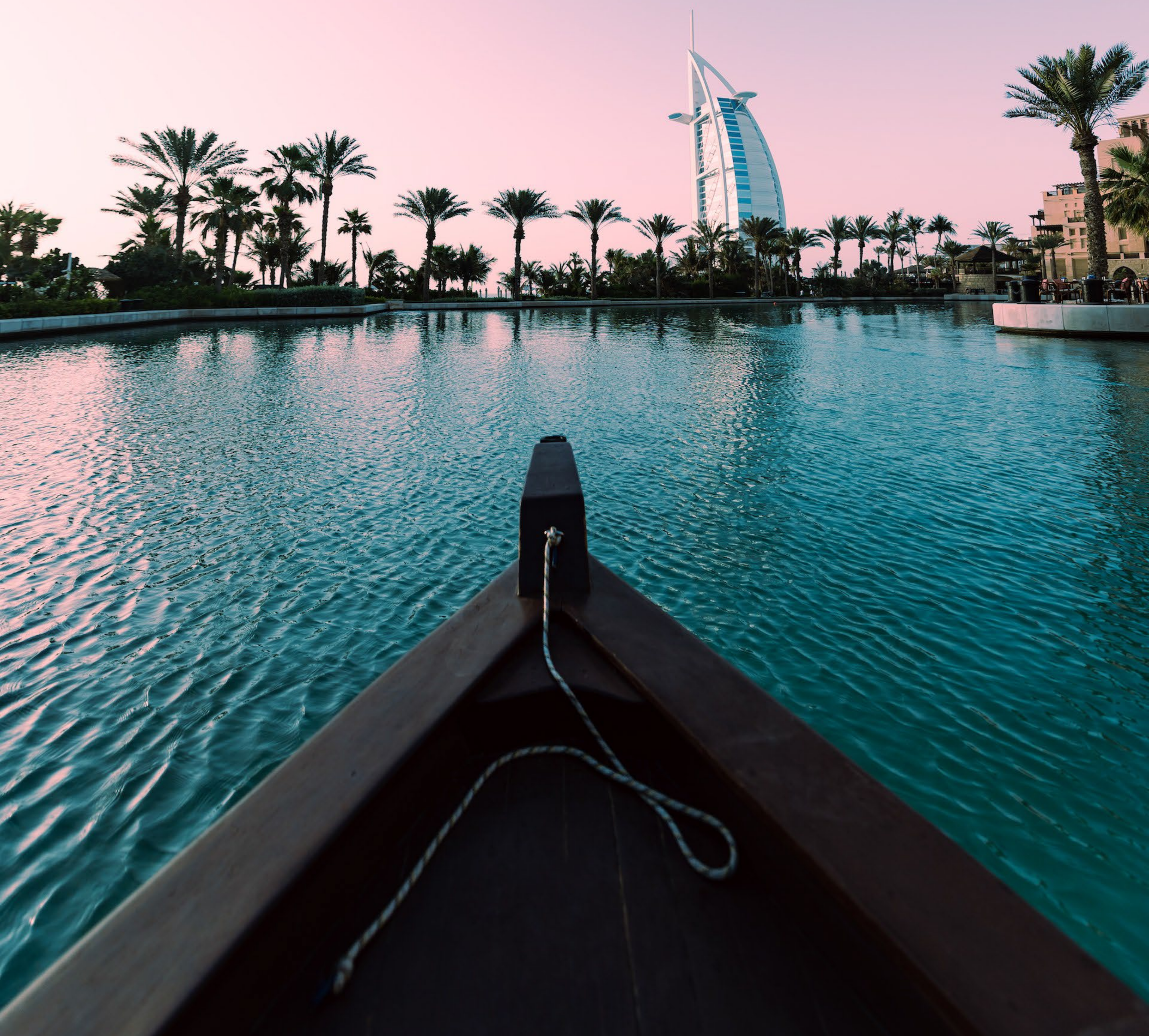
Grant Thornton

Tax Newsletter

June 2023



Landscape

In our June 2023 edition of GT's Monthly Tax Newsletter, you can read the latest news updates affecting International Tax, Transfer Pricing, and Indirect Tax in the UAE and across the Middle East Region.

Contents

The UAE Update

Value Added Tax

The Federal Tax Authority ('FTA') publishes Private Clarifications Tax Procedure Guide ('TPGPC1')

On 1st June 2023, the FTA released a Tax Procedural guide, compiling all the updates that have been released over the past few months. This document aims to provide guidance on who may apply for clarifications as well as instances where clarifications may get rejected.

In December 2022, the FTA had released USEG001, which was a user guide that provided detailed guidance on the eligibility of persons for applying for private clarifications. The major changes updated in the June 2023 version are listed below:

- Simplified the guide to reflect the recent updates;
- References to e-Services were removed;
- The field descriptions in the private clarification application have been updated in accordance with the EmaraTax portal;
- A fee section for submitting clarification requests has been included.

Effective from 1st June 2023, fees will be applicable on private clarification applications. The fees applicable will be as below:

- The fee applicable on private clarification applications relating to only one type of Tax will be AED 1,500 per application.
- The fee applicable on private clarification applications relating to more than one type of Tax will be AED 2,250 per application.

It is pertinent to note that the fees can only be paid through the EmaraTax portal through a valid credit or debit card.

The FTA may take up to 50 business days to issue a response to a clarification request. In certain cases, the FTA may request additional information to finalise its response. In such cases, 50 business days will be calculated from the date such additional information or documentation is received.

It is important for the readers to note that the clarifications are not considered to be a decision by the FTA, but rather the FTA's view on the application in relation to the legislation.

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**.

Value Added Tax

Saudi Arabia ('KSA') – The Zakat, Tax and Customs Authority ('ZATCA') set guidelines for selecting VAT payers in Wave 5 for Implementing ('Integration Phase') of E-invoicing

On 26th May 2023, the ZATCA announced its 5th wave of taxpayers for implementing the Integration Phase (Phase 2) of E-invoicing, which now includes VAT payers whose taxable revenue exceeds 100 million Saudi Riyals ('SAR') during 2021 or 2022. The VAT payers who meet the criteria should integrate their E-invoicing solutions with (FATOORA) Platform with effect from 1st December 2023.

As previously communicated, ZATCA has outlined the below additional requirements for Phase 2 of the implementation of E-invoicing, which includes:

- Integrating E-invoicing solutions with FATOORA;
- Issuing invoices in a specific format;
- Including additional fields in the invoice.
- The below table provides a quick summary of the sequence of target groups and important timelines.

Target-groups	Taxable turnover in 2021	Go-live date	To be fully integrated by	Likely penalty dates for non-compliance
1st wave	Exceeds SAR 3 Billion	1st January 2023	30th June 2023	1st July 2023
2nd wave	Exceeds SAR 500 Million	1st July 2023	31st December 2023	1st January 2024
3rd wave	Exceeds SAR 250 Million	1st October 2023	1st February 2024	Post 1st February 2024
4th wave	Exceeds SAR 150 Million	1st November 2023	29th February 2024	Date awaited
5th Wave	Exceeds SAR 100 Million	1st December 2023	31st March 2024	Date awaited

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

Should you need further clarification and details regarding this update, please contact GT KSA Head of Tax **Adel Douglas**, or Senior Tax Manager, **Syed Abul Rahman** or Senior Tax Manager, **Ganesh Nair**.

Saudi Arabia ('KSA') – The Zakat, Tax and Customs Authority ('ZATCA') sets the criteria for Profit Margin Scheme on used cars

The ZATCA has approved the provisions of Article 48 of the Executive Bylaws of the Value Added Tax Law, thereby permitting the application of Profit Margin Scheme on used cars. However, the following conditions must be satisfied for being eligible to apply the scheme:

- The car must be classified as a 'qualified used car' by ZATCA i.e.:
  - The used car must be registered in the KSA;
  - The used car must have been driven on the road for personal or business purposes;
  - The used car must be suitable for reuse with or without minor repairs, without any significant changes to its basic nature;
  - The supply of the used car must be by a taxable person registered with the ZATCA and licensed to practice the car trading activity according to a commercial register or any similar license.

Additionally, the ZATCA has classified the following as ineligible to avail the benefits of the profit margin scheme for used cars:

- New cars (registering the car and the distance traveled to deliver it to the customer does not mean that the car is "used" and the profit margin method is applicable to it);
- Cars imported into the KSA, even if they are used outside the KSA, including the car received on behalf of the person.
- Any used car purchased by a taxable person applying the profit margin method and issued a tax invoice showing that VAT is calculated separately in accordance with the normal rules for non-used goods.

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

Should you need further clarification and details regarding this update, please contact GT KSA Head of Tax **Adel Douglas**, or Senior Tax Manager, **Syed Abul Rahman** or Senior Tax Manager, **Ganesh Nair**.

Oman – The Oman Tax Authority ('OTA') grants Indirect Tax Exemptions for Electric Vehicles ('EV') and implements new regulations for EV charging

As per the latest announcement from the OTA, EVs and EV parts will be exempt from VAT, customs tax, and registration fees in Oman.

Zero-rated VAT on EVs may be applied if the below-stated specific conditions are satisfied:

- The vehicle must be equipped with a fully electric motor or a hydrogen-powered engine;
- The vehicle be registered in Oman as an electric car or a zero-emission vehicle (hydrogen) as legally required;
- The EV must also meet the approved specifications and standards in Oman; and
- The purchase of EVs and their spare parts must be made from Oman VAT-registered individuals or entities. This is to ensure proper tax compliance and legal regulation in the EV market.

