Tax Newsletter

October 2023

Landscape

In our October 2023 edition of GT's regional monthly Tax Newsletter, we provide the latest news updates affecting International Tax, Corporate Tax, Transfer Pricing, and Indirect Taxes in the UAE and across the GCC region.

Contents

UAE Value Added Tax

The Federal Tax Authority (FTA) publishes 'VATP034' clarifying the application of Reverse Charge Mechanism (RCM) on electronic devices

The Federal Tax Authority (FTA) of the UAE has issued a Public Clarification (VATP034) on the application of Reverse Charge Mechanism (RCM) on electronic devices via Cabinet Decision No. 91 of 2023. This decision is effective from 30 October 2023.

The cabinet decision was summarised in our **September 2023 Tax Newsletter**.

Below is the summary of key updates from the Public Clarification.

1. **Definition:**

   Electronic Devices: The article defines "electronic devices" as smart mobile phones, computers, and tablets, as well as associated parts and components.

   a. Mobile Phones and Smart Phones: This includes mobile phones with merely call and/or texting capabilities and smart phones with a wide range of features. Phones that operate over physical channels like wire or fibre optic cables are not covered by this provision.

   b. Computer Devices: This includes personal computers, desktop computers, minicomputers, analog, digital, hybrid, server computers, computerised engine control units (ECU) for automobiles

   c. Tablet: "Tablets" are essentially touchscreen, wireless personal computers with a hybrid form factor that combines features of both a smart phone and a computer. This excludes e-readers that are advertised as such, without any additional functions like gaming capabilities or web browsing, and that may have different hardware and software than tablets.

   d. Associated Parts and Components: The Minister of Finance shall issue a decision that will specify the criteria that should be followed in determining the pieces or parts related to Electronic Devices.

2. **Overview of the New Mechanism:**

   a. The New Mechanism is applicable to local supplies of electronic devices to VAT-registered buyers who intend to resell the products or use them to produce or manufacture other electronic devices.

   b. The New Decision stipulates that the application of the New Mechanism will result in the following (subject to meeting the compliance requirements):

      - The supplier shall not be responsible for calculating VAT and reporting in his VAT return for such supplies.
      - The recipient shall be responsible for calculating VAT and its reporting.

3. **Compliance requirements for the recipient and supplier:**
   a. Recipient:
      - The recipient should provide a written statement explaining the intention to resell or use the devices for the production of such electronic goods purchased.
      - A written declaration should be provided confirming that the recipient is registered for VAT.

   In case the recipient is unable to meet the compliance requirements prior to the date of supply, then the recipient cannot recover input VAT on such supplies.

   b. Supplier:
      - The supplier should retain the above records for documentation purposes.
      - The supplier should verify the customer is registered and retain records for the same.

   In case the written declaration is not obtained, then the supplier must charge VAT. It should be noted that the supply of electronic devices is currently subject to VAT at the standard rate of 5% by the supplier.

4. **Direct and Indirect Exports:** This provision would not apply where such supplies qualified for zero-rating due to export of goods as per Article 45(1) of the UAE VAT Law.
5. **Date of Supply:** Article 25 and 26 of the Decree-Law shall be determined on the date of supply of such supplies on electronic devices.
6. **Designated Zones:** A supply of Electronic Devices from the UAE mainland to a Designated Zone, or a movement of such goods from the UAE mainland to a Designated Zone shall also be subject to the provisions of Cabinet Decision No. 91 of 2023.

For further information on the above-mentioned update, please click **here**.

Should you need any further clarification and details regarding this update, please contact our VAT Directors **Harsh Bhatia**, or **Sunny Kachalia** or our VAT Associate Director **Charlotte Stanley**.

UAE Customs & Excise

Dubai Customs issue Customs Notice No. (09/2023) on the national system for tracking trucks and shipments in the UAE

The national system for tracking trucks and shipments in the UAE will be implemented effective from 1 November 2023. This initiative comes as a part of Dubai Customs' efforts to enhance customs security and facilitate trade by tracking the movement of cargoes and conveyances.

For further detailed information on the above-mentioned update, please click **here**.

Should you need any further clarification and details regarding this update, please contact our VAT Directors **Harsh Bhatia**, or **Sunny Kachalia** or our VAT Associate Director **Charlotte Stanley**.

