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Winter 2022



A ROUND UP OF TAX DEVELOPMENTS ACROSS THE MIDDLE EAST

# PILLAR 2: WILL IT IMPACT YOU?

How OECD's plans to ensure large multinational enterprises pay minimum levels of income tax will affect the GCC


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# PILLARS AND FOUNDATIONS

Over 130 countries, including most of those in the GCC, have signed the agreement on the OECD's Pillar 2 Model Rules (or Anti Global Base Erosion Rules). Their aim is to ensure going forward large multinational enterprises pay a minimum of 15% tax determined on a jurisdiction-by-jurisdiction basis by charging a 'top-up tax' if the Effective Tax Rate is below 15%. As a result, states across the world including in the GCC are currently making or thinking about policy changes to respond to this significant change in approach. In this issue we explain how the Pillar 2 Model Rules are being handled in different GCC states, when changes might happen and what sorts of options the GCC states who have not yet announced their planned response to this change could be thinking about. However, it is not just governments and tax authorities who have started to think about how they will tackle Pillar 2, the additional tax work it and other recent GCC tax proposals are expected to create going forward, is also creating a change in the specialist inhouse tax resource levels businesses across the region think they require. As GCC tax recruitment experts Alchemy tell us large numbers of GCC businesses have now decided, for the first time ever, to recruit an Inhouse Head of Tax to provide them with both practical and strategic help in dealing with these expected changes. This is not an easy thing to do - there are regional skill shortages in this area and these new Heads of GCC Tax are finding themselves at ground zero - working in companies where tax may not even have been a consideration before and they have limited existing infrastructure to build on. In this issue we also speak to Siegert Slagman, one of the new breed of GCC Inhouse Heads of Tax, on the lessons he has learnt and what he believes are the secrets to success and the priorities in the critical first 100 days, for others taking on a brand new role as a GCC Inhouse Head of Tax.

**Thomas Vanhee** - Editor in Chief

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# PILLAR 2: WILL IT IMPACT YOU?

OECD's Pillar 2 Module which ensures large multinational enterprises pay minimum tax levels on income will impact taxpayers across the globe. Rami Alhadhrami Partner–Tax and Regulatory Services at BDO Kuwait looks specifically at how it might affect GCC businesses.

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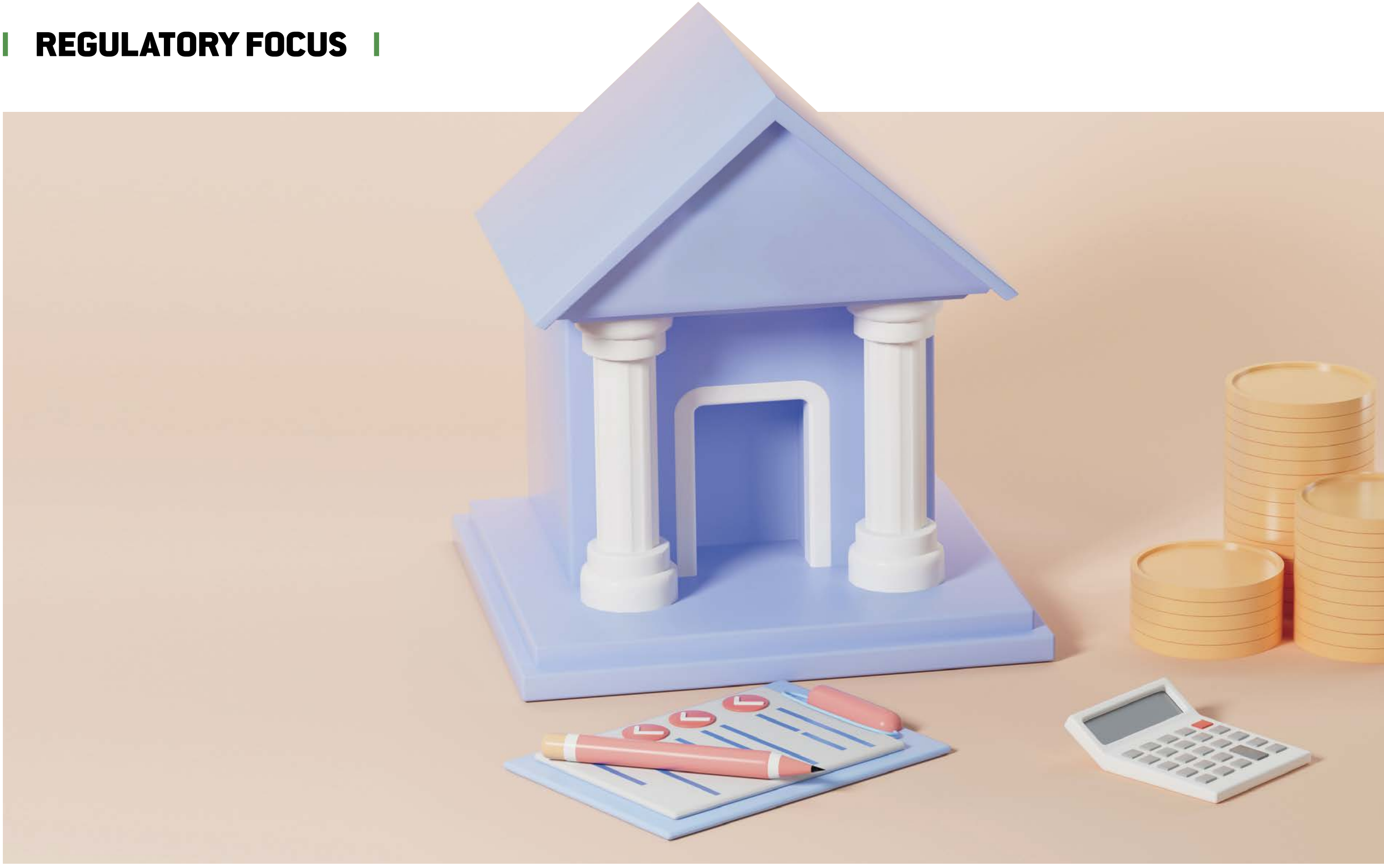
As part of its work on responding to the tax challenges which arise from the growing digital economy and its aim to ensure that large multinational enterprises (MNEs) pay a minimum level of tax on the income arising in each jurisdiction in which they operate, the Organisation for Economic Cooperation and Development (OECD) have issued Pillar 2 Model Rules (also called the Global Anti Base Erosion Rules). The proposed rules seek to ensure multinationals will pay a minimum of 15% tax determined on a jurisdiction-by-jurisdiction basis by charging a 'top-up tax' if the Effective Tax Rate falls below 15%. Over 130 countries including a number in the GCC have signed this agreement. These agreements provided for, amongst other things, the introduction of an Income Inclusion Rule (IIR) in 2023 and an Undertaxed Payments Rule (UTPR) in 2024. A number of jurisdictions including the EU, UK, Hong Kong, and Switzerland have opted to defer implementation to 2024. Understanding the approach being taken on this change in specific jurisdictions in the GCC is important.

