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GULF TAX

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FEATURE INVESTMENT APPROACHES
UAE tax rules on investment funds and investment management services

PROFILE BAHRAIN AND OMAN
Ashrujit Mandal of BDO LLP

ANY QUESTIONS
What's a Tax Assessment Review?

A ROUND UP OF TAX DEVELOPMENTS ACROSS THE MIDDLE EAST

PILLAR TWO - WHAT NOW?

Domestic Minimum Top-Up Tax in Bahrain and next steps across the GCC

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WHAT AND WHERE

On the face of it, the Organisation for Economic Cooperation and Development (OECD)'s Pillar Two or Global Anti Base Erosion Rules (GLOBE Model Rules) are a fairly straightforward concept - large Multinational Enterprises should pay a minimum level of tax in each jurisdiction that they operate in. Over 140 countries have already signed up to this concept including all the GCC states. A number of countries including the UK, France and Germany have also already implemented local tax laws based on Pillar Two. However, what makes this complicated, particularly for Multinational Enterprises which operate in a whole host of different jurisdictions is getting to grips with the stage each of those jurisdictions is currently at and the approach the specific jurisdictions have decided to take. The problem is that the tax authorities in different jurisdictions are choosing to take very different approaches. This is particularly true in the GCC where the options being taken range from some jurisdictions which are yet to make any formal announcements to one - Bahrain which has now issued a specific law on the taxation of multinational enterprises which is due to come into force on 1 January 2025. As a result, we have decided in this issue to look at the approaches being taken in each of the GCC jurisdictions - as well as explaining the new provisions which are due to come in, in Bahrain. Companies which are affected by this new law have been given quite a short time to react, and there are also a number of issues which will only become clear when the implementing regulations to this new law have been issued.

However, it is worth noting that the authorities in Bahrain have stressed that OECD rules and guidance will be taken into account when implementing the provisions of this new law, so it is worth companies taking the time familiarisation with them. This may also be good advice for those operating in jurisdictions where the position is less clear than in Bahrain.

Claire Melvin - Editor

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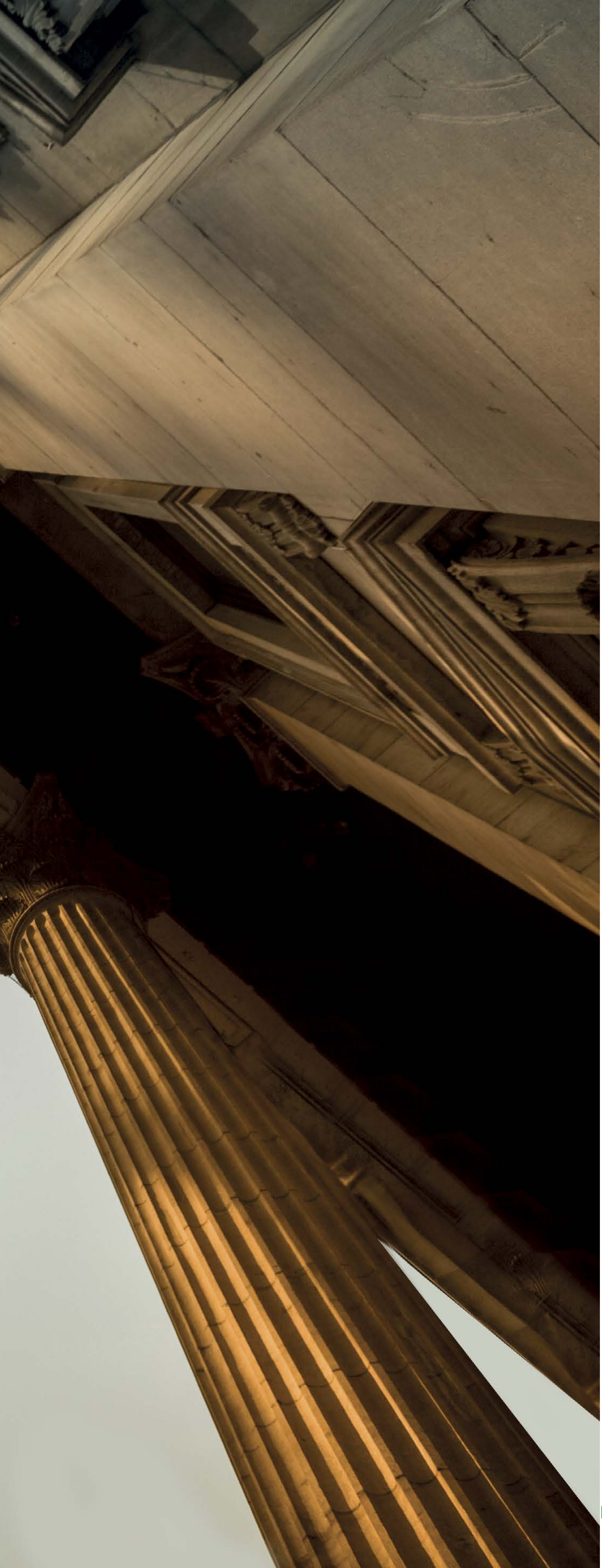
PILLAR TWO - WHAT NOW?

Bahrain has become the first GCC country to enact a Domestic Minimum Top-Up Tax. Shashank Chandak of KPMG looks at their and other GCC countries' latest position on Pillar Two.



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“In December 2021, the Organisation for Economic Cooperation and Development (OECD) released its Pillar Two or Global Anti Base Erosion Rules (GLOBE Model Rules) which aimed to ensure Multinational Enterprises (MNEs) with global revenues over €750 million would pay a minimum level of tax on income arising in each jurisdiction where they operate,” states Shashank Chandak of KPMG.

“Over 140 countries including all the GCC countries have now signed up to the OECD’s Inclusive Framework (IF) on Base Erosion Shifting (BEPS), ” Chandak adds. “Many IF countries have also already legislated or are in the process of implementing local tax rules based on Pillar Two which focus on the Global Minimum Tax for large multinationals.”

“For example, countries such as the UK, France, Germany, Italy and the Netherlands enacted the Income inclusion rules (IIR) as of 1 January 2024 which means where an MNE’s effective tax rate (ETR) in any jurisdiction is below the minimum 15% rate, the ultimate parent entity may become liable for a top-up tax to bring the rate up to 15%.”

“This has meant multinational enterprise groups which are affected by these requirements have already had to start taking these changes into account and it is vital they understand the approaches being taken by the tax authorities in the different jurisdictions they operate in, particularly as tax authorities in different jurisdictions are choosing to take different approaches.”

GCC COUNTRY APPROACHES

“When Kuwait joined the OECD IF on BEPS in November 2023, it meant that all six GCC states had committed to this significant international tax reform,” states Chandak. “It is hoped this change will not only help stabilise the international tax system but also provide increased tax certainty for MNEs which are operating in the region.”

