

BDO GCC TAX UPDATE

Q2 2024

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Introduction

BDO publishes a Gulf Cooperation Council (GCC) tax update on a quarterly basis. In Q2 2024, there is, as always, plenty to report as the tax scene across the region continues to develop and change.

The UAE has been particularly active in Q2: one of the most important developments has been the publication of the Federal Tax Authority's (FTA) guide on the special regime for free zone companies. This regime allows free zone companies to apply corporate tax at a rate of zero percent to income derived from certain 'qualifying activities'. This is a very useful relief - but the rules are complex and certain areas of the legislation could be open to interpretation. This new guide from the FTA is welcome as a result, because it provides detailed information on how the FTA will apply the free zone relief and answers many of the concerns that have been raised by the free zone community.

There is some important news on the *Foreign account tax compliance act* (FATCA) and *Common reporting standard* (CRS) in Kuwait, where the Ministry of Finance has announced the suspension of certain reporting deadlines. Financial institutions that are affected should make sure they are fully updated on the details and should be on the lookout for updates.

Qatar continues to strengthen its network of tax treaties and has entered into new agreements with the UAE and Saudi Arabia.

In Saudi Arabia, there have been announcements about a new regime for advance pricing agreements. The full legislation and guidance have not yet been published but this is an important development as it will provide support for multi-national businesses and the growing cross-border trade in the region.

In Bahrain, the National Bureau for Revenue continues to be proactive, with the issue of updates to both the general guide and real estate guide, a programme of market inspections and taxpayers' workshops. There is also a new hotel accommodation fee, imposed by the Ministry of Tourism.

E-invoicing continues to be a hot topic in the region and the Oman Tax Authority recently held a seminar on the subject. E-invoicing is likely to be introduced in Oman in 2025.

We hope you find this summary of the tax news for the region useful. If you would like further information on any of the topics discussed, or on any other tax matter, please see the contact details for all our GCC offices on the back page of this publication.

Q2 TAX UPDATE

Bahrain

VALUE ADDED TAX

The National Bureau for Revenue (NBR) has published various updates to its VAT guidance material.

VAT general guide

The *VAT general guide* was first released by the NBR in December 2018. It gives an overview of the VAT rules and procedures in Bahrain, together with compliance obligations and guidance on determining how a supply should be treated for VAT purposes.

On 26 May 2024, the NBR added a new section - 10.10 - to clarify the rules for claiming VAT charged on expenses related to mobile phones and vehicles. There is another new section - 15 - which provides further details on bad debt relief.

The methodology suggested under section 10.10 had previously been provided to several taxpayers in response to private clarification requests.

Section 15 of VAT general guides explains the process to claim bad debt relief and provides the conditions to be met for applying relief. One of these conditions is that the supplier must be able to prove that they have taken all necessary measures to collect the debt (e.g. emails, calls, registered letters, notification for payment etc.) and must have initiated legal proceedings against the customer. In this regard, the NBR has clarified what constitutes the legal proceedings and process to be followed.

VAT real estate guide

The VAT real estate guide was released by NBR in March 2019. It is a sector specific guide that sets out general principles of VAT in relation to the real estate sector in Bahrain. Version 1.3, released in May 2024, has added the following new sections:

Section	Description
2.3.9	VAT treatment of the rental of retail and promotional stands
3.3.6	Detailed information relating to the treatment of construction of Eskin and Mazaya
3.6.1	Further details on the treatment of expired building permits

Market inspections

During the first quarter of 2024, the NBR conducted 343 market inspections across various governorates, aiming to protect customer rights and combat tax evasion. These efforts resulted in 36 reported VAT violations and the imposition of administrative fines for non-compliance in connection with VAT invoices, price display and VAT certificate visibility. The NBR also identified potential VAT and excise evasion cases, with legal actions initiated against violators, who may face penalties including imprisonment and substantial fines.