Furthermore, the OTA clarified that both VAT-registered and non-registered entities can import EVs or hydrogen-powered vehicles without incurring VAT. This reaffirms the associated procedures established by the General Administration of Customs and the customs tariff.

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

Should you need further clarification and details regarding this update, please contact GT Oman Tax Partner **Nasser Al-Mughairy**, or Tax Director, **Deepika Rajan**.

Oman – The Oman Tax Authority ('OTA') releases a VAT Guide on Input VAT

The OTA publishes a VAT Guide on Input VAT, clarifying the key matters relating to input VAT credit. The highlights of the guide are as discussed below:

A person registered for VAT may deduct the VAT they incurred on their purchases ('input VAT') from the VAT they must charge on supplies they make ('output VAT').

- **Steps to Deduct Input VAT**

  For a taxable person to determine the amount of input VAT they may deduct, they must take the following steps (in order):

  - Identify taxable expenses considered as input VAT for VAT purposes;
  - Distinguish and apportion input VAT between business and non- business activities;
  - Identify and exclude the amount of blocked input VAT, (if any);
  - Distinguish and apportion input VAT between taxable and exempt activities; and
  - Claim the deductible input VAT in their periodic VAT return.

- Amounts that are not considered input VAT
  - VAT that is incorrectly charged (such as VAT charged on a zero-rated food item, or VAT charged by a non-registered supplier);
  - Equivalent VAT applied in the GCC or other countries; and
  - Amounts related to prohibited goods in Oman.

- Conditions for an input VAT deduction

  The taxable person must retain:

  - A valid VAT invoice for purchases (issued pursuant to the provisions of the Law and its Regulations – this could be a standard tax invoice, a simplified tax invoice, or a summary tax invoice)
  - Documents proving the import of goods and VAT paid on imports. Commercial documents such as supplier invoices, contracts, and transportation bills of lading meet these requirements as well as official proof will include the documents issued by the Directorate General of Customs.
  - The OTA clarifies that the Input VAT will not be disallowed if the Tax Invoice clearly identifies the supplier, customer, and nature of supply and it is clear that VAT was charged correctly and vice versa.

- **Taxable Person's economic activity**
  - Input VAT will be considered to have been incurred by a taxable person only if the purchases are related to their economic activity.
  - Most common examples of expenses that are not related to a taxable person's economic activity are personal interest expenses such as expenses related to recreational and sporting activities, expenses for the personal benefit of the company's employees, managers and directors etc.

- Time of deduction
  - The taxpayer has the right to deduct input VAT through their VAT return when all conditions are met like receiving the tax invoice and required documentation for reverse charge mechanism transactions.
  - The right to claim the input VAT shall be extinguished three (3) years from the end of the tax period during which the right to deduct was created if the taxable person does not deduct the input tax immediately.

- Evidence that are required to deduct Input VAT
  - Valid tax invoice pursuant to the provisions of the Law and its Regulations. The OTA may refuse the input VAT credit if the taxable person is unable to provide a valid tax invoice.
  - Documents proving the Import and the payment of any Import VAT on goods.
  - VAT Returns and records of Output VAT if declared under the Reverse Charge Mechanism or deferment of Import VAT.

- Input VAT on imported goods
  - Input VAT on goods or services is not deductible by the taxable person and cannot deduct where such supplies were supplied to someone else.
  - The importer of record may deduct the VAT paid on imported goods, provided they have imported these goods for business purposes. Import VAT will not be claimable by both persons where a taxable person imports goods in the name of another person.
  - The importing and supplying of goods on behalf of the third party will be considered to have been made by the agent as a principal, where an agent acts in their own name on behalf of a third party. The agent may deduct the input VAT on these supplies provided the agent properly accounts for VAT on the onward supply from them to the third party.

- Input VAT incurred by employees
  - The taxable employer must ensure that these purchases are made for business purposes only and keep records the to prove the business nature of the goods or services purchased. If so, input VAT may be recovered subject to the normal rules. Any portion related to private use must be excluded.
  - Input VAT incurred for the personal benefit of the employee, may not be deducted when incurred by the employer or employee.
  - Supplies made to a person in their capacity as an employee will be considered to have been made to the employer. Common examples are fuel and motor vehicle repair expenses, meals and accommodation while on a business trip, miscellaneous low-value goods and services such as materials and tools, up to a maximum value of Omani Riyals ('OMR') 500.

- Blocked Input VAT
  - Goods or Services incurred for entertainment purposes:
    - Includes admission to sporting, cultural, and artistic events, goods and services used in holding such events, and ancillary goods and services.
    - Events that are primarily of an educational or business nature would not typically be considered entertainment.
    - Any expenditure which was primarily entertainment-related should not be deducted.

- Motor vehicles and related Goods and Services for private use:
    - The taxable person must identify and not deduct the private use portion of expenditure on motor vehicles.
    - For example, where the employee is allowed to keep the car after working hours with them, only the portion related to working hours will be deductible.
- Provision of food and beverage catering services:
    - Includes all provision of food and beverages intended for onsite consumption.
    - This does not include food and beverages provided at taxable person's sites for the provisions of employees, either under prevailing laws in Oman or at remote locations where alternatives are not reasonably available.
    - In addition, it does not include food and drinks when provided within the course of a meeting or as normal refreshments (such as dates, chocolates, tea, coffee, etc.)
- VAT incurred in relation to prohibited supplies or imports:
    - Any expenditures related to goods or services that are prohibited per laws in Oman.
    - In addition, where eligible goods are bought and sold in accordance with the profit margin mechanism the input VAT that forms part of the purchase cost may not be deducted.

- **Alternative Apportionment Method**
    - The Taxable Person may not apply any alternative method of calculating the partial deduction unless he/she obtains the OTA's approval and is notified of the approval decision. Some of the common alternative methods include:
        - **Transaction Count method:** Apportionment based on a ratio of the number of taxable transactions to total transactions.
        - **Floorspace method:** Apportionment based on a ratio of floorspace used for taxable supplies to total floor space.
        - **Expenditures method:** Apportionment based on expenditures used for taxable supplies to total expenditures.
        - **Headcount method:** Apportionment based on number of staff dedicated to taxable supplies to total number of staff.
        - **Sectoral method:** Dividing the economic activity into discrete divisions and applying the most suitable method for each sector.

- **Issuing Tax Invoices**
    - A taxable supplier must issue a tax invoice for each supply made in the course of its activities.
    - This includes standard-rated and all exempt as well as zero-rated supplies.

The Guide is available both in Arabic as well as English and can be accessed.

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

Should you need further clarification and details regarding this update, please contact GT Oman Tax Partner **Nasser Al-Mughairy**, or Tax Director, **Deepika Rajan**.

Oman – The Oman Tax Authority ('OTA') releases a VAT Guide on charities and non-profit organisations

The OTA publishes a VAT Guide, clarifying the key matters relating to charities and non-profit organisations. The highlights of the guide are as discussed below:

- **Activities of non-profit organisations**
  - Economic activities: Non-profit entities usually carry out a mixture of economic and non-economic activities. Therefore, it will have to carefully evaluate its activities to determine the nature of the goods and services that have been supplied.
  - Common examples of non-economic activities include receipt of donations given voluntarily and without requiring anything to be done in return, activities offered for free, receipt of government grants to provide humanitarian services without fees pursuing a hobby, such as an informal club with a limited number of people getting together to play video games for entertainment.

- **VAT on supplies made by non-profit organisations**
  - Any non-profit entity registered for VAT must charge VAT at the appropriate rate to supplies it makes as part of its economic activities.
  - Taxable supplies are either taxable at 0% or subject to 5%. VAT should not be charged on exempt supplies or supplies outside the scope of VAT.

- **Donations**
  - Cash donations: The non-profit entity is not required to charge VAT on receiving cash donations as they are considered as non-economic activities and hence will be outside the scope of VAT. However, if the donations are made under terms and conditions that goods or Services, such as advertising or promotional services, are provided by the non profit organisation in exchange for these payments' donations will be considered a consideration for the supply of goods and services.
  - Non-cash donations: Goods donated by a taxable person as part of an initiative will not be considered a supply and input VAT will be considered for such goods and will be deducted according to the input VAT deduction rules. But if the donations of goods and services were made with the expectation of obtaining a great benefit from the non-profit entity, it will be considered as an exchange/barter. Supplies made by the donor to a non-profit entity are considered as a separate supply and the appropriate VAT treatment must be determined accordingly.

- **Deemed Supplies**
  - For non-profits, this is important in cases where goods are being offered for free or free services or, in particular, if the use of capital assets changes in particular.
  - Any non-profit entity registered for VAT will be deemed to have made a supply
  - Assumed in the following cases, provided that Input VAT has been recovered in respect of the goods or previous services:
    - Disposal of goods for purposes other than economic activity
    - Keeping goods after ceasing to practice economic activity
    - The supply of goods or services without consideration
    - Use of goods for non-taxable supplies

- **Sale of goods by Non-Profit entities**
  - The sale of goods is subject to 5% VAT unless the goods qualify for the zero rate or are exempt from VAT as per the law and the Executive Regulations.
  - However, if the goods are supplied without consideration, no VAT should be charged by a non-profit entity unless Deemed supply rules apply.

- **Supply of services by Non-Profit entities**
  - The sale of services is subject to 5% VAT unless they are subject to the zero rate or are exempt from VAT as per the law and the Executive Regulations.
  - However, if the services are provided without charge, no VAT should be charged unless the Deemed Supply rules apply.

