GCC TAX ROUND-UP

Q2 - 2021

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WELCOME TO OUR QUARTERLY UPDATE OF TAX NEWS IN THE GCC.

Oman continues to make the news this quarter as its phased implementation of Value Added Tax continues to roll forward.

In the UAE, the authorities have announced some important changes to the tax penalty regime. Many penalties will be reduced, and an amnesty scheme for unpaid penalties will also be introduced.

There is also interesting news from Saudi Arabia, where we have a new tax and customs authority which will be called the Zakat, Tax and Customs authority (ZTCA or Zatca).
On the wider international front, over 130 member jurisdictions of the OECD/G20 Inclusive Framework on BEPS have agreed to a Two-Pillar Plan to address the tax challenges of the digital economy. The fine details are expected to be released by October 2021, with the hope of implementing the agreement in 2023.

Broadly, Pillar One of the plan aims to reallocate tax rights so that a portion of a multinational enterprise's residual profit is taxed in the market jurisdiction where the MNE generates revenue. Pillar Two introduces a global minimum tax of at "least 15%". MNEs headquartered in participating jurisdictions would be required to pay at least 15% corporate tax on all domestic profits and pay a top-up tax on the profits of their foreign subsidiaries taxed locally at less than 15%.

MNEs operating in low tax jurisdictions such as UAE or Bahrain will end up losing the tax benefits as they would have to pay the top-up tax in their home countries. In light of this, both UAE and Bahrain may consider expanding the existing limited corporate tax regime, which will impact the local tax landscape, or focus more on non-tax incentives to continue to be attractive business locations.

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This quarter has seen the unveiling of the revamped NBR website. There has also been some updated guidance for VAT agents, a change to one of the ESR deadlines and some developments with the new Country by Country reporting requirements.

NATIONAL BUREAU FOR REVENUE ('NBR') LAUNCHES ITS REVAMPED WEBSITE:

NBR has launched its revamped website (www.nbr.gov.bh). This includes a refreshed, user-friendly interface and an enhanced browsing experience for visitors. NBR has also added new sections to the updated website, such as Foreign Tax Relations and Excise Tax.

In addition, a "VAT Calculator" tool has been embedded to enable users to calculate the value of goods/services inclusive or exclusive of VAT and VAT at the standard rate of 5%.

NBR RELEASES VAT AGENT / VAT REPRESENTATIVE GUIDE:

NBR has released a VAT Agent / VAT Representative Guide. The Guide explains the criteria for a person to become a VAT Agent or VAT Representative in Bahrain and the process for applying. It also covers and how a taxable person can appoint a VAT Agent or VAT Representative to act on their behalf.

Any person who is interested in becoming or appointing a VAT agent or VAT representative should review this Guide to understand the criteria that must be met and the process that must be followed.

ECONOMIC SUBSTANCE (ES) RETURN FILING DEADLINE EXTENDED TO 31 JULY 2021

The Ministry of Industry, Commerce and Tourism (MoICT) sent a notification in early May 2021 confirming that the ES return filing has to be made through the new International Tax Information Exchange System (ITIES) portal, launched by NBR.

MoICT has temporarily suspended the ES submission service until 17 June 2021 to make some important modifications to the ES template. As a result, entities that have already filed their 2020 ES return through the ITIES portal will be required to re-file once the new modified ESR template becomes available.

The ES submission deadline for MoICT regulated entities (i.e. entities not regulated by the Central Bank of Bahrain) has been extended until 31 July 2021. Any entity that fails to file an ES return within the timelines mentioned above and in accordance with the requirements under Ministerial Order no. 106 of 2018 will be subject to fines, sanctions and removal from the CR.

BAHRAIN COUNTRY BY COUNTRY REPORTING ('CBCR')

Bahrain has ratified the Multilateral Competent Authority Agreement CbCR on 28 January 2021 and published the same in its Official Gazette.

CbCR is applicable to Multinational Entities (MNE) Groups operating in Bahrain with a consolidated revenue of BHD 342 Million (approximately USD 907 million or EUR 748 million) during the year immediately preceding the Reporting Fiscal Year. MNE Groups will be treated as having a presence in Bahrain through a constituent entity such as a tax resident local entity, branch or Permanent Establishment.