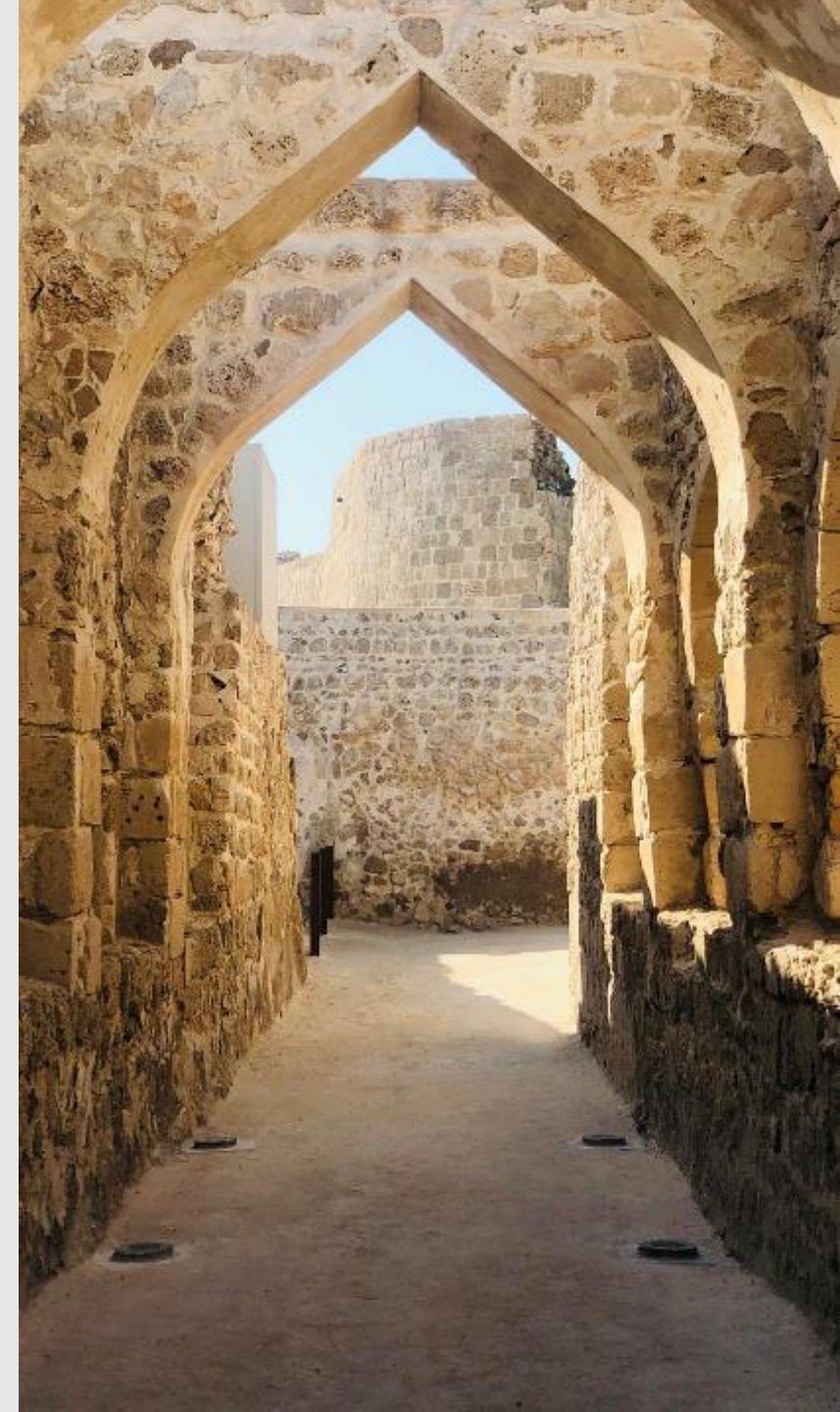
VAT invoice compliance workshop

The NBR held an interactive workshop on VAT invoice compliance as part of its commitment to raise VAT payers' awareness of VAT related issues. The workshop was attended by more than 150 taxpayers.

OTHER TAXES / LEVIES

Hotel accommodation fees

The Ministry of Tourism has imposed a fixed hotel service fee called the hotel accommodation fee. From 1 May 2024, a tax of three Bahraini dinars will be charged per room per day, which will be incorporated into the room rates charged to tourists visiting Bahrain. The hotel accommodation fees will be collected from the guest who occupies a hotel unit, regardless of the entity that made the reservation or that is responsible for payment for the stay. Once collected, the fee and its proceeds will be transferred to the Bahrain Tourism and Exhibition Authority, on a quarterly basis in accordance with Article (3) of Ministerial Resolution No. 196 of 2017 regarding hotel services fees, as amended by Resolution No. 2 of 2024.



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Kuwait

FATCA AND CRS

Ministry of Finance extends CRS reporting deadline

The Central Bank of Kuwait issued a letter dated 12 June 2024 to banks in Kuwait, attaching a notification from the Kuwait Ministry of Finance (MOF) regarding the Foreign account tax compliance act (FATCA) and *Common reporting standard* (CRS) reporting deadlines. The notification from the MOF provides the following:

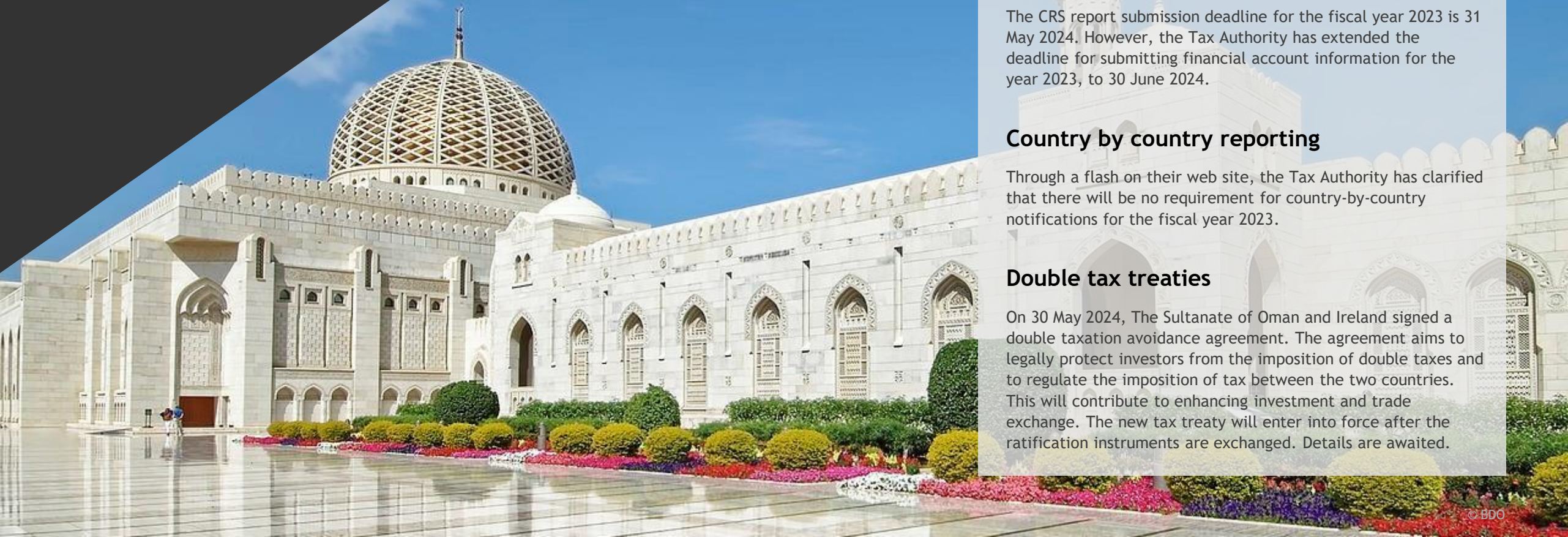
1. The deadline for filing the CRS reports for 2022 and 2023 has been postponed until further notice.
2. The FATCA and CRS reports for 2022 and 2023 should be kept ready for filing with the MOF upon issuance of the revised reporting deadlines.

No specific date has been determined yet for the filing of the CRS reports. The original CRS reporting deadline for the year 2023 was 31 May 2024. For FATCA, the original deadline is 30 August 2024.

The above postponement to the reporting deadlines is due to the ongoing maintenance of the MOF's FATCA & CRS reporting systems. The MOF is expected to issue further notifications to confirm revised reporting deadlines. Financial institutions in Kuwait should closely monitor developments in this area.

Q2 TAX UPDATE

SULTANATE OF Oman



E-invoicing

The Oman Tax Authority has held a seminar on e-invoicing, which is likely to be implemented next year. During the seminar the authority gave insights into the key e-invoicing requirements for taxpayers and also discussed transfer pricing and BEPS 2.0 Rules, together with strategies to address tax base erosion and profit shifting.

CRS

The CRS report submission deadline for the fiscal year 2023 is 31 May 2024. However, the Tax Authority has extended the deadline for submitting financial account information for the year 2023, to 30 June 2024.

Country by country reporting

Through a flash on their web site, the Tax Authority has clarified that there will be no requirement for country-by-country notifications for the fiscal year 2023.

Double tax treaties

On 30 May 2024, The Sultanate of Oman and Ireland signed a double taxation avoidance agreement. The agreement aims to legally protect investors from the imposition of double taxes and to regulate the imposition of tax between the two countries. This will contribute to enhancing investment and trade exchange. The new tax treaty will enter into force after the ratification instruments are exchanged. Details are awaited.

Q2 TAX UPDATE

Qatar

TAX TREATIES

Double taxation treaty with the UAE

On 30 May 2024, the ministry of finance representative for Qatar signed a treaty with the United Arab Emirates for the avoidance of double taxation.

This represents a significant milestone in eliminating double taxation and combating tax evasion between Qatar and the United Arab Emirates. Adhering to global transparency standards and facilitating the exchange of reliable financial information, these agreements create a fair and equitable tax environment for enhanced commercial cooperation and wider investment opportunities for governments and individuals in line with the Qatari official foreign investment strategy.

Double taxation treaty with the Kingdom of Saudi Arabia

The State of Qatar and the Kingdom of Saudi Arabia have also signed an agreement, dated 30 May 2024, on the avoidance of double taxation, particularly taxes on income, and the prevention of tax evasion.

The agreement will contribute to supporting international transparency standards through the exchange of documented financial information, within the framework of both countries' efforts to strengthen coordination and cooperation in tax matters and economic relations.

The agreement is part of efforts to enhance legislative coordination between the Kingdom of Saudi Arabia and the State of Qatar. It aims to establish tax treaties between the two countries to eliminate all cases of double taxation, in addition to promoting commercial cooperation and expanding investment opportunities for both governmental bodies and individuals, while simultaneously combating tax evasion and supporting neutrality and equity of individuals.

Q2 TAX UPDATE

KINGDOM OF Saudi Arabia

TRANSFER PRICING

Advanced pricing agreements

In a world with complex international taxation frameworks and rapidly growing globalisation, companies and regulators face multiple challenges in ensuring compliance with transfer pricing regulations and the avoidance of double taxation. This has led to the introduction of advanced pricing agreements (APAs) to provide clarity and certainty to cross-border transfer pricing arrangements.