- **Fundraising activities**
  - No special provisions apply to fundraising activities or events, and the transaction is dependent on VAT for any supplies made during these events depending on the conditions and nature of the goods and services provided. Non-profits must look closely at the correct transaction to apply VAT for supplies made during these events.
  - Common examples of income related to fundraising events entry fee, sale of goods, food and beverages, donations etc.

- **Advertising and sponsorship**
  - In some cases, companies may enter into sponsorship agreements with non-profit entities, and sponsors receive a return or gain (of value) in exchange for cash or non-cash payments, therefore these payments will be considered consideration for the supply of taxable services.
  - Common examples of low-value benefits include display ads and the name of the sponsoring organisation, promoting the goods or services of the sponsoring organisation, right to use facilities or attend events, etc.

- **Special cases**
  - **Professional Societies:** A non-profit professional association may carry on economic activity for VAT purposes and it will be required to register for VAT if it earns income from a taxable supply of goods and services, provided they exceed the mandatory registration threshold. In certain cases, the not-for-profit professional association may be seen as carrying out activities non-economic outside the scope of VAT.
  - **Social Clubs:** Community clubs provide a range of goods and services to their members. So, community clubs will have to determine which of these goods and services are economic activities. The VAT Treatment of some of these supplies are as follows:
    - Celebration of national holidays – Taxable Supply
    - Help and support for members – Out of Scope Supply
    - Educational Classes – Exempt Supply
    - Membership fees paid by members – Taxable Supply
  - **Real Estate Owners' Associations:** Generally, when the landlord's association facilitates the purchase of goods and services for the benefit of property owners, it will not be seen as carrying on an activity in an independent economy for VAT purposes.

- Input VAT related to Non-profit entities

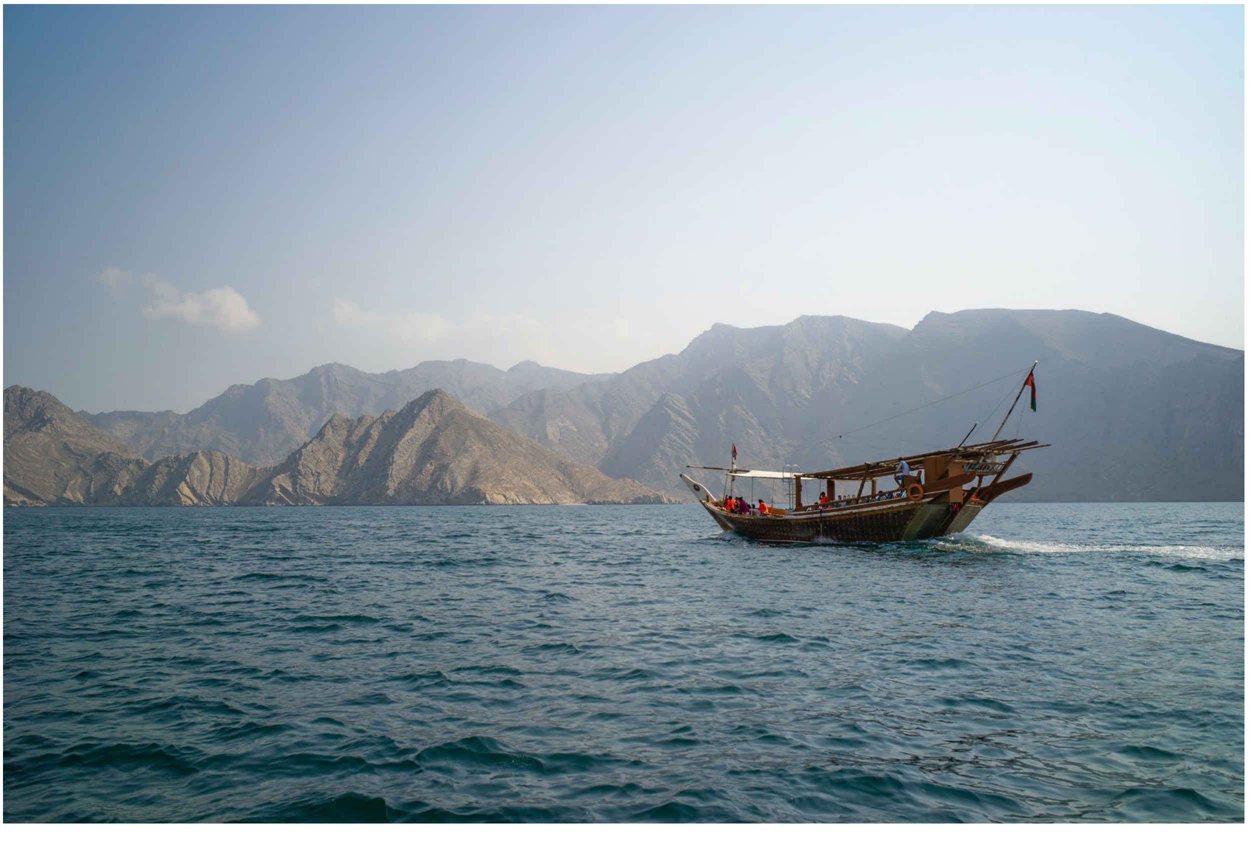
  When a non-profit entity purchases goods or services from a taxable person, it must pay VAT on any taxable purchases at the base rate just like any other taxpayer. Non-profits must also pay any VAT to imports of subjected goods at the basic rate unless tax exemption is applied to the VAT on those imports.

- Exemption from VAT on imports
  - Charitable institutions: Supplies imported for charities are exempted from VAT on imports in accordance with the conditions and rules specified in the Unified Customs Law.
  - People with special needs: Supplies for people with special needs are exempted from import VAT, provided that the conditions are met according to the VAT law and Executive Regulations.

- Input VAT deduction
  - The VAT Law does not include any rules for deducting input VAT for entities or non-profit organisations, and accordingly, the usual input VAT deduction provisions apply to all persons subject to tax.
  - The VAT incurred on the goods and services used must be apportioned to both Taxable and exempt supplies and/or non-trading activities.

The Guide is available in Arabic can be accessed.

Should you need further clarification and details regarding this update, please contact GT Oman Tax Partner **Nasser Al-Mughairy**, or Tax Director, **Deepika Rajan**.



GCC Tax Developments

UAE issues Cabinet Decision on determining qualifying income of a qualifying free zone person

For the purposes of the new Corporate Tax Law, the UAE Ministry of Finance has released **Cabinet Decision No. 55 of 2023** on calculating the qualifying revenue of a qualifying free zone person. Additionally, **Ministerial Decision No. 139** of 2023 details further guidelines for qualifying activities and excluded activities, as well as guidelines for de minimis thresholds. Following is a summary of the two rulings' key points:

Qualifying Income

Qualifying free zone residents are entitled to a corporate tax rate of 0% on qualifying income, as stated in Article 3 of the corporate tax law. According to Cabinet Decision No. 55, the following types of income are included as qualifying income as long as they are not attributable to a domestic permanent establishment, a foreign permanent establishment, or to the ownership or exploitation of immovable property as described in Articles 5 or 6 of the Decision:

- Income derived from transactions with other free zone persons, except for income derived from excluded activities;
- Income derived from transactions with a non-free zone person, but only in respect of qualifying activities that are not excluded activities; and
- Any other income provided that the qualifying free zone person satisfies the de minimis requirements under Article 4 of the Decision.

Qualifying and Excluded Activities

Ministerial Decision No. 139 specifies the qualifying and excluded activities as follows:

Qualifying activities include:

- Manufacturing of goods or materials;
- Processing of goods or materials;
- Holding of shares and other securities;
- Ownership, management, and operation of ships;
- Reinsurance services that are subject to the regulatory oversight of the competent authority in the UAE;
- Fund management services that are subject to the regulatory oversight of the competent authority in the UAE;
- Wealth and investment management services that are subject to the regulatory oversight of the competent authority in the UAE;
- Headquarter services to related parties;

- Treasury and financing services to related parties;
- Financing and leasing of aircraft, including engines, and rotable components;
- Distribution of goods or materials in or from a designated zone to a customer that resells such goods or materials, or parts thereof, or processes or alters such goods or materials or parts thereof for the purposes of sale or resale;
- Logistics services; and

Any activities that are ancillary to the activities listed above.

Excluded activities include:

- Any transactions with natural persons, except transactions in relation to the following qualifying activities:
  - ownership, management, and operation of ships;
  - fund management services that are subject to the regulatory oversight of the competent authority in the UAE;
  - wealth and investment management services that are subject to the regulatory oversight of the competent authority in the UAE;
  - financing and leasing of aircraft, including engines, and rotable components;
- Banking activities that are subject to the regulatory oversight of the competent authority in the UAE;
- Insurance activities that are subject to the regulatory oversight of the competent authority in the UAE, other reinsurance services that are subject to the regulatory oversight of the competent authority in the UAE;
- Finance and leasing activities that are subject to the regulatory oversight of the competent authority in the UAE, other than:
  - treasury and financing services to related parties;
  - financing and leasing of aircraft, including engines, and rotable components;
- Ownership or exploitation of immovable property, other than commercial property located in a free zone where the transaction in respect of such commercial property is conducted with other free zone persons;
- Ownership or exploitation of intellectual property assets; and

Any activities that are ancillary to the activities listed above.

De Minimis Requirements

In accordance with Cabinet Decision No. 55, the de minimis requirements are met when a qualifying free zone person's non-qualifying revenue for a given tax period does not exceed the lower of 5% of total revenue or AED 5 million.

For the purpose of the de minimis requirements:

- Non-qualifying revenue is revenue derived in a tax period from any of the following:
- excluded activities; and
- activities that are not qualifying activities where the other party to the transaction is a non-free zone person; and
- Total revenue is all revenue derived by a qualifying free zone person in a tax period.