## WHICH GCC COUNTRIES ARE AFFECTED?

With the exception of Kuwait, all GCC countries are part of the Pillar 2 Inclusive Framework (IF) and have committed to introduce Pillar 2. However, despite this Pillar 2 will have an impact on all the GCC countries, with Saudi Arabia and the UAE likely to be most impacted because of the size of their economies and companies which have a presence there. The UAE has been the first GCC country to announce that entities which are in-scope for Pillar 2 will be subject to a corporate tax rate which is higher than the proposed local CT rate of 9% (that is due to apply from the financial period beginning 1 June 2023). However, up until now GCC countries have been silent on how the introduction of Pillar 2 will apply in their jurisdictions including their expected timelines. Since key jurisdictions in Europe are likely to be first movers in introducing Pillar 2 Rules in 2024, the GCC countries would be expected to delay the implementation until 2024 if not later. There may also be some GCC countries that decide to adopt Pillar 2 only if a critical mass of other countries adopt it and possibly also after they have had the opportunity to monitor how the implementation goes elsewhere. It is also possible that different GCC countries could decide to follow different timetables. For example, the UAE and Saudi Arabia which have large numbers of MNEs may decide to press ahead with implementation, while smaller GCC countries with limited numbers of GCC head-quartered groups that meet the Pillar 2 threshold are likely to be slower with the implementation.

The Pillar 2 Rules apply to entities that are members of an MNE Group that has consolidated annual revenue of at least EUR 750 million (or



## PREPARE FOR PILLAR 2

- Assess information readiness and reliability
- Review capability of existing financial reporting systems and processes
- Develop a roadmap for Pillar 2 compliance
- Perform modelling exercises to understand potential tax impact
- Communicate with the C-suite on the potential tax impact and Pillar 2 compliance costs
- Determine if any disclosure is required in the financial statements
- Review corporate structure and supply chains in the context of the Globe Pillar 2 Rules

equivalent), adopted from BEPS Action Plan 13. Therefore, entities in the GCC which are part of an MNE group that meets this threshold will be affected particularly if the effective tax rate (ETR) in a jurisdiction falls below 15%. In both the UAE and Saudi this threshold will apply to considerable numbers of businesses, while in other GCC countries the impacted entities could be less. Looking at the size of listed companies, Kuwait has around 20 listed companies that could be in-scope for Pillar 2, whereas the rules may apply to less than 10 listed companies in Bahrain, Oman and Qatar respectively. There are also exemptions which apply to certain government entities (that are not conducting business and are largely fulfilling a governmental function), international and non-profit organisations, pension and investment funds, and certain types of real estate investment entities. In addition, there is an exclusion which applies to income from qualifying international shipping activities. Compliance with complex Pillar 2 Rules will be a challenge for affected GCC entities.

This will involve complex new calculations and reporting obligations. There may also be issues caused by data availability, systems capabilities, resource constraints and accounting implications.

If a GCC entity falls within the scope of these rules but the GCC country in which it is based has not put in place their own rules by the global deadline, broadly, what will happen will be, if that entity is currently subject to an effective tax rate below 15% and its group has a presence in a foreign country that is adopting Pillar 2, any shortfall between the global minimum tax of 15% and the lower tax rate (if any) in the GCC country will be levied in the foreign country that implemented Pillar 2 (via the IIR or the UTPR).

So, for example, if the Ultimate Parent Entity (UPE) was in a country that had implemented the IIR and had a subsidiary located in a low or no tax jurisdiction (such as Bahrain or Qatar), the UPE would pay the top-up tax to its own local tax authority for its low taxed subsidiary.

### NEXT STEPS IN THE GCC

GCC countries, which are part of the Inclusive Framework (IF) do not have an obligation to adopt Pillar 2 Rules locally. If they take this approach they can still be treated as having joined the common approach of the OECD's Pillar 2 Model Rules.

Alternatively, they could introduce Corporation Tax or adjust their existing corporate tax rate to, 15% across all entities, or they could selectively introduce a 15% tax rate only for constituent entities of MNEs that meet the Pillar 2 threshold.

To the best of our knowledge, other than in the UAE, at present there has been limited (if any) confirmation in the rest of the GCC countries on what will happen next. This may be because Pillar 2 could potentially trigger tax


| Country | Tax Rates % | Exemption to GCC entities from CT |
|---|---|---|
| KSA | 2.5% Zakat<br>20% CT | CT exemption available to GCC entities fully owned GCC nationals, or GCC's share in a GCC company. CT is largely applied on foreign entities. |
| Qatar | 10% CT | |
| Kuwait | 1% Zakat<br>2.5% NLST<br>15% CT | |
| UAE* | 9% CT<br>(higher rate for MNEs crossing €750mn turnover) | No exemption for GCC nationals |
| Oman | 15% | No exemption for GCC nationals |
| Bahrain | No CT | N/A |

*Tax rates in the UAE are yet to be enacted.

policy changes in those countries.

For example, at present, Bahrain faces a challenge as it does not have a corporate tax regime (except on certain hydrocarbon activities). Saudi Arabia, Kuwait and Qatar would potentially have to consider policy decisions on the removal of local or GCC tax exemptions from Corporation Tax. The least impact would be on Oman as the local Corporation Tax rate is already at 15% but it would still need to make legislative changes to introduce Pillar 2 Rules there if it chooses to adopt Pillar 2.

