



Grant Thornton

Tax Newsletter

December 2022



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Landscape

In our December 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.

The GCC Update



INDIRECT TAX

1. VAT

The Zakat, Tax and Customs Authority (ZATCA) prolongs the Tax Amnesty relief to May 2023

ZATCA had previously extended the penalty exemption initiative launched in 2020, to include the period of 1 June 2022 to 30 November 2022. However, the recent announcement by ZATCA has further extended such penalty exemption to cover the period from 1 December 2022 to 31 May 2023.

The relief covers the following exemptions:

- Penalties resulting from late registration under all tax systems;
- Penalties for late payment and late tax return filing in all tax systems;
- Penalties resulting from the correction of a VAT return; and
- Penalties resulting from detected violation acts related to the application of e-invoicing and other general provisions related to VAT

Businesses that wish to benefit from the Tax Amnesty Relief will have to ensure eligibility by complying to the below requirements:

- The taxpayer must be registered with the tax system and must submit all previously unsubmitted returns to ZATCA;
- The taxpayer must pay all the principal tax debt associated with the returns that will be submitted or modified to ensure accurate disclosure of the outstanding tax liabilities. Further, the taxpayers will have the option to request an installment payment plan from ZATCA as well; and
- The initiative is still in effect.

It is critical to note that the initiative excludes penalties relating to tax evasion violations, penalties paid before the initiative's effective date and penalties associated with the returns payable after 30 November 2022.

Furthermore, the taxes covered by the initiative include VAT, Withholding Tax, Excise Tax, Income Tax, and Real Estate Transaction Tax (RETT).

It is advisable that businesses evaluate their compliance and eligibility based on the discussion above.

For further information on the above-mentioned announcement in Arabic, please click [here](#).

Should you need any further clarification and details regarding this update, please contact our [Tax Experts](#).

The UAE Update

INDIRECT TAX

1. VAT in the UAE

Amendment to the Executive Regulation of the Federal Decree — Law No. 8 of 2017 on Value-Added Tax

The UAE Government has recently published Cabinet Decision No. 99 of 2022, which updates the Executive Regulation of the Federal Decree-Law No. 8 of 2017 on Value-Added Tax (VAT). This update will take **effect from 1st January 2023**.

The key amendments have been summarised below:

VAT registration of Board Members

Article 3(2) - It will not be considered a supply of services where a natural person performs duties in their own capacity as a member of a board of directors of for any government or private organisation and hence will be treated as Out of Scope from a UAE VAT perspective.

Accordingly, natural persons who are already registered for VAT solely based on the directors' fees must evaluate their VAT obligations from the 1 January 2023 and consider if they should continue to be registered for VAT.

Record keeping and definition changes

Article 72(3) - This clause is an exception to be noted by businesses which **do not** have a Fixed Establishment in the UAE. The following will be the record-keeping requirements for such Taxable Persons:

- Records must be kept to prove the Place of Establishment, where the Taxable Person has a Place of Establishment.
- Records must be kept to prove the Emirate in which the Supply is received, where the Taxable Person does not have a Place of Establishment.

Qualifying businesses must evaluate their record-keeping requirements accordingly.

Article 72(4) - This clause is an exception to Article 72(2) and 72(3). This amendment is especially relevant for e-commerce businesses to determine their record-keeping obligations and must be determined by evaluating whether their supplies during the calendar year have breached the threshold of AED 100,000,000 as per the timeframes described in Article 72(6) of the Executive Regulations.

Article 72(5) - The term Electronic Commerce must be determined based on the given definition for the purposes of Article 72 of the Executive Regulations which states, "the process of selling Goods or Services through electronic means, an electronic platform, a store in social media, or electronic applications in accordance with criteria and conditions determined by the Minister."

Article 72(6) - Taxable Persons providing Taxable Supplies through Electronic Commerce must determine the timeframe of their record-keeping requirements by evaluating when the threshold has been breached and maintain the records with respect to the below timeframes:

- Where the threshold as per Article 72(4) has been breached during the calendar year ending 31 December 2022, records must be maintained from the first Tax Period that begins on or after 1 July 2023, for 18 months.
- For two years commencing from the first Tax Period of the calendar year that begins after the date on which the Taxable Supplies made by the Taxable Person through Electronic Commerce exceeded the threshold prescribed in Article 72(4).

For further information on the above-mentioned amendment, please click here for the [Arabic](#) and here for the [English](#) version.

Should you need any further clarification and details regarding this update, please contact our VAT Director [Harsh Bhatia](#), or our VAT Director [Sunny Kachalia](#), or our VAT Associate Director [Charlotte Stanley](#).