CbCR is applicable to financial reporting years commencing on or after 1 January 2021. Notification due date is 31 December 2021 for the year-end 31 December 2021. Constituent entities should notify if they qualify as an Ultimate Parent Entity (UPE) or if not a UPE, then details of the UPE should be provided along with the notification. The resolution is silent regarding the form and method of submitting the required notification. The resolution highlighted that Bahrain may extend the deadline mentioned above for the first year, i.e., FY 2021.

Penalties for non-compliance include suspension of commercial registration, imposition of administrative fines, omission of commercial registration and administrative investigation.

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In this quarter's newsletter, we give an insight into the rising disputes around the application of Zakat law in Kuwait

KUWAIT ZAKAT & IMPLICATIONS FOR GCC COMPANIES DOING BUSINESS IN KUWAIT

Under Law No. 46 of 2006 concerning Zakat and the Contribution of Public and Closed Shareholding Companies in the State's Budget ("the Zakat Law"), Kuwaiti closed and public shareholding companies are subject to Zakat at 1% of their annual net profit.

The Zakat Law is not applicable to companies fully owned by government entities, limited liability companies or those subject to corporate income tax.

The Zakat law does not have specific provisions requiring GCC shareholding companies operating in Kuwait to comply with the Zakat Law. However, in recent years, the Ministry of Finance in Kuwait ("MOF") requested Kuwait registered branches of GCC shareholding companies to file their Zakat declaration.

The MOF has recently taken the above approach further and requested GCC closed shareholding companies that operate in Kuwait through a local agent or those executing short-term projects (or even providing remote services) to register with the MOF and meet their Zakat obligations.

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The approach taken by the MOF is not in line with the provisions of the Zakat Law. The MOF is relying on the Decision issued in 1988 by the Supreme Council for Gulf Cooperation Council concerning equality of tax treatment between GCC nationals. The MOF issued a Ministerial Order to that effect back in 1989 to give GCC nationals the same tax treatment as Kuwaitis.

We are aware of several GCC closed shareholding companies that received arbitrary Zakat assessments from the MOF. While some companies settled the Zakat demanded by MOF, others have initiated legal action against the MOF. We will inform you of the Court's position on the above matter once the judgments are issued.

TAXABILITY OF UNREALISED INCOME FOR ZAKAT PURPOSES

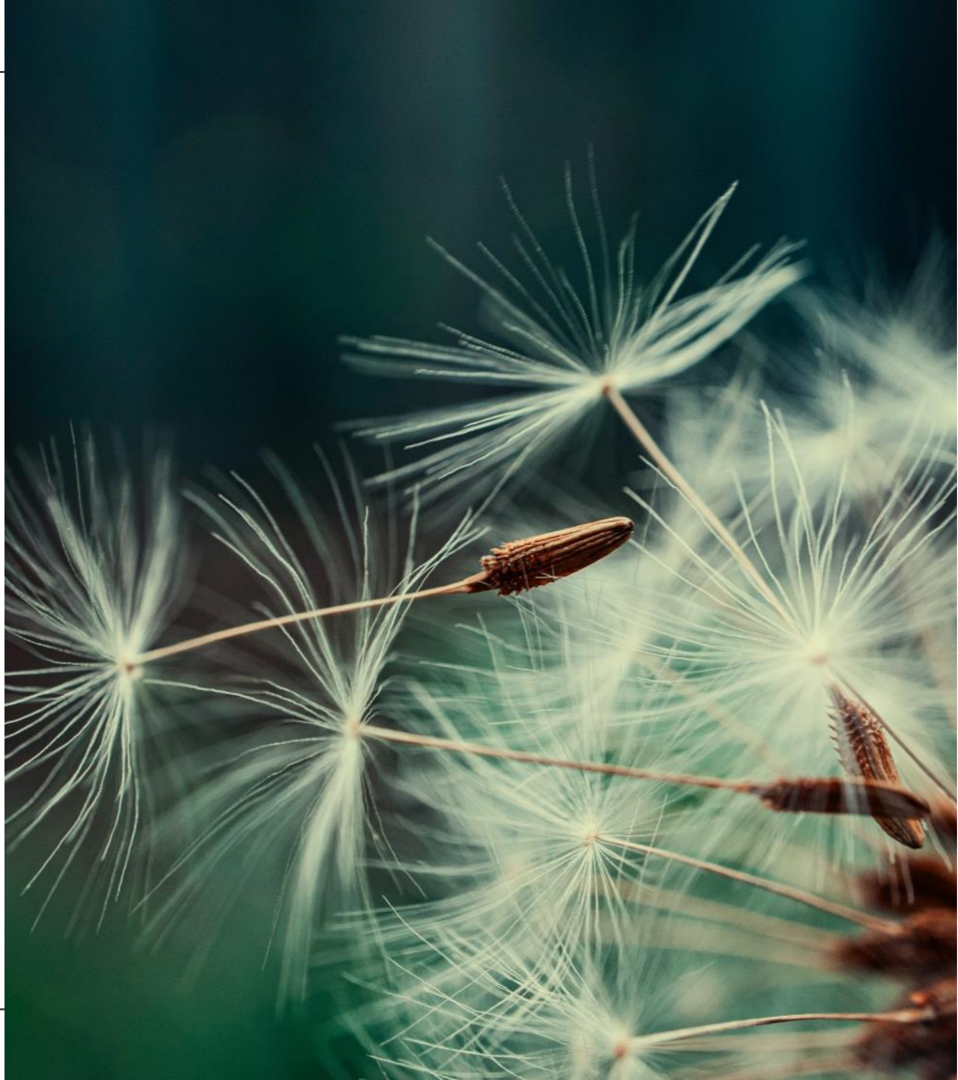
Zakat declarations are prepared based on the IFRS based financial statements of taxpayers. As per IFRS, companies are required to report their unrealized income from different transactions, including the revaluation of the investments.

