

# PwC Middle East Financial Services Tax & Legal Update

January 2022

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# Introduction

Welcome to the seventh edition of our Middle East Financial Services Tax and Legal update, picking up on a range of current hot topics relevant to the financial services industry. As we enter 2022 there are some very important tax developments in the coming months. Perhaps the most fundamental is the OECD's global minimum tax and related changes which we covered in our previous update so have not repeated here. However we do cover 7 key local and regional developments as set out in our articles below:

1. UAE - Input VAT deduction for employee mobile phones and telecommunications used for business;
2. UAE - Amendment of Tax Procedures Law provisions in relation to tax disputes resolution;
3. UAE - New rules on administrative penalties waivers and installments;
4. Oman - VAT registration procedures for non-resident applicants;
5. Oman - Double Tax Avoidance Agreement (DTAA) between Oman & Qatar;
6. Oman - Executive Regulations to the Commercial Companies Law;
7. Kuwait - Ministry of Finance considers imposing Corporate Income Tax (CIT) on local branches of GCC banks.

I hope you find the articles relevant and informative. Please get in touch with me or your regular PwC contact for further information or if you would like to discuss how these changes impact your business.

As always I am keen to hear your feedback on this newsletter so would welcome any thoughts or comments.

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# Input VAT deduction for employee mobile phones, airtime and data packages used for business

## In brief

The UAE Federal Tax Authority (“FTA”) published a new VAT Public Clarification (VATP028) to provide guidance on the input VAT recoverability related to mobile phones, airtime, and data packages that are made available to employees for business use by their employers.

## In detail

According to the Public Clarification, in principle, where an employer acquires mobile phones with telecommunication services (airtime and data packages) for use by its employees solely for business purposes and has a strict policy to restrict the use to business purposes, the right to use the devices and telecommunication services would not constitute a personal benefit for the employee, provided the value of the telecommunication services was determined based on actual historical business usage.

### Eligibility for input VAT recovery

A business is entitled to recover input VAT for mobile phone usage if these costs are incurred to make taxable supplies and **all the following conditions** are met:

- **VAT registration:** The business is registered for VAT and acquired phones and telecommunication services in its own name;
- **Business use policy:** The business has a documented policy in place which clearly states that the usage of phones and telecommunication services may only be for business purposes, stating the consequences of any personal use;
- **Monitoring of usage:** The business regularly monitors the use of telecommunication services and retains justification for the variances;
- **No personal use:** The business takes action against employees using phones and telecommunication services for personal use in accordance with the documented policy; **and**
- **Tax invoice records:** The business retains valid tax invoices in respect of the phones and telecommunication services acquired.

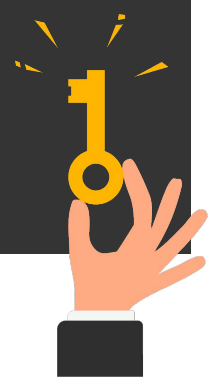
The Public Clarification also emphasizes that only documented policies which have already been in place at the time the phones and telecommunication services were made available to the employee will be considered. If any of the above five conditions are not met, the recovery of input VAT incurred will be blocked in accordance with Article 53(1)(c) of the Executive Regulations.

## What next

Taxpayers need to assess the recoverability of the input VAT incurred on mobile phone related expenses in line with the new clarification. For the historic part, taxpayers are required to substantiate that all the conditions are met to support the recovery of input VAT.

### The takeaway

Taxable persons may need to revisit their current input VAT recovery position in relation to mobile phones and telecommunication services that they made available to their employees for business purposes in the light of this Public Clarification, to ensure that they are in compliance with the requirements of the VAT legislation.



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# Amendment of certain Tax Procedures Law provisions in relation to tax disputes resolution

## In brief

The UAE Cabinet of Ministers issued the Federal Decree Law No. 28 of 2021 to amend the provisions of Federal Decree Law No. 7 of 2017 on Tax Procedures relating to tax dispute and resolution in the UAE. The new Decree Law has extended the timelines available for any person to dispute decisions issued by the Federal Tax Authority ("FTA") as well as the timelines for the FTA to issue its decision regarding the disputed case. The Decree law has also introduced amendments to the requirements for submitting objections and appeals.