“However, when it comes to implementation, the six GCC countries are at very different stages,” Chandak adds. “At present, Oman and Saudi Arabia are yet to make any formal announcement on how they intend to tackle Pillar Two .”

“ In contrast, Kuwait has announced it is actively considering the implementation of a 15% corporate tax and aims to complete plans on this by January 2025.” Chandak states. “ It is expected the Business Profits Tax Law will introduce a 15% tax on the profits of MNE groups which exceed the EUR 750 million threshold with a presence in Kuwait.”

“The Business Profits Tax will apply to a range of operating entities including corporate entities and partnerships.“

“Different rules may apply to entities which have been established and incorporated in Kuwait as opposed to those which merely operate in the country.”

RELEVANT LEGISLATION

Article 18 of Bahrain Decree-Law No. 11/2024

The following Entities shall appoint one among them as the Filing Constituent Entity, which shall be responsible for paying the Tax and handling all tax administration matters, including registration, filing of returns, making elections, and submitting notifications:

1. The Constituent Entities of a Multinational Enterprise Group that are located in the Kingdom and meet the Revenue Test specified in Paragraph C of Article 3 of this Law.
2. A Joint Venture and its Joint Venture subsidiaries.

The appointment shall be made by notifying the Bureau using a form designed for this purpose.

(Source:Lexis Middle East Law)

"The UAE has had Corporate Tax of 9% in place since 1 June 2023," Chandak continues.

"Their initial public consultation on this made a brief statement that further announcements on how the Pillar Two rules would be embedded into the UAE Corporate Tax regime would be made in due course."

"Since then Federal Decree-Law No. 60/2023 has amended the UAE Corporate Income Tax Law to include key terms from the Globe Model Rules including a definition of Top-up tax and Multinational Enterprise," states Chandak.

"The UAE Ministry of Finance (MOF) also issued a consultation on the Pillar Two Rules in March 2024 alongside a guidance paper which provided details on specific aspects of the Globe Model Rules."

"That consultation provided a number of policy options the UAE might consider when designing its Pillar Two Rules but no indication of how it might implement its rules," Chandak adds.

"The MOF has also stated its Pillar Two Rules will not be implemented in 2024 but it intends to allow the submission of the Globe Information to the relevant UAE authorities for 2024."

BAHRAIN'S APPROACH

"The position in Bahrain has been very different," Chandak explains. "On 1 September 2024, it became the first GCC country to enact a Domestic Minimum Top-Up Tax (DMTT) which is aligned with the Pillar Two rules."

"Bahrain Decree-Law No. 11/2024 Regarding the Implementation of Tax on Multinational Enterprises comes into force on 1 January 2025," Chandak states.

"This applies the Global Minimum Tax of 15% on Bahrain Constituent Entities (CEs) of MNE groups and contains key operative provisions of OECD's Model GloBE rules."

"However, at present the executive regulations and decisions which will provide the detailed rules, conditions and procedures for implementing this law have yet to be issued."

KEY FEATURES

"Bahrain Decree-Law No. 11/2024 is applicable for fiscal years (a fiscal year is the accounting period of the MNE group's Ultimate Parent Entity (UPE)) starting on or after 1 January 2025," Chandak explains.

"For example, for a UPE with a fiscal year of 1 January to 31 December, the first year its Bahrain CEs will be subject to this tax will be the fiscal year ending 31 December 2025," Chandak adds.

"Bahrain CEs of in-scope MNE groups will need to appoint a Filing CE, who will be responsible for paying tax liabilities and handling all tax administration matters."

"The law also contains provisions for advance tax payments," Chandak states.

"In line with the GloBE rules, there are also a number of excluded entities including government bodies, international organisations and investment funds or real estate investment vehicles which are UPEs."

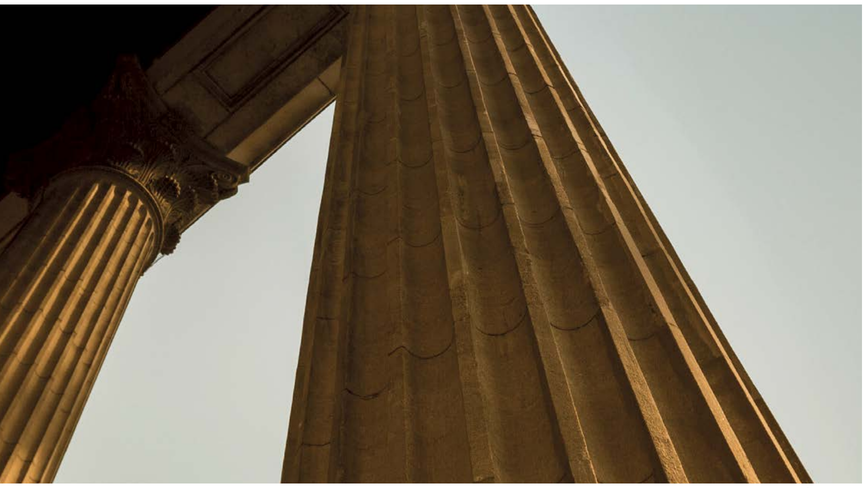
"However, the law provides that excluded entities may still be required to register and would also be relevant in determining whether an MNE group exceeds the EUR 750 million threshold."

"In order to avoid the complexities of a full top-up tax computation where the amount of top-up tax would not justify the associated compliance and administrative costs, Bahrain Decree-Law No. 11/2024 provides a de minimis exclusion for all Bahrain CEs where the average CE revenue is below EUR 10 million and the average CE income is below EUR 1 million," Chandak continues.

"The averages are calculated based on the figures for the current and two preceding fiscal years."

"Article 13-14 of Bahrain Decree-Law No. 11/2024 also provide a limited period transitional Country-by-Country Report based safe harbour and a permanent simplified computation safe harbour which allows the MNE group to rely on simplified income, revenue and tax calculations in determining whether it meets the de minimis, routine profits or effective tax rate test," Chandak adds.

"There are also provisions and specific conditions for an exclusion for in-scope MNE groups in their initial phase of international activity. MNE groups which either



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qualify for any exclusion or safe harbour will not have any top-up tax liability for the year in which they are eligible to benefit from these exclusions or safe harbours."

Shashank Chandak

Associate Director, KPMG

ARMS' LENGTH AND ANTI-ABUSE

"While Bahrain Decree-Law No. 11/2024 itself does not mention any specific transfer pricing rules, in line with the GloBE rules, the regulations are likely to have an arm's length requirement for cross-border transactions between CEs of the same MNE group," Chandak adds.

"Transfer pricing adjustments may also have to be made to the Financial Accounting Net Income or Loss of CEs that are parties to a controlled transaction where the transfer price used in the financial accounts does not reflect arm's length."