The FTA publishes Private Clarification User Guide (USEG001)

The FTA has published user guide number USEG001 on Private Clarifications, detailing the taxable persons eligible to submit a private clarification and instances where it will be rejected, which is summarised below:

The following are vital to note while submitting a private clarification:

- A private clarification can be submitted by any person who is:
 - A participant in the transaction for which the clarification has been requested;
 - The answer for the clarification is uncertain even after the individual has examined the appropriate FTA publications, not limited to the relevant tax law and regulations.
 - The request for clarification is based on a legitimate and real factual matter.
 - The subject for which the clarification has been requested, has not been covered previously in clarifications issued by the FTA to the same applicant.

Additionally, it is to be noted that the tax obligations of another person are not generally addressed by FTA in a clarification issued to an applicant.

- For tax registrants, the authorised signatory must submit the clarification form. However, in case of non-tax registrants, valid proof of authorisation must be provided by the person submitting the request.
- It is pertinent to note that it not required that the applicant is a taxable person, or that the applicant appoints a tax agent or that the matter relates to a transaction, supply or matter of facts which has already occurred.

- The clarification form should typically be sent by the person (or their authorised signatory) who requests a clarification regarding their business. Although, submissions may also be accepted from appointed tax agents or court-appointed legal representatives. The authorised signatory of the representative member of tax group should submit the request where the applicant is a member of a tax group. However, submission of clarification requests made by tax advisors (who are not registered tax agents) on behalf of another person is not permitted.
- An applicant may access the Clarification form through the FTA's website <http://www.tax.gov.ae/>, in the Tax Clarifications Request tab under Services.

Below listed are a few instances where clarification requests will **NOT** be accepted by the FTA:

- The Clarification form is incorrectly carried out, for instance inadequate clarification of relevant supplies (this includes how it is supplied, the type, who is supplying what to whom, etc.), the facts have not been clearly stated insufficient legal or technical analysis provided etc.
- Unclear Clarification request;
- An individual other than an authorised person submitted the application, which includes the following:
 - Absence of proof of authorisation (e.g. on submission of application or on e-Services).
 - Submission of clarification done by a tax agent for a specific client without providing the client's details, including name and TRN.
 - A natural person was indicated as "Applicant" in respect of a clarification request related to a company.

- A tax group member who is not the representative member submits an application in their own name.
- A clarification on the same matter has been published previously to the applicant;
- The request for clarification relates to transactions that the FTA believes are intended towards tax avoidance;
- The request for clarification is hypothetical or made in order to obtain tax or tax planning advice;
- The request for clarification refers to a subject for which the FTA has already publicly disclosed guidance such as in the form of a guide or a public clarification.
- Any issue that was brought up in a tax inspection, audit, or assessment by the FTA is in any way connected to the application.

Clarifications are only now offered for VAT and Excise Tax while a formal announcement will be made regarding the commencement for corporate tax clarification requests.

The guide also clarifies requests which will not be considered as private clarifications, namely:

- Reconsideration request;
- Administrative penalty waiver request;
- Administrative penalty payment by instalment request;
- Special Input Tax Apportionment method request;
- Administrative exception request;
- System technical enquiries; and
- Other matters not pertaining to the interpretation of the relevant tax law in the context of specific facts.

It is recommended that businesses consider the FTA's guidance when deciding to apply for a private clarification, the requirements that should be met (including the necessary human resources) and methods for applying for a private clarification as well as the instances where such clarifications may be rejected.

For further information on the above-mentioned guide, please click [here](#).

Should you need any further clarification and details regarding this update, please contact our VAT Director [Harsh Bhatia](#), or our VAT Director [Sunny Kachalia](#), or our VAT Associate Director [Charlotte Stanley](#).

International Tax & Tax Treaty

International Tax Development

The UAE Ministry of Finance (MoF) issues Corporate Tax Law

On 9th December 2022, the long-awaited Corporate Tax Law has been released by the MoF. The law covers Taxation of Corporations and Businesses which will be effective for tax periods commencing on or after 1 June 2023. The introduction of the decree-law represents another major evolution in the UAE tax landscape.

Please refer to the [Tax Alert](#) published on the GT UAE website for further information.

Should you need further clarification and details regarding this update, please contact our [Tax Experts](#).

Kuwait shows significant progress on Global Transparency and Exchange of Tax Information

In an announcement made on the 9 November 2022, the OECD publicised the release of the Peer Review of the Automatic Exchange of Financial Account Information 2022. The report shows great strides globally on transparency and exchange of tax information. A key highlight was the publishing of 10 new peer review reports on the Exchange of Information on Request for Barbados, the British Virgin Islands, Iceland, Israel, Kuwait, the Maldives, Morocco, Slovenia, South Africa, and Turkey.