It is expected that the GCC countries which have not yet made announcements on their likely approach will speed up their work on Pillar 2 once there is acceptance, or enactment, of the GloBE rules by major jurisdictions like the US, EU and the UK. In terms of the potential approaches GCC countries may take to Pillar 2 when this happens, GCC countries may transpose the GloBE rules into their legislation to ensure consistency.

It is also possible that some of the GCC countries will take advantage of one additional option provided in the GloBE rules of introducing a 'qualified domestic minimum top up tax' (QDMTT).

This approach is also being considered by a number of other jurisdictions such as the UK and Switzerland. It ensures that any top-up tax which would otherwise be due under the Pillar 2 framework to a foreign jurisdiction would instead be payable to the local jurisdiction where an entity is based, through a local domestic minimum tax.

This option might be appealing for GCC tax authorities from a tax policy and an administrative standpoint.

**Rami Alhadhrami**
Partner Tax and Regulatory Services
BDO Kuwait

## NEXT STEPS BY THE OECD

At present the OECD is yet to issue the implementation framework on Pillar 2 which will provide guidance on certain aspects including administrative areas and a clarification on how QDMTT will be treated as 'qualified' for Pillar 2. The OECD is also working on the model treaty provision and the MLI to implement the STTR.

In terms of understanding likely timescales for this, it is worth noting that the recent enactment of Alternative Minimum Tax in the US, which is not totally in line with Pillar 2 Rules, and the delay in the EU, may lead to delays in Pillar 2 announcements regionally. Despite the absence of full consensus among EU members, five key jurisdictions in the EU issued a joint statement affirming their commitment to implement Pillar 2 in 2023.

As the GloBE Model Rules and commentaries have been issued by the OECD, tax authorities in the GCC currently have sufficient detail on this area to help them form their tax policies and begin public consultations. Entities within the scope of Pillar 2 will need to closely monitor the regional and global developments to identify which jurisdictions adopt the GloBE rules and/or amend their domestic tax policies.

Entities in-scope should begin with ETR assessment and review existing of structures, but it may make sense to potentially delay planned investments in enhancing existing reporting infrastructure, and recruiting additional resources to deal with additional work likely to be generated by the Pillar 2 rules until these are enacted in a jurisdiction where the affected entity operates and what needs to be done and when it needs to be done is clearer.

# THE FIRST 100 DAYS...AS HEAD OF TAX

As a result of recent tax changes in the Middle East, tax recruitment specialists in the region have seen increasing numbers of businesses wanting to hire their first ever Middle East Inhouse Head of Tax. Conor McHugh of recruitment specialists, Alchemy Search and Siegert Slagman, a Head of Tax, explain their experiences of recruitment of these roles and the crucial first 100 days in post.

“At the moment, Heads of Tax and Tax Managers are the most common roles we are being asked to recruit in the GCC,” states Conor McHugh. “Most of the companies hiring here are looking for a tax professional with broad experience, particularly candidates who already have industry experience, which has seen them involved in lots of M&A activity, international tax, corporation tax and transfer pricing. They will also expect the candidate to have solid VAT knowledge, although this skill set is not now as sought after as it was a few years ago.”

“At present most of the requests we are getting are from businesses in the UAE and Saudi, but there are also a few from Kuwait,” McHugh adds. “However, once the final UAE corporation tax legislation is passed, we expect there will be a dramatic rise in enquiries for these roles, in the UAE in particular. In Kuwait and Saudi companies tend to only consider Arabic speakers for these roles but in the UAE, the employers tend to be more flexible on this point.”

Conor McHugh, Alchemy Search

Siegert Slagman

## THE RECRUITMENT PROCESS

“At the moment, however, the pool of suitable, available candidates for these roles is limited, especially where companies are looking for inhouse experience,” McHugh states. “So, companies are also having to consider relocating candidates from abroad. At present on average the recruitment process can take four to six weeks but there are some cases when it takes three months. Most candidates will be looking at opportunities in multiple firms, so the quicker the recruit process takes, the more likely the business is to be able to hire the candidate they want, rather than the one they are left with.”

“Some businesses have been waiting until the UAE’s corporation tax law is finalised to recruit but given the lead in time to recruit and the

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fact this is a candidate short market, it is a good idea to plan ahead," McHugh continues. "This will ensure the business has the best of the talent pool in the market, as the longer a company waits to build their tax department, the smaller the tax candidate pool will be to choose from."

"I would also stress that when hiring a new Head of Tax, companies need to think about whether the candidate has the soft skills needed to manage a team as tax is going to keep evolving in this region, so the new Head of Tax will need to be able to build a bigger tax function."

## BUILDING A NETWORK

"If you become the Head of Tax in the Middle East, particularly in a business that has not previously had an inhouse tax function, in the first 100 days, there will be certain specific points you will need to focus on in order to be successful as the tax landscape here is changing very rapidly," states Siegert Slagman.

"To be of value to your new company in your new role as Head of Tax you will need to ensure you have built a strong network throughout all relevant functions in the company, as soon as possible," Slagman continues. "This is an environment where tax is still relatively new (although Customs Duties have a longer history in the GCC region) so you need to ensure as quickly as you can, all relevant functions and departments are aware of the potential tax impacts of their business decisions."

"This means making good connections with colleagues in Finance and Accounting and also reaching out to other departments, such as Legal, Supply Chain/ Operations and IT," Slagman adds. "These connections help you gain more knowledge about the company and its business. It is important you understand the company's culture and values too, so you can also understand its history of decision making and risk taking."

"Those coming from outside the Middle East region, for example from Europe, will also find that as well the professional aspects of their new role, there will be a huge cultural change to manage," states Slagman. "In some cases, it is better to absorb information and understand why certain decisions have been made in the past first, rather than instantly questioning

## FIRST 100 DAYS

- **Build a network**
- Showcase your value add
- **Understand the business and its business models**
- Draw up a tax profile overview
- **Look for quick wins**
- Assess available resource and determine if changes are needed in the insourced, outsourced or co-sourced mix

everything you see and find, especially as historic decisions may have been made without considering Indirect and Direct tax aspects, which is understandable in a region where tax is still relatively new."