"In addition, the law contains general anti abuse rules so that any transactions or arrangements which are carried out without a genuine commercial purpose and with the primary purpose of obtaining a tax advantage may be disregarded," Chandak continues.

"In essence, MNE groups with a Bahrain presence cannot undertake a transaction or restructure if the dominant purpose is to obtain a tax advantage. They need to have genuine commercial reasons for undertaking the transaction or restructuring."

OMISSIONS

"However, compared to OECD's Model GloBE rules, Bahrain Decree-Law No. 11/2024 does seem to have some notable omissions," Chandak states.

"For example, there seems to be no specific provisions for the exclusion of defined shipping income similar to that in the GloBE Rules."

" It also does not specifically mention any Qualified Refundable Tax Credits which are aimed at attracting investments."

There are also no clear provisions on a transitional penalty relief regime which recognises that no penalties or sanctions should apply during a specified transitional period in connection with filing GloBE Information Returns if an MNE has taken 'reasonable measures' to ensure the correct application of the GloBE Rules," Chandak states.

"However, it is possible areas such as these could be covered in the implementing regulations."

WHAT'S NEXT FOR BAHRAINI BUSINESSES

"At present Bahrain does not have a broad-based corporate income tax, as is the case in the UAE and no formal announcement has been made on this yet, although it is possible Bahrain may introduce such a tax in the next 18 months to two years in line with other GCC jurisdictions," Chandak states.

"Currently, the top-up tax for Bahrain CEs within an in-scope MNE group will be close to 15% as there is no broad-based Corporate Income tax and their current Effective Tax Rate will be close to 0%."

"However, if Bahrain does introduce a broad-based Corporate Income Tax, large MNE groups which fall within the scope of Bahrain Decree-Law No. 11/2024 would need to first compute their tax liability under that broad-based regime, then compute the top-up tax as per the DMTT rules."

"With this law coming into force on 1 January 2025, there is a very short time for in-scope MNE groups with a presence in Bahrain to implement the necessary changes," Chandak continues.

"Therefore, those affected will need to act immediately and should be analysing whether their Bahrain CEs qualify for any exclusions or safe harbours."

"MNE groups will also need to consider the implications of the enactment of Bahrain Decree-Law No. 11/2024 on their interim financial statements and the annual financial statements," Chandak states. "Therefore, those effected will need to act immediately and should be analysing whether their Bahrain CEs qualify for any exclusions or safe harbours. MNE groups will also need to consider the implications of enactment of Bahrain Decree-Law No. 11/2024 on their interim financial statements and the annual financial statements."

"To assess the bottom-line impact on their Bahrain operations, MNE groups should consider carrying out mock DMTT calculations based on historical data and projections, which will also help in-scope MNE Groups with a Bahrain presence assess and plan for cash flow impacts due to the requirement for advance tax payments," Chandak adds. " In addition, as further corporate income tax reform may be on the way, other Bahraini businesses should at least be conducting a preliminary analysis of the possible impact."

"Although, further decisions and regulations on Bahrain Decree-Law No. 11/2024 are still to be issued and some areas may not yet be clear, it is worth noting the law states the rules and guidance issued by the OECD on base erosion and shifting of profits, and specifically the Model Rules, will be taken into consideration when applying or interpreting this law's provisions, regulations, or decisions so it makes sense for impacted businesses to have read these."

INVESTMENT APPROACHES

Following on from recent changes to the way Investment Fund Management Services are treated for VAT purposes, Markus Susilo of Crowe looks at the differences in tax treatment more generally for Investment Management Services and investment funds.

"Cabinet Decision No. 52/2017 On the Implementing Regulation of Federal Decree-Law No. 8/2017 on the Value Added Tax (also known as the VAT Implementing Regulations (VATIR)) were recently amended," states Markus Susilo.

"As a result the approach to VAT exemptions for supplies related to Investment Fund Management (IFM) services was clarified."

"However this is not the only distinct tax treatment which is potentially available for some investment funds (IF) and related IFM services as there are also a number of exemptions on the Corporate Tax front potentially available for these types of entities."

VAT EXEMPTIONS

"Article 42(2)(j) of Cabinet Decision No. 52/2017 deals with the VAT treatment of financial services and was amended recently by Cabinet Decision No. 100/2024. This provision provides a concise overview of the economic and compliance aspects of these special regimes in the UAE," Susilo explains. "Clause 4.1.1 of the Financial Services VAT Guide states that the supply of financial services is generally considered exempt from VAT unless it is provided for an explicit fee or similar consideration."

"Financial services supplied by IFs typically, do not involve these fees which has meant this supply could be exempt and any related input VAT would become a business expense as per Article 54 of Federal Decree-Law No. 8/2017."

"According to Article 19 of Federal Decree-Law No. 8/2017 (the UAE VAT Law) exempt supplies are also excluded from the VAT threshold calculation for both voluntary and mandatory VAT registration," Susilo adds.

"As a result, if a business's primary supply consists of exempt services, and the taxable portion does not meet the registration threshold, the business will be unable to register for VAT and recover input VAT."

"However, the position has been different in the past for those providing IFM services as in contrast IFMs are often remunerated through explicit fees. For example, they may receive fixed management fees or performance fees which are calculated as a certain percentage of the fund income. That meant that in the past IFM services could be subject to VAT."

"However, under the latest VATIR, it has been confirmed that IFM services shall now be treated as exempt if their services are provided to funds which have been licensed by a competent authority in the UAE," Susilo explains.

"Therefore, businesses which are offering these

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services should now be reassessing their ability to recover input VAT and reconsider their eligibility for VAT registration."

"A business cannot register for VAT unless its taxable supplies meet a certain threshold, so the exemptions which may now apply to both IFMs and IFs could make it more likely they will not qualify for VAT registration."

" However, an IF or IFM does succeed in registering for VAT, they must report exempt supplies in their VAT returns and perform an annual VAT wash-up exercise."

"It is also worth noting although providing exempt supplies can reduce a business's VAT compliance obligations it may also affect the business's ability to recover input VAT."

Markus Susilo
Partner, Crowe

INCOME TAX TREATMENT

"While the VATIR have focussed on Investment fund management services, the UAE Corporate Tax laws (Federal Decree-Law No. 47/2022) primarily focus on investment funds," Susilo states.

"Certain investment funds may apply to be treated as an exempt person under Article 10 of Federal Decree-Law No. 47/2022 which deals with qualifying investment funds (QIFs), and means their income is not subject to tax."

"Article 1 of Federal Decree-Law No. 47/2022 defines QIFs as any entity whose main activity is issuing investment interests to raise funds or pool investor funds or establish a joint investment fund with the aim of enabling the holder of such an investment interest benefiting from the profits or gains from the entity's acquisition, holding, management or disposal of investments, in accordance with the applicable legislation and when they meet the conditions stipulated in Article 10 of Federal Decree-Law No. 47/2022."