The following Revenue, however, shall not be included in the calculation of non-qualifying revenue and total revenue:

- Revenue attributable to immovable property located in a free zone derived from the following transactions:
  - transactions with non-free zone persons in respect of commercial property; and.
  - transactions with any person in respect of immovable property that is not commercial property; and
- Revenue attributable to a domestic permanent establishment or a foreign permanent establishment of the qualifying free zone person.

<u>Income Attributable to a Permanent Establishment</u>

Regarding income attributable to a permanent establishment, Article 5 of Cabinet Decision No. 55 states that income attributable to a domestic permanent establishment or a foreign permanent establishment of the qualifying free zone person shall be considered taxable income and taxed in accordance with Clause (2) of Article 3 of the **Corporate Tax Law**, Paragraph (b), which means it will be subject to a 9% tax rate. The taxable income of any such establishment for a given tax period is determined as if the establishment were a separate and independent person who is a related party of the qualifying free zone person. It can be attributable to either a domestic permanent establishment or a foreign permanent establishment of a qualifying free zone person.

<u>Income Attributable to Immovable Property Located</u>

In accordance with Article 6 of Cabinet Decision No. 55, income attributable to immovable property located in a free zone that is derived from the following transactions will be treated as taxable income and be subject to the 9% tax rate:

- Transactions with non-free zone persons in respect of commercial property;
- Transactions with any person in respect of immovable property that is not commercial property.

The taxable income from the immovable property mentioned above is the income attributable to the immovable property adjusted for tax purposes in accordance with the pertinent rules of the Corporate Tax Law for a tax period.

<u>Adequate Substance</u>

Lastly, Cabinet Decision No. 55 establishes guidelines for what constitutes an eligible free zone individual in terms of enough content. This stipulates that a qualifying free zone person must carry out its primary income-generating activities within a free zone and, taking into account the scope of those activities, must have sufficient assets, a sufficient number of qualified employees, and must incur sufficient operating expenses. Activities may be delegated to a related party or a third party inside a free zone as long as the qualified free zone person has sufficient control over the delegated activity.

Should you need any further clarifications and details regarding this information, please contact our Tax Team – Partner **Sam Maycock** and Director **Emma Bird**.

UAE issues Cabinet Decision on determination of a non-resident person's Nexus in the UAE through immovable property

To determine a non-resident person's nexus in the UAE for the purposes of the new Corporate Tax Law, the UAE Ministry of Finance have released **Cabinet Decision No. 56 of 2023**. A non-resident is regarded as a taxable person under Article 11 of the **Corporate Tax Law** if certain criteria are satisfied, such as when the non-resident has a nexus in the UAE as defined in a decision made by the Cabinet.

- Any juridical person (corporate entity) that is a non-resident person is regarded to have a nexus in the UAE if it receives income from any immovable property in the UAE, as per Cabinet Decision No. 56. Any of the following is considered immovable property:
  - Any area of land over which rights or interests or services can be created;
  - Any building, structure, or engineering work attached to the land permanently or attached to the seabed; and
  - Any fixture or equipment which makes up a permanent part of the land or is permanently attached to the building, structure, or engineering work or attached to the seabed.

Taxable income from immovable property in the UAE that is attributable to a non-resident person's tax base includes income from the right in rem (right to), sale, disposal, assignment, direct use, letting, including subletting, and any other form of exploitation of immovable property.

In accordance with Cabinet Decision No. 56, a non-resident person who artificially transfers or otherwise disposes of their right in rem in any immovable property in the United Arab Emirates to another person and that transfer or disposal is not for a legitimate commercial or other non-fiscal reason that reflects economic reality will be deemed to have entered into an arrangement to obtain a corporate tax advantage under Article 50 (General Anti-Abuse Rule) of the Corporate Tax Law. Finally, according to Cabinet Decision No. 56, a non-resident who has a nexus in the United Arab Emirates in line with the decision must register with the authorities in accordance with Article 51 (Tax Registration) of the Corporate Tax Law.

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

UAE Ministry of Finance issues Ministerial Decisions on transfers within a qualifying group, business restructuring relief, and determining taxable income

Three new Ministerial Decisions have been **released** by the UAE Ministry of Finance in accordance with Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses. **Ministerial Decision No. 132 of 2023 on Transfers Within a Qualifying Group, Ministerial Decision No. 133 of 2023 on Business Restructuring Relief**, and **Ministerial Decision No. 134 of 2023 on the General Rules for Determining Taxable Income**.

Transfers within a Qualifying Group

Additional information on how to claim Corporate Tax Relief on transfers of assets and liabilities between members of a Qualifying Group is provided in the decision on Transfers within a Qualifying Group. The ruling makes it clear that an entity must comply with the related record keeping obligations and make an election to apply the relief in their tax return. The decision to utilize the relief for transfers inside of a Qualifying Group is final and will be effective for all upcoming Tax Periods. The decision also clarifies the effects of concurrent asset or liability exchanges and the tax ramifications if the relief must be revoked ("clawed back") due to the relevant assets and liabilities or the relevant group companies leaving the Qualifying Group within two years of the original transfer.

Business Restructuring Relief

The Business Restructuring Relief Decision defines the circumstances under which corporate mergers and other restructuring transactions can be carried out without ensuing in a tax obligation for the company. When a firm or a standalone division of a business is transferred or merged into another legal entity in return for stock or other ownership interests, this relief is possible. No gain or loss must be taken into account when determining the transferor's taxable income when they choose to apply the relief. A limited amount of other consideration, such as cash, or when shares are received or issued by a party other than the transferor or the transferee, as long as that party owns the transferor or the transferee, respectively, may also be eligible for the relief. In addition, the judgement describes how the relief might be revoked in the event that the company or its ownership interests are later transferred within two years of the date of the first reorganisation.

General Rules for Determining Taxable Income

The General Rules for Determining Taxable Income streamline the process of calculating taxable income for UAE businesses. The decision sets out adjustments needed for the taxable income calculation, including the recognition of realized and unrealized gains or losses reported in the Financial Statements. It also clarifies the conditions for applying the realization basis and provides guidelines for adjusting changes in values on assets and liabilities derived from transfers involving Related Parties, Qualifying Groups or Business Restructuring Relief.

Businesses preparing Financial Statements on an Accrual Basis of Accounting can choose to recognize gains and losses on a realization basis for certain assets and liabilities. This election must be made during the first Tax Period and is irrevocable, except under exceptional circumstances approved by the Federal Tax Authority.

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

UAE Ministry of Finance issues Ministerial Decisions on tax groups, the interest deduction limitation rule, and unincorporated partnerships

The UAE Ministry of Finance has announced the issuance of Ministerial Decision No 125 of 2023 on Tax Groups, Ministerial Decision No 126 of 2023 on the General Interest Deduction Limitation Rule, and Ministerial Decision No 127 of 2023 on Unincorporated Partnerships for the purpose of the new Corporate Tax Law.

His Excellency, Younis Haji Al Khouri, Undersecretary of the Ministry of Finance, declared that the recent rulings demonstrate how the UAE's corporate tax structure preserves flexibility and provides simple tax processes for compliance, all while cementing the UAE's position as a leading business and investment destination. Tax grouping treats groupings as a single business, which reduces the administrative and compliance load. The interest capping guidelines, which are based on OECD best global practice, give clarity to businesses when expensing debt financing costs.

Tax Grouping

The Tax Grouping Decision explains the requirements under which UAE resident companies with 95% or more direct or indirect ownership by a UAE parent company can create or join a Tax Group and be considered as a single entity for Corporate Tax purposes. The UAE Parent Company must control at least 95% of the voting rights and shares in each UAE firm, according to the judgment. Furthermore, for Corporate Tax purposes, all members of the tax group must be considered UAE residents.

Forming a Tax Group streamlines the computation and reporting of Taxable Income by allowing the Parent Company to submit a single Tax Return based on the Tax Group's aggregated taxable profit or loss, with transactions between Tax Group members typically disregarded. The decision further explains the communication requirements in the event that a Subsidiary quits a Tax Group or the Tax Group no longer meets the qualifying circumstances.

General Interest Deduction Limitation Rule

The General Interest Deduction Limitation Rule establishes the maximum amount of interest that can be deducted by businesses that are not banks, insurance providers, or natural persons (individuals) doing a business or commercial activity in the UAE.

According to international norms, the net interest expense that can be deducted is limited to the greater of 30% of adjusted earnings before interest, tax, depreciation, and amortization (EBITDA) or AED12 million. When calculating the 30% EBITDA criterion, Tax Groups with members who are banks and/or insurance providers must omit their members' income and expenditure.

In appreciation of the importance of infrastructure projects to the country, long-term infrastructure projects that fulfill appropriate requirements will be exempt from the General Interest Deduction Limitation Rule. Furthermore, in order to retain the UAE's position as a major commercial and financial centre, interest on debt instruments taken into before the Law was released to the general public on 9 December 2022 will be exempt from the limitation restriction.

Unincorporated Partnerships

Under this decisions (and until an election is made), an Unincorporated Partnership will not be regarded a taxable person in its own right if it is not a Juridical Person (corporate entity). When an Unincorporated Partnership elects to be recognized as a Taxable Person in its own right, the choice is final once authorized, and any change in partnership composition must be reported to the Federal Tax Authority within 20 business days. A Foreign Partnership that is handled as an Unincorporated Partnership must file an annual declaration stating that it is not taxable under foreign jurisdiction rules, and each partner is taxed individually based on their share of revenue.