Dubai Customs issue Customs Notice No. (10/2023) on the imposition of anti-dumping duty on the GCC imports of automotive batteries originating in or exported from the Republic of Korea

A final anti-dumping duty has been enforced on all GCC imports of automotive batteries which has electric lead-acid accumulators with the capacity of 35 up to 115 amperes and have origins in or are exported from South Korea under HS code 8507.10.00, in accordance with the GCC Industrial Cooperation Committee's decision and UAE Federal Law (1) of 2017 on anti-dumping, countervailing, and safeguards measures. The anti-dumping duty will be in force for 5 years effective from 25 June 2022.

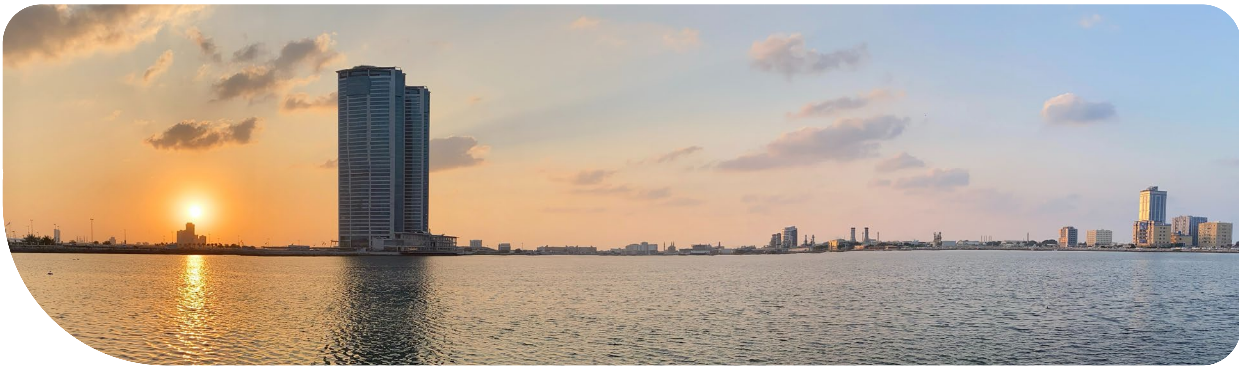
Ad valorem anti-dumping duties will be imposed by Dubai Customs, as a percentage of based on the imports' CIF value as shown in the following table:

Ad valorem anti-dumping duty (Percentage of CIF value)	Name of the Company
21%	Hankook & Company Co., Ltd
19%	Sebang Global Battery CO., LTD
12%	Hyundai Sungwoo Solite Co., LTD
25%	DN Automative Corporation
25%	Other Companies

Effective from 25 June 2022, all deposits, financial guarantees, or sums owed to Customs on imports of automobile battery products from or exported to the Republic of Korea for domestic use during the timeframe prior to 25 June 2022 shall be shifted to final antidumping duties. Businesses may approach the Tariff & Origin Department in case of any issues relating to the implementation of the above.

For further information on the above-mentioned update, please click **here**.

Should you need any further clarification and details regarding this update, please contact our VAT Directors **Harsh Bhatia**, or **Sunny Kachalia** or our VAT Associate Director **Charlotte Stanley**.



International Tax & Tax Treaty

GCC Tax Developments

UAE Federal Tax Authority issued Corporate Tax Guide for Non-Resident Persons

The UAE Federal Tax Authority (FTA) released a Corporate Tax Guide for Non-Resident Individuals and Entities (CTGNRP1) on October 9, 2023. This guide is intended to offer general guidance to individuals or legal entities that are not considered as resident persons for Corporate Tax purposes and who derive income from the UAE. It is designed to assist them in determining if they are liable for Corporate Tax in the UAE as non-resident persons. The guide provides an outline of:

- Definition of non-resident person for UAE Corporate Tax purposes;
- Corporate tax registration obligations applicable for non-resident persons; and
- Types of income of a non-resident person that are subject to UAE Corporate Tax.

Further, specific guidance is provided on permanent establishments, UAE source income, and nexus in the UAE.

To access the guide, please click **here**.