"However, the investment fund or investment fund manager must be subject to the regulatory oversight of a competent authority in the UAE, or a foreign competent authority which has been recognised for the purposes of Article 10 of Federal Decree-Law No. 47/2022."

"In addition, interests in the Investment Fund must also be traded through a Recognised Stock Exchange or marketed and made available sufficiently widely to investors."

"The main or principal purpose of the investment fund cannot be to avoid Corporate Tax and it is possible for other conditions to be set in a Cabinet Decision."

"The FTA can also request any relevant information

KEY POINTS

VAT Exemptions
In October 2024 it was clarified that VAT exemptions apply to Investment Management Services (IFM) services for UAE-licensed funds which affects VAT recovery and registration.

The Right Regulators
In the UAE companies which are engaged in investment funds or investment fund management are regulated by one of three regulators - the onshore Securities and Commodities Authority (SCA), the Dubai Financial Services Authority (DFSA) which is based in the DIFC Financial Freezone or the Financial Services Regulatory Authority (FSRA) which is based in the ADGM Financial Freezone. The appropriate regulator will be determined by the location in which the company or business is located.

Free Zone Status
IFMs operating in free zones such as the DIFC or the ADGM may also attain Qualifying Free Zone Person status, which allows a 0% tax rate on qualifying income from specific activities, with other income taxed at 9%.

or records from the entity, within a specified time-limit in order to ensure there is ongoing compliance."

"It is worth noting that according to FTA guidelines, the aim of the QIF exemption is to prevent double taxation at the investor, investment manager, and QIF level itself," Susilo adds.

TYPES OF INVESTMENT FUNDS

"In addition, Cabinet Decision No. 81/2023 On Conditions for Qualifying Investment Funds for the Purposes of Federal Decree-Law No. 47/2022 on the Taxation of Corporations and Businesses has divided Investment Funds into two specific types each with different conditions," states Susilo.

"These are Real Estate Investment Trusts (REITs) and non-REITs. Non-REIT funds are subject to conditions on investment business, ownership diversity and independence," Susilo adds.

"For example, a non-REIT's main Business or Business Activities conducted by the investment fund must be Investment Business activities, and any other Business or Business Activities conducted by the investment fund must be ancillary or incidental." Susilo explains.

"If there is a single investor, they and their Related Parties must not own more than 30% of the fund's ownership interests if the investment fund has less than ten investors and more than 50%, if the investment fund has ten or more investors," Susilo continues.

"The investment fund must also be managed or advised by an Investment Manager with at least three investment professionals and the investors must not have control over the day-to-day management of the fund."

"A different set of criteria apply to REITs which involve minimum real estate values, ownership and the real estate percentage of the fund," Susilo adds.

"In that case the real estate asset value under the management or ownership of the REIT excluding land must exceed 100,000,000 AED, at least 20% of the REIT share capital must be floated on a Recognised Stock Exchange, or directly wholly owned by two or more institutional investors specified in Article 5 of Cabinet Decision No. 81/2023 as long as at least two of these institutional investors are not Related Parties," Susilo states.

"In addition, the REIT must have an average Real Estate Asset Percentage of at least 70% during the relevant Gregorian calendar year, or the relevant 12 month period for which the financial statements are prepared."

IFMS AND INCOME TAX

"IFMs do not qualify for exemption under Federal Decree-Law No. 47/2022," Susilo states. "However, if the IFM is operating within a UAE free zone and many do, they may be eligible for Qualifying Free Zone Person (QFZP) status. To maintain QFZP status, there are six conditions to meet and the IFM must also generate Qualifying Income (QI) which may be derived from transactions with either Free Zone Persons (FZPs) or non-FZPs (although income derived from non-FZPs must be related to a Qualifying Activity (QA) and must not involve Excluded Activities). It is worth noting in this context that fund management services (FMS) are recognised as one of the QAs. Those classed as a QFZP have their exempt income taxed at 0% and the rest of their income taxed at 9%."

PRACTICAL POINTS

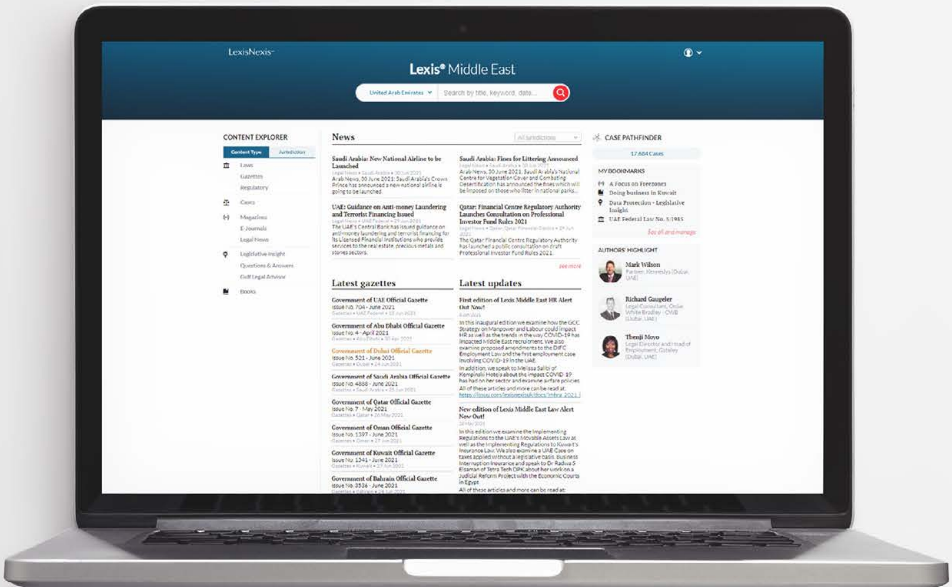
"Being exempt from an income tax perspective or being classed as a QFZP can lower compliance burdens, including the obligation to pay corporate tax," Susilo states. "However, it is also important to note that certain corporate income tax reliefs such as those for Qualifying Groups, Business Restructuring, and the transfer of Tax Losses may not apply to entities with this status, so the reduction in compliance obligations always needs to be weighed against the potential loss of certain other tax benefits."

"In contrast, with the VAT rules, under Federal Decree-Law No. 47/2022, IFs and IFMs must register for Corporate Income Tax purposes before they can apply for Exempt person status or use QFZP benefits," Susilo explains. "QIFs must also report their taxable income and declare they have met QIF conditions throughout the tax period. In addition, their financial statements must also have divided their income into exempt income, interest income, UAE-sourced immovable property income, and other income to ensure accurate reporting of investors' income in their financial statements."

"Once an IF achieves QIF status, its income must be reported for Corporate Income Tax purposes as part of investor income, akin to a transparent structure."