### ADDING VALUE

"After having identified and got to know the tax function stakeholders, it is important as a Head of Tax you begin to showcase your value add to the company," Slagman adds. "In a region where tax is still fairly new in most countries, it is important to understand the business reaction on tax risks and opportunities. It will also be important to explain the rational of different taxes which you can show with examples of how tax works in countries with mature tax systems. For example, explain how decisions made with an Indirect Tax benefit can have a negative impact on Direct Tax or Transfer Pricing purposes and vice versa."

### BUSINESS AND BUSINESS MODELS

"As an in-house tax professional, you are part of the business. In the past in the Middle East, you may have come across situations where it was said the business wants to do this or that and the tax function needs to review and/or approve. These days are over in the Middle East," Slagman explains. "Tax is now touching so many aspects of any company's operations and business that as a valuable Head of Tax you need to fully understand your company's business and operations, and be part of it in order to add value."

"It is also important from the beginning to be clear about which business models are used within the company and ensure that all stakeholders are aware of the opportunities and limitations from a tax perspective of those applicable business models."

"In the Middle East we now have Country by Country Reporting (CBCR), new taxes being implemented, Economic Substance Regulations (ESR), Pillar 2 (BEPS 2.0), and Environmental, Social and Corporate Governance (ESG) operating," states Slagman. "In addition, there is a demand for transparency from all angles, so it is even more important to be able to connect the business needs with relevant and acceptable business models from a tax perspective. It is vital to show the impact of decisions on different taxes."

### TAX PROFILE OVERVIEW

"As a new person responsible for an area which is now more in the spotlight, it is also important as soon as possible to have an overview of relevant tax aspects," Slagman adds. "For example, think about the legal entity structure, where are most profits made, which business models apply, where the most crucial tax audits happen and create an overview of all tax filing obligations. It is also important to understand the numbers behind the tax filings and 'discover' what were the most material tax issues in the past (and how they were resolved going forward)."

"You also need to ensure in a relatively short time that you create a control framework for tax processes so that you and the rest of the management feel comfortable," Slagman states. "If you have inherited an existing tax control environment you need to understand if it is effective and up to date."

"This includes what controls are in place, if there is an overall tax policy and a tax training or e-learning programme," Slagman adds. "Along with the overall tax strategy, you need to understand the tax risk appetite and company's overall culture on risks in general. If a new Head of Tax is to succeed it is also important the CEO/CFO or even the board sign off on an overarching tax policy that applies to the whole company. In addition, as well as tax and business information, the availability and quality of tax resources also needs to be assessed, and if any of these elements are non-existent, a plan will need to be created to address them in the first months."

### QUICK WINS

"If you are able to identify quick wins in the first few weeks in your new role, the company will instantly recognise the value you can add as a business partner minded tax professional. This also helps the tax department become a trusted go to partner for business decisions with tax implications."

### RESOURCES

"It is important to understand how many FTEs you have available as tax resources and which budgets are available for consultants, software and knowledge," Slagman adds. "Apart from pure tax resources, there may also be internal stakeholders who are involved in tax processes or spend time on it (so called hidden tax FTE). You will need a holistic view on this area as without it, it is hard to decide which areas available resources should focus on. You should assess if these resources are being used in the most efficient manner. You will also need to decide if new resources are needed, if available budgets are sufficient and if the tax department's operating model, e.g. centralised or decentralised, can meet the business' needs. This includes determining if tax processes should be insourced, outsourced, co-sourced or if a mix of these operating models should be used."

"If you can quickly show you understand the business, can provide tax perspectives and achieve quick wins, stakeholders will involve you in decision making processes but give yourself sufficient time to learn about the business. If you create the right operating model which makes efficient use of available resources, you will find your role as the new Head of Tax much easier."

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# TAX NEWS ROUND-UP

COVERING RECENT KEY DEVELOPMENTS – REGION-WIDE

UAE

## TAX REFUNDS FOR TOURISTS

Decision No. 4/2022 which repeals Decision No. 4/2019 has been issued by the UAE Federal Tax Authority (FTA). It requires the operator of the Tax Refund for Tourist Scheme to set a deadline of one-year for tourists to claim VAT refunds from the date of verification of the refund request. Refunds can be obtained via a bank card or in cash. The scheme operator must disclose these time limits in their published list of terms and conditions. If refunds are unclaimed after this period, the Scheme Operator has to deliver the money to the FTA within a month.

The FTA has also announced a facility, called the 'innoVATive' system which will enable tourists to claim VAT refunds of their purchases made in the UAE, without having to have paper receipts with them at their UAE departure point. Previously, tourists in the UAE had to have all their physical receipts with them in order to claim the refund, and the process was lengthy and cumbersome. The new digital approach to tourist VAT refunds has involved integrating retail merchants with government systems. Tourists can scan their passports to access their receipts and also choose their preferred refund method. Self-service kiosks at airports, hotels, shopping malls and UAE departure gates help facilitate the system.

## CHANGE ON EXCISE TAX

Amendments have been made to Federal Decree-Law No. 7/2017 On Excise Tax. The changes mean that those who import goods for non-business purposes will be exempt from tax registration. However, they will remain liable to pay the relevant Excise Tax on the import. Other changes include that the Federal Tax Authority (FTA) may not conduct a tax audit or issue a taxable tax assessment five years after the end of the relevant tax period except with some exemptions detailed in Article 25 bis (2), (3), (6) and (7) of Federal Decree-Law No. 7/2017.

## VAT ON CONSTRUCTION

The Federal Tax Authority (FTA) has confirmed that UAE citizens can reclaim the VAT on building more than one residence. This can be done if they request the refund for each residence separately. However, in order to make a claim, a number of conditions must be met. These include that the residence must be newly built on land owned by a citizen and the building must be used exclusively by a citizen or their family. The building should also meet the definition of a 'dwelling' which includes small homes and villas. In addition, it must be used predominantly as a private home for a natural person.

DUBAI

## AUTHORISATION CERTIFICATES

Dubai Customs' Valuation Department has been highlighting efficiencies that can be gained by freezone companies who use their website to obtain authorisation certificate approval.

Using a service on Dubai Customs' website, freezone companies can now accept invoices issued in a country of origin. Dubai Customs has stressed that using this method can help freezone companies reduce costs and also help them improve their returns.

ABU DHABI

## EASIER IMPORT AND EXPORT ADMIN

The General Administration of Abu Dhabi Customs has launched a smart classification system which is designed to help users quickly identify the correct HS code for goods they wish to import or export. The system has a search engine which is powered by artificial intelligence and allows users to easily identify applicable customs duties, taxes and restrictions.