Should you need any further clarifications and details regarding this information, please contact our Corporate Tax Team – Tax Partner **Anuj R. Kapoor** or Associate Tax Director **Tatiana Stupenkova**.

Federal Tax Authority issued Corporate Tax Guide for Dividends and Participation Exemption

On 16th October 2023, the UAE Federal Tax Authority released a Corporate Tax Guide for Dividends and Participation Exemption (CTGEXI1). This guide is intended to give clarifications to Taxable Persons on exemptions under the Corporate Tax Law for certain types of dividends and other profit distributions.

The Participation Exemption allows certain income, such as capital gains and foreign dividends, to be exempt from Corporate Tax if a Taxable Person has a significant, long-term ownership interest in a juridical person. This guide discusses some of the terminology and circumstances in the Corporate Tax Law and includes the following topics such as:

- Definition of dividends and other profit distributions;
- Nature of exempt income (and related expenditure) from a Participation; and
- Applicability and conditions to be eligible for the Participation Exemption.

To access the guide, please click **here**.

Should you need any further clarifications and details regarding this information, please contact our Corporate Tax Team – Tax Partner **Anuj R. Kapoor** or Associate Tax Director **Tatiana Stupenkova**.

UAE Federal Tax Authority provides General Guide on Corporate Tax

The UAE Federal Tax Authority (FTA) released a Corporate Tax General Guide (CTGGCT1) dated on September 11, 2023. This guide is aimed at offering general insight into Corporate Tax in the UAE, with the goal of presenting the provisions of the Corporate Tax Law in a clear and understandable manner for readers. It covers essential Corporate Tax regulations and procedures, such as determining the Corporate Tax base, calculating Corporate Tax, filing Corporate Tax Returns, and complying with related requirements. Additionally, the guide provides answers to common questions that businesses may have and includes simple examples to illustrate the functioning of key aspects of the Corporate Tax system.

To access the guide, please click **here**.

Should you need any further clarifications and details regarding this information, please contact our Corporate Tax Team – Tax Partner **Anuj R. Kapoor** or Associate Tax Director **Tatiana Stupenkova**.

UAE not implementing Global Minimum Tax in 2024

On September 13, 2023, the UAE hosted a regional discussion forum in collaboration with the Organisation for Economic Co-operation and Development (OECD) regarding the Global Minimum Tax (GMT) under Pillar Two. It has been reported that the UAE officially announced its decision not to enforce the GMT in 2024. Instead, the government intends to initiate consultations in the first quarter of 2024 to explore potential implementation of the GMT at a later date. More information will be made available as it becomes accessible.

It is important to highlight that the UAE has put into effect a fresh Corporate Tax system starting from June 1, 2023. This system involves a standard tax rate of 9%, which is lower than the 15% GMT.

Please find the updated version of **Corporate Tax FAQs** that will provide as an additional insight to the future implementation of GMT in UAE.

Should you need any further clarifications and details regarding this information, please contact our Corporate Tax Team – Partner **Anuj R. Kapoor** or Associate Tax Director **Tatiana Stupenkova**.

Amendments to Saudi Arabian Corporate Income Tax Law

The Saudi Arabian Ministry of Finance has authorised changes to the Income Tax legislation. The amendments to the Income Tax by-law are summarised in the following points:

- The interest expenses linked to funding capital assets and added to the asset's value during its construction phase are not factored into the interest formula used for determining the taxable profit. In simpler terms, interest charges that have been included in the value of a capital asset under construction are not considered in the interest calculation for tax purposes. This means that the borrowing costs capitalised in accordance with IAS 23 will not be part of the permitted interest calculation and will instead be subject to taxation based on depreciation rules.
- The deductible contributions made by corporations to pension, social security, or other funds created to ensure the provision of end-of-service benefits or cover medical expenses for employees must satisfy specific criteria, including the following, among other requirements:
    - The deductible amount should not exceed the unfunded liabilities of these funds, which have not been paid from the beginning of the fiscal year during which the amount is deductible.