Should you need any further clarifications and details regarding this information, please contact our Tax Team – Partner **Sam Maycock** and Director **Emma Bird**.

UAE Ministry of Finance issues decision on transitional rules for Corporate Tax

The UAE Ministry of Finance has announced the issuance of **Ministerial Decision No. 120 of 2023** on adjustments under the transitional rules for the purpose of the new Corporate Tax Law.

The Undersecretary of the Ministry of Finance stated that transitional rules for corporate tax provide crucial clarifications for companies that need to move seamlessly from the Corporate Tax Law's pre-implementation period to the post-implementation period. The objective is to make the process of determining the opening balance sheet easier while providing a fair and transparent approach for assets and liabilities held before the new Corporate Tax system comes into effect.

The ruling relates to various assets and liabilities owned by corporations prior to the implementation of the Corporate Tax Law, such as immovable property, intangible assets, financial assets, and financial liabilities.

Businesses can adjust the tax classification of such assets and liabilities depending on certain standards, and they must do so when they file their initial Tax Return. Except in exceptional situations, their decision would be permanent. The decision also takes into account the history of asset and liability ownership, including assets and liabilities owned by the firm or other members of the same business group.

Companies with immovable property recorded on a historical cost basis have the option to select the basis of the relief, using either a time apportionment method or a valuation method, allowing groups to determine the most favourable outcome for them on immovable property on an asset-by-asset basis. Consider a UAE company that had a real property asset, such as a building or land, prior to the implementation of the Corporate Tax Law. When the property is sold after the law is enacted, the company can adjust their Taxable Income in one of two ways: they can either exclude a portion of the gain based on the holding period, or they can use a fixed formula based on the property's value (as determined by the relevant government entities in charge of valuation of land and real-estate property in the UAE) at the start of the first Tax Period. This enables a fair tax computation that takes into account the property's ownership or value history and only taxes the business's gains on such immovable property ascribed to periods after the Corporate Tax Law takes effect.

Another possibility for financial assets and liabilities (as defined under IFRS) is a UAE company that owns financial asset on a historical cost basis prior to the implementation of the Corporate Tax Law. When such company sells these financial assets after the law takes effect, it can adjust its Taxable Income by removing a portion of the gain based on the value of the financial assets at the beginning of the first Tax Period. This transitional provision guarantees that only profits on such financial asset attributable to periods after the Corporate Tax Law takes effect are taxed.

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

UAE issues Ministerial Decision on the participation exemption for Corporate Tax purposes

The UAE Ministry of Finance has issued **Ministerial Decision No. 116 of 2023**, which governs the participation exemption under Article 23 of the new Corporate Tax Law. The decision addresses the types of instruments that qualify as an ownership interest for participation exemption purposes, the aggregation of ownership interests in the same juridical person to determine whether a taxable person has a qualifying participating interest, the treatment of qualifying transfers of ownership interests as the same continuous ownership interest, and a variety of other participation exemption-related issues.

One noteworthy aspect is Clause 11 of Article 23 of the Corporate Tax Law, which states that a minimum acquisition cost may be specified in order for an ownership interest to be recognized as a qualifying participation interest even if the ordinary 5% minimum ownership criterion is not fulfilled. The Ministerial Decision specifies a minimum acquisition cost of AED 4 million.

Should you need any further clarifications and details regarding this information, please contact our Tax Team – Partner **Sam Maycock** and Director **Emma Bird**.

UAE issues Decision on conditions for the Corporate Tax Exemption for private pension funds and private social security funds

The UAE Ministry of Finance issued **Ministerial Decision No. 115 of 2023**, which specifies the parameters for qualifying private pension funds and private social security funds to get Corporate Tax exemption. The following are the important points:

Private Pension Fund

If all of the following requirements are satisfied, a private pension fund may petition to the Federal Tax Authority (FTA) to be excluded from Corporate Tax under Article 4 (excluded Persons) of the Corporate Tax Law:

1. The fund comprises a pool of assets that have been assigned by law or contract as pension plan assets or the acquisition of these assets has been financed by or with the use of contributions to a pension plan for the exclusive purpose of financing the pension plan benefits;
2. The fund grants pension plan members or beneficiaries a right or other contractual claim or entitlement, against its assets or earnings;
3. The income of the fund solely comprises income as specified in Article 4 of the Ministerial Decision (see below); and
4. The fund must have an auditor.

Private Social Security Fund

A private social security fund may apply to the Authority to be exempt from Corporate Tax under Article 4 (Exempt Persons) of the Corporate Tax Law where all of the following conditions are met:

1. The fund comprises a pool of assets that have been assigned by law or contract as fund assets or the acquisition of these assets has been financed by or with the use of contributions to the fund for the exclusive purpose of financing the end of service benefit;
2. The income of the fund solely comprises income as specified in Article 4 of the Ministerial Decision; and
3. The fund must have an auditor.

Qualifying Income

For the purposes of the exemptions, a private pension fund and a private social security fund must earn their income from any of the following:

1. Investments or deposits, where the investments or deposits are held for the purposes of fulfilling the obligations of the fund, and the investments do not constitute a business operated by the fund;
2. Underwriting commissions that are charged for the purposes of the fund;
3. Rebates of charges due or paid by the fund to persons involved in managing part or all of the assets of the fund, that are not deemed as compensation for services provided by the fund; and
4. Any other income derived in accordance with a defined investment policy for the benefit of pension plan members or beneficiaries of the end of service benefit, as applicable.

Deductible Contributions to a Private Pension Fund

In addition to the exemption requirements, Ministerial Decision No. 115 provides restrictions for payments to a private pension fund. This includes a taxable person who is an employer deducting the whole value of payments made to a private pension fund in respect of its employees who are pension plan members in the tax period in which such contributions are paid. The value of contributions that may be deducted for each pension plan member is restricted to 15% of the total pension plan member's pay that is deductible for corporation tax purposes in the relevant tax period.

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

UAE issues Decision on accounting standards and methods for Corporate Tax purposes

The UAE Ministry of Finance issued **Ministerial Decision No. 114 of 2023**, which specifies specific criteria for corporate tax accounting standards and techniques. The following are the important points:

Preparing Financial Statements Using the Cash Basis of Accounting

A person may prepare financial statements using the cash basis of accounting, in any of the following instances:

- Where the person derives revenue that does not exceed AED 3 million; or
- In exceptional circumstances and pursuant to an application submitted by the person to the authority

Consolidated Financial Statements

Consolidated financial statements of a tax group must be prepared in accordance with Clause 11 of Article 42 (Taxable Income of a Tax Group) of the Corporate Tax Law by aggregating the standalone financial statements of the parent company and each subsidiary that is a member of the tax group, while excluding transactions between the parent company and each subsidiary as required by Clause 1 of Article 42.

Required Accounting Standards

Financial statements must be produced in accordance with International Financial Reporting Standards (IFRS). Taxable person with revenue of less than AED 50 million, on the other hand, may apply the International Financial Reporting Standards for small and medium-sized companies (IFRS for SMEs).

Should you need any further clarifications and details regarding this information, please contact our Tax Team – Partner **Sam Maycock** and Director **Emma Bird**.

UAE issues specific categories of businesses or business activities conducted by natural persons that are subject to Corporate Tax

The UAE Ministry of Finance has **announced** the issuance of **Cabinet Decision No. 49 of 2023** on the categories of businesses or business activities conducted by resident or non-resident natural persons that are subject to corporate tax.

The latest Cabinet Decision underscores the UAE's commitment to maintaining a transparent and competitive tax environment for both domestic and foreign private investors. According to His Excellency Younis Haji Al Khouri, Undersecretary of the Ministry of Finance, by streamlining the Corporate Tax system, the UAE continues to cultivate an appealing business climate that supports the growth of small firms, startups, and the entire economy.

The decision aims to clarify the application of the Corporate Tax regime for natural persons ('individuals' in this context) and ensure that only income from business or business activity is taxed, while clarifying that personal income, particularly from employment, investments, and real-estate (without licensing requirements), is not subject to Corporate tax. Individuals doing business or carrying out commercial operations shall be liable to Corporate Tax and registration requirements only if their aggregate annual turnover reaches AED1 million.

For more information, please visit **(mof.gov.ae)**

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

UAE issues Corporate Tax registration open for public joint stock companies and private companies

On 15 May 2023, the UAE Federal Tax Authority **announced** the opening of Corporate Tax registration for public joint stock companies and private companies through the **EmaraTax digital tax services platform**.

Registration for Corporate Tax through the EmaraTax digital tax services platform for Public Joint Stock Companies and Private Companies started on Monday, 15 May 2023, in line with Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses ("Corporate Tax Law"), which stipulates that Taxable Persons will become subject to Corporate Tax from the beginning of their first financial year that starts on or after 1 June 2023. Therefore, Taxable Persons must register and obtain a Tax Registration Number for Corporate Tax purposes.

The FTA welcomed all Taxable Persons who are Public Joint Stock Companies and Private Companies located in the UAE for Corporate Tax purposes to register with the FTA, stressing on the fact that this does not include Free Zone Persons, for whom Corporate Tax Registration would be made accessible later. Similarly, Corporate Tax registration will open at a later date for additional types of Taxable individuals, such as natural individuals doing Business or Business Activity as indicated by a Cabinet Decision.

Only individual legal entities will be allowed to register for Corporate Tax, for the time being. Entities that want to create a Corporate Tax Group must first register separately, and then apply to form a Corporate Tax Group at a later period.

The Authority explained that early Corporate Tax registration will allow ample time for companies and businesses to comply with their legal obligations.