## In detail

The new Decree Law has introduced the following amendments to the Tax Procedures Law that entered into force as of 1 November 2021:

### 1. Extension of timelines related to tax dispute resolution: Amendment of Articles 27, 30 and 33 of the Tax Procedures Law as follows:

- **Procedures for application for reconsideration (Article 27)**
  - a. The timeframe for any person to submit a reconsideration request to the FTA has been extended to 40 business days (previous timeline of 20 business days);
  - b. The timeframe for the FTA to review the reconsideration request and issue a decision has been extended to 40 business days (previous timeline of 20 business days).
- **Procedures for submitting objections and cases of inadmissibility (Article 30)**
  - a. The timeframe to submit an objection to the FTA's decision to the respective Tax Disputes and Resolution Committee (TDRC) in respect to a reconsideration request has been extended to 40 business days (previous timeline of 20 business days).
- **Challenge procedures before Courts (Article 33)**
  - a. The timeframe for the person and the Authority to submit an appeal to the TDRC's decision before the competent Court has been extended to 40 business days (previous timeline of 20 business days).

### 2. Amendment of requirements to submit objections and appeals

Amendment of Articles 30 and 33 of the Tax Procedures Law as follows:

- **Requirements to submit objections to Committees (Article 30)**  
The requirement for settlement of taxes and penalties prior to filing an objection to the FTA's decision has been amended to include the settlement of taxes only (not the penalties anymore).
- **Requirements to submit appeals to Courts (Article 33)**  
A new clause was introduced to Article 33 to provide the instances where the appeal is considered as inadmissible. These instances are as follows:
  - a. Existence of inadmissible case to file an objection with the TDRC;
  - b. Failure of the person to provide proof of payment of taxes to the FTA; and
  - c. Failure of the person to provide proof of payment of no less than 50% of the administrative penalties by means of cash payment or submission of bank guarantee to the FTA.

### 3. Enforcement of TDRC' decisions

Amendment to Article 32 of the Tax Procedures Law as follows:

- The decisions of disputes issued by the TDRC exceeding AED 100,000 shall be considered as exclusionary instruments if not appealed before the competent Court within 40 business days of notification of the outcome of objections (previous timeline of 20 business days);
- If the parties of dispute are federal or local government entities, the Cabinet shall issue a decision adopting an alternative mechanism of objections and appeal. Until then, the current mechanism shall apply [Article 32 (bis)].

### 4. Special waiver committee:

Amendment to Article 46 of the Tax Procedures Law as follows:

- The special waiver committee has been given additional powers in approving instalments of the penalty amount or refund it to the person according to the controls and procedures of a Cabinet Decision to be issued according to a suggestion by the Minister;
- The committee shall be formed by a decision issued by the Chairman of the Board of the FTA. The Committee is chaired by the Chairman of the board of the FTA or his deputy, with the membership of two board members.

## What next

Decisions issued by the FTA, TDRC or Courts to follow the provisions of the amended Tax Procedure Law. Taxpayers have now more time (additional 20 business days) to dispute decisions issued by the FTA which will help to reduce the risk of missing the chance of disputing the penalties.

## The takeaway

The new timelines and procedures shall apply to new decisions issued as of 1 November 2021 onwards by the FTA, TDRC or Courts, i.e. any decisions issued prior to the effective date shall follow the provisions of the old Tax Procedures Law. Taxpayers would now have more time (additional 20 business days) to dispute decisions issued by the FTA. Taxpayers have been given more flexibility in terms of settlement of taxes and penalties, whereby they will be only required to make the payment of taxes to be eligible of filing objections with the TDRC, and payment of 50% of administrative penalties or submission of an equivalent bank guarantee to the FTA to be eligible of filing appeals with the Courts.



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# New rules on administrative penalties waivers and installments

## In brief

Following the issuance of Federal Decree Law No. 28 of 2021 to amend the provisions of Federal Decree Law No. 7 of 2017 on Tax Procedures relating to tax disputes and resolution in the UAE, a new Cabinet Decree No.105 of 2021 was issued on 28 December 2021 covering the controls and procedures related to the waiver and installment of administrative penalties.

The new Cabinet Decree comes into effect on 1 March 2022.

## In detail

### Administrative penalties installments

The approval of requests to pay administrative penalties in installments is subject to the following conditions:

- The installment request must be in respect of unsettled penalties only;
- The amount of penalties subject to installment should not be less than AED 50,000;
- Penalties subject to installment should not be currently disputed in front of the Tax Disputes Resolution Committee (TDRC) or Federal Courts (excluding the reconsideration process);
- The tax due for the tax period subject to the installment request is settled.

### Administrative penalties waivers

The approval of requests to waive administrative penalties is subject to penalties not be associated with tax evasion case(s).

The new Cabinet Decree lists the accepted reasons to grant penalty waivers as follows. The request should be related to any of the following cases:

- Death or illness of the taxpayer if the taxpayer is a natural person or owner of an establishment.
- Death, illness, or resignation of a key employee of the tax registrant.
- Evidence of restrictions, precautionary or preventive measures, applied on the taxpayer by UAE government agencies.
- Evidence of system failure of the Federal Tax Authority (FTA), or payment and communication systems failure that affects a class of persons.
- Causes relating to restrictions on liberty and freedom of a natural person taxpayer or owner of an establishment.
- Payment of all taxes through the tax account of another registered taxpayer.
- In cases of insolvency or bankruptcy, penalties may be waived if they have been paid prior to the insolvency or bankruptcy, and if it is evident that the insolvency or bankruptcy was not for purposes of tax evasion.

### Procedures related to the submission of installment or waiver requests

- The request for either an installment or waiver request must include the general details e.g. tax identification number, penalty amounts, reasons, etc.
- An undertaking should be filed by the taxpayer:
  - For installment requests, the undertaking should state that the penalties will be paid in accordance with the payment schedule that is accepted by the Committee.
  - For waiver requests, the undertaking should state that the cause of the penalties shall be rectified, and that the cause shall not occur again.
- Breach of the undertakings will nullify and void the underlying request.
- A taxpayer may not file more than one request for the same penalty[ies].
- Failing to adhere to an installment payment plan may result in either:
  - A new payment plan if there is a justifiable excuse for non-compliance with the schedule, or
  - Action by the FTA against the taxpayer to collect the penalties.

### Timelines

- The FTA has 40 business days to review the request for compliance with all requirements. If the request is valid, it shall be referred to the Committee.
- The Committee has 60 business days to decide on the request and 10 days to notify the applicant thereafter.
- Lack of a decision is deemed a final rejection.

### Committee role

The Committee will be responsible for:

- Setting the time limit for filing waiver requests.
- Draw the payment procedures and schedules for installment requests.
- Decide the percentage of penalties to be waived in respect of waiver requests.
- Request any guarantee it sees fit to process an installment request.

### Retrospective penalty refund

The Cabinet Decree grants the Committee the authority to stipulate the circumstances and rules in respect of paid penalties within the previous 5 years.

If paid penalties are waived retrospectively, the paid penalties subject of the waiver will be credited to the taxpayer's account with the FTA within 90 business days or refunded in cash in case the taxpayer has canceled their tax registration.

## The takeaway

Taxable persons who have been subject to administrative penalties can now request a waiver or installment of penalties.

Taxable persons should evaluate whether the conditions stipulated in the new Cabinet Decree for submitting a request to the Committee for installment / waiver of administrative penalties are satisfied in order to benefit from these initiatives.



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# VAT Registration Procedures For Non-Resident Applicants

## In brief

The Oman Tax Authority issued guidance for resident and non-resident businesses seeking to register for VAT in Oman following the implementation of VAT in Oman on 16 April 2021. In furtherance to the earlier guidance, the Oman Tax Authority has released a guide for VAT registration procedures for non-resident applicants.

The guide addresses several challenges faced by non-resident businesses, including the inability to appoint a Responsible Person resident in Oman or appoint a Tax Representative.

## In detail

According to Article 57 of the Oman VAT law every person who has no place of residence in the Sultanate (but makes taxable supplies), shall register with the Authority. As per Article 2 of the Oman VAT law, Ministerial Decree 2/2021, any person with no place of residence in the Sultanate must appoint a Responsible Person having a place of residence in the Sultanate. The guide clarifies Article 2 of the Oman VAT law and provides the procedure for appointing a Tax Representative and provides options in case the non-resident person is unable to appoint local Responsible Person.

### Where it is not possible to appoint a Responsible Person resident in Oman or appoint a Tax Representative

A non-resident person who has not appointed a Responsible Person resident in Oman or a Tax Representative in Oman may follow one of the two options below

#### Option 1

A person with no place of residence in the Sultanate can register for VAT directly and specify a Responsible Person that is a related person. The applicant must also provide a copy of a bank guarantee or fiscal undertaking in favor of the Tax Authority.

The bank guarantee or fiscal undertaking must be issued from a bank in Oman in the name of the Tax Authority for a value not less than 5% of taxable annual supplies and valid for one year. In addition, the person must provide details of a bank account in Oman and pay the tax due in Omani Rials.

#### Option 2

A person with no place of residence in the Sultanate can register for VAT directly and specify a Responsible Person that is a related person. The applicant must also provide a copy of a bank guarantee or fiscal undertaking in favor of the Tax Authority or pay a cash security deposit.

The bank guarantee or fiscal undertaking can be issued from any bank in the name of the Tax Authority for a value not less than 5% of taxable annual supplies and valