Investment funds and partnerships are proposed to be transparent, in line with a number of other jurisdictions."

TRANSFER PRICING

"UAE businesses will need to comply with transfer pricing rules and documentation requirements set with reference to the OECD Transfer Pricing Guidelines," states Vanhee. "This may mean three tiers, master file, local file and country by country reporting. Other jurisdictions in the region, e.g. KSA and Qatar have gold-plated the three tiers with a controlled transactions disclosure form and a transfer pricing certification. The UAE is also proposing to have such a disclosure form."

ADMINISTRATION AND ENFORCEMENT

"The MOF will continue to be the competent authority for multilateral/bilateral agreements and the international exchange of information," states Vanhee. "The FTA will be responsible for administration, collection and enforcement of the new regime. Businesses subject to it will have to file a CIT return electronically for each financial period (which is generally a year)."

"Businesses established in a free zone will also have to register and file a CIT return, despite potentially claiming an exemption."

"There will be penalties for non-compliance with the new regime."

KEY POINTS

"The introduction of Corporate Income Tax in the UAE is a direct result of OECD's 'Pillar Two' which is part of the Base Erosion and Profit Shifting (BEPS) project," states Vanhee. "With a headline 9% rate on taxable income, carve outs for small businesses and free zone companies, but at same time imposing different tax rates for MNEs, the UAE is striking the right balance. The 9% is also aligned with the Subject to Tax Rule under the Pillar Two rules, which require an increased source taxation for base eroding payments (e.g. royalties and interest) to jurisdictions where this passive income would not be taxed at 9% as a minimum. The UAE is often used as a regional hub, and charges to high taxing countries are sometimes challenged. Hopefully, the UAE will develop a practice of awarding bilateral Advance Pricing Agreements, which would involve other jurisdictions. Another interesting point is that although Free zone companies are seemingly outside the scope of the new corporate Income tax regime, it seems that the carve out is at least subject to certain conditions, such as complying with all regulatory requirements and not conducting business in mainland UAE. Free zone companies will also still have to file a corporate tax return. We also expect the implementation of corporate income tax will have an impact on the Economic Substance Regulations that were implemented in 2019. In addition, the UAE's move to becoming a light tax jurisdiction, may be more positive in an international context, as measures taken against the UAE as a tax haven might not be necessary anymore," Vanhee continues.

"Although there may be some which will continue to apply, so careful analysis is still needed on areas such as will a branch exemption under Double Tax Treaties with the UAE still serve any purpose, what will be the extent of creditable foreign tax and what will be the limitation on interest expenses? The UAE will also continue to have a very beneficial holding company regime, so we expect there to be many benefits from corporate income tax. The Public Consultation Document offers some clarity on the matter, but is not binding, and therefore might still be subject to change."

NEXT STEPS

"UAE businesses will need to assess how the implementation of Corporate Income Tax will apply to their activities and ensure they are ready for its implementation in 2023," states Vanhee.

"They will also need to keep an eye open for the actual publication of the Corporate Income Tax law to understand the exact scope. There are many unanswered questions. The Public Consultation Document is detailed enough nonetheless, to offer a number of answers, and we do not expect the final regime to greatly deviate from the proposed regime. It should also be noted that all restructurings or long-term plans involving the UAE will now need to involve an analysis from a UAE point of view and international tax planning will be the key to ensure structures have been future proofed."

GULF LEGAL ADVISOR

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TAKING THE RETT APPROACH

2022 kicked off with amendments to Saudi Arabia's Real Estate Transaction Tax Implementing Regulations. **Michael Camburn** and **Manish Bansal** of Deloitte explain the impact of these changes and the areas where clarifications are still needed.

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"The second of two amendments to the Real Estate Transaction Tax (RETT) regime in Saudi Arabia came into effect from 18 February 2022," states Michael Camburn. "RETT was introduced through Saudi Arabia Royal Decree No. A84/1442 and Saudi Arabia Ministerial Decision No. 712/1442 on 4 October 2020 when the Implementing Regulations covering Tax imposed on Real Estate Transfer took effect."

"Somewhat unusually despite the introduction of the implementing Regulations in this area as well as two subsequent amendments to them the RETT law itself has not yet been formally published," states Manish Bansal. "However, the draft RETT Law has been published, was subject to consultation and is currently being finalised which means that there could also be further changes to this area when the law is finally published ."

WHAT IS RETT?

"Unless there is a specific exemption, this tax applies to all land and property sales, and associated rights, usufructs of over 50 years, transfers and similar transactions which take place in Saudi Arabia," Camburn continues. "In addition, sales of shares in property owning companies may also attract a RETT charge. In Saudi Arabia RETT is charged at a rate of 5% of the value of the land, property and associated rights."

"RETT generally becomes due there when a relevant deal has been notarised at the appropriate authority," states Manish Bansal. "Although there is an earlier tax point for transactions which do not require notarisation procedures such as grants of usufruct of over 50 years."

"The primary responsibility for collecting RETT lies with the seller but if tax is not remitted by them, the purchaser may become liable," Bansal continues.

"However, there are a number of RETT exemptions. These mostly involve property transfers to close family members or for public good, such as charitable purposes, and transfers which result from inheritance," Camburn continues. "In addition, the Saudi government will bear the cost of RETT when a Saudi national buys their first home of up to SAR 1 million in value."

"It should also be noted that both taxable and exempt RETT transactions need to be reported to Zakat Tax and Customs Authority (ZATCA) and unlike with VAT, no RETT grouping is provided for in the law, so intercompany transfers of land and property are still liable to this tax. This can potentially cause problems for groups, (especially family-owned groups) which are embarking on intra-group restructuring."

RECENT CHANGES

"The amendments to the RETT Implementing Regulations which came in at the start of this year have brought with them some significant changes to the RETT exemption regime, " states Camburn. "Apart from a couple of additions to the existing exemptions, the main focus has been rationalising and widening the scope of the existing exemptions and ironing out some of the problems which were faced in applying these exemptions. "

"It is now possible to claim a RETT exemption when there is a real estate property transfer to a Waqf or licensed charities at any time. Previously, this exemption was only available if the transfer was made at the time the Waqf or licensed charity was originally established".

"Generally, what we have seen is an expansion in the scope of the available exemptions," Bansal adds. "For example, the donation of real estate property to a person who is a relative, up to the third degree is now exempt subject to certain conditions, when previously this exemption only applied to relatives up to the second degree."

"Another area where there has been a change has been to the available inheritance exemptions," states Camburn. "In the past there was a cap of up to one quarter of the testator's estate which could be subject to a RETT exemption."

"This has now changed so there is no cap on the disposal of property pursuant to a legally certified Shariah compliant will which can be exempt from RETT."

"However, there are also some new areas where RETT exemptions have been removed," Camburn continues. "These include the specific exclusion of (unincorporated) joint ventures from the scope of the exemption in relation to in-kind contribution to the capital of companies. There is confusion on whether or not such joint ventures are eligible for this exemption or not."

"In January 2021, an exemption involving the in-kind contribution of real estate in the capital of companies was extended to an in-kind contribution in the capital of limited liability companies, partnerships and limited partnerships as well as joint stock companies."

Michael Camburn

Indirect Tax, Bahrain & KSA leader Deloitte

Manish Bansal

Senior Manager, Indirect tax and RETT, Deloitte Middle East

Deloitte

"In Saudi Arabia it is common practice for real estate to be transferred to a company and appear in the company's books although the title deed for that property is still in the name of the original owner," states Bansal. "This practice created RETT issues so a new exemption has been introduced to avoid genuine hardship in cases where beneficial ownership was transferred before RETT was introduced, but the title deed could not be changed."

OFF-PLAN SALES

"There has also been a change in the way RETT operates for off-plan property sales as the due date for RETT payment is no longer-linked to the date of signing the contract or sales agreement, which means the RETT payment has now been deferred until notarisation takes place, rather than the previous potentially earlier point for RETT to be paid when signing the off-plan sales agreement."

"This has probably been one of the most notable RETT changes to have been brought in as the previous practice of RETT being payable when signing an off-plan sales agreement could cause problems as the Regulations were not clear on the due dates, so taxpayers had been following different interpretations, and having an earlier due date generally meant developers had to finance the RETT amount due."

RELATED STORY

Saudi Arabia: Tax Exemption for Real Estate Properties Transferred by Wills Announced

Saudi Arabia's Zakat, Tax, and Customs Authority has announced it has approved amendments to the Implementing Regulations to the Real Estate Transfer Tax Law. They also approved other amendments to the date for paying tax in respect of the transactions made for off-plan sales.

The amendments came into force on 18 February 2022. They include amending the degree of relative who are covered by the exemption for paying tax in cases where there is a documented gift. Under the amendments, relatives of up to the third degree can now transfer the ownership of the property and there will be a tax exemption. However, the person receiving the gift cannot transfer the property until after three years to someone who is not entitled to the exemption if the property was transferred to them directly by the person giving the gift. Previously, only gifts by second degree relatives could benefit from the exemption.

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MINISTERIAL DISCRETION

"Another area of change has been to a residual category of exemptions, where a decision on the exemption of any matter could be made by the Finance Minister, has been deleted, possibly because of the large number of requests the Minister was getting on this subject," Camburn adds. "Unfortunately, this removal of the Finance Minister's power to use their discretion on the application of RETT, means that new exemptions are less likely to be introduced going forward, which is a shame as it could have been helpful to have this flexibility as this is an area where a new law is being introduced."

WHAT IS NEXT?

"There has been no official confirmation from the ZATCA on when the law itself will be published," states Camburn. "However, it is generally expected it will be published by the middle to end of this year."

WHERE CHANGES COULD BE USEFUL?

"In the case of the vast majority of transactions undertaken in Saudi Arabia, particularly in the private sector, it should be comparatively easy to identify whether they are liable to RETT," Camburn adds.

"However, there will be more complicated arrangements, such as those involving Private Public Partnership Projects, major infrastructure projects where multiple partners are involved, as well as transactions involving joint ventures, property investment companies and real estate funds which will require careful and detailed review. "

"As a result, there are several areas where additional clarification in the finally published law would be helpful including a clarification on the levying of RETT on public-private partnership projects which involve Build, Own, Operate and Transfer (BOOT) contracts."

RELATED LEGISLATION

Article 13 of Saudi Arabia Ministerial Decision No. 712/1442

Those affected by a decision issued by the Authority may object to the Decision in line with the rules of the functioning of tax disputes and violation resolution committees.

(Source: Lexis Middle East)

"At present, the exemption on in kind contributions of real estate into estate funds could also do with being widened," states Camburn.

"For example, currently this exemption is not available for funds which have been set up for the purpose of renting real estate, which seems a little too prescriptive."

"It would also be helpful if there was further clarification on the definition of what were real estate rich companies and how RETT will operate on the transfer of shares of those companies."

"In Saudi Arabia, VAT no longer applies to the sale and disposal of property and these transactions are treated as VAT exempt," Bansal adds.

"A Licensed Real Estate Developer Scheme has also been introduced to allow land and property development companies in Saudi Arabia to recover VAT on expenses."

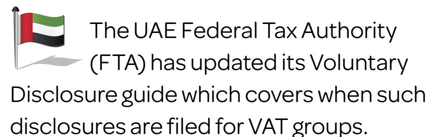
"However, given the close interaction between RETT and VAT it is possible in certain circumstances both taxes could apply to the same transaction and could impact the current and historical VAT position of the taxpayer. It is worth noting that an incorrect position taken could lead to hefty penalties under RETT and/or VAT legislation, so going forward close attention will be needed to both the substance and form of these types of transactions."

TAX NEWS ROUND-UP

COVERING RECENT KEY DEVELOPMENTS – REGION-WIDE

UAE

VOLUNTARY DISCLOSURES

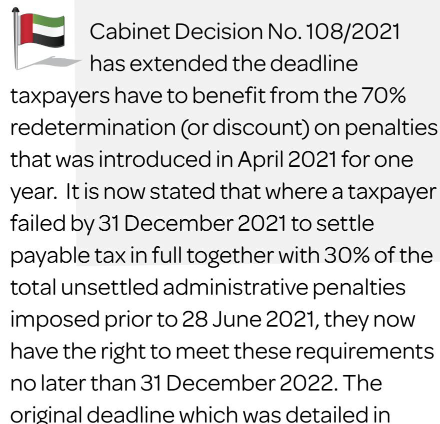


The UAE Federal Tax Authority (FTA) has updated its Voluntary Disclosure guide which covers when such disclosures are filed for VAT groups.

The provision of voluntary disclosures is mandatory within 20 business days after an error has been made in a VAT or Excise Tax return which has resulted in payable tax being too low by an amount of 10,000 AED or more.

In such cases the representative member of the group needs to file the Voluntary Disclosure and other members of the VAT group can only view the Voluntary Disclosure and the outcome filed. It has also been reiterated that Voluntary Disclosures can be submitted against submitted VAT returns, acknowledged voluntary disclosures, or acknowledged tax assessments.

REDETERMINATION OF PENALTIES



Cabinet Decision No. 108/2021 has extended the deadline taxpayers have to benefit from the 70% redetermination (or discount) on penalties that was introduced in April 2021 for one year. It is now stated that where a taxpayer failed by 31 December 2021 to settle payable tax in full together with 30% of the total unsettled administrative penalties imposed prior to 28 June 2021, they now have the right to meet these requirements no later than 31 December 2022. The original deadline which was detailed in Cabinet Decision No. 49/2021 had set this deadline at 31 December 2021. Cabinet Decision No. 49/2021 stated that the administrative penalties for violations of the tax laws that had not been paid would be reduced to 30% of the total unpaid penalties if a number of conditions were met. The Federal Tax Authority has also issued a new Public Clarification TAXP004 on the redetermination of administrative penalties levied prior to the effective date of Cabinet Decision No. 49/2021.

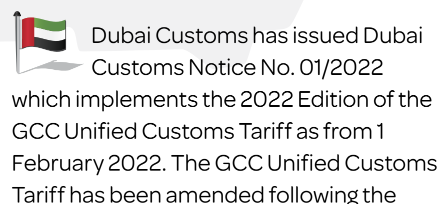
ABU DHABI

CUSTOMS DECLARATIONS

Abu Dhabi Customs has hosted a workshop with major UAE importers, exporters and stakeholders in collaboration with the IBM global supply chain solution, TradeLens to show how TradeLens' blockchain technology can help ease the Custom declaration process. TradeLens, which is powered by blockchain technology, has been helping government authorities around the world by offering direct connection to reliable supply chain data and structured Customs documents.

DUBAI

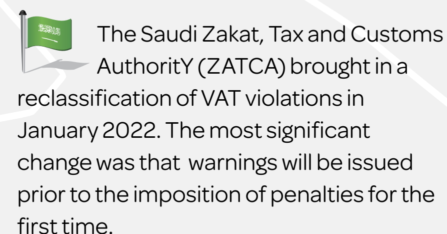
GCC CUSTOMS TARIFF



Dubai Customs has issued Dubai Customs Notice No. 01/2022 which implements the 2022 Edition of the GCC Unified Customs Tariff as from 1 February 2022. The GCC Unified Customs Tariff has been amended following the issue of the 2022 Edition of the World Customs Organisation (WCO) Harmonised System (HS) Nomenclature. The Notice states, the Tariff and Origin Department is the referential agency which will answer any enquiries and settle any disputes relating to the implementation of the GCC Unified Customs Tariff.

SAUDI ARABIA

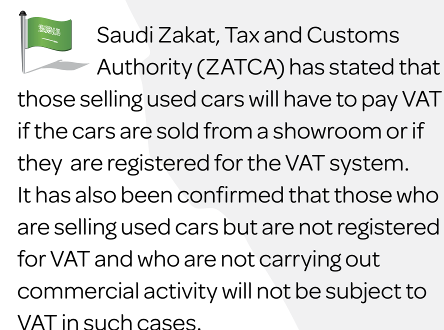
E-INVOICING VIOLATIONS



The Saudi Zakat, Tax and Customs AuthoritY (ZATCA) brought in a reclassification of VAT violations in January 2022. The most significant change was that warnings will be issued prior to the imposition of penalties for the first time.

ZATCA will also grant violators an appropriate time period of up to three months from the date of issuing the penalty to correct the violation, before they impose a penalty if there has been a repeat offence (except in cases where there have been attempts to prevent or impede the Authority's employees from performing their duties and tasks).

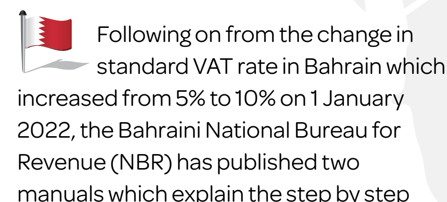
VAT AND USED CARS



Saudi Zakat, Tax and Customs Authority (ZATCA) has stated that those selling used cars will have to pay VAT if the cars are sold from a showroom or if they are registered for the VAT system. It has also been confirmed that those who are selling used cars but are not registered for VAT and who are not carrying out commercial activity will not be subject to VAT in such cases.

BAHRAIN

VAT RETURN GUIDES



Following on from the change in standard VAT rate in Bahrain which increased from 5% to 10% on 1 January 2022, the Bahraini National Bureau for Revenue (NBR) has published two manuals which explain the step by step

TAX TREATY UPDATE

Qatar: Oman and Qatar have signed a double taxation treaty. The treaty is the first such treaty Oman has signed with a GCC country.

Oman: Oman has signed a double taxation treaty with the Slovak Republic.

UAE: The UAE and India have signed a Comprehensive Partnership Agreement. Over the next five to 10 years zero tariff access for India products to the UAE will increase to 97% of UAE tariff lines.

Oman: Talks have been held between Oman and India on a bilateral protocol on Investment and Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income.

process for VAT returns and simplified VAT returns under the transitional provisions.

VAT returns in Bahrain now require taxpayers to detail whether they have sales, purchases, imports, or adjustments subject to 5% VAT which are required to be declared in the VAT return. Depending on the taxpayer's response, the form may display additional fields which relate to supplies, purchases, or imports made at the 5% standard rate.

Alternatively the return form will indicate that a VAT rate of 10% is applicable to all standard-rated transactions within it.

OMAN

TOURISM TAX RETURNS

From 1 January 2022 a rate of four per cent has been used to calculate tourism tax in Oman. The Ministry of Heritage and Tourism (MHT) had previously exempted all tourist facilities in Oman from the tax until December 2021, as part of efforts to stimulate the economy there following COVID 19.

REVERSE CHARGES

The Oman Tax Authority (OTA) has published a new Arabic language VAT Guide on the Reverse Charge Mechanism (RCM). Topics covered in the guide include the scope of RCM, specific cases when it is triggered, the due date of payment, and the timing of input tax deductions.

The guide also states that all GCC countries are treated on a par with the countries outside the GCC until unified systems are applied among the GCC countries. As a result, the box on 'purchases from the GCC countries subject to RCM' has not yet been activated in Omani VAT returns. It should also be noted, that an RCM input tax deduction cannot be claimed unless the taxable person has valid commercial documents such as an invoice.

KUWAIT

EXCISE TAX

The Kuwaiti Government has announced that it is looking at implementing Excise duty there. It has been stated that Excise tax there will cover tobacco and tobacco derivatives, soft and sweetened drinks and also expensive goods, such as watches, jewellery, precious stones, luxury cars and yachts.

Excise tax would apply to these goods instead of VAT.

Excise tax would be levied at a rate of between 10% and 25%. In 2016 Kuwait signed a GCC agreement under which excise tax had to be applied on tobacco products of all kinds and forms, energy drinks at 100% and soft drinks at 50%.

BAHRAIN

TAX TREATY APPROACHES

In November 2020 Bahrain signed the OECD Multilateral Instrument (MLI) listing their provisional reservations and notifications and a wish that 44 double tax treaties be covered by the MLI. The MLI has now been ratified by Bahrain Law No. 2/2022, To Approve the Multilateral Treaty of Implementing Tax Conventions Measures to Prevent Base Erosion and Profit shifting (MLI) and this law has been issued in the Bahraini Official Gazette.

The MLI is an instrument which was developed by the OECD. It aims to improve international tax co-operation and reduce base erosion and profit shifting (BEPS) risks in a synchronized and efficient way.

The convention offers a concrete and streamlined solution for governments to close loopholes in international tax treaties by including the results and conclusions from the BEPS project into bilateral treaties worldwide, without the need to renegotiate each treaty bilaterally.

EGYPT

VAT AND STAMP DUTY AMENDMENTS

Egypt Law No. 3/2022 has been issued amending the VAT Law and Stamp Duty Tax Law there.

The Law includes new and multiple tax exemptions targeted on vital services which affect the lives of Egyptian nationals and sectors which support industrial and economic growth.

Amendments to the VAT Law include granting goods or services exported by projects in economic zones of a special nature abroad, or imported into them, with a change in tax treatment in order to encourage investment in these zones of a special nature, by not charging VAT on goods or services imported for these projects. Tax refunds will also be allowed for goods and services which are subject to or exempted from the schedule tax exported abroad provided they do not exceed the credit balance for goods and services for which the tax deduction is applicable.

IN BRIEF

Saudi Arabia: The Zakat, Tax and Customs Authority has stated customs duties will be imposed on personal shipments which exceed 300 Riyals including shipping fees...

Oman: Oman Decision No. 89/2022 has added more food commodities to the zero-rated list for VAT purposes including barley, corn, wheat and soybeans, poultry and animal feed...

Kuwait: The application of 100% customs duty on shisha and related products which was originally expected to come into force from 1 March 2022 has now been postponed until 1 September 2022...

Qatar: The General Customs Authority has announced a special programme which will simplify customs procedures for giant sporting events, including the FIFA 2022 World Cup which is due to begin in November...

Oman: Oman's Consumer Protection Authority has annonced they have started investigating consumer complaints about businesses which have fraudulently added VAT to products which are not subject to the tax...

UAE and Bahrain: The updated Belgium list of tax havens includes the UAE and Bahrain. Belgian companies must report in their corporate tax returns direct and indirect payments over EUR 100,000 (including payments made to persons, permanent establishments, and bank accounts) to a state treated as a tax haven...

Egypt: A draft of amendments to Egypt's Income Tax Law, Egypt Law No. 91/2005 has been published...

Turkey: A range of VAT reductions have been announced in Turkey. VAT on products such as detergents, soaps, toilet paper, napkins and diapers will also be reduced from 18 to eight percent...

FOCUS ON ZAKAT

WHAT IS ZAKAT?

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 criteria of wealth.

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'.

THE NISAB

The nisab is the Zakatable fund and is traditionally calculated using either the current market price of gold or silver. Muslims whose personal wealth is below the nisab do not owe Zakat.

The nisab is the cash equivalent of three ounces/87.48 grams of gold or 21 ounces/612.36 grams of silver.

So, if an ounce of silver is currently worth $15, using the silver calculation the nisab would be $315 ($15 x 21 ounces = $315) and Muslims whose personal wealth was over $315, would owe Zakat that year.

POSITION IN SAUDI ARABIA

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), which is the same authority which is responsible for collecting other taxes.

On 6 April 1951, a Royal Decree was issued in Saudi Arabia, which included an order to levy Zakat.

The collection of Zakat in Saudi Arabia is entrusted to the State, and therefore the government, as prescribed in Article 21 of Saudi Arabia Royal Order No. A90/1412 (the Saudi Arabian Basic Law).

Zakat applies to natural Saudi persons who reside in Saudi Arabia and GCC nationals with the same status (including minors and the legal incapable) who practice an activity with the intention of making a profit either in the form of money or business.

They are subject to Zakat after completion of one year (al hawl).

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This is also the case for Saudi businesses and establishments domiciled in the Kingdom where Zakat applies to the shares of Saudi persons and nationals of GCC countries which have the same status and to shares of Saudi governmental authorities and corporations.

Corporate Income Tax needs to be paid at a rate of 20%, proportional to the shareholdings of non-Saudi and non GCC nationals. Businesses could therefore be subject to both Zakat and income tax, often resulting in an overall lower taxation. Unfortunately, this mixed regime is abused very often.

Those who are liable to pay Zakat must register with ZATCA on the ZATCA portal (www.zatca.gov.sa). ZATCA is responsible for collecting Zakat, assessing, and reviewing data provided by Zakat payers and also, when necessary, auditing their books. The funds collected in this way are used for social purposes.

The regulations around the collection of Zakat were only recently codified with Implementing Regulations issued in 2017 (Saudi Arabia Ministerial Decision No. 2082/1438) and 2019 (Saudi Arabia Regulation No. 1/1440).

All individuals and companies with an industrial or commercial activity must keep organised accounting books which show capital, receipts and expenditure relevant to their activity for each year which is used to assess their Zakat liability.

SMALL BUSINESSES

Following a recent reform of the deemed calculations for Zakat payers, the scope of this regime now also extends to businesses that do not have and are not required to keep financial statements.

The Zakat basis is at a minimum not less than the capital determined in the company's corporate documents. It is calculated by summing up the sales divided by eight and the sales multiplied by 15%.

The sales are determined on the basis of the sales reported in the VAT return as a proxy, and the real estate sales transactions in the most recent period. Sales in the VAT return include the standard rated, zero rated and exempt sales.

If a tax payer has not made any sales in the period, then the basis used is calculated amongst other means by multiplying the amount of imports or purchases by a factor 1.15. The applicable rate used is 2.5%.

NORMAL METHOD

Generally speaking, businesses will add to the Zakat basis a number of balance sheet items which are on the passive side of their balance sheet. These include external sources of funding, such as equity and loans.

Assets (the active side of the balance sheet), such as net fixed assets used in the activity and investments in businesses themselves subject to Zakat are deductible. The end result constitutes the Zakat basis. This method is known as the indirect method, or the sources of funds method. For example, if a limited liability company which had capital of SAR 200,000 had earned SAR 40,000 in profit for the year, but had loans of SAR 160,000 and net fixed assets of SAR 100,000, the company's Zakat base would be calculated as follows:

Capital	SAR 200.000.00
Loans	SAR 160.000.00
Net Profit for the year	SAR 40.000.00
Total	SAR 400.000.00
Minus net Fixed Assets deductible for Zakat purposes	SAR 100.000.00
Zakat Base	SAR 300.000.00
Legal Zakat	SAR 7.500.00

In order to calculate the correct Zakat tax base, the Zakat payer must exclude all ordinary and necessary expenses required for the activity, whether they have already been paid or are still due in order to calculate the activity's net result.

There is a requirement that the expenditure should be evidenced by supporting documents or other proof that enables ZATCA to verify this expenditure even if it is related to previous years.

The expenditure should also be related to the activity, and not be a personal expense or an expense for other activities.

In addition, the expenditure should not be of a capital nature. If capital expenses are included in these expenses, the result of the activity is amended and the capital expenditure is instead added to the fixed assets and addressed according to the regular percentages.

BAD DEBTS

It should be noted that bad debts are deemed to be deductible expenses so are not part of the Zakat base if they have already been declared within the establishment's revenues for the year when revenues became payable. The bad debt should also result from practice of the activity. In addition, the establishment must also provide a certificate which has been issued by their chartered accountant to the effect that these debts have been written off from the books as result of a decision by an authorised person. It should be noted too that the debts cannot be payable by entities which are related to the Zakat payer and the establishment must also undertake to declare debts within their income whenever they are collected.

This article is based on a Practice Note included in the Gulf Legal Advisor collection in Lexis Middle East Law.

TAX PROFESSIONAL PROFILE

PARTNER - TAX & REGULATORY SERVICES – KUWAIT

In association with ALCHEMY SEARCH

KUWAITI CONSIDERATIONS

Rami Alhadhrami, Partner - Tax & Regulatory Services at BDO in Kuwait (Al Nisf & Partners) talks about how Kuwaiti and international tax changes and practices impact his work.

ABOUT YOU

I studied Accounting at the Victoria University of Wellington in New Zealand and am a qualified Chartered Accountant of the Institute of Chartered Accountants of Australia and New Zealand. I started my career with BDO in New Zealand and then moved to the Gulf in 2012 and have worked with BDO in Kuwait since then. At BDO in Kuwait, I am responsible for the tax practice's overall growth and service quality. I am also the international tax coordinator for BDO in Kuwait and link in with our offices in about 167 countries to deal with in-bound and out-bound assignments assisting businesses growing internationally. BDO has offices in each of the Gulf states. I am mostly involved in corporate tax and Zakat compliance and related advisory matters, including company formations and FDI. In addition, I work on tax disputes, including tax appeals, court cases and assist with Mutual Agreement Procedures (MAP). These include tax issues involving distributorship versus agency arrangements, capital gains imputations and tax treaty interpretations. My work also includes tax projects in the Saudi-Kuwait Neutral Zone and we specialise in Automatic Exchange of Information (AEOI) including FATCA, CRS and Qualified Intermediary (QI) compliance.

VAT AND EXCISE TAX

The introduction of VAT and Excise Tax is on the agenda in Kuwait. It is unlikely to happen in Kuwait in 2022, as the Parliament has just resigned and a compromise may be needed between the government and parliament on this reform. In New Zealand I helped businesses get ready for an increase in GST from 12.5% to 15%, which has helped me advise on the implementation of VAT in some Gulf states.

CORPORATE TAX CONSIDERATIONS

Regionally, the introduction of corporate tax in the UAE and impact of proposed OECD Pillar 1 and Pillar 2 are keeping us busy. It will be interesting to see if Bahrain introduces corporate tax and if tax authorities in Saudi Arabia, Kuwait and Qatar decide to increase their applicable tax rates for local

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companies owned by GCC citizens, as a result of the OECD's 2-Pillar deal. Kuwait is not a member of the Inclusive Framework and has yet to express its views on the OECD Pillar 1 and 2 proposal. In Kuwait income tax has been 15% since early 2008, and the income tax law, in practice, has been applied only on foreign companies doing business in Kuwait or those with a stake in a GCC company doing business in Kuwait. Based on the difficulties the government has faced in introducing VAT and Excise tax, it may be difficult for them to apply a 15% income tax rate, or similar, to Kuwaiti companies particularly those meeting Pillar 2's 750m Euro turnover threshold. While with Pillar 1, the proposed reallocation of taxing rights may provide additional, but probably limited, tax revenue to Kuwait, the tax authority's administrative costs and issues around proposed mandatory arbitration may not be rewarding enough for Kuwait since the population is about 4.5 million. However, large Kuwaiti Multinational Enterprises (MNEs) are currently monitoring the international development and I have been working with some in Kuwait on measuring the tax impact of these recent OECD proposals.

REGIONAL APPROACH

Compared to my experience in New Zealand, in the Gulf I have found sometimes practice seems to take greater precedence than actual tax law, e.g.

PRACTITIONER PERSPECTIVE

Shabana Begum

Partner – Tax & Transfer Pricing, KPMG Lower Gulf Limited

Shabana Begum of KPMG Lower Gulf Limited explains the far reaching effect Pillar One and Pillar Two will have on GCC businesses.

On 8 October 2021, the international community, and (at the time of writing) 137 countries, including five of the six GCC countries, reached an unprecedented agreement on the introduction of a Global Minimum Tax (GMT) at a rate of 15%, which was reinforced on 20 December 2021 with the finalization of the Global Anti-Base Erosion (GLoBE) rules. The GMT is the second pillar in a two-pillar solution, also known as Base Erosion and Profit Shifting (BEPS) 2.0 to be announced by the Organisation for Economic Cooperation and Development (OECD). BEPS 2.0 aims to ensure multinational enterprises pay a fair share of tax wherever they operate. Pillar One seeks to reallocate profits for the world's largest groups (with revenues over EUR 20 billion and operating profit margins above 10%) but excludes regulated financial services companies and extractives activities. However, Pillar Two aims to apply a minimum floor to tax competition and applies to multinational groups with consolidated turnover over EUR 750 million. The GMT is made up of three rules. The primary rule which is the Income Inclusion Rule (IIR) along with the Subject to Tax Rule (STTR) is expected to be implemented in January 2023 (but it may be deferred to 2024 in most jurisdictions). While the backstop rule to the IIR is the Undertaxed Payments Rule (UTPR) which will be implemented in January 2024. Whilst Pillar One is only expected to impact the world's largest groups, a significant amount of work may be needed for the in-scope groups, in order to assess the profits that will need to be allocated to market jurisdictions. This will involve identifying in-scope revenues and work to assess the sourcing of revenue and location of end users and consumers. It will vary by industry but for many in-scope groups, effort will be needed to segregate transactions according to category of goods and services. The review of existing transfer pricing methodologies being applied for marketing and distribution activities will also be critical to avoid any instances of double taxation. Given the profile of the GCC economy, it is expected a number of groups in the energy and natural resources sector may be impacted by Pillar One and the analysis of the 'extractives exclusion' across multinational enterprises' (MNEs) value chain will be critical. Other GCC groups which may be in scope of the rules include sovereign wealth funds whose composition of various portfolio company groups (PCGs) may also create substantial work in order to assess the application of the rules to what are (often very) different segments across a variety of industries. Pillar One, will also impact a number of foreign headquartered groups which are present in the region. While the overall compliance of the rules may be managed by these groups' head offices, the local entities will be responsible for reporting revenue and profitability data. This is particularly relevant for the many groups which use the UAE and Saudi Arabia as their regional headquarters to make sales into neighbouring GCC jurisdictions and/or serve Africa and South East Asia from their GCC hub.

The impact of Pillar Two in the region is also expected to be significant from both a taxpayer and tax policy perspective. The number of groups who are impacted by Pillar Two is far greater than Pillar One and for many groups in the region, tax holidays/reliefs/zakat have resulted in Effective Tax Rates (ETRs) being lower than 15%. The Pillar Two rules are complex and highly technical. Compliance with them will involve assessing an in-scope group's ETR in each of the jurisdictions in which it operates. This involves calculations being performed under the GloBE rules using a hybrid of tax return, financial statements and country-by-country reporting data. It will effectively result in two sets of corporate tax books - one for domestic corporate tax and the other for BEPS 2.0 purposes. Whilst both Pillars will impact businesses, they also raise considerable questions for tax policy in the region. The UAE has been the first mover to respond, but five of the six GCC countries are signatories to the proposals. As a result, we may see further corporate tax policy reform announcements from Saudi Arabia, Bahrain, Kuwait (and potentially others) to ensure that tax revenues generated from these jurisdictions are not ultimately taxed by others. The pace of change on these proposals also suggests that tax reform, planning and compliance have significantly shifted gear for multinationals in the region.

The impact of these proposals will need to be carefully communicated to all stakeholders, and identifying appropriate next steps such planning, resourcing and budgeting will be critical as GCC-based businesses prepare for the changes.

although Kuwaiti tax law does not differentiate between foreign and GCC companies in practice only foreign shareholders in a GCC company (to the extent of their shareholding) or their direct operations tend to be subject to tax under Kuwait income tax regime. In the past there was also a lack of digital compliance portals in the Gulf.

However, most Gulf tax authorities have now developed online portals to assist taxpayers with their tax filing obligations.

The main area I would like to see change in Kuwait is the 5% tax retention clause. Every entity which deals with a supplier here has to retain 5% tax retention from payments made to that supplier until the supplier obtains a Tax Retention Release Letter/ Tax Clearance Certificate (TCC) from Kuwait Tax Authority (KTA).

This can cause cashflow issues particularly for taxable foreign contractors or suppliers doing business in Kuwait as they have to file an income tax declaration, pay income tax at 15%, and wait sometime for the tax audit and assessment to be completed by the KTA before a TCC is obtained.

ANY QUESTIONS?

DOES THE UAE HAVE INCOME TAX NOW?

What do the announcements on UAE Corporation Tax mean for tax on income there?

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On 31 January 2022, the UAE Ministry of Finance (MoF) announced that the UAE would introduce a Federal Corporate Tax on business profits. According to the implementation plan, Corporation Tax will be levied for financial years starting on or after 1 June 2023. UAE Corporation Tax will apply to all UAE businesses and commercial activities except those involving the extraction of natural resources, including oil and gas.