"IFMs which qualify as QFZPs, are required to submit their Corporate Tax return and pay the CT liability (if any) within nine months from the end of the relevant tax period, while also maintaining audited financial statements and the applicable transfer pricing documentation."

"Before opting for these regimes, businesses should always thoroughly evaluate all the economic factors," Susilo concludes.



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TAX NEWS ROUND-UP

COVERING RECENT KEY DEVELOPMENTS – REGION-WIDE

UAE

E-INVOICING

The UAE is set to launch a comprehensive e-invoicing system in 2026. Invoices in PDF, Word, or scanned formats will not qualify as e-invoices under the standards established by the Ministry of Finance (MoF). Under the MoF regulations, all business-to-business (B2B) and business-to-government (B2G) transactions must adopt the e-invoicing model, regardless of the VAT registration status of the entities involved. Under the system suppliers will transmit eInvoice data in an agreed format with its UAE accredited Service Provider. The eInvoice data will be validated and converted into the UAE standard eInvoice xml format (if it was received in a different format). The eInvoice in XML format is transmitted with the buyer's UAE accredited Service Provider. There is an acknowledgement that the eInvoice has been received successfully and the eInvoice is transmitted to the buyer. Tax related data is then reported to the central data platform managed by the Federal Tax Authority, and there is an acknowledgement the eInvoice has been successfully reported, which is forwarded to the supplier. Accreditation of UAE Service providers is to begin in QA 2024. There will be e-invoicing legislation changes in Q2 2025 and the first phase of einvoicing is expected to begin in Q2 2026.

TRANSFER PRICING

The UAE Federal Tax Authority (FTA) has updated its Corporate Tax Return which now includes a significant part for Transfer Pricing related disclosure. Under Article 56 of Federal Decree-Law No. 47 of 2022 there is a disclosure containing information on the Taxable Person's transactions and arrangements with its Related Parties and Connected Persons in the form prescribed by the Authority. The FTA Transfer Pricing guide includes a blueprint for the disclosure form. The timeline for providing the form was also the same as the tax return, i.e. within nine months from the end of the tax period. The tax return now includes a separate schedule for related party and connected persons. It also requires disclosure of adjustments made to the transaction values to meet the arm's length value. Income from related parties also needs to be reported at a gross level and taxpayers have to disclose the tax residence of the related party. The form also requires each transaction to be categorised as either Goods, Services, Intellectual Property, Interest, Assets, Liabilities, and Others. Only one category can be applied.

ECONOMIC SUBSTANCE

Cabinet Decision No. 98/2024 has been issued amending Cabinet Decision No. 57/2020 (which are the Economic Substance Regulations). This has effectively abolished the Economic Substance Regulations (ESR) for Financial Years from 2023. These rules have applied since 2019 and as a result of this amendment, they are effectively limited to the period from 2019 up to and including the 2022 Financial Year.

TAX TREATY UPDATE

Saudi Arabia: The Saudi Council of Ministers has approved a Double Tax Treaty (DTT) with Qatar, which was signed on 30 May 2024.
Qatar: The Qatari Cabinet has approved an amending Protocol to their Double Tax Treaty (DTT) with Norway.
Oman: Oman has signed a Double Tax Treaty (DTT) with Estonia.
Kuwait: Kuwait and Tajikistan have signed an amending Protocol to their 2013 Double Tax Treaty.
Oman: Oman has signed a Double Tax Treaty (DTT) with Luxembourg.

TAX RESIDENCY

The UAE Federal Tax Authority (FTA) has published a new guide 'Tax Residency and Tax Residency Certificate – Tax Procedures Guide (TGPTR1)' which outlines the rules on tax residency in the UAE. It explains the criteria for establishing residency for individuals and businesses, and emphasises the importance of the Place of Effective Management (POEM) for corporations. The process for obtaining a Tax Residency Certificate (TRC) or getting a UAE stamp on an original TRC issued by a foreign jurisdiction is explained. Exempt Persons or entities generally exempt from Corporate Income Tax are eligible to apply for a TRC, as they are considered taxable persons under the UAE's tax regulations. The Guide also includes an important clarification on 'future' periods, which are defined as any Tax Period or 12-month duration that has yet to commence.

KUWAIT

INFORMATION EXCHANGE

The Ministry of Finance have released executive regulations (Kuwait Ministerial Decision No. 75/2024) which explain Kuwait Decree-Law No. 6/2024 On the Exchange of Information for Tax Purposes. The regulations outline the procedures and requirements for implementing agreements on the exchange of tax information between Kuwait and other countries. Under the new rules, financial institutions must maintain precise records, have robust internal compliance mechanisms, and submit detailed annual reports on their clients' financial data. Fines range from 10,000 to 20,000 Dinars for failing to comply with this new regime.

SAUDI ARABIA

AUDITS AND APPEALS

The Zakat, Tax and Customs Authority (ZATCA) have issued comprehensive new guidance on VAT audits, evaluations, corrections, decision reviews, and appeals in Saudi. As well as outlining procedures for VAT self-assessment, the guidance also details ZATCA's assessment rights and examination processes, which include on-site audits, record reviews, and documentation requests. There is also information on the timelines for amending incorrect VAT returns. Businesses can correct over-declared taxes in subsequent returns but under-declared taxes need to be immediately notified to ZATCA within 20 days of discovery. The guidance also explains the appeals process, which starts with ZATCA's internal committees and can be escalated to the VAT Primary Committee if required.

BAHRAIN

FINES FOR UNPAID EXCISE TAXES

A director and his company have been ordered by the Bahrain Court of Cassation to pay almost 3 million Dinars in unpaid excise tax and fines, following a two-year legal battle. The director was accused of deliberately evading taxes by importing 123,860 pre-filled electronic smoking devices without paying the full excise tax due which was 456,978.750 Dinars, and also of possessing and distributing 341,571 electronic shisha accessory units without paying the relevant excise tax which was 444,099 Dinars. The accused was originally acquitted by the Bahrain Lower Criminal Court but the Public Prosecution appealed the verdict. The High Appeals Court then unanimously overturned the acquittal. The defendant was ordered to pay 456,978.750 Dinars in unpaid taxes and an equal fine for the first charge, and then 444,099 Dinars in unpaid taxes and an equal fine for the second charge. As the defendant's company, was a legally registered entity operating in Bahrain and was owned and managed by the primary defendant, it was also charged with facilitating the tax evasion activities.

JORDAN

CUSTOMS FINES

The Jordanian Finance Ministry has stated the Council of Ministers has decided to exempt those involved in customs cases which have been discovered or where customs seizures took place before 31 December 2019, from the fines they were due to pay, up to 90%. The decision states there will be an exemption of 90% on customs and tax fines, confiscation fees which have been imposed, and administrative expenses incurred, based on the Customs and Public Funds Collection Laws, whether the cases were based on judicial rulings, administrative decisions, or conciliation settlement agreements. In order to qualify for the exemption the required fees, taxes, service fees, expenses, and the remaining fines, must be paid and confiscations must be implemented, within six months from the day following the issue of the decision. However, if this deadline is missed the exemption rate will be reduced to 75% if the necessary amounts are paid within the following six months.