It has been the practice of the MOF to require taxpayers to include in their Zakat declarations all profits made and reflected in the financial statements of the taxpayer, including unrealized income.

Recently several taxpayers started to challenge the above position applied by the MOF, and they have excluded unrealized income from being subject to Zakat.

The taxpayers' challenge was on the ground that Zakat due should be computed on the actual business profit earned by companies through their real operations, and should not be based on the accounting profit.

The taxpayers pointed out to the Court that unrealized income is not a real income and would not be realized until the actual sale of the investment. Accordingly, taxpayers argued that it is not fair for the taxpayers to be taxed on such income. We are aware of several judgments issued in favour of the taxpayers, and other cases remain to be heard in the Kuwait courts.



OMAN

Value Added Tax (VAT) continues to dominate the tax headlines in Oman. The second phase of registrations is well underway, and the first VAT returns will befall due by the end of July. There have also been updates to some of the detailed VAT rules.

SECOND PHASE OF VAT IMPLEMENTATION

As per the implementation schedule, business with annual supplies between 500,000 OMR to 1,000,000 OMR are required to register and implement VAT with effect 1 July 2021. Given that business have registered within the stipulated timeline, it is important to comply with VAT compliance obligations such as issuing / receiving tax compliant invoice, maintaining records and other similar compliance obligations prescribed..

OMAN TO FILE FIRST VAT RETURN

Businesses registered under VAT with effect from 16 April 2021 are required to file their first VAT return for the quarter ended 30 June 2021 on or before 30 July 2021. VAT registered entities, therefore, have limited time to conclude any pending VAT issues for correct filing of the VAT return. VAT registered entities should record and report all VAT related transactions entered to support business to file its first VAT return, Oman Tax Authority has published a detailed VAT return filing guide, which provides much awaited guidance on return format and requirements to populate information therein. Along with VAT return filing guide, Oman Tax Authority has also published a checklist, which should be updated and uploaded along with VAT return filing for claiming input tax credit refund.

RECENT UPDATES

- Pursuant to Article 102 of the VAT Executive Regulations, the Oman Tax Authorities have recognised the Special Economic Zone in Duqm and the Free Zones in Salalah, Sohar, and Al Mazyunah as Special Zones, for the purpose of zero-rating the supply of goods and service to a Special Zone.
- The list of basic food items has been extended to 488 from an initial list of 94 items. Items mentioned in the list will be subject to VAT at the zero rate.
- The Oman tax portal has been updated to allow the filing of applications for postponement of Import VAT. This allows the importer to postpone payment until the VAT return is filed for the tax period in which the import takes place.
- The Ministry of Energy and Minerals announced in a letter dated 13 April 2021 that it is currently in discussion with the Oman Tax Authority regarding the acceptance of a JSRS certificate as evidence for zero-rating in lieu of MEM licensing/ registration/ certification, required under Article 93 of the Executive Regulation.
- Tax authority in Oman has allowed businesses in Oman to issue a simplified tax invoice from 16 April 2021, provided that an application seeking approval, along with sample simplified tax invoices, is filed on or before 15 July 2021.