SAUDI ARABIA

## VAT CHANGE CONSULTATION

The Zakat, Tax and Customs Authority (ZATCA) has issued a public consultation on proposed changes to the VAT Executive Regulations, Saudi Arabia Administrative Decision No. 3839/1438 On the Approval of the Implementing Regulation of the VAT Law. The proposed changes are to Article 33 of Saudi Arabia Administrative Decision No. 3839/1438 which covers services supplied to non-residents of GCC countries. It is proposed that a new Article 33(3) would be added to these

## TAX TREATY UPDATE

**Kuwait:** A protocol amending the Kuwait– Luxembourg Double Taxation Treaty which covers Mutual Agreement Procedures, exchange of information, and entitlement to benefits has been approved by Kuwait.

**Kuwait:** South Africa has approved a protocol amending the Kuwait-South Africa Double Taxation Treaty which involves residence, dividends, capital gains, and exchange of information.

**Oman:** The Kazakhstani Ministry of Finance has issued a press release about a draft government resolution authorising the signature of a Double Taxation Treaty with Oman.

**UAE:** The UAE has signed a Double Taxation Treaty with Tanzania.

**Oman:** The Russian Government has authorised the signing of a new Double Taxation Treaty with Oman.

**Qatar:** The Czech Republic's Senate has approved the signing of a Double Taxation Treaty with Qatar.

Regulations. This would state, 'Without prejudice to the provisions of the second paragraph of this Article, the supply of services to a non-resident customer in any of the member states is subject to the zero rate in cases where the supply facilitates the supply of taxable services by that non-resident customer to a person in the Kingdom'. A Saudi registered supplier would be eligible for zero rate on supplies of services to a non-resident customer, if such supplies, in turn, facilitated the supply of taxable services by that non-resident to a person in Saudi Arabia. The Saudi Arabian VAT zero rating provisions have been subject to a lot of debate and have been applied in a conservative way by auditors. The aim of this change is to clarify the meaning of Article 33 of Saudi Arabia Administrative Decision No. 3839/1438, even though this principle has already been laid down in ZATCA guidance. The consultation period ended on 11 November 2022.

QATAR

## DIGITAL TAX STAMPS

Qatar's General Tax Authority has introduced a new digital tax stamp system for goods subject to Excise Tax. This means the import of tobacco products and their derivatives which do not have a valid and activated digital tax stamp will not be permitted from 13 October 2022. Importers of cigarettes who are registered for Excise Tax in Qatar have been able to submit requests for these digital tax stamps since July 2022.

## USE OF ATA CARNET PERMIT FOR TV EQUIPMENT

Qatar Chamber and the Qatari General Authority of Customs have announced the implementation of the temporary use of the entry book for goods, ATA Carnet, for professional products which are used as television broadcasting equipment during the FIFA World Cup in Qatar. The ATA Carnet is an international customs document that allows duty-free and tax-free temporary import and export of goods for up to one year. The system is applied to import-export goods that will return to their country of origin within the period, which is approved by customs authorities. The General Authority of Customs (GAC) will set a deadline for the re-export of the goods that enter Qatar using the temporary ATA Carnet.

OMAN

## VAT AMENDMENTS

The Oman Tax Authority has issued Oman Ministerial Resolution No. 456/2022 in order to harmonise controls on some tax policies, by amending provisions of the Executive Regulations of the VAT Law. The Ministerial Resolution amends Oman Decision No. 53/2021 Issuing the Executive Regulations for the VAT Law. Amendments will be made to areas include exempting financial services; determining the deadlines for issuing tax invoices; provisions on the application of the electronic tax invoicing system and documentation requirements.

## INCOME TAX EXEMPTIONS

Oman's Tax Authority (OTA) has announced the controls and conditions which will apply for the income tax exemptions for companies which operate in sectors which Oman is targeting for economic diversification. The exemptions will relate to income earned by companies which started their operations between January 2021 and December 2022 who will be exempt from Income Tax for five years. The sectors will be tourism, logistics, fisheries, agriculture, and mining. In order to claim an exemption, the company should to be established in Oman as per the law. They should be registered with the Ministry of Commerce, Industry and Investment Promotion (or under any other applicable law) with Oman as their main centre for their management or operations. The company should also be authorised to engage in the relevant sectors and be registered in accordance with the laws and regulations that govern the practice of the activity during the exemption period. These tax-exempt companies should file income tax returns as per the Income Tax Law, Oman Sultani Decree No. 28/2009 following the same rules to determine the taxable income. These exemptions are cancelled if companies do not file their tax returns.

## IN BRIEF

**Oman:** The Oman Tax Authority (OTA) has urged tax payers to update information on their institutions on the authority's website www.taxoman.om...

**Dubai:** The Dubai Court has rejected a Danish request for the extradition of a British man suspected of masterminding a $1.7 billion tax fraud...

**Saudi Arabia:** The Zakat, Tax and Customs Authority (ZATCA) has issued VAT Guidelines for Electronic Contracts...

**Egypt:** The Egyptian Cabinet has approved a draft law allowing Egyptians with a valid legal residence abroad to import a car without having to pay customs duties or taxes including VAT...

**UAE:** Cabinet Decision No. 82/2022 has been issued on the recovery of input tax paid for the construction and operation of mosques...

**Saudi Arabia:** Saudi Arabia Ministerial Decision No. 58510/1443 has been issued on the exclusion of the state's liability for deductible tax due in Clause II of Saudi Arabia Decree No. 2218/1440...

**Turkey:** Turkey Law No. 7420/2022 which has amended the Income Tax Law and Certain Laws and Statutory Decrees has introduced new tax treatment in the event of a capital reduction...

BAHRAIN

## AL-MU'ASSEL MARKS

Bahrain's National Bureau for Revenue (NBR) has announced the stages and date for applying a distinctive mark to shisha tobacco and a Decision has been issued on the subject. Those registered for selective tax purposes must submit purchase requests for the distinctive Al-Mu'assel marks through the approved electronic system from 20 November 2022. Mu'assel tobacco will not be able to be imported into Bahrain from 18 June 2023, if it does not have a valid, activated distinctive mark.