OMAN

INCOME TAX ON INDIVIDUALS

According to local media reports a member of the Omani Shura Council has stated when income tax is implemented in Oman it will be levied on individuals who have monthly salaries of over 2,500 Rials. It has been claimed this was stated by the Chairman of the Economic and Financial Committee at Majlis Al Shura.

SPECIAL ECONOMIC ZONES AND FREEZONES

The Legislative and Legal Committee and the Economic and Financial Committee of the Shura Council has approved the final draft of the law on Special Economic Zones and Free Zones in Oman. The aim of the law is to unify the system of guarantees, advantages, incentives, exemptions, and facilities granted to economic activities in these zones. Incentives being considered include income tax exemptions designed to help attract investment.

TURKEY

SECTORAL INSPECTIONS

The Turkish Treasury and Finance Ministry is set to intensify the level of tax inspections taking place in the alcoholic beverage sector. Under the move which has been announced on social media, it has been stated the inspections will focus on large taxpayers in the sector who have been identified. Actual inventory counts revealed the majority of those companies in this sector reviewed were classed as 'large tax payers'.

IN BRIEF

UAE: The UAE Federal Tax Authority (FTA) has issued a new guide, the Real Estate Investment for Natural Persons – Corporate Tax Guide CTGREI1...

UAE: Amendments to the VAT Implementing Regulations Cabinet Decision No. 52/2017 brought in by Cabinet Decision No. 52/2017 which took effect on 15 November 2024 classify virtual assets, including cryptocurrencies, as Exempt Supplies...

Saudi Arabia: The Zakat, Tax and Customs Authority (ZATCA) has confirmed withholding tax will be imposed on the income (services) realised by non-resident entities in Saudi from economic activity in the Kingdom....

Saudi Arabia: A VAT refund scheme for tourists is to be introduced in 2025 as outlined in the Saudi Budget statement for the upcoming fiscal year...

UAE: According to Public Clarification TAXP007 a new initiative to reverse certain administrative penalties will only apply for a limited time period from 1 January 2024 up to 31 March 2025...

Egypt: The Egyptian government has unveiled a streamlined and incentivised tax regime for small and medium enterprises with annual revenues up to 15 million Egyptian Pounds...

EGYPT

ADVANCED RULINGS

A new Advance Ruling System, has been developed in Egypt which is legally authorised to issue binding decisions on tax treatments for transactions taxpayers and registrants plan to undertake, which have potential tax implications. A key element in making this happen has been transforming the Advance Ruling Committee into a permanent unit under the direct supervision of the head of the Egyptian Tax Authority.

FOCUS ON TAX REFORM

Recently there have been reports that both Kuwait and Oman have plans in the pipeline to change the way income and profits are taxed but at present limited information on these changes has been provided.

So what is known about these proposed tax reforms?

KUWAIT

The Kuwaiti government wishes to introduce fiscal and structural reforms to enable them to diversify their economy.

It is also eager to align its tax practices with international standards. Last year Kuwait joined the Inclusive Framework on Base Erosion and Profit Shifting (BEPs) and committed to introducing Pillar Two.

As a result, one of the measures which is currently being finalised is the introduction of a broad corporate tax on all legal entities operating in Kuwait.

In Kuwait, there is currently an existing income tax of 15% which in practice only applies to foreign companies.

Kuwaiti and GCC companies which are owned by individuals are not subject to this income tax.

Kuwaiti companies are either not taxed at all or are subject to different types of taxes of up to 4.5% depending on their legal form.

However, based on various media reports including a recent report from the IMF, Kuwait plans to introduce a Business Profit Tax (BPT) which will apply to all legal entities operating in the country.

A proposed rate of 15% is planned for this Business Profit Tax which will be introduced in two phases.

During the first phase, which it is proposed will be effective from 2025, this Business Profit Tax is expected to apply to multinational enterprises (MNEs) which are in-scope for Pillar Two.

In addition, it is also expected that these MNEs will be subjected to a separate Domestic Minimum Top-Up Tax (DMTT) which will give Kuwait the right to tax any under-taxed profits based on the Pillar Two Model Rules.

However, in the second phase, it is expected that this Business Profit Tax will be extended so that it applies to all other legal entities operating in Kuwait. Newly proposed exemptions are expected to provide relief for small to medium-sized enterprises (SMEs) by establishing a turnover threshold that, if met, would exclude SMEs from Business Profit Tax requirements.

In addition, entities which are fully owned by the Kuwaiti government and not-for-profit entities are also expected to be exempt from the new Business Profit Tax. It is also expected that during this second phase, the existing income tax law (Kuwait Decree No. 3/1955) as well as Zakat Law (Kuwait Law No. 46/2006) and the National Labour Support Tax (Kuwait Law No. 19/2000) will be repealed. However, the above law will be phased out for large MNEs from 2025.

The proposed Business Profit Tax is also likely to adopt the principle of tax residence, so that tax residents of Kuwait would be taxable on their worldwide income.

It is also expected that there will be a definition of a permanent establishment within the new legislation. This is a concept which has been missing in Kuwait Decree No. 3/1955 and as a result has often led to tax disputes there.

In addition, it is expected that transfer pricing rules will be introduced as part of this tax reform, in line with the trend which is now being seen in other GCC countries.

Another significant change that is expected to be part of Kuwait's new Business Profit Tax regime is the introduction of withholding taxes (WHT) there.

This will impact non-resident entities (including non-resident GCC entities) which earn certain Kuwait sourced income such as royalty, interest, dividends and services fees. The inclusion of specific anti-avoidance measures to curb profit shifting and tax evasion is also expected to be a key feature of the tax reform, and is aimed at strengthening tax compliance.

In Kuwait, exiting income tax rules exempt dividends and capital gains earned from securities listed in the Kuwait Stock Exchange. It remains to be seen if the Business Profit Tax regime will include a similar exemption.

Entities doing business in Kuwait are likely to be impacted by these proposed tax changes and as a result should carry out an assessment to understand the potential impact this new tax could have on them.

OMAN

There have also been a number of recent media reports that the Oman Shura Council has been working on a draft Personal Income Tax Law on incomes of over 30,000 Rials. It has been stated that the Shura Council has now referred this draft law to the State Council which is its upper chamber, for approval.

Further reports have mentioned a range for rates of this new tax, and it has also been stated that the regime will apply to both Omani nationals' and expatriates' income.

Oman has been considering the introduction of a Personal Tax regime for quite some time now and this reform aligns with its economic strategies under the Vision 2040 to reduce reliance on oil revenues.