To register for Corporate Tax, visit Corporate Tax registration portal available **here**. An E-Service Card on Corporate Tax Registration is available on the FTA website.

Should you need any further clarifications and details regarding this information, please contact our Tax Team – Partner **Sam Maycock** and Director **Emma Bird**.

UAE sets out Transfer Pricing documentation requirements

The UAE Ministry of Finance issued **Ministerial Decision No. 97 of 2023**, which establishes the transfer pricing compliance requirements under Federal Decree-Law No. 47 of 2022 (the Corporate Tax Law). This includes the requirement for a taxable person who fulfills any of the following qualifications to keep both a master file and a local file for the relevant tax period:

- At any time during the relevant tax period, the taxable person is a constituent company of a multinational enterprises group as defined in the Cabinet Decision No. 44 of 2020 (CbC reporting) that has a total consolidated group revenue of AED 3.15 billion or more in the relevant tax period; or
- The taxable person's revenue in the relevant tax period is AED 200 million or more.

Taxable persons shall include transactions or arrangements with all of the following related parties and connected persons in the local file:

- Non-resident persons;
- Exempt persons;
- Resident persons that have made an election under Article 21 of the Corporate Tax Law and meet the conditions of such election (small business relief - treated as not having derived taxable income); and
- Resident persons whose income is subject to a different corporate tax rate from that applicable to the income of the taxable person.

However, taxable persons shall not include transactions or arrangements with the following related parties and connected persons in the local file:

- Resident persons other than those specified above;
- Natural persons, provided that the parties to the transaction or arrangement are acting as if they were independent of each other;
- Juridical persons that are considered to be a related party or a connected person solely by virtue of being a partner in an unincorporated partnership, provided that the parties to the transaction or arrangement are acting as if they were independent of each other; and
- Permanent establishments of non-resident persons in the UAE whose income is subject to the same corporate tax rate as that applicable to the income of the taxable person.

In the case of natural or juridical persons, the parties to the transaction or agreement are regarded to be operating independently of each other if both of the following requirements are met:

- The relevant transaction or arrangement is undertaken in the ordinary course of Business; and
- The parties are not exclusively or almost exclusively transacting with each other.

It is also stated that where the activities of one person in the transaction or arrangement are subject to detailed instruction or comprehensive control of the other person in the transaction or arrangement, such persons shall not be considered to be acting independently of each other

The Federal Tax Authority will establish recommendations for implementing the Decision's requirements and maintaining transfer pricing paperwork.

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

UAE Court of Cassation orders British hedge fund trader to pay USD 1.7 billion for role in Danish dividend withholding tax refund scheme

On May 16, 2023, the UAE Court of Cassation ordered British hedge fund trader Sanjay Shah to pay USD 1.7 billion to the Danish tax authority (SKAT) for his involvement in arranging a tax fraud scheme involving dividend withholding tax refunds that spanned from 2012 to 2015. Shah had already been convicted in a lower court for masterminding the plan, which entailed falsely claiming dividend withholding tax refunds on shares in Danish firms that did not exist. The Court also ordered Shah and other foreign companies involved in the scam to pay 5% interest on the USD 1.7 billion accumulated since the lawsuit was initially filed in August 2018. In a separate decision, Shah was ordered to be extradited to Denmark, where he would face tax fraud charges.

Should you need any further clarifications and details regarding this information, please contact our Tax Team – Partner **Sam Maycock** and Director **Emma Bird**.

Qatar amends Income Tax Law Executive Regulations in relation to Permanent Establishment and Economic Substance Requirements

On May 16, 2023, Qatar's Council of Ministers adopted Decision No. 3 of 2023, which updates the Executive Regulations to the Income Tax Law. This incorporates modifications to permanent establishments, such as a new definition of permanent establishment and other amendments made by Law No. 11 of 2022. The following are some of the important features of the revised Executive Regulations:

- Provisions regarding activities that will not constitute a permanent establishment (PE) as long as the activity is of a preparatory or auxiliary character (i.e., negative list), which is in line with the 2017 OECD Model Tax Convention, including related anti-fragmentation and anti-avoidance provisions.
- A new obligation for a non-resident entity undertaking negative list activities in Qatar to register with the tax authority, although any particular compliance obligations are uncertain;
- New insurance PE rules, providing that a PE is constituted when a non-resident insurer collects premiums in Qatar or insures risks in the State via a person in Qatar, excluding reinsurance activities;
- New agency PE rules, providing that a PE is constituted when a person in Qatar habitually concludes contracts, or exercises the key role leading to the conclusion of contracts, without material modification by the non-resident;
- New rules regarding independent agents, providing that an insurance PE or an agency PE will not be constituted if the person collecting premiums or habitually concluding contracts is an independent agent and acts for the non-resident in the ordinary course of its business, although the person will not be considered an independent agent if acting exclusively or almost exclusively on behalf of the non-resident or is closely related to the non-resident;
- New rules for the determination of taxable income for a PE, including:
  - the introduction of the separate legal entity concept under which dealings between the head office and a PE should be determined as if the PE is a separate and distinct enterprise.
  - the removal of the 3% limit on allocated overhead expenses, with expenses allocated to the PE now required to be determined in line with the separate legal entity concept;
  - limits on certain payments made by a Qatar PE to its head office or another related entity, including that the following are not deductible for the PE:
    - royalties and other fees/payments for the right to use patents and other rights;
    - commissions for certain services rendered or management; and
    - interest on loans to the PE, except for PEs of foreign banks;
- a force of attraction rule providing that the following income will be attributed to a PE:
- income from the sale of goods or merchandise by a non-resident in Qatar if the same or similar goods are also sold by a PE maintained by the non-resident in Qatar; and
- income from business activities carried on by a non-resident in Qatar if the same or similar business activities are also carried on by a PE maintained by the non-resident in Qatar.

In addition to the new PE provisions, the amended Executive Regulations also provide new requirements in relation to Qatar's economic substance requirements, including:

- The economic substance requirements apply to relevant entities that meet the following conditions in the two preceding fiscal years:
  - more than 75% of their income is generated from immovable property, dividends, interest, or royalties (relevant income);
  - more than 60% of the book value of the entity is from assets outside Qatar or more than 60% of the entity's relevant income is from foreign sources; and
  - the management of day-to-day operations and decision-making on key functions is outsourced;
- Certain entities are excluded, including:
  - entities listed on the Qatar Stock Exchange;
  - regulated financial institutions;
  - entities that are wholly owned by Qatar tax residents and mainly hold shares in Qatar businesses;

    - holding companies in Qatar that are wholly owned by Qatar tax resident shareholders or by an ultimate parent entity that is tax resident in Qatar; and
    - entities with at least five full-time employees that perform core income generating activities that generate the relevant income;
- A relevant entity is required to submit a report to Qatar's General Tax Authority (GTA) as part of the annual income tax return that indicates whether it meets the minimum indicators of substantial activity, which include that the entity:
    - has an exclusively owned or used location in Qatar;
    - has at least one active bank account in Qatar; and
    - meets at least one of the following conditions:
        - has one or more managers that are tax resident in Qatar with the authority to make decisions related to the generation of relevant income and actively, independently, and regularly exercises this authority; or
        - can demonstrate that the majority of its employees are tax resident in Qatar;
- A relevant entity will be deemed not to be carrying on substantial activity in respect of a reported fiscal year if:
        - the report is not submitted;
        - one of the minimum indicators is not met; or
        - documentary evidence of such indicators is not submitted to the Authority, upon its request;
- If a relevant entity is deemed not to be carrying on substantial activity, the GTA may refuse to issue a tax residence certificate to the entity and the entity may be subject to a penalty equal to 15% of its net income.

For more information, please visit **(almeezan.qa)**

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

Saudi Arabia clarifies taxation of service Permanent Establishments in the context of double taxation agreement

The Saudi Zakat, Tax, and Customs Authority (ZATCA) released a Circular titled Taxation of Permanent Establishments in the Context of Double Taxation Agreements on May 17, 2023. The Circular, in particular, offers information and guidance on service permanent establishments (PEs), including their determination and tax consequences in Saudi Arabia in accordance with DTAs signed with other jurisdictions.

In this regard, the Circular notes that the service PE concept in 54 of Saudi Arabia's 57 DTAs is based on paragraph 3 (b) of Article 5 of the UN Model Tax Convention (Article 5.3(b)) and provides clarity on the interpretation of Article 5.3(b), addressing:

- The activities and business models that do or do not result in the creation of a PE under this Article; and
- The taxation mechanism applicable in Saudi Arabia in instances where a PE is deemed to exist

Instances where a Service PE Exists

Key points regarding instances where a service PE exists include the following:

- In accordance with Article 5.3(b), a service PE would be deemed to exist when a non-resident enterprise provides services to a customer in Saudi Arabia;
- The exact provision under Article 5. 3(b) may vary between DTAs, however in most of the DTAs signed with Saudi Arabia, the furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise is deemed to constitute a PE to the extent that the activities are conducted (for the same or a connected project) within a contracting state for a period or periods aggregating more than 183 days in any 12-month period commencing or ending in the fiscal year concerned;
- There are three main tests to determine whether a service PE is deemed to exist:
  - "Furnishing of services", which means that the enterprise must be providing services through its employees;
  - "Within", which means that the employees must be physically present on the ground in Saudi Arabia; and
  - "More than 183 days in any 12-month period", which means that being physically present in the country for a certain period of time to perform the services is fundamental to determining whether or not the non-resident entity is deemed to create a PE in Saudi Arabia;
- In most of Saudi Arabia's DTAs that have Article 5.3 (b), the threshold stipulated in the DTA is more than 182 days/ 183 days/ 6 months in any 12-month period, according to the respective DTA;
- Under the DTAs, only the profits directly attributable to the PE may be taxed in Saudi Arabia provided that the relevant DTA does not contain a provision extending the scope of taxation under the Force of Attraction concept;
- Profits directly attributable to the PE encompass the income derived from the sole activity of the PE in Saudi Arabia;
- If a PE exists in Saudi Arabia, the non-resident is deemed to be subject to tax according to the relevant DTA and under the terms of Saudi law; and
- In accordance with Saudi law, the PE shall be subject to income tax on a net basis measured by the gross income and reduced by the expenses attributable to the PE, provided that they are incurred for the purposes of conducting business through the PE.