An APA is a key tool in reducing the tax compliance burden on cross-border transactions, which could otherwise end up in costly and lengthy audits and treaty disputes. It is essentially a mechanism to provide a co-operative process for resolving transfer pricing issues on a prospective basis and to prevent transfer pricing disputes.

An APA is a document that outlines the terms and conditions of a transfer pricing arrangement between the taxpayers and the tax authorities. There are three types of APAs:

1. Unilateral APA - an agreement between the Taxpayer and the jurisdiction in which the taxpayer is located
2. Bilateral APA - an agreement between the taxpayer, the (foreign) related party with whom the transfer pricing arrangement is applicable, the tax authority in the jurisdiction of the taxpayer and the tax authority of the jurisdiction of the above related party.
3. Multilateral APA - an agreement between the taxpayer, multiple (foreign) related parties with whom the transfer pricing arrangement is applicable, the tax authority of the jurisdiction of the taxpayer and the tax authorities of all the respective jurisdictions of the related parties.

Introduction of APAs in Saudi Arabia

As a part of an amendment to the existing transfer pricing bylaws in Saudi Arabia, the Zakat, Tax and Customs Authority (ZATCA) introduced APA provisions to both taxpayers and Zakat-payers on 7 April 2023. Subsequently, ZATCA published the requirements for applying for unilateral APAs on related party transactions, as below:

- ▶ The value of the transaction with the related party shall not be less than SAR 100m (about USD 26.66m)
- ▶ A completed application shall be submitted at least 12 months before the start of the first fiscal year covered by the agreement.

In addition, ZATCA will hold a preliminary (pre-filing) meeting with the taxpayers / zakat-payers to assess the possibility of accepting the APA request. The APA will cover a period of three years, subject to the taxpayer's / zakat-payer's annual compliance report.

As the APAs in KSA are in a nascent stage, regulations and guidelines on applications and negotiations of APAs are yet to be issued by ZATCA.

Benefits for multinationals from the introduction of APAs

The introduction of APAs is a welcome move in KSA, given the growth in cross border transactions from developments around the 2030 vision, NEOM projects, regional headquarters establishing in the capital city of Riyadh and increasing multinational presence.

The main benefit of obtaining APAs for cross border transactions is the alignment between the taxpayers and the respective tax authorities on transfer pricing. This alignment allows closer corporative relationships with the tax authorities and is more transparent in cross border dealings.

An APA can provide tax certainty for future tax years. Further, an APA will help reduce the risk or limit tax audits if the transactions are conducted in line with the terms and conditions prescribed in the APA. There are also benefits for the tax authorities, which can reduce the cost of administration and free up scarce resources.

Final comments

APAs are an important tool for multinationals, especially in countries where the tax authorities are likely to scrutinise transactions closely. They are an effective mechanism for obtaining certainty, as the knowledge that transfer pricing has been accepted by all parties enables taxpayers to manage internal resources and plan effectively.

In practice, negotiating an APA can be a time-consuming process. However, the benefits of having an APA will normally compensate for all the efforts made in bringing it into force. As the process of applying for an APA will consume time and resources, the decision should be based on considerations such as the nature and the complexity of the transaction, the availability of in-house resources and an assessment of potential costs and benefits.





E-INVOICING PHASE II - Integration waves 10, 11 & 12

The Zakat, Tax and Customs Authority (ZATCA) has published new information on the integration phase of e-invoicing.

ZATCA confirmed the criteria for selecting the targeted taxpayers as follows:

- Wave 10: taxable turnover exceeding SAR 25 million during 2022 or 2023
- Wave 11: taxable turnover exceeding SAR 15 million during 2022 or 2023
- Wave 12: taxable turnover exceeding SAR 10 million during 2022 or 2023.

Based on these announcements, ZATCA will begin notifying taxpayers that fall within these waves to go live as follows:

- Wave 10: the period from 1 October 2024 to 31 December 2024
- Wave 11: the period from 1 November 2024 to 31 January 2025
- Wave 12: the period from 1 December 2024 to 28 February 2025.

VAT registered taxpayers meeting the criteria should integrate their e-invoicing solutions with the FATOORA platform. ZATCA confirmed that it will notify all targeted taxpayers in these waves to implement the integration.

In addition to integration with the Fatoora portal, taxpayers must issue e-invoices based on a specific format, including additional fields in the invoice.

ZATCA has stated that it will issue notifications to the taxpayers targeted for each wave, at least six months before their integration date.

Phase two of e-invoicing is part of the economic development and digital transformation taking place in the Kingdom. Phase one achieved positive results, most notably raising the level of consumer protection in KSA. ZATCA praised the awareness of taxpayers and the rapidity of the response in the implementation of Phase One.

The overall objectives of the e-invoicing initiative are to oblige taxpayers to cease generating handwritten invoices or computer-generated invoices through text editing or spreadsheet software. Also to implement a technical solution for e-invoicing that is compatible with the ZATCA requirements.