These recent reports seem to confirm there will be action on this front and that the new tax could possibly be in place by around mid of 2025. Oman could also be on the brink of becoming the first GCC state to introduce a tax on the individual.

Despite these reports about the progress of the legislation in the Shura Council up until now there has been very little detail on what this Omani personal tax will cover, although in most jurisdictions taxes of this type tend to cover income from employment, investment properties, securities and other sources such as interest, so these types of income could also be subject to this new personal tax.

In other jurisdictions employers also tend to be responsible for the enforcement of payroll tax by withholding income at source before payment of salaries but it is also likely in Oman individuals will be required to file a personal tax return to report all other sources of income.

Typically in other jurisdictions, a person who is a tax resident is taxed on their global income, while a tax non-resident in a country is only taxed on income generated in that country, which may be the same position taken in Oman with this new tax. Given Oman's Vision 2040 emphasis on digital infrastructure, the government may consider implementing a streamlined digital platform for personal tax filings, potentially easing the compliance burden for taxpayers and employers.

It is also possible that in addition to salary income, fringe benefits, such as company vehicles, and allowances, provided to employees could be included in the calculation of taxable income. Incomes may also need to be grossed up for any taxes paid by the Employer on behalf of the Employee. This could mean huge changes for Omani employers who would need to ensure they had a proper tax administered payroll system in place for compliance purposes. At present it is still early days on this potential tax reform in Oman, however, it is advisable that Omani companies, keep an eye out for any further announcements on this topic, and consider the potential impact this change could have both on them as employers and on their employees, closer to when the relevant laws are introduced.

Ultimately, these reforms may pave the way for greater economic diversification and resilience in the region, aligning Kuwait and Oman with global tax practices while supporting their longer-term visions for economic stability.

Rami Alhadhrami, Tax Partner – BDO Kuwait and Asrujit Mandal, Tax Advisor in Oman.
The views expressed in this article are the personal views of the authors.

TAX PROFESSIONAL PROFILE

TAX PARTNER – OMAN AND BAHRAIN

Quick Change

For Asrujit Mandal, Tax Partner, Oman and Bahrain, BDO LLC, the biggest challenge for businesses in the GCC when it comes to tax legislation is the speed of change.

ABOUT YOU

I am a Chartered Accountant from India with a Post Graduate Diploma in Business Management from the Indian Institute of Management, Calcutta. I always had a passion to work in Tax, but I began my career in the Internal Audit Department at Larsen & Toubro Limited which is a large, listed conglomerate in India. I then went to work for Bharti Cellular Limited, which is an Indian Multinational working in the mobile, telemedia, enterprise and digital TV sectors in the Tax and Management Information systems departments. However, in 2005, I switched to Tax Consulting after joining KPMG in India working on Domestic and International Taxes, Transfer Pricing and Mergers & Acquisitions Tax, on Indian, Bangladeshi, Nepalese and UAE matters. I was then asked to develop KPMG's practice in the East of India and later became Partner and Head of Transfer Pricing for East of India and Bangladesh at PwC India where I worked with influential Indian clients on Domestic and International Taxes. The next move was to BDO India LLC as Partner, Co-leadership Committee Member and the Regional Head where I built the BDO brand for East India and Bangladesh, across all service lines. However, at the start of 2024, I moved to the GCC and now head the Tax Practice for Oman and Bahrain with BDO LLC in Oman.

To be a successful Tax Partner it is important to combine technical knowledge with customer centricity, two skills I have learnt in my career of over 28 years. I have been lucky to have worked in a lot of different tax areas, including Corporate Domestic and International Taxes, Transfer Pricing, Tax with Mergers and Acquisitions and Personal (both Domestic and Expatriate) Taxes. This range of experiences is helping me, as the Tax Laws in the Middle East develop, and clients need different capabilities.

The time I have spent as a regional tax head in large accounting and consulting firms, has also helped me develop good customer management and team leadership skills.

ABOUT YOUR FIRM

BDO is the world's fifth largest consulting firm in terms of service revenue and has a significant practice in the GCC serving clients in Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the UAE on Audit and Assurance, Business Consulting and Outsourcing and Tax Advisory and compliance services. We have around 1700 employees and 21 offices in the region.

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REGIONAL DEVELOPMENTS

What we are seeing in the GCC at present is a switch from countries being nil or low tax jurisdictions, to a place where new tax laws are being introduced, to take into account the directives of regulators such as the Organisation for Economic Cooperation and Development (OECD), provide certainty to foreign investors and help complement oil revenues.

I have been working on Base Erosion and Profit Shifting (BEPS) since 2013, and Transfer Pricing, since it was introduced in India and Bangladesh in 2001, and 2014. This has helped me with the advent of Transfer Pricing and BEPS 2.0 in the Middle East and introduction of Domestic Corporate Tax regimes in the region, including in the UAE. At the moment the UAE is leading the race on the development of new taxes but that is changing. Global investors in Bahrain are now grappling with the recent introduction of the Qualified Domestic Minimum Top Up Tax (QDMTT) regime since the Executive Regulations are not yet in place.

I also believe we may soon see a personal tax and transfer pricing regime and need to comply with BEPS 2.0 (possibly a Domestic Minimum Top Up Tax (DMTT) in Oman, as well as the possible introduction of Corporate and Withholding tax in Bahrain. Changes in Kuwait are also expected. With the introduction of these new tax regimes, businesses in the region may also find it necessary to restructure.

PRACTITIONER PERSPECTIVE

Zainab Murad - Tax & Corporate Services Manager, KPMG Fakhro

Zainab Murad unpacks Bahrain's recent VAT legislation changes, which zero-rate more essential food items in line with the GCC VAT Framework.

Bahrain's VAT legislation allows the application of VAT at the zero-rate on certain basic food items, with the aim of providing economic relief to consumers. This initiative aligns with Bahrain's commitment to the GCC VAT Framework, which allows Member States to apply 0% VAT on specific food items included in a unified list of goods approved by the GCC's Financial and Economic Cooperation Committee. The decision to implement this provision reflects the government's efforts to ease the cost of living for residents while adhering with regional agreements with limited impact to Bahrain's overall fiscal strategy of improving non-oil revenue. Some examples of food items included in the list include (but are not limited to) apples, fresh dates, oranges, bananas, teabags not exceeding 3g, milk, yogurt, artificial mineral water, normal natural water and ordinary bread of any kind. Since the introduction of VAT in Bahrain on 1 January 2019, Bahrain's tax authority, the National Bureau for Revenue (NBR) has periodically updated this list to provide more clarity and ensure compliance on the sale and import of food items in Bahrain.

The most recent update, which was published in September 2024, builds upon an earlier revision which had included certain live animals such as live sheep and goats, and offers a more detailed breakdown of the relevant food items, complete with their Harmonised System (HS) codes.