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There have been some changes to important reporting deadlines in Qatar. The details are given below

TRANSFER PRICING

The Qatar General Tax Authority chairman issued Decision No. 8 for 2021 on 17 June 2020 regarding the submission deadline of Master and Local files. This Decision has extended the deadline to be 30 September 2021.

FATCA, CRS, AND COUNTRY BY COUNTRY REPORTING

The deadline to register in the TABADOL Portal has been extended to 24 June 2021. The extension was requested by Qatar Financial Centre Authority and agreed by the General Tax Authority.

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Saudi Arabia has a new tax and customs authority – the ZTCA or Zatca. The past quarter has also been an important time for the tax amnesty, and the VAT rate changes transitional period, which have both now come to an end. More detail on all of these changes can be found below, together with an update on the rollout of E-invoicing in the Kingdom.

MERGER OF THE GENERAL AUTHORITY OF ZAKAT AND TAX AND THE GENERAL AUTHORITY OF CUSTOMS

The Council of Ministers issued Resolution No. 570 on 4 May 2021 to merge The General Authority for Zakat and Tax and the General Authority of Customs. The merged body will be called The Zakat, Tax and Customs Authority or 'ZATCA'.

The merger decision is intended to improve business practice and improve zakat, tax and customs procedures for the business sector. In addition, it will raise the level of integration between the two departments by developing a unified platform that saves time and costs for businesses, thus enhancing the Kingdom's economic competitiveness and attracting foreign investments.

THE TAX AMNESTY INITIATIVE HAS ENTERED ITS THIRD PHASE

On 7 June 2021, ZATCA renewed its call on all its taxpayers from the business sector to take advantage of the tax amnesty initiative, which has entered its third phase. This initiative allows the waiver or reduction of fines and financial penalties and is one of the Authority's initiatives to mitigate the financial and economic impact of the spread of the Coronavirus (Covid-19). The initiative was extended for six months, from 21 January 2021 until 30 June 2021.

The Authority explained that the initiative includes exempting taxpayers from fines for late payment and late submission of the return stipulated in all tax systems, in addition to the VAT return correction fine, which is related to returns that must be submitted and/or paid to the authority before the extension date.

The initiative has included three phases: the first ended at the end of March 2021, and the second was until the end of May 2021. The third phase, in which the taxpayer is exempted from fines by 50%, continued until the end of June of 2021.

VAT RATE TRANSITIONAL PERIOD FROM 5% TO 15% ENDING IN KSA.

On 1 July 2020, ZATCA announced transitional rules governing supplies made during the transitional period for the VAT rate increase from 5% to 15%.

The duration of that transitional period was from 1 July 2020 to 30 June 2021

Starting from 1 July 2021 and going forward, the VAT rate to be applied should be 15% for all supplies (except where the supply is zero-rated or exempt by law).

E-INVOICING

On 28 May 2021, ZATCA published the resolution of Controls, Requirements, Technical Specifications and Procedural Rules for Implementing the provisions of the E-Invoicing Regulation.

The E-invoicing (FATOORAH) is being rolled out in two phases:

Phase One, known as the Generation phase and enforceable as of 4 December 2021, will require Persons subject to the E-Invoicing Regulation to generate and store compliant tax invoices and notes using compliant electronic systems.

Phase Two, known as the Integration phase, and enforceable starting from 1 January 2023 (ZATCA previously mentioned that the integration phase would start June 2022 on the resolution of Controls, Requirements, Technical Specifications and Procedural Rules for Implementing the Provisions of the E-Invoicing Regulation draft) will be implemented in waves, by targeted taxpayer groups. During this phase, taxpayers must comply with Phase Two business and technical requirements for electronic invoices and electronic solutions and integrate with ZATCA's system. ZATCA will notify taxpayers of the date of their integration at least six months in advance.