- The meaning of "unfunded liabilities" has been provided with more specific details. These clarifications will apply to the deduction of employer contributions to an approved retirement fund as an expenditure.
- The employer's obligations related to their contributions to these funds arise at the start of the year in which the deductible amount is applicable and remain unpaid until the conclusion of that fiscal year.
- The tax dispute resolution procedure is regulated by the guidelines established in the operational rules of Tax Violations and Dispute Resolution Committees.
- In alignment with the modification of Article 60 of the Income Tax By-law, which specifies that the tax dispute process is guided by the regulations of the tax committees, Articles 61 and 62, which previously addressed the tax dispute process and the establishment of tax committees, have been eliminated.
- Payments made to non-residents for technical and consulting services, as well as international telecommunication services, are subjected to a 5% withholding tax (WHT), irrespective of whether they are made to related parties or third parties.
- Payments to non-residents for air tickets that are subject to withholding tax (WHT) are those payments for international flights departing from Saudi Arabia.
- Payments to non-residents for air or maritime freight services subject to withholding tax (WHT) encompass payments to air or maritime freight companies, whether the payment is made within or outside the Kingdom. However, it's important to note that this does not apply to freight services from foreign locations to the Kingdom.

Should you need any further clarifications and details regarding this information, please contact our International Tax Team – Partner **Anuj R. Kapoor** or Associate Transfer Pricing Director **Nimesh Malik**.

Saudi Arabia revises withholding tax provisions

The Ministry of Finance of Saudi Arabia has released Resolution No. 25 introducing amendments to the rules related to withholding tax applied to payments to non-residents. These revisions stipulate that non-residents are now liable to pay a (withholding) tax on any funds they receive from any origin within Saudi Arabia. This tax is applicable at the specified standard rates, including the following main rates:

- Dividends - 5%
- Interest - 5%
- Royalties or rents - 15%
- Technical or consulting services - 5%

The primary modification concerns the withholding tax rate for technical or consulting services. The previous elevated rate of 15% for payments to the head office or related companies is no longer in effect, and these payments are now subject to the standard 5% rate.

Additional information about this resolution will be shared when it becomes accessible.

Should you need any further clarifications and details regarding this information, please contact our Corporate Tax Team – Tax Partner **Anuj R. Kapoor** or Associate Tax Director **Tatiana Stupenkova**.

The Saudi Arabian Ministry of Finance has sanctioned a series of amendments to the Zakat regulations

The Zakat, Tax and Customs Authority (ZATCA) introduced certain amendments to the existing Zakat by-law under a new Article to the Concluding Provisions. These amendments include the following provisions:

- ZATCA aims to enhance awareness and promote adherence by disseminating guidelines and publications to taxpayers. ZATCA may, at its discretion, provide a clarifying directive in response to requests from the public or proactively, specifying the period it pertains to.
- ZATCA is dedicated to following the information contained in the interpretations provided in the guidelines, publications, or explanatory rulings for periods subsequent to their issuance or modification, without affecting the prior periods. When issuing explanatory rulings, ZATCA must take into account compliance with the legal provisions and regulations.
- ZATCA's commitment to the interpretation presented in the guidelines, publications, or explanatory rulings does not extend to the following cases:
  - Difference of the actual facts, activities and transactions.
  - Ignoring or manipulating material facts.
  - The transactions that do not fulfil the conditions or assumptions as per the guidelines, publications or explanatory rulings.
- The purpose of any document issued by ZATCA, as stated in this article, is to clarify how the legal and regulatory provisions relate to specific transactions involving certain circumstances. This does not grant ZATCA the authority to:
  - Provide an exception, exemption, privilege, discount or any other advantage other than what is allowed as per the provisions of the law and by-law.

For further information, please click **here**.

Should you need any further clarifications and details regarding this information, please contact our International Tax Team – Partner **Anuj R. Kapoor** or Associate Transfer Pricing Director **Nimesh Malik**.

GCC Tax Treaty Developments

Qatar ratifies pending protocol to tax treaty with Ukraine

As per recent information, Qatar officially issued a decree to confirm the approval of the unresolved protocol related to the income tax treaty with Ukraine, originally signed in 2018. This significant step occurred on September 14, 2023. The protocol, initially signed on September 2, 2021, represents the first amendment to the treaty and brings about modifications to the treaty's preamble and two key articles: Article 25 (concerning the Mutual Agreement Procedure) and Article 26 (pertaining to the Exchange of Information). Furthermore, it introduces a new Article 28, focusing on the entitlement to benefits. This protocol will come into effect following the exchange of ratification instruments and will be enforceable starting from the 1st of January in the year following its official implementation.