The number of items included in the latest list has increased to 118 items from an original 94 items (as per the previously revised list). However, this increase in the number of items is largely attributable to HS code segregations as opposed to a widening the scope of the zero-rating to include additional items. In fact, the only new addition made to the latest list from its previous version is the inclusion of 'grated or powdered cheese of all kinds', classified under the HS code '04062000'. With the inclusion of the HS codes in the updated list, businesses are encouraged to assess that the correct tax codes are assigned to qualifying food items with respect to their relevant transactions. This may require updating internal systems and conducting audits to confirm consistent application of the zero-rating across their operations. For food retailers, this update means reviewing and adjusting the selling price of the newly added item to accurately reflect their updated VAT treatment. This could potentially involve adjusting point-of-sale systems, updating the ERP system and verifying the products that meet the criteria for the zero-rating according to the updated list. Wholesalers and traders involved in the importation and distribution of food products are also required to ensure that their goods follow the revised zero-rating criteria, necessitating closer coordination with suppliers, the logistics team and the Bahrain Customs Affairs. Some of the compliance challenges businesses may face with this regulatory update include proper implementation and meeting record-keeping requirements. The NBR's recent extension of the VAT record retention period by five additional years adds to the challenge of maintaining accurate documentation for all zero-rated food transactions, particularly as this list evolves. Operational delays and added costs may arise, especially for businesses managing large inventories or complex supply chains. Effective monitoring, staying updated on VAT changes, and investing in compliance measures like staff training and system updates can help mitigate non-compliance risks and align with Bahrain's evolving tax regime. While the update poses challenges, it aims to improve transparency and zero-rating application, aiding businesses and consumers in identifying qualifying products. This development will benefit food retail and the supply chain sectors by providing clear guidance on qualifying goods, and enabling better alignment with VAT classifications.

Tax controversies, tax litigation and advocacies are also becoming more important in the GCC, and the past successes and experience I have had dealing with such cases, in complex tax jurisdictions like India and Bangladesh is also helpful.

Tax Authorities here are also putting Digital Transformation initiatives in place, such as e-invoicing in the UAE and Saudi, which are helping to improve Tax compliances and administration.

We may also see Oman and Bahrain introducing E-invoicing on the VAT side.

The biggest challenge for those working in this region at present, is the speed with which tax regimes both on the direct and indirect tax side are changing.

These laws and new regimes are comprehensive and complex, making it challenging to absorb the details and understand the initial compliance requirements.

In addition, there is a need to strategise Group Taxes and chart out Group Tax Policies which becomes more complicated for Multinational Enterprises.

It is also often necessary to revamp Accounting Systems in order to accommodate data requirements for compliance, and train internal Tax and Accounting Teams on the changes.

In addition, putting in place suitable ringfencing often takes time and requires brainstorming.

For Tax Consultants, what helps is having a strong team on the ground, who have experience of working on these laws in other tax developed jurisdictions, as does having a global network which can guide and help multinational clients traverse through these complexities.

What's a Tax Assessment Review?

Tina Hsieh of Baker McKenzie examines new details provided by the FTA on disputing tax assessments and administrative penalties in the UAE.

In the UAE, the Federal Tax Authority (FTA) has released new guidance on Tax Assessment Reviews, an optional mechanism for disputing key taxes in the jurisdiction, including corporate tax, excise tax and VAT. So what are the main highlights in the guidance, and what does this means for taxpayers in the UAE?

THE LEGISLATION

The Tax Procedures Law (Federal Decree-Law No. 28/2022), published in 2022, introduced an optional mechanism allowing taxpayers to dispute any tax assessment or associated penalty issued by the FTA.

This can be done by requesting a review from 'independent FTA officials', meaning those who were not involved in the initial audit. This process is known as a 'Tax Assessment Review'. On 13 November 2024, the FTA published detailed guidance for taxpayers on Tax Assessment Reviews in the form of a Public Clarification document (TAXP008).

This document marks a significant update on tax disputes in the UAE, and provides helpful clarity on the circumstances in which a taxpayer can request a Tax Assessment Review, the procedure to follow and the range of possible outcomes following the FTA's assessment.

RELEVANT CIRCUMSTANCES

A taxpayer can request a Tax Assessment Review to dispute any finding by the FTA if they have reasonable grounds to believe there were technical errors in applying the relevant tax legislation or double tax treaty, or if there were calculation errors in the audit procedure. However, if new evidence has come to light, a Tax Assessment Review is not the appropriate avenue for redress. In such cases, a request for reconsideration of the decision by independent FTA auditors is more suitable.

Taxpayers who want to request a Tax Assessment Review must provide evidence to the FTA that it did not follow the correct procedures 'during the tax audit', or made a calculation error in determining the amount of tax due.

TAXP008 defines 'during the tax audit' as the period beginning with the taxpayer's receipt of the audit notification, until the date that the tax and penalty assessment is issued. If a reconsideration has been requested from the FTA, a taxpayer is no longer eligible to submit a Tax Assessment Review.

EXAMPLES

As part of the Public Clarification document, the FTA has provided examples of when a taxpayer may request a review. These include, but are not limited to:

- when the taxpayer believes the FTA failed to notify them of an audit but issued a tax and penalty assessment;
- when the taxpayer believes the FTA conducted an audit in breach of the statute of limitations rule (i.e. more than five years after the relevant period);
- when the taxpayer believes there are calculation errors in accounting for the tax due; or
- when the taxpayer believes there were errors in calculating the value of the supply.

SUBMITTING A REQUEST

All Tax Assessment Review requests should be submitted to: AssessmentReview@tax.gov.ae.

An important point to note is that timing is key for any taxpayer hoping for a successful Tax Assessment Review.

The request for a Review (including all evidential documentation) must be submitted to the FTA within 40 business days from the date of the tax and penalty assessment. If a taxpayer cannot meet this deadline, they may request an extension from the FTA, providing valid reasons for the delay.

POSSIBLE OUTCOMES

Upon receiving a valid request for a Tax Assessment Review, the FTA has 40 business days to issue a decision, unless they notify the taxpayer that more time is needed.

The FTA must inform the taxpayer of their decision within five business days of making it. The FTA may:

- reject the request if the procedural requirements for requesting a review are not met;
- adjust the previously issued tax assessment and associated penalties; or
- uphold the previously issued tax assessment and associated penalties.

If the taxpayer disagrees with the FTA's decision, they may submit a reconsideration request within 40 business days of receiving the decision.

TAXP008 highlights the UAE's commitment to fostering a transparent and equitable tax system, and demystifies what is a key procedure for many taxpayers across the UAE's fast-evolving tax regime.

This article was co-written with Ben Phillips, Associate, Baker McKenzie.

Contributor

Tina Hsieh
Partner, Baker McKenzie

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