The MoF announcement on the subject, stated all activities undertaken by a legal entity would be deemed to be 'business activities' and therefore would be covered under Corporation Tax. Although, it is relevant to note that dividends and capital gains earned by UAE businesses from their specified 'qualifying shareholdings' will be exempt from it.

Foreign entities and individuals will also only be subject to UAE Corporation Tax if they conduct trade or business in the UAE in an ongoing or regular manner.

INDIVIDUAL'S INCOME

UAE Corporation Tax will not apply to an individual's salary and other employment income (in both the public and private sector). In addition, interest and other income which has been earned from bank deposits or saving schemes will not be subject to the Corporation Tax regime.

Similarly, dividends, capital gains and other income earned by individuals from owning shares or other securities in their personal capacity would also be treated as being outside the scope of UAE Corporation Tax.

Nevertheless, it is understood that an individual's activities could be considered and therefore be subjected to UAE Corporation Tax if an individual has (or is required to have) a business licence or a permit, including a freelance licence or permit, in order to be able to conduct such activities in the UAE.

In such cases a freelancer will not be taxed on the income they generate as a salary, but the company or licence which hosts their visa will be taxed on their net profit. There is also an outstanding question as to whether an individual, say a tax adviser operating under a profession rather than business licence would be liable. However, the MoF has already stated that an individual's investments in real estate (in their personal capacity), which does not require a commercial licence or permit to be carried out, would not fall under the scope of the Corporation Tax.

THRESHOLDS AND RATES

As a result of the introduction of the Corporation Tax in the UAE, an individual's business income up to 375,000 AED will be taxed at 0%.

The Corporation Tax rate will then increase to 9% for taxable income above 375,000 AED. This rate of 9% which is currently been cited would position the UAE as the lowest rate of Corporation Tax in all Middle East countries.

There will also be a special rate which will be applied to so called 'large multinationals'.

These 'large multinationals' will be defined as having consolidated global revenue exceeding Euro 750 million equivalent to 3.15 billion AED).

However, the UAE MoF has yet to announce the tax rate which will be applied to these so-called 'large multinationals'. Although at present the rate for large multinationals is expected by some commentators to be 15%, as per Pillar Two of the OECD Base Erosion and Profit Shifting (BEPS) project.

WHAT'S NEXT

Perhaps not surprisingly, following this groundbreaking announcement by the UAE Government that Corporation Tax is definitely coming to the UAE, there has been a lot of speculation in many quarters that the UAE Federal Government could also be about to introduce individual income tax in the UAE.

However, in an interview on 21 February 2022, His Excellency Dr Thani Bin Ahmed Al Zeyoudi, Minister of State for Foreign Trade clarified that the UAE will not introduce an individual income tax for the time being. In addition, in relation to the potential introduction of an individual's income tax, the Minister stated that, 'It is not at the table at all now'.

Therefore, starting from 1 June 2023, only income which is derived from activities undertaken by legal entities or by individuals in possession of a licence will be subjected to the UAE Corporation Tax. In addition, those foreign entities and individuals which conduct trade or business in the UAE in an ongoing or regular manner will also fall under the new UAE Corporation Tax regime.

This article was co-written by Alessandro Valente, International Tax Services and Transfer Pricing Manager at Crowe UAE, Dubai.

Contributor

Markus Susilo
Partner at Crowe UAE, Dubai

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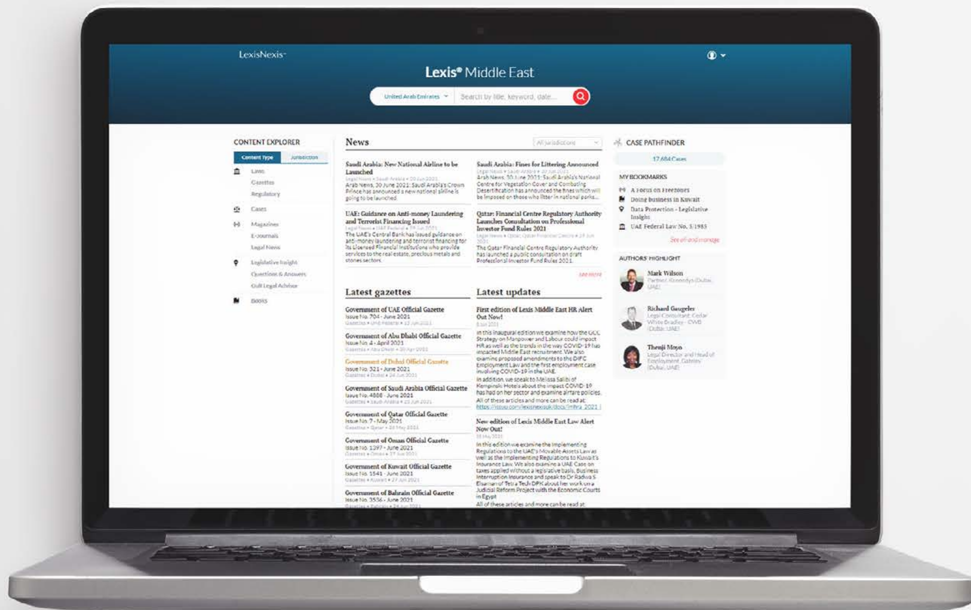

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