Instances where a Service PE Does Not Exist

Key points regarding instances where a service PE does not exist include the following:

- In accordance with Article 7 (Business Profits) of the DTAs, the profits of an enterprise of a contracting state shall be taxable only in that state unless the enterprise carries on business in the other contracting state through a PE situated therein;
- Where a service PE does not exist, the profits of the non-resident enterprise should generally be taxable only in the residence state based on its domestic law;
- Article 7 applies to all types of income from conducting business that are not covered by other articles of the DTAs with Saudi Arabia, which generally include service fees that do not trigger a PE and are not included in other articles;
- In instances where a PE does not exist, the income generated by the non-resident in respect of activities performed for the benefit of a Saudi resident would not fall within the scope of income tax in Saudi Arabia, although in certain cases it may fall within the scope of withholding tax, in which case withholding tax will be imposed on the gross payment and not on the net profit (as with income tax); and

- A limited number of DTAs treat technical services under Article 12 (Royalties), including the DTAs with Egypt, Ethiopia, Gabon, Georgia, Malaysia, Morocco, and Vietnam, under which the income generated from the provision of technical services should be subject to withholding tax under the Royalties Article on the gross amount paid to the non-resident enterprise (usually a lower rate than that the domestic rate).

Virtual Service PE

Although not addressed in the Circular, the new instructions represent a significant departure from the tax authority's previous approach to tax treaty claims. Previously, it was provided that a non-resident could be considered to have a "virtual service" PE in Saudi Arabia if services are furnished under contract for a period exceeding the threshold set in the relevant tax treaty, even if no employees or other engaged personnel are physically present in Saudi Arabia. Employees must be physically present in Saudi Arabia for a service PE to exist, as explicitly stated in the new Circular.

For mor information, please visit **(zatca.gov.sa)**

Should you need any further clarifications and details regarding this information, please contact our GT Saudi Arabia Head of Tax **Adel Douglas** and Tax Partner **Imad Adileh**.

ZATCA has released proposed amendments on the Income Tax law

ZATCA has proposed several amendments to Income Tax regulations, which can be summarized as follows:

1. Economic and Commercial Justification: Non-residents' income derived from similar activities will be attributed to their permanent establishment in Saudi Arabia based on economic and commercial justification.
2. Intra-Group Relief on Transfer of Assets: Resident legal persons will be eligible for intra-group relief when transferring assets, provided certain criteria are met.
3. Retroactive Applicability of Guidelines: Guidelines and explanatory rulings will generally not be applied retroactively, except in specific cases, and their applicability to ZATCA will depend on meeting certain conditions.
4. Extended Filing Period for CIT Returns: The proposed amendment extends the statutory period for filing Corporate Income Tax (CIT) returns from 120 days to 180 days after the end of the taxable year.
5. Definition of Related Parties: Related parties will be defined according to Transfer Pricing guidelines, which determine relationships and common control between individuals or entities.
6. Statute of Limitations: The statute of limitations for both income tax and withholding tax returns will be reduced from 5 years to 3 years. However, in cases of tax evasion or failure to file a return, the statute of limitations may be extended to 10 years.
7. Capitalized Loan Charges: Capitalized loan charges will no longer be subject to the interest formula.
8. Appeal Process: The appeal process will be governed by the provisions of the operating rules of the Tax Violations and Dispute Resolution Committees.
9. Elimination of Certain Committees: Articles related to the organisation of the preliminary and appellate committees will be eliminated.

10. WHT on Technical and Consulting Services and International Telecommunication Services: Both technical and consulting services and international telecommunication services will be subject to a 5% withholding tax (WHT), regardless of whether they are provided by a third party or a related party.
11. WHT on Air Ticket Purchases: Payments made for air ticket purchases will be subject to a 5% withholding tax (WHT) only for flights departing from the Kingdom.

Please note that these proposed amendments are subject to further review and potential changes before being officially implemented.

Should you need any further clarifications and details regarding this information, please contact our GT Saudi Arabia Head of Tax **Adel Douglas** and Tax Partner **Imad Adileh**.

Ministry of Finance (MOF) Decision No. 24 of 2023 Concerning Tax Inspection Process

In accordance with MOF Decision No. 24 of 2023, regarding the tax inspection process of foreign entities in Kuwait, it has been decided that the Department of Income Tax ("DIT") may adopt a new tax inspection mechanism that is categorised as follows:

i. Comprehensive Tax Inspection:

DIT has the right to perform a detailed tax inspection, accordingly, entities will be required to provide up to 100% of the supporting documents related to revenue declared and expenses claimed on a tax declaration/s, if any of the below criteria is met by the entity:

1. The revenue recognised during a taxable year exceeds KD 10 Million.
2. Losses are incurred during a taxable year.
3. No inspection was performed previously i.e. 1st year of inspection.
4. Claiming Double Tax Treaties ("DTT") benefits.
5. Operating in the Partitioned Zone.
6. Ceasing operations in Kuwait, completing Kuwait contracts, or under liquidation.
7. Changing the legal structure of the entity, or the shareholder's percentages, or other changes i.e. merger, acquisition, etc)

ii. Targeted Tax Inspection:

A sample basis tax inspection will be adopted by DIT to review SMEs' tax declarations that do not fall under the "Comprehensive Tax Inspection" criteria mentioned above. During the inspection process of such entities, the tax inspector will select specific samples based on their materiality, judgment of the tax inspector, and in line with other similar cases.

iii. Deemed Profit Basis Tax Inspection:

DIT will perform an inspection on standard agreed practices in line with the current approach of inspection procedures for deemed profit basis entities. The results of some entities can be accepted in case the criteria under "Accepting Tax Declaration Results" are met.

iv. Accepting Tax Declaration Results:

DIT may approve the results (without inspection) of the submitted tax declaration/s if the following criteria are met:

1. There are no changes to the submitted tax declarations i.e. no tax penalties or any tax due.
2. The tax declaration results are showing net profit during the taxable year.
3. Revenue confirmations are obtained from the entity's customer/s and submitted along with their declaration.

4. All supporting documents are submitted along with the declaration/s.
5. The entity is fully complying with Kuwait's tax law and its regulations.

Note: DIT will issue a list including a list of approved tax declarations according to which these entities can apply for and obtain Retention Release Letters/Tax Clearance Certificates.

Should you need further clarification and details regarding this update, please contact GT Kuwait Tax Partner **Hazem Al-Agez**, or Tax Manager, **Karim Ezz El-Din**.

GCC Tax Treaty Developments

Tax Treaty between Russia and the UAE under negotiation

The second round of discussions for a new income and capital tax treaty took place on June 12, 2023, according to a press statement issued by the Emirates News Agency. Before becoming effective, the treaty must be negotiated, signed, and ratified.

A limited income tax treaty between the two nations is now in effect; it was signed in 2011 and typically only relates to income and gains received by Contracting States or their financial and investment organisations.

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

Should you need any further clarifications and details regarding this information, please contact our International Team – Partner **Anuj R. Kapoor** and Director **Mohamed Ezz**.

Ivory Coast approves pending Tax Treaty with the UAE

On May 24, 2023, the Ivory Coast Council of Ministers gave their approval for the ratification of the income tax treaty that was pending with the United Arab Emirates. This treaty, which was signed on November 25, 2021, marks the first agreement of its kind between the two nations. Once the ratification instruments are exchanged, the treaty will come into effect.

Should you need any further clarifications and details regarding this information, please contact our International Team – Partner **Anuj R. Kapoor** and Director **Mohamed Ezz**.

Ukraine ratifies pending protocol to Tax Treaty with Qatar

Ukraine has recently released Law No. 3030-IX, which will become effective on June 6, 2023. This law pertains to the ratification of the pending protocol associated with the 2018 income tax treaty between Ukraine and Qatar. The protocol, which was signed on September 2, 2021, marks the first amendment to the treaty. It introduces various changes to the preamble and Articles 25 (Mutual Agreement Procedure) and 26 (Exchange of Information). Additionally, it introduces a new Article 28 (Entitlement to Benefits). Once the ratification instruments are exchanged, the protocol will come into effect and its provisions will be applicable starting from January 1 of the year following its entry into force.

Should you need any further clarifications and details regarding this information, please contact our International Team – Partner **Anuj R. Kapoor** and Director **Mohamed Ezz**.

Oman and Russia sign new Tax Treaty

On June 8, 2023, the Russian Ministry of Finance made an announcement regarding the signing of a fresh income tax treaty with Oman. Although a treaty was signed back in 2001, it was never ratified. The newly signed treaty adheres to the Base Erosion and Profit Shifting (BEPS) standards and includes the following withholding tax rates:

- Dividends - 10% if the beneficial owner is a company that owns at least 20% of the paying company's shares; otherwise, 15%
- Interest - 10%
- Royalties - 10%

Once the ratification instruments are exchanged, the treaty will come into effect, and its provisions will be applicable starting from January 1 of the year following its entry into force. Additional information regarding the treaty will be published once it becomes available.