SCOPE OF THE APPLICATION:

1st phase

The Generation of Electronic Invoices and Electronic Notes Phase, including provisions related to processing, and record keeping of Electronic Invoices and Electronic Notes, which is applied to all Persons subject to the E-Invoicing Regulation, effective from 4 December 2021.

2nd phase

The Integration Phase on the transmission of Electronic Invoices and Electronic Notes, and sharing them with the Authority. Applicable to all persons subject to the E-Invoicing Regulation in phases starting from 1 January 2023 and according to the timelines to be determined pursuant to Clause Six of the Resolution.

The Authority emphasized that the electronic invoices and electronic notes issued will be considered for the purpose of exercising the right to deduction within tax returns

General Requirements	First phase 4 December 2021	Second phase From 1 January 2023 in stages
Install or update the invoices system (stop issuing handwritten invoices)	✓	✓
Adding a QR code to the invoice.	*✓	**✓
Adding the VAT registration number of the customer if he is registered for VAT***	✓	✓
Issuance of invoice in (XML, PDF/A-3) format	Optional	✓
Tamper-prevention properties (example: cryptographic function, digital stamp)	Optional	✓
Other 'technical Properties (example: UUID)	Optional	✓
Integrating with the Authority's systems	Doe not apply****	✓

* Mandatory on the simplified tax invoice starting from the first phase.
**Mandatory on the tax invoice starting from the second phase.
***Mandatory on the tax invoice only from the first phase.
****The entity can be prepared for the requirements of electronic invoicing (Fatoorah), and there will be no connection before January 2023.

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For quarter two, the biggest tax news in the UAE was the announcement that many of the tax penalty rates will be reduced and that a tax amnesty scheme for unpaid penalties will be introduced.

PENALTY UPDATE

The UAE government has announced significant changes to the tax penalty regime. The changes are set out in Cabinet Decision Number 49 of 2021, which will come into effect on 28 June 2021.

The Decision revises some penalty rates and procedures and introduces an amnesty scheme that will allow unpaid penalties levied under the previous regime to be reduced in certain circumstances. The key impacts of these changes are outlined below.

rules, to be reduced by 70 %, provided the taxpayer settles the unpaid tax and penalties by 31 December 2021.

The Federal Tax Authority (FTA) has issued a public clarification explaining how the amnesty will be administered. This clarification confirms that the amnesty applies to all administrative penalties set out in Cabinet Decision 40 of 2017 that are issued before 28 June 2021. The conditions for the amnesty are as follows:

- The taxable person has not settled all of the penalties imposed on it, in full, before 28 June 2021
- The taxable person pays all payable tax by 31 December 2021 and pays 30% of the unsettled penalties by 31 December 2021

If these conditions are met, the FTA will amend the taxpayer's account after 31 December 2021 to reduce the penalty by 70%.

VOLUNTARY DISCLOSURES

With effect from 28 June 2021, the late payment penalty for voluntary disclosures will only be levied from the date the voluntary disclosure was lodged, as opposed to the date of supply of the transaction. This is a very significant and welcome change, which will encourage taxpayers to deal with voluntary disclosures quickly in order to minimise the penalty cost.

LATE PAYMENT PENALTIES

In addition to reducing the impact of late payment penalties on voluntary disclosures, as outlined above, the Cabinet Decision has reduced the rate of late payment penalty from 1% per day to 4% per month. However, the 300% maximum for late payment penalties remains in place.

OTHER PENALTIES

The Cabinet Decision will also result in reductions in a number of other penalties, including:

- Late registration
- Late deregistration
- Failure to keep specified tax records
- Failure to notify a change in circumstances
- Failure to display tax-inclusive prices
- Failure to provide the FTA with price lists for excise goods
- Failure to issue tax invoices or tax credit notes correctly.

ECONOMIC SUBSTANCE REGULATIONS (ESR)

A reminder that there is a rolling notification deadline for ESR in the UAE. Businesses are required to make an ESR notification to the Ministry of Finance within six months of the company's year-end. Therefore, companies with financial years ending 31 January 2021, 28 February 2021 or 31 March 2021 will all have notification deadlines falling during the third quarter of 2021.

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