The aim of these marks is to track excise goods from the manufacturing stage to the consumption point to limit smuggling in Bahrain and reduce the possibility of Excise evasion.

# FOCUS ON DOUBLE TAXATION AGREEMENTS

With effect from 1 January 2020, Saudi Arabia and the UAE have implemented a treaty to avoid double taxation. This Double Taxation Treaty (DTT) between the UAE and Saudi Arabia provides significant advantages for businesses which are operating in the two contracting states. It has two key aims to avoid double taxation and prevent tax evasion.

## WHO BENEFITS?

Only residents of the two contracting states are entitled to benefit from this treaty as per Article 1 of the DTT.

Saudi Arabia has generally adopted this residence principle in its most recent DTTs while the UAE has in the past, for example in its DTT with Brazil, used citizenship as the criteria for eligibility. A resident is defined as a person who is liable to tax in a state because of their tax domicile, residence, or a legal entity established and operated in accordance with the contracting state's laws. In this context a person can be an individual, a company, any other body of persons including the government, their administrative subdivisions or their local authorities. This is also in line with Cabinet Decision No. 85/2022, which defines a tax resident as a corporation that was established in accordance with UAE laws, or that person is resident in the UAE, physically present in the UAE for a prescribed period.

Under Article 27 of the DTT, investments owned by governments (e.g. the Central Bank, financial authorities and governmental body investments) are exempt in the other contracting state. In addition, income from these investments (including the alienation of the investment) is also exempt.

The DTT also expressly qualifies as resident any legal person established, existing and operating in accordance with the legislation of the contracting states and generally exempt from tax if this exemption is for religious, educational, charity, scientific or any other similar reasons; or if this person aims at securing pensions or similar benefits for employees, as being eligible to benefit from the agreement.

It should be noted that the DTT does not specify whether this residence concept also applies to businesses which are established in UAE freezones or in one of Saudi Arabia's Special Economic Zones.

The competent tax authorities are required to coordinate to determine the requirements and conditions that will need to be satisfied to be entitled to any tax benefit granted by the treaty, but the treaty should cover free zones entities, based on the UAE definition.

## PERMANENT ESTABLISHMENT

Multinational businesses which do business in foreign countries are generally subject to the domestic tax laws of the countries in which they do business in. DTTs contain a permanent establishment concept which creates a minimum threshold below which a source country will not attempt to tax a foreign enterprise's business income. A Permanent Establishment is defined as a fixed place of business through which the enterprise's business is carried out in whole or in part. The UAE/Saudi DTT's Permanent Establishment clause has been largely based on the OECD Model Tax Convention but also has two elements that have been inspired by the UN Model. It should be noted that it qualifies a building site, construction or installation project after six months as a Permanent Establishment. A service Permanent Establishment is also defined as providing services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose if their presence lasts for a period or periods aggregating more than 183 days in any 12-month period.

## RELEVANT TAXES

In Saudi Arabia, the DTT covers income tax and Zakat. However, as is also the case in a number of other Saudi Arabian DTTs, such as those with Georgia, Mexico and Kazakhstan, Article 24 of the DTT states, in the case of the KSA, '[...] the methods for elimination of double taxation will not prejudice the method of collection of Zakat'. While in the UAE it covers income tax (despite the fact that there was no Federal Income tax when this agreement took effect). In the UAE the treaty will be relevant in the context of income tax. (Each Emirate has its own income tax law, but only profits of the oil and gas and banking sectors are currently taxed. However, at the time of writing, the UAE is in the process of introducing its income tax regime commencing from 1 June 2023.) It should be noted that no withholding tax regime applies in the UAE. The table below shows the impact on withholding tax rates in Saudi Arabia as a result of the treaty.

| Type of Payment | Domestic WHT rate in KSA | Treaty |
|---|---|---|
| Business profits | 5% - 15% - 20% depending on the type of service | - |
| Dividends | 5% | 5% |
| Royalties | 15% | 10% |
| Interest | 5% | - |

A limited withholding tax will apply on dividends, interest and royalties in cases where the recipient does not have a permanent establishment in the source country.

## MUTUAL AGREEMENT PROCEDURES

The DTT also provides for a mutual agreement procedure (MAP) in Article 25 of the DTT which can be requested from the competent authority in any of the contracting states within three years from the first notification of the action which has resulted in taxation in a way that does not follow the treaty's provisions. Under Article 27 of the DTT, investments owned by governments (e.g. investments of Central Banks, financial authorities and governmental bodies) will be exempt in the other contracting state. The income from such investments (including the alienation of the investment) is also exempt.

## PREVENTING EVASION

A key aim is to prevent tax evasion. Therefore, entitlement to benefits from the treaty will not be granted if it is reasonable to conclude that one of the main aims of the transactions or the arrangements was to benefit from the treaty, unless it can be shown that granting this benefit in the circumstances would be in line with the aims and objectives of the agreement. It should also be noted there are no provisions in the DTT for non-discrimination, assistance in the collection of taxes or territorial extension.

This article is based on a Practice Note originally published in Lexis Middle East Law written by Zain Satardien, Global Trade and Tax Law Leader, Hourani & Partners (Dubai, UAE).

# TAX PROFESSIONAL PROFILE

## HEAD OF TAXATION – RETAIL

# MANAGING CHALLENGE AND CHANGE WITH TECHNOLOGY

Nitin Agarwal, Head of Taxation at Majid Al Futtaim Carrefour UAE talks about how successful major transformation projects have made him more confident and prepared to deal with future tax changes and challenges.

### YOUR BACKGROUND?

I am a Chartered Accountant from the Institute of Chartered Accountants of India and have a Bachelor of Commerce (Honours) from Dibrugarh University, India. Currently I am pursuing the INSEAD Global executive MBA in Fontainebleau, France. Having worked with respected billion Dollar businesses in Middle East in Tax and Audit, understanding the business context is my key strength. Early years in internal audit have instilled strong process, systems design and analytical skills in me.

### YOUR BUSINESS

I currently manage a diverse team with a wide portfolio of responsibilities in a large family-owned conglomerate - Majid Al Futtaim Carrefour in Dubai, UAE. It is an Emirati holding company which owns and operates shopping malls, retail, and leisure establishments in the MENA region in 16 countries. Its retail arm owns the Carrefour franchise and trades goods mostly in the B2C segment.