Should you need any further clarifications and details regarding this information, please contact our International Tax Team – Partner **Anuj R. Kapoor** or Associate Tax Director **Amisha Anil**.

Iran and the UAE looking to sign tax treaty

Officials from Iran and the United Arab Emirates convened on September 21, 2023, to engage in discussions related to bilateral matters. These discussions encompassed mutual interests in establishing an income tax treaty. It's worth noting that if such a treaty materialises, it would mark the first of its kind between the two nations and would necessitate the completion of final negotiations, the signing of the agreement, and the ratification process before it becomes effective.

Should you need any further clarifications and details regarding this information, please contact our International Tax Team – Partner **Anuj R. Kapoor** or Associate Tax Director **Amisha Anil**.

Russia and the UAE to conclude tax treaty negotiations

Officials from Russia and the United Arab Emirates are in the process of scheduling the conclusion of discussions for a fresh income and capital tax treaty, set for October 2023. This prospective treaty will represent the initial comprehensive tax agreement between these two nations and will need to go through the stages of finalisation, signing, and ratification before it becomes legally binding. It's important to note that presently, there exists a limited income tax treaty, signed in 2011, which is primarily applicable to income and gains obtained by a Contracting State or its financial and investment institutions.

Should you need any further clarifications and details regarding this information, please contact our International Team – Partner **Anuj R. Kapoor** or Associate Tax Director **Amisha Anil**.

Peru and Saudi Arabia looking to negotiate tax treaty

On 22 September 2023, officials from Peru and Saudi Arabia held a meeting to deliberate on matters related to bilateral collaboration. This included talks about potentially creating an income tax treaty. Should such a treaty come to fruition, it would stand as the inaugural agreement of its kind between the two nations, necessitating the completion of negotiation, signing, and ratification processes before it takes effect.

Should you need any further clarifications and details regarding this information, please contact our International Tax Team – Partner **Anuj R. Kapoor** or Associate Tax Director **Amisha Anil**.

Swiss National Council approves pending protocol to tax treaty with the UAE

On September 19, 2023, the Swiss National Council, which is the lower house of parliament, granted its approval for the ratification of the outstanding protocol associated with the 2011 tax treaty with the United Arab Emirates. This protocol, formally signed on November 5, 2022, stands as the initial modification to the treaty and features adjustments aimed at aligning the treaty with OECD BEPS standards, among other changes. The protocol will come into effect after the exchange of ratification documents and, in general, will be applicable starting from the 1st of January in the year following its official enactment.

Should you need any further clarifications and details regarding this information, please contact our International Tax Team – Partner **Anuj R. Kapoor** or Associate Tax Director **Amisha Anil**.

Tax treaty between the Democratic Republic of the Congo and the UAE in force

As per an announcement from the UAE Ministry of Finance, the income tax treaty with the Democratic Republic of the Congo became legally effective on January 24, 2023. This treaty, initially signed on October 12, 2021, marks the initial agreement of its kind between these two nations.

Taxes Covered

The treaty covers Congolese:

- Tax on rental income;
- Tax on income from movable capital;
- Tax on benefits and profits;
- Special tax on excess profits
- Special tax on capital gains from the sale of shares or interests
- Professional tax on remuneration;
- Exceptional tax on remuneration paid by employers to expatriate employees; and
- Professional tax on amounts paid for the provision of services of any kind provided by natural or legal persons not established in the Democratic Republic of the Congo.

The treaty covers UAE income tax and corporate tax.

Income from Hydrocarbons

Article 3, which pertains to income generated from hydrocarbons, stipulates that, regardless of any other aspect of the treaty, it does not impede the authority of either Contracting State, or any of their local governments or local authorities, to enforce their own domestic laws and regulations concerning the taxation of income and profits originating from hydrocarbons within their respective territories.