Further, it is important to note that the Pillar 2 Minimum Effective Rate of 15% for MNEs has not been embedded in the CT Law yet.

Further information on the Global Forum's activities can be found in its [latest annual report](#).

Should you need further clarification and details regarding this update, please contact our International Tax team – Partner [Anuj Kapoor](#), and Senior Manager [Amisha Anil](#).

Oman's Shura Council approves Income Tax on high earners

Beginning 2023, Oman set to be the first country in GCC to introduce Income Tax on High Earners, following approval of the draft law by Shura Council on 6 November 2022. Once approved by the Council of Ministers and Sultan Haitham bin Tariq Al Said, the Income Tax law will come into force.

Should you need further clarification and details regarding this update, please contact our International Tax team – Partner [Anuj Kapoor](#), and Associate Director [Nimesh Malik](#).

G20 leaders committed to swift implementation of OECD/G20 Two-Pillar International Tax Package

The G20 Leaders' Declaration has been published following the Summit held from 15 to 16 November 2022 in Bali, Indonesia. With respect to taxation and transparency, the Declaration includes the following:

We are committed to the swift implementation of the OECD/G20 two-pillar international tax package. We welcome the progress on Pillar One. We also welcome progress on Pillar Two Global Anti-Base Erosion (GloBE) Model Rules, which pave the way for consistent implementation at a global level as a common approach, and we look forward to the completion of the GloBE Implementation Framework. We call on the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (BEPS) to finalize Pillar One, including remaining issues and by signing the Multilateral Convention in the first half of 2023, and to complete the negotiations of the Subject to Tax Rule (STTR) under Pillar Two that would allow the development of a Multilateral Instrument for its implementation. We will work to strengthen the tax and development agenda in light of the July 2022 G20 Ministerial Symposium on Tax and Development, and we note the G20/OECD Roadmap on Developing Countries and International Tax.

We support the progress made on implementing internationally agreed tax transparency standards, including regional efforts and welcome the signing of the Asia Initiative Bali Declaration in July 2022. We also welcome the Crypto-Asset Reporting Framework and the amendments to the Common Reporting Standard, both of which we consider to be integral additions to the global standards for automatic exchange of information. We call on the OECD to conclude the work on implementation packages, including possible timelines, and invite the Global Forum on Transparency and Exchange of Information for Tax Purposes to build on its commitment and monitoring processes to ensure widespread implementation of both packages by relevant jurisdictions.

Click the following for the [**full text of the G20 Bali Leaders' Declaration**](#).

Should you need further clarification and details regarding this update, please contact our International Tax team – Partner [**Anuj Kapoor**](#), and Senior Manager [**Amisha Anil**](#).

GCC Tax Treaty Developments

Oman approves pending Tax Treaty with Egypt

The ratification of the tax treaty signed between Oman and Egypt on 26 April 2000 has been approved by Oman's Shura Council on 6 November 2022 and will come into effect once the ratification instruments are exchanged between the two countries.

Should you need further clarification and details regarding this update, please contact our International Tax team – Partner [**Anuj Kapoor**](#), and Manager [**Tamer El Khatib**](#).

Amending protocol to the Tax Treaty between Bahrain and Morocco has entered into force

Bahrain's National Bureau for Revenue recently published an [**update**](#) (in Arabic), stating that the amending protocol to the income tax treaty signed in 2000, came into effect on 11 April 2022. The protocol, signed 22 April 2016, amends Article 26 (Exchange of Information) to bring it in line with the OECD standard for information exchange and further goes on to clarify that the State of Bahrain became known as the Kingdom of Bahrain as of 14 February 2002. The protocol is generally effective from 1 June 2022.

Should you need further clarification and details regarding this update, please contact our International Tax team – Partner [**Anuj Kapoor**](#), and Senior Manager [**Amisha Anil**](#).

Update: Protocol to Tax Treaty between Switzerland and the United Arab Emirates

5 November 2022 saw the signing of the amending protocol to the 2011 tax treaty between Switzerland and the UAE. The protocol is the first to amend the treaty and includes the following changes:

- The preamble is replaced in line with BEPS standards;
- Article 3 (General Definitions) is updated with respect to the definition of the term "competent authority" for Switzerland;
- Article 7 (Business Profits) is amended with the addition of a new paragraph 7 providing that a Contracting State shall make no adjustment to the profits that are attributable to a permanent establishment of an enterprise of one of the Contracting States after 5 years from the end of the taxable year in which the profits would have been attributable to the permanent establishment, although this provision does not apply in the case of fraud, gross negligence, or willful default;
- Article 9 (Associated Enterprises) is amended as follows:
 - paragraph 2 is replaced, including new provisions regarding appropriate (corresponding) adjustments by a Contracting State where an adjustment has been made in the other State; and
 - a new paragraph 3 is added, providing that a Contracting State shall not include in the profits of an enterprise, and tax accordingly, profits that would have accrued to the enterprise but by reason of the conditions referred to in paragraph 1 (non-arm's length) have not so accrued, after 5 years from the end of the taxable year in which the profits would have accrued to the enterprise,

although this provision does not apply in the case of fraud, gross negligence, or willful default;