REAL ESTATE TRANSACTIONS TAX (RETT)

Public consultation on amendments to the RETT regulations

ZATCA has announced the approval of amendments to the Real estate transaction tax (RETT) implementing regulations under Ministerial Resolution No. 1445-88-1, as published in the Umm Al-Qura official gazette. The amendments are detailed in a table - which is also published in Umm Al-Qura - and are effective from the date of publication of the Ministerial Resolution.

Additionally, ZATCA has updated the *Simplified RETT guideline* and the *Detailed RETT guideline*.

The new amendments have extended the scope of certain exemptions under the RETT implementing regulations and the RETT due dates concerning build, own, operate and transfer (BOOT) contracts. These latter have been revised in certain instances.

The new amendments cover the following areas:

Article 3 clause A/14: Exemption for the disposal of real estate has been extended from shareholders to 'any person'. The exemption applies provided the property is included in the company's assets before the effective date of the regulations and the person is a shareholder in the company on the date the property is included in its assets.

The audited financial statements should be obtained from a licenced public accountant.

Article 3 clause A/15: Exemption for real estate transactions involving a real estate disposal by means of an in-kind distribution of the capital of a real estate investment fund established following the rules and regulations of the Capital Market Authority. The fund's units or shares corresponding to the real estate disposal are not disposed of until the earlier of *either* the date of termination or liquidation of the fund, *or* five years from the date of registration or ownership of the units or shares.

Article 3, new sub-clause C: A change in the percentage of ownership through a public offering of the shares of the disposed company or the units of the disposed fund following the rules and regulations of the Capital Market Authority is not considered a violation of the prohibition relating to the disposal of the shares or shares corresponding to the exempted real estate disposal.

Article 4: The date of disposal and the date at which tax must be paid in relation to build, own, operate and transfer (BOOT) projects has been confirmed as the date of actual transfer of ownership or possession to the recipient.

Article 4 clause b: In cases that are not covered by the official documentation procedure with the competent administrative authority or the authorised, the tax is payable within 30 calendar days from the date of the contract or final agreement, or the transfer of ownership or the actual transfer of possession in a project. A fine for late payment is imposed if this period is exceeded.

DUTY FREE ALLOWANCES

Duty-free markets in arrival lounges

On 14 May 2024 ZATCA established new regulations for duty-free purchases in the arrival lounges at all land, sea and air customs ports. These regulations aim to provide clear guidelines for passengers arriving in Saudi Arabia who wish to make duty-free purchases. The maximum purchase limit and quantities allowed for passengers arriving to Saudi Arabia are as follows:

1. Maximum purchase limit: Each passenger is allowed to make duty-free purchases up to a maximum value of SAR 3,000
2. Cigarette purchase limit: 200 cigarettes per passenger for duty-free purchases.

These measures are designed to enable passengers to enjoy the benefits of duty-free shopping within reasonable and controlled limits.

Licence applications can now be made by operators of duty-free markets in arrival lounges at customs ports.

Q2 TAX UPDATE

United Arab Emirates

CORPORATE TAX

Corporate tax guide for free zone persons

The Federal Tax Authority (FTA) has released a guide that provides valuable insight and in-depth explanations regarding the application of the corporate tax (CT) law to UAE Free zone persons (FZPs). The guide is not a legally binding document but is intended to be read in conjunction with the CT law and Cabinet and Ministerial decisions.

The background to this guide is that the CT law allows the income from certain 'qualifying activities' to be taxed at the zero-rate. The law relating to this relief is complex and certain matters could be open to interpretation. This guide clarifies the FTA's interpretation on a number of key points, as outlined below.

Adequate substance

One of the conditions of the relief is that an FZP must carry out the core income-generating activities for the qualifying activity in a free zone (or designated zone (DZ) if the qualifying activity is the distribution of goods from a free zone) throughout the tax period.

It must also have adequate substance in the free zone or DZ throughout the period. This is determined by reference to having adequate assets and qualified full-time employees in the free zone or DZ and incurring an adequate amount of operating expenses. This must be assessed on a case-by-case basis and determining what constitutes adequate substance will depend on the nature and size of the business. Double counting of employees is not allowed.

Non-core activities can be conducted outside a free zone, provided such activities do not directly drive sales or are routine in nature.

Activities can be outsourced but an FZP needs to establish methods to monitor, evaluate, guide and give instructions on the service provider in terms of quality, quantity and timeliness. This should be documented in agreements and supported by the parties' actions.

Qualifying activity

The definition of the qualifying activities encompasses activities that are ancillary to the primary qualifying activity. An activity is considered ancillary if it is essential for the execution of the main activity or if it provides a small contribution to the main activity and is closely connected to it without being regarded as a distinct activity.