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

Should you need any further clarifications and details regarding this information, please contact our International Team – Partner **Anuj R. Kapoor** and Director **Mohamed Ezz**.

New Tax Treaty between the Czech Republic and the UAE

On May 24, 2023, the Czech Republic and the United Arab Emirates signed a new income tax treaty. This treaty, once it becomes operational and takes effect, will replace the existing tax treaty from 1996 between the two countries.

Taxes Covered

The treaty covers Czech tax on income of individuals and tax on income of legal persons, and covers UAE income tax and corporate income tax.

Residence

If a company or organisation is considered a resident in both countries, the authorities of those countries will work together to decide its residency status for the purposes of the treaty. They will consider factors such as where the company is managed effectively, where it is legally registered or established, and other relevant factors. If they cannot reach an agreement, the company will not be eligible for any tax benefits or exemptions granted by the treaty.

Service PE

The treaty states that if a Permanent Establishment provides services in a country using its employees or hired personnel for a total of more than 6 months within a year, it will be considered as having a permanent presence in that country.

Withholding Tax Rates

- Dividends - 5%
- Interest - 0%
- Royalties - 10%

Capital Gains

The other State has the right to tax the following capital gains earned by a resident of one State:

- Profits made from selling property (such as buildings) located in the other State.

- Profits made from selling movable property (such as assets) that are part of a permanent establishment (a fixed place of business) in the other State.
- Profits made from selling shares or other ownership interests in a company that is a resident of the other State, unless the gains are earned by specific entities like a Contracting State, its Government, political subdivisions, local authorities, the Central Bank of a Contracting State, or entities wholly owned by a Contracting State.Gains from the alienation of other property by a resident of a Contracting State may only be taxed by that State.

Double Taxation Relief

Both countries apply the credit method for the elimination of double taxation.

Entitlement to Benefits

Article 27 (Miscellaneous Provisions) states that a specific advantage or benefit mentioned in the treaty will not be given for a certain income if it can be reasonably concluded, based on all the relevant facts and situations, that obtaining that benefit was one of the main intentions behind a particular arrangement or transaction that directly or indirectly led to that benefit. However, if it can be proven that granting that benefit in such circumstances aligns with the goals and objectives of the relevant provisions of the treaty, then it may still be allowed.

Entry into Force and Effect

The treaty will enter into force once the ratification instruments are exchanged and will apply from 1 January of the year following its entry into force. Once the new treaty is in force and effective, the 1996 tax treaty between the two countries will cease to apply.

Should you need any further clarifications and details regarding this information, please contact our International Team – Partner **Anuj R. Kapoor** and Director **Mohamed Ezz**.

New Tax Treaty between Egypt and Oman signed

Egypt and Oman have signed a new income tax treaty, as announced by Egypt's State Information Services. Although a previous treaty was signed in 2000, it never became effective. The new tax treaty will come into force once the ratification documents are exchanged. Further information about the new treaty will be shared once it becomes accessible.

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

Should you need any further clarifications and details regarding this information, please contact our International Team – Partner **Anuj R. Kapoor** and Director **Mohamed Ezz**.

Swiss Federal Council approves pending protocol to Tax Treaty with the UAE

The Swiss Federal Council has approved the necessary steps to implement a protocol that will amend the 2011 tax treaty with the United Arab Emirates (UAE). This protocol, which was signed on November 5, 2022, is the first amendment to the treaty and introduces various changes to align it with international standards, specifically the OECD Base Erosion and Profit Shifting (BEPS) guidelines. To become effective, the protocol requires the exchange of ratification instruments between the two countries. Once this exchange takes place, the protocol will come into force and its provisions will generally be applicable from January 1 of the year following its implementation. This development underscores Switzerland's commitment to upholding global tax standards and promotes a fair and transparent tax environment between Switzerland and the UAE.

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

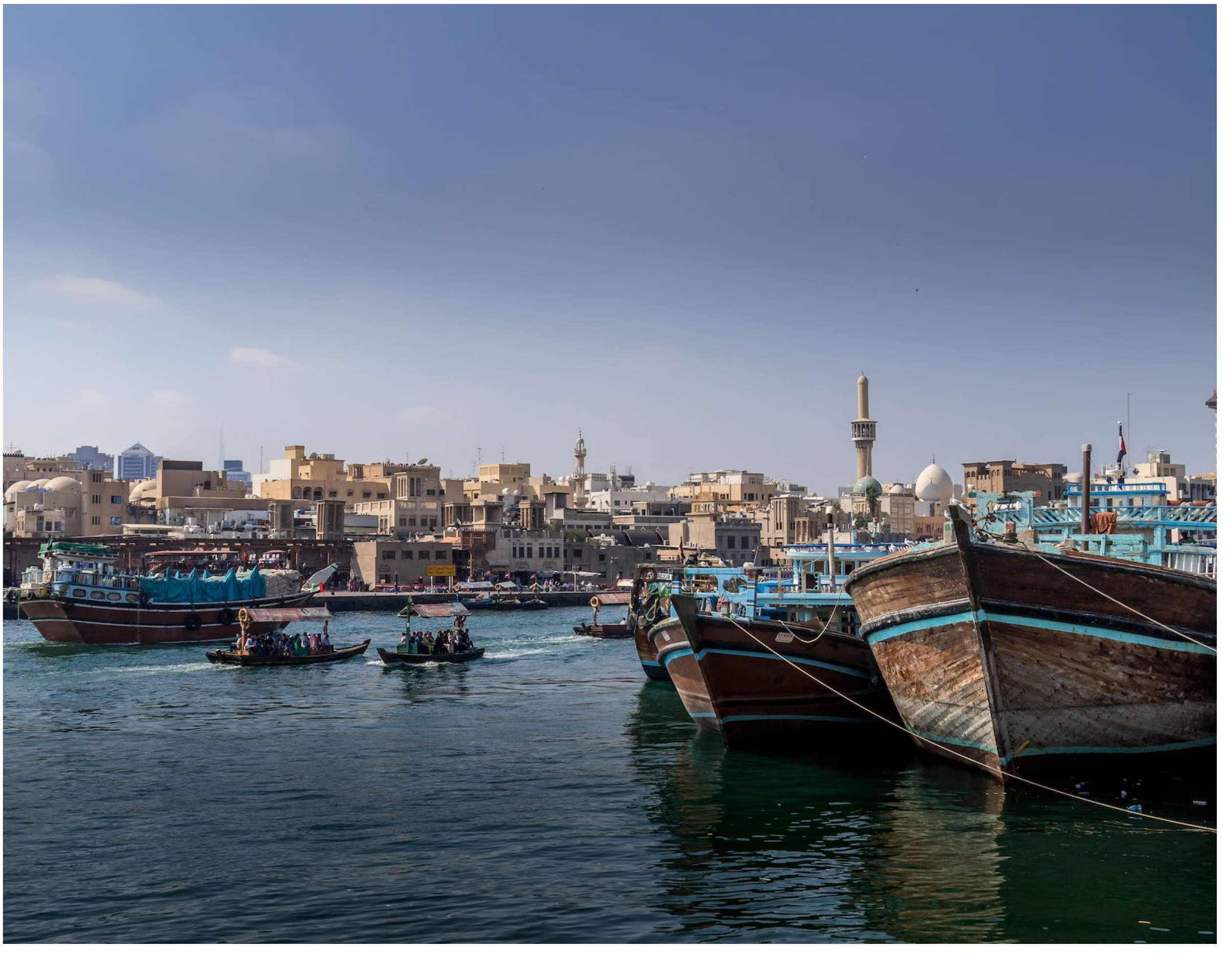
Should you need any further clarifications and details regarding this information, please contact our International Team – Partner **Anuj R. Kapoor** and Director **Mohamed Ezz**.

Tax Treaty between Qatar and Uzbekistan signed

An income tax treaty was signed on June 6, 2023, according to a statement from the Uzbekistan Ministry of Foreign Affairs. The treaty is the first of its kind between the two nations and will take effect once the ratification instruments have been exchanged. It will be accessible to the public once when the treaty's specifics will be disclosed.

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

Should you need any further clarifications and details regarding this information, please contact our International Team – Partner **Anuj R. Kapoor** and Director **Mohamed Ezz**.



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

Sam Maycock
Partner
Corporate Tax

T +971 56 547 6846
E sam.maycock@ae.gt.com

Kingdom of Saudi Arabia

Imad Adileh
Partner
Tax Advisory, GT KSA

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

Adel Daglas
Head of Tax
Zakat & Tax, GT KSA

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

Mohamed Hwitat
Director
VAT Advisory, GT KSA

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

Kingdom of Bahrain

Jatina Karia
Senior Partner
Tax Advisory, GT Bahrain

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

Shashank Arya
Director
Tax Advisory, GT Bahrain

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

Sultanate of Oman

Tammam Al-Mughairi
CEO
GT Oman

E tammam.al-mughairi@om.gt.com

Deepika Rajan
Director
GT Oman

T +968 9279 5313
E deepika.rajan@om.gt.com

Kuwait

Hazem Al-Agez
Partner
Tax Advisory &
Compliance Services
GT Kuwait

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

Karim Ezz El-Din
Manager
Tax Advisory &
Compliance Services
GT Kuwait

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

DD-16-121-031
16th Fl. WeWork Hub 71
Al Khatem Tower
ADGM Square
Al Maryah Island
Abu Dhabi, UAE

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

Grant Thornton

grantthornton.ae