- Article 22 (Elimination of Double Taxation) is amended with the addition of the provision that the exemption provided in Article 22(1)(a) shall not apply to income derived by a resident of Switzerland where the United Arab Emirates applies the provisions of the treaty to exempt such income from tax or applies the provisions of paragraph 2 of Article 10 (Dividends) to such income (withholding tax of 5% or 15%);
- The first sentence of paragraph 1 of Article 24 (Mutual Agreement Procedure) is replaced, providing that where a person considers that the actions of one or both of the Contracting States result or will result for that person in taxation not in accordance with the provisions of the treaty, that person may, irrespective of the remedies provided by the domestic law of those States, present the case to the competent authority of either Contracting State (originally just the State of residence); and
- A new Article 26A (Entitlement to Benefits) is added to the treaty, providing that a benefit under the treaty shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the treaty.

The protocol will come into effect once the ratification instruments are exchanged and will generally apply from 1 January of the year following its entry into force. However, the changes to Article 9 (Associated Enterprises) and Article 24 (Mutual Agreement Procedure) will apply from the date of entry into force, without regard to the taxable period to which the matter relates.

Should you need further clarification and details regarding this update, please contact our International Tax team –

Partner [Anuj Kapoor](#), and
Manager [Tamer El Khatib](#).

Kuwait and Spain's Tax Treaties could see amendments

On 15 November 2022, officials from Kuwait and Spain met to discuss Draft of an amending protocol to the 2008 tax treaty between Kuwait and Spain in a meeting on 15 November 2022. Finalisation, signing and ratification of the amending protocol will precede its entry into force.

Should you need further clarification and details regarding this update, please contact our International Tax team – Partner [Anuj Kapoor](#), and Senior Manager [Amisha Anil](#).

Russia revises list of jurisdictions for Automatic Exchange of Financial Information

The Official Gazette, on 5 December 2022 contained Published [Order No. ED-7-17/986@](#) (in Russian) from Russia, containing an updated list of jurisdictions, with which Russia will automatically exchange financial account information under the Common Reporting Standard (CRS). The revised list includes the following jurisdictions:

Albania, Andorra, Antigua and Barbuda, Argentina, Aruba, Australia, Austria, Azerbaijan, Bahamas, Bahrain, Barbados, Belgium, Belize, Bermuda, Brazil, British Virgin Islands, Brunei,

Bulgaria, Chile, China, Colombia, Cook Islands, Costa Rica, Croatia, Curacao, Cyprus, Czech Republic, Denmark, Dominica, Ecuador, Estonia, Faroe Islands, Finland, France (including New Caledonia), Germany, Ghana, Gibraltar, Greece, Greenland, Grenada, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Kazakhstan, Kuwait, Latvia, Lebanon, Liechtenstein, Luxembourg, Macau, Malaysia, Maldives, Malta, Marshall Islands, Mauritius, Mexico, Monaco, Montserrat, Nauru, Netherlands, New Zealand, Nigeria, Norway, Oman, Pakistan, Panama, Peru, Poland, Portugal, Qatar, Romania, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Saudi Arabia, Seychelles, Singapore, Slovakia, Slovenia, South Africa, South Korea, Spain, Sweden, Turkey, Turks and Caicos Islands, United Arab Emirates, Uruguay, and Vanuatu.

The list included additions of Kazakhstan, the Maldives, and Oman and omission of the Cayman Islands and Switzerland. The list is effective from 16 December 2022.

Should you need further clarification and details regarding this update, please contact our International Tax team – Partner [Anuj Kapoor](#), and Senior Manager [Tatiana Stupenkova](#).

Qatar and Ivory Coast sign new Tax Treaty

A first of its kind treaty between Qatar and Ivory Coast was signed by officials on 7 December 2022 and will enter into force after the ratification instruments are exchanged.

Should you need further clarification and details regarding this update, please contact our International Tax team – Partner [Anuj Kapoor](#), and Senior Manager [Amisha Anil](#).

Want to know more? The Tax Team at Grant Thornton UAE aims to provide you with updates regarding the latest developments in Tax within the Middle East region.

For more details with respect to this alert or queries on other Tax issues, please contact the following in-country GT Tax leaders, whose details are given below.

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