### YOUR WORK

I currently lead a team with a sizeable portfolio of responsibilities who take care of VAT and Excise tax compliance, digital transformation and business partnering. Prior to my role with MAF, I led tax at Landmark Retail, Dubai after having successfully delivered a strategic transformation project to implement VAT in 11 divisions of their $6Bn retail business in the UAE and Saudi. As part of this project, I trained over 20,000 employees on VAT awareness across business functions. My role now largely focuses on UAE VAT and Excise Tax compliance, and I am actively engaged in transforming the tax function. I led a cross functional team which implemented a market leading tax technology platform, set up a robust master data governance framework and simplified processes to improve visibility, reduce risks and optimise compliance costs. This work also laid foundations for the subsequent roll-out of the platform across other countries we operate in. The philosophy of compliance by design is at the heart of my transformation initiatives. With governments moving towards Tax

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Administration 3.0, the aim of transformation initiatives is to build an agile, resilient business with the ability to seamlessly integrate its natural systems into the wider framework, when needed.

My goal is to empower the business with insights to make appropriate decisions in the perceived tax context. The introduction of Excise Tax on sweetened drinks was a classic example where tax teams partnered with commercial teams, not only to comply with the legislation, but also to drive new strategy, which led to the introduction of a wider range of 'No sugar added' beverages in the market. With the introduction of UAE Corporate Tax, we will again be collaborating heavily with the rest of the business. Technology plays a key role in letting tax teams do what they are meant to do - tax, not spend 70% of their time in juggling data. The ability of middle eastern tax jurisdictions to leapfrog on the adoption and use of technology is inspiring in this context and taxpayers in the region have been leading from the front in support of the administrators' efforts. I have led teams responsible for upgrading ERP and legacy systems, so they are tax compliant, have developed RPA enabled tax data validators, and have implemented tax compliance tools as well as the full suite of tax determination engines in my roles. My experience has been that digital

## PRACTITIONER PERSPECTIVE

**Michel Ruitenberg**
Tax Director
Crowe

Michel Ruitenberg, Tax Director at Crowe looks at how Excise Tax, an important compliance area for retail businesses, has changed in the UAE and the differences in how it operates there, to other GCC countries.

Excise Tax is an indirect tax imposed on limited excisable goods, which aims to reduce consumption of goods that are potentially harmful to health or the environment while also raising revenues for government. Since 2017, Excise Tax has been covered in most GCC countries' national laws, except Kuwait. In the UAE Excise Tax has been effective since 1 October 2017. During this time, the Federal Tax Authority (FTA) has developed several Excise Tax mechanisms in line with international best practice. The UAE database of excisable goods has increased from 3,078 products in 2017 to 30,834 as at September 2022. The Digital Tax Stamp has also been introduced to allow the tracking of tobacco and tobacco products electronically from the production facility until they reach the customer, in order to prevent smuggling of illegal products and tax evasion. The FTA has also published 12 Public Clarifications, 107 Private Clarifications, and 30 Guides and User Guides on Excise Tax, in addition to legislation, clarifications, and guides on tax procedures in general that also apply to Excise Tax. With effect from 14 October 2022, Federal Decree Law No. 7/2017 the Excise Tax Law was amended. The most important changes have included the introduction of a five-year statutory limit for tax audits or tax assessments which in tax evasion cases have been extended to 15 years. In addition, the submission of a voluntary disclosure is also now limited to five years and there has been a new exception on registering for Excise Tax where the person is not regularly importing Excisable goods. In addition, any person receiving an amount as Excise Tax or issuing an invoice that mentions Excise Tax is responsible to pay the Excise Tax to the FTA. One other recent change which has been seen in UAE Excise Tax has been that in July 2022, the FTA announced that they had intensified their inspections on the compliance with the rules on Digital Tax Stamps for tobacco products and on the payment of Excise Tax on soft drinks, energy drinks and sweetened drinks by 104% in six months. This has led to 5.5 million packages of tobacco products which did not bear the required Digital Tax Stamps being seized. There has also been an assessment of 130.4 million AED in tax liabilities on 1.07 million packages of selected goods, including soft drinks, sweetened beverages, and energy drinks. In addition, 1,213 tax law violations have been issued to various facilities and 404 UAE non-registration notices have been sent to violating entities. There are some important differences between how Excise Tax operates in the UAE and other GCC countries which are worth noting. While Excise Tax has been effective in the UAE since 1 October 2017, it has been in effect in Saudi from the slightly earlier date of 11 June 2017 and in Bahrain from the slightly later date of 30 December 2017. Qatar and Oman did not bring Excise Tax into effect there until 1 January 2019 and 15 June 2019 respectively, and in Kuwait this tax has not yet been implemented. However, the GCC countries which have implemented Excise Tax have all done so at a particular rate for particular products - a tax rate of 100% for tobacco and tobacco products, liquids used in electronic smoking devices and tools, electronic smoking devices and tools and energy drinks but at a rate of 50% for carbonated drinks. In addition, in the UAE, Saudi and Oman, sweetened drinks are also subject to Excise Tax at the rate of 50%. While in Oman and Qatar, there is a class of Special Purpose Goods, which includes alcoholic and pork products, that are also subject to Excise Tax at a 100% rate. It should be noted that the UAE does not levy Excise Tax on Special Purpose Goods. Another difference in the way the UAE operates Excise Tax and the way it is operated in other GCC states which have implemented this tax, is that in the UAE, Excisable goods that are kept in a Free Zone that qualifies as a 'Designated Zone' are not taxed, as in the Designated Zone, these goods are not considered to be in free circulation in the UAE. However, the movement of excisable goods in and out of a Designated Zone is strictly monitored and controlled. In contrast the GCC countries that have implemented Excise Tax do not have Designated Zones and related rules in this area on Excise Tax. Since its implementation in the UAE in 2017, Excise Tax has been considered a success by the UAE government both in terms of meeting its objectives and revenue generation. New technology is also being used to make the administration of Excise in the UAE more efficient. As a result of both the recent changes in Excise Tax Law in the UAE and the increased level of audit inspections by the FTA, businesses that are either producing or importing Excisable goods into the UAE are advised to review the historical Excise Tax returns they have submitted to the authorities there in the last five years and make any corrections that are necessary. The success the introduction of Excise Tax has had in reducing consumption of harmful goods in the UAE could also see the scope of Excisable goods there being expanded in the future.

transformation of tax and related processes reduce tax teams' efforts on non-productive and repetitive tasks in a meaningful way.