Residence

The treaty contains a clause which states that in cases where an entity (not an individual) is considered a resident in both of the Contracting States, its residency status for treaty purposes will be determined through mutual agreement between the competent authorities. This determination will consider factors like the entity's place of effective management, where it is legally formed or incorporated, and other pertinent factors. If no agreement is reached, this entity won't be eligible for any tax reductions or exemptions as outlined in the treaty, unless otherwise agreed upon by the competent authorities of both Contracting States.

Service PE

The treaty contains a clause stating that a permanent establishment will be considered to exist when a business provides services using its employees or other contracted personnel if these activities persist within a Contracting State for a total of more than 183 days within any continuous 12-month period, either for the same project or related projects.

Withholding Tax Rates

- Dividends - 0%
- Interest - 0%
- Royalties - 5%
- Fees for technical (professional) services of a managerial, technical, or consultancy nature - 5%

Capital Gains

The following capital gains derived by a resident of one Contracting State may be taxed by the other State:

- Gains from the alienation of immovable property situated in the other State;
- Gains from the alienation of movable property forming part of the business property of a permanent establishment in the other State; and
- Gains from the alienation of shares deriving more than 50% of their value directly or indirectly from immovable property situated in the other States.
- Gains from the alienation of other property by a resident of a Contracting State may only be taxed by that State.

Double Taxation Relief

In both nations, the standard approach to prevent double taxation is the exemption method. However, for income that might be subject to taxation as outlined in Articles 11 (Dividends), 12 (Interest), and 13 (Royalties), the credit method is employed.

Entitlement to Benefits

Article 29, which deals with eligibility for treaty benefits, stipulates that a benefit under the treaty would not be extended for a specific income source if it's reasonable to believe that the primary aim of any arrangement or transaction leading to that benefit, directly or indirectly, was to secure that benefit. This is unless it can be proven that granting that benefit in such a situation aligns with the intended objectives and purposes of the relevant sections of the treaty.

The treaty applies from 1 January 2024.

For further information, please click **here**.

Should you need any further clarifications and details regarding this information, please contact our International Tax Team – Partner **Anuj R. Kapoor** or Associate Tax Director **Amisha Anil**.

Our Experts

United Arab Emirates

Steve Kitching
Head of Tax, Partner
Tax Advisory

T +971 58 5520 90 64
E steve.kitching@ae.gt.com

Anuj R. Kapoor
Partner
Tax Advisory

T +971 4 388 9925
E anuj.kapoor@ae.gt.com

Kingdom of Saudi Arabia

Adel Daglas
Head of Tax
Zakat & Tax

T +966 (0) 55 280 7442
E adaglas@sa.gt.com

Imad Adileh
Partner
Tax Advisory

T +966 (0) 59 558 0027
E iadileh@sa.gt.com

Mohamed Hwitat
Director
VAT Advisory

T +966 (0) 53 454 3017
E mhwitat@sa.gt.com

Kingdom of Bahrain

Jatin Karia
Senior Partner
Tax Advisory

T +973 3957 5562
E jatin.karia@bh.gt.com

Shashank Arya
Director
Tax Advisory

T +973 3544 2937
E shashank.arya@bh.gt.com

Sultanate of Oman

Badar Al Hashmi
CEO and Head of Advisory
GT Oman

T +968 90333330
E badar.alhashmi@om.gt.com

Kuwait

Hazem Al-Agez
Partner
Tax Advisory &
Compliance Services

T +965 9994 9147
E hazem.alagez@kw.gt.com

Karim Ezz El-Din
Manager
Tax Advisory &
Compliance Services

T +965 6624 6798
E karim.ezzeldin@kw.gt.com

Abu Dhabi

Al Kamala Tower
Office 1101, 11th Floor
Zayed the 1st Street
Abu Dhabi, UAE

T +971 2 666 9750
F +971 2 666 9816

Dubai

The Offices 5
Level 3, Office 303
One Central, DWTC
PO Box 1620
Dubai, UAE

T +971 4 388 9925
F +971 4 388 9915

Abu Dhabi

Unit 2, Floor 14
Sila Tower
ADGM Square
Al Maryah Island
Abu Dhabi, UAE

T +971 2 666 9750
F +971 2 666 9816

Sharjah

Al Bakr Tower
Office 305
7/9 Al Khan Street
Sharjah, UAE

T +971 6 525 9691
F +971 6 525 9690

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