The guide gives additional information on the various qualifying activities as follows:

- **Manufacturing of goods or materials:** Goods means tangible (not intangible) items. Software embedded in hardware would generally be considered goods. Manufacturing covers both fully-fledged manufacturing and contract or toll manufacturing (irrespective of the contractor's location). Manufacturing excludes repair services as this is a service involving the restoration or repair of existing products to their original or functional condition, as opposed to the creation of a new product (manufacturing) or the significant alteration of a product's form or characteristics (processing).
- **Processing of goods or materials:** Processing is normally the intermediary stage in the production process, although exceptions exist where it may serve as the final step. It is important to note that processing extends beyond manufacturing and can occur when an object undergoes a transformation without creating a new product. The term 'processing' conveys the idea of consistent or ongoing actions carried out on a tangible item.
- **Trading of qualifying commodities:** This covers 'raw form' commodities and raw commodities that have undergone minimal processing, such as cleaning, sorting, grading and minor refining to meet quality and uniformity standards for commodity exchanges.
- **Holding of shares and other securities for investment purposes:** This includes cryptocurrency investments. For shares and other securities to be classified as held for investment purposes, they must be held for an uninterrupted period of at least 12 months, or there must be a clear intention to hold them, and the FZP must be able to demonstrate this intention. It may be assumed that the transaction is not made with a natural person if the person trades shares and securities on a recognised stock exchange, provided the 12-month ownership test is satisfied.



- **Wealth and investment management services:** Wealth and investment management is a comprehensive service that goes beyond fund management. It covers all aspects of a person's finances, including retirement planning, estate planning, tax planning and budgeting. Wealth managers develop personalised plans to help clients achieve their short- and long-term financial objectives.
- **Headquarter services to related parties:** An FZP is considered to provide headquarters services if it offers specific services to related parties who are either residents or non-residents. A headquarters company can be responsible for the group's overall success or an important aspect of the group's performance, while also ensuring corporate governance. To be seen as taking responsibility for a group's success, an FZP may need to provide strategic services, senior management, take on material risks, or give substantive advice on managing risks.
- **Treasury and financing services to related parties:** Treasury and financing services include cash pooling and centralised payment or cash collection activities for, or on behalf of, related parties including domestic permanent establishments and self-investment. Interest income will be treated as arising from treasury and financing services to related parties, provided the FZP maintains adequate substance in relation to the activity.

- **Distribution of goods or materials in or from a DZ:** Distribution of goods or materials outside the UAE (high sea sales or third port trading) by a person based in a DZ will be considered a qualifying activity. The person involved in distributing goods or materials needs to perform due diligence to ensure that their customer is not the final user in order to fall within the scope of the qualifying activity. Sales agents or consultants who solely help the purchase or sale of goods or materials without directly participating in the actual transaction are not considered to be carrying out the qualifying activity of distribution.
- **Logistics services:** An FZP conducts most of its logistics operations within a free zone for clients in the UAE or abroad while offering last mile delivery services outside the free zone in the UAE or another country. Despite the delivery services being outside the free zone, they are considered to be part of the qualifying activity of logistics services.





Transfer pricing

The FZP must apply transfer pricing to qualify for the zero-rate. In this regard, profit allocation between a FZP and its domestic/foreign permanent establishment (PE) should follow a two-step approach. First, a functional analysis of the FZP PE will be conducted. Second, compensation will be determined based on functions, assets and risks. The guide makes reference to the OECD PE Report (2010) and the BEPS Action Plan 7 Report (2018). For cost allocations between qualifying income and taxable income, it is recommended that expenses be directly linked to specific income components where possible. Additionally, deductible expenses not directly attributable to specific income components should be allocated using arm's length principles and appropriate allocation keys.

There is a requirement to maintain documentation to demonstrate the arm's length nature of the relevant transactions and prepare a master file, local file and disclosure form for the FZP if the relevant TP compliance thresholds are exceeded.

Other considerations

- **De-minimis requirement:** For the computation of the de-minimis threshold, the revenue attributable to a PE is determined by applying the arm's length principle.
- **Audited financial statements:** A qualifying FZP must have audited financial statements for CT purposes. It does not need separate financial statements for its qualifying Income and other income or for any of its branches, but it should have sufficient documentation to demonstrate the qualifying income calculation.
- **Registration:** An FZP (including QFZP) must register for CT within the prescribed timelines. However, if a non-resident company has a branch in a free zone (but does not have a PE) and only earns UAE-sourced income, they are not obliged to register for CT.
- **Designated zones:** Distribution of goods is only treated as a qualifying activity if it is carried out in a designated zone. For these purposes, the designated zones listed for VAT purposes will be considered designated zones for CT purposes.
- **Verification:** The guide states that taxpayers should verify with their free zone authority that they function in a free zone or designated zone for customs and tax purposes.
- **Domestic / foreign PE:** A head office in the UAE or a branch of a foreign company within a free zone would be generally considered a domestic / foreign PE. The guide contains information on the constitution of a domestic / foreign PE for the FZP.
- **Satisfaction of beneficial recipient of goods or services:** FZPs selling goods or services to another FZP may rely on a written statement or undertaking from the latter confirming that they are the intended recipient of the goods or services and will use them for their free zone business, unless there is a valid reason to doubt the accuracy of such representation.
- **No qualifying income in first taxable period:** A FZP that has no qualifying income during a tax period due to not commencing revenue generation would be deemed to satisfy the qualifying income criteria if it does not earn any non-qualifying revenue.
- **Re-evaluating eligibility after the first taxable period:** If a FZP fails to meet the conditions in the first taxable period, they can opt to be a qualifying FZP after the end of the 5-year period. Not meeting the conditions for years 2 to 5 does not affect eligibility for re-qualification.
- **Loss set-off:** tax losses incurred in relation to taxable income are eligible to set-off and carry forward against a qualifying FZP's taxable income. However, income from non-qualifying intellectual property can only be offset against tax losses from such intellectual property.

This guide should be evaluated diligently as the benefit of the zero-rate will be lost for the next 4 years if the conditions are not met in the first year.

Public clarification on corporate tax registration

Decision No 3 of 2024 prescribed timelines for corporate tax registration, along with penalty consequences (AED 10,000 per application) for delayed applications. The timelines for filing the registration application were driven by the trade licence date, or other prescribed parameters if a trade licence was not issued. Separate timelines were also prescribed for non-resident taxable persons.

The following persons were required to file the corporate tax registration application on or before 31 May 2024:

- Juridical persons holding trade licences with an issuance month of January or February
- Juridical persons that do not hold a trade licence (including foreign entities effectively controlled and managed in the UAE)
- Juridical persons having nexus in the UAE.

The FTA has now issued a public clarification on corporate tax registration to further explain and clarify the applicable deadlines. The clarification also provides illustrations of various scenarios that can assist taxpayers in determining the applicable timelines:



	Scenario	Deadline
1	Place of effective management (PoEM) established in the UAE prior to 1 March 2024	To be determined as per the trade licence issue month. Where no trade licence is held, the applicable deadline will be 31 May 2024
2	PoEM established in UAE on or after 1 March 2024	3 months from the end of the financial year
3	PE established prior to 1 March 2024	9 months from date of existence of the PE*
4	PE established on or after 1 March 2024	6 months from date of existence of the PE*
5	Nexus established prior to 1 March 2024	31 May 2024
6	Nexus established on or after 1 March 2024	3 months from date of establishment of nexus**
7	Entities under liquidation or dormant entities whose first tax period has begun (<i>irrespective of whether it intends to conduct business/has ceased business or is proposing to liquidate after the start of the first tax period</i>)	Timeline to be determined as per the trade licence issue month

* The date of existence of a PE is typically the date when the PE is recognised to have a taxable presence in the UAE. This is usually the period where the taxable presence of the non-resident has existed in the UAE for a period of six months, or such period as prescribed under the applicable tax treaty. However, it will be necessary to evaluate all the relevant parameters.

** The date of existence of nexus in the UAE would typically be the date where immovable property held by the non-resident starts generating income in the UAE.

OTHER CORPORATE TAX GUIDES

Investment funds & investment managers

This guide provides a detailed analysis on the tax treatment for investment funds, its investors and managers. It also provides examples that enable taxpayers to understand the implications under various scenarios. The key aspects covered in the guide include:

- An overview of the meaning of qualifying investment fund and investment manager
- Conditions for a qualifying investment fund to be exempt from corporate tax
- Conditions for a real estate investment trust (REIT) to be exempt from corporate tax
- Tax implications for an investor investing in a qualifying investment fund
- Conditions for a foreign person to benefit from the investment manager exemption as specified under Article 15 of the corporate tax law
- Corporate tax compliance requirements for the above.





Qualifying group relief guide and business restructuring relief guide

These guides cover Qualifying group relief & business restructuring relief under Article 26 & Article 27 of the CT law. The key aspects covered in the guides include:

- Transactions within scope
- Conditions to be eligible for relief
- Consequences of electing for relief
- Circumstances when the relief will be clawed back and the resulting consequences
- Compliance obligations
- Interaction with other provisions of the corporate tax law

Digital public consultation on research & development (R&D) tax incentives

The UAE has initiated a digital public consultation to gather stakeholder views on the implementation of an R&D tax incentive under the UAE corporate tax law. The consultation was open from 19 April to 14 May 2024 and was accessible via the official website of the Ministry of Finance & the UAE Federal Government.

The purpose of the consultation was to understand the scope of R&D activities undertaken by businesses and corporations in the UAE and provide brief guidance on the activities that may be covered under the R&D tax incentive. The consultation also provided guidance on aspects related to the implementation and administration of the incentives in the UAE.

As the R&D tax incentive is a new concept for the UAE, a guidance note was also issued as a part of the consultation to familiarise stakeholders with the concept of R&D and activities that may be covered, in line with the Organisation for Economic Co-operation and Development's (OECD) Frascati Manual.

VALUE ADDED TAX

Public clarification on manpower and visa facilitation services

The Federal Tax Authority (FTA) has released a public clarification (VATP038) on the treatment of manpower services and visa facilitation services.

It is a common practice in UAE corporate groups that the employment visas are held by one company (Supplier) while the employees work under the supervision and control of another entity (Recipient). The public clarification provides guidance on the distinction between manpower services and visa facilitation services and the value of supply for both these services.

Manpower services

Manpower services are defined as:

The identification/recruitment/hire of candidates and making such employees available to any customer is a taxable supply of manpower services.

The Supplier would generally be responsible for the employee's performance in his/her role at the Recipient and potentially control where each employee is placed.

The consideration for manpower services is:

The full amounts received from the Recipient, i.e. the total of salary and benefits paid either by the Supplier or the Recipient.

The value of supply is unchanged if the amount is paid by the Recipient in entirety to the Supplier or directly to the employees.

Visa facilitation services

A supply is considered as visa facilitation services if:

- The Supplier holding the employment visa and the Recipient are part of the same corporate group but not part of the same VAT group
- The Facilitator's business activities do not include the supply of manpower
- The Facilitator is not responsible for any of the obligations related to the employee
- The Facilitator sponsors these employees to work exclusively for and under the supervision and control of the Recipient.

The employees exclusively work for the Recipient and are under that Recipient's supervision and control.

The consideration for the supply of Visa Facilitation services:

Includes:

recharge of expenses such as typing fees, medical tests and issuance of employee Emirates IDs

Excludes:

Employee's salary, annual flight allowance and any other monetary benefits, as these are the obligation of the Recipient.

The public clarification also explains the treatment of visa facilitation services where the services are not provided at market value or for no charge to the Recipient. The key matters clarified are:

- Where the visa facilitation services are not provided at market value, the services will be taxable at market value irrespective of the consideration agreed
- If the visa facilitation services are provided free of cost and input VAT is recovered on costs, the services will be taxable as deemed supplies. The value of the deemed supply will be all direct and indirect costs. If the facilitator is not able to determine cost, then market value applies
- In the event of free visa facilitation services provided to related parties and where the Recipient is not able to fully recover the input tax charged, the services will be taxable at market value (and not at cost).

The clarification that the value of supply for visa facilitation services excludes employee salaries is a welcome development for corporate groups with such arrangements. However, it should be noted that the clarification concerning free services to related parties could trigger additional tax liabilities.





Introduction of UAE pass for EmaraTax portal

The FTA has announced that the EmaraTax Portal (for VAT & CT) will only be accessible via UAE pass login from 30 September 2024. Users will be required to download the UAE pass application on their mobile and link the already registered email address on the EmaraTax portal with the UAE pass.

A similar process was also introduced on the Ministry of Finance (MoF) ESR Portal in September 2023. From our experience, a few challenges that have been faced on the MoF ESR portal are as follows:

- Creating UAE pass account for individuals without an Emirates ID
- Creating UAE pass account where a group email address is used to login

Businesses should be proactive and complete the linking as soon as possible.

VAT public clarification: directors' services provide by a natural person

In October 2022, the FTA announced changes to the VAT executive regulations that would be effective from 1 January 2023. One of the additions introduced to the executive regulations was Clause 2 to Article 3 which stated:

“As an exception to Clause 1 of this Article, the functions of a member of a board of directors, performed by a natural person appointed as such, for any government entity or private sector establishment, shall not be considered a supply of Services.”

The FTA released a public clarification in May 2024 on where the function of director on a board of directors was carried out by a natural person (VATP037). The clarification provides guidance on the above provision and associated VAT obligations for the natural persons concerned. This public clarification replaces Public Clarification VATP031.

Prior to 1 January 2023, director services, whether provided by a natural person or otherwise, were considered a supply of services and were considered a taxable supply if:

- The director performed the services on a regular, ongoing, and independent basis
- Total value of taxable supplies and imports made by the director (not limited to but also including the director services) exceeded the mandatory registration threshold.

With the enactment of the amendments to the executive regulations, the provision of directors' services will not be considered a supply of services for VAT purposes if the following conditions are met:

- The services are provided by a natural person, whether UAE resident or not (this amendment does not extend to a legal person, whether private or public, who may delegate in its own name a natural person to act as director)
- The person is appointed as a director on a board of any government entity or private sector establishment.



Other key points highlighted in the public clarification are:

- Only director services performed in the formal capacity as a director on a board of directors can be excluded
- The services performed by an individual as a member of a sub-committee within the main board of directors is excluded from the scope of VAT
- Services provided by the member of committee not serving as a director, not in the capacity of Director, are considered a supply of services
 - ▶ Example: freelance services rendered by third party natural person who is not a director during board or committee meetings will be considered a supply of service
- The public clarification also provides various examples for determining the date of supply and whether deregistration provisions will apply.

Key takeaways

- Natural persons performing the function of director on a board of directors must review their tax obligations for the periods prior to and from 1 January 2023
- The date of supply will be governed by Article 25 and 26 of the executive regulations which will also enable directors to ascertain whether the performance of the director function is deemed to take place before or from 1 January 2023
- If the natural person ceases to meet the requirements for mandatory registration after introduction of the above provision, such natural person must deregister for VAT purposes (assuming the natural person does not person any other taxable supplies).

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