This is true for multinational businesses operating across continents, where tax rules in other jurisdictions can also influence and guide decision making and the operating model in most, if not all multi-country arrangements and transactions. In line with Tax Administration 3.0, taxation should be increasingly joined-up with other government services and functions in order to take this digital transformation to the next level. One such example can be where product registration is done by multiple authorities for example, for food products, medicine and equipment. Unified product classification can facilitate accurate taxation.

# ELIGIBLE FOR WORLD CUP TAX EXEMPTIONS

Qatari authorities are granting special World Cup Tax Exemptions but who is eligible and for what?



The World Cup will be taking place in Qatar from 20 November to 18 December 2022. As a rule, international sports bodies typically insist on obtaining widespread tax exemptions as a precondition to awarding hosting rights for international tournaments to a bidder. This is also the case with the Fédération Internationale de Football Association (FIFA). As a result, Qatar Ministerial Decision No. 9/2022 has been issued and provides details on the tax exemptions that are available as a result of the tournament to a range of parties, based on a Government guarantee which Qatar issued to FIFA in 2010. The most comprehensive benefits have been provided to FIFA itself, FIFA Event companies and FIFA's subsidiaries who enjoy blanket exemptions from direct and indirect tax, as long as the activities are related to the World Cup.

## MAINLAND EXEMPTIONS

Contractors are being granted a more limited exemption on all taxes on import, export or transfer of goods, services and rights that relate to World Cup activities. For example, the goods need to be imported for use by FIFA's contractors with the possibility of returning them or donating them to bodies such as sports entities or charitable foundations at the end of the tournament.

Individuals who are employed or appointed by FIFA or its affiliated organisations are also exempt from individual taxes on payments, fringe benefits or amounts paid or received in relation to the World Cup, until 31 December 2023. This may be less relevant, for natural persons, as there is no personal income tax in Qatar.

An Excise Tax exemption can also possibly be obtained by way of a refund, if documents such as purchase invoices and bank details are provided.

In order to claim customs duty exemptions, eligible individuals or organisations should be included in a list approved by FIFA that has been given to the General Authority of Customs (GAC). This list contains various details about the parties (such as their number of registrations and details of relevant individuals). A Tax Exemption Certificate is then provided to the General Tax Authority (GTA) with relevant documentation, such as the Articles of Associations of companies or individuals' addresses.

In addition, earlier this year the GAC launched a 'Sports Events Management System' to facilitate customs procedures during sporting events, including the World Cup. This system provides electronic services for the clearance of goods, including easy registrations, accelerated customs procedures, and there is a special unit which helps facilitate approvals for incoming shipments.

## QATAR FINANCIAL CENTRE

Even though Qatar has a number of Free Zones, only the Qatar Financial Centre (QFC) issues its own tax framework which runs alongside the general tax framework that applies to the rest of Qatar. In terms of the World Cup, the QFC has issued a Concessionary Statement of Practice which explicitly provides that a QFC entity which is a FIFA subsidiary is exempt from Corporation Tax and any other charge, levy, penalty or related interest. In addition, a FIFA Host Broadcaster or a Local Organising Committee (LoC) Entity, is exempt from tax 'in relation to taxable profits that are derived from activities carried on for the purposes of the World Cup'.

Among the conditions which apply to these QFC entities is that they should establish that they have genuine economic substance in Qatar.

## VAT

Although Qatar is a part of the GCC VAT Agreement and is committed to implementing VAT in the same vein as the UAE, Saudi Arabia, Bahrain and Oman have done, it has not yet enacted any VAT legislation.

Therefore, there is currently no need for a VAT exemption for the World Cup.

## VALUE OF THESE TAX EXEMPTIONS

Granting tax exemptions for international sporting events can sometimes be controversial, as the public in some hosting countries do not always believe they have received a return on investments from the event. In Qatar the effect of these tax exemptions is rather limited, and for Qatar at least the money spent seems to have been worth the investment. These exemptions are a precondition, without which a country cannot bid. The UAE has hosted the FIFA Club World Cup a number of times and Saudi Arabia is looking at hosting the Asian Winter Games in 2029. Similar tax concessions to the international organisations managing these events have also been seen in those cases.


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# Global Trade Law in the Middle East

## Essential principles for the Gulf States

This book provides an analysis on the laws of international trade in the Middle East, focusing on the Gulf Cooperation Council countries – the UAE, Saudi Arabia, Qatar, Bahrain, Oman and Kuwait (the GCC). Considering the rising importance and evolution of international trade and related laws in this region, the book provides a deeper understanding of the core international trade law principles applicable in the GCC Union, the Common Customs Laws and the impact of these laws on global trade in the region. Individual chapters provide further legal analysis and thought on technical areas such as HS classification, customs valuation, rules of origin, and preferential treatment. Bilateral and multilateral free trade agreements are also examined, alongside duty saving regimes, industrial exemption mechanisms and admission schemes. Additional consideration is given to the disposition of GCC countries in relation to international trade law frameworks, treaties and conventions, the applicable WTO based trade remedies regimes, the relevant export controls laws, and the relevant sanctions laws applicable in the region.

This work is a first of its kind, and offers to present a concise and practical guide to general counsel, global trade consultants, indirect tax consultants, business owners, and students, or anyone who has an interest in the region's applicable global trade and customs laws.

- Are you interested in the GCC global trade law regime and how these laws impact business?
- Do you seek a much deeper understanding of the applicable technical trade laws and concepts, accompanied with related 'on the ground' practical insight and analysis?
- Are you interested in understanding the practicalities of trade and customs law regimes such as duty saving mechanisms, customs enforcement, trade remedies, export controls laws and sanctions laws in the region, or how they might affect business?
- Do you need an easy-to-understand resource where you can find all the above in one place?

Sign up now to receive a free e-copy of this new book being published later this year by Hourani & Partners and LexisNexis. Authored by Zain Satardien, Global Trade and Tax Law Leader, with Hourani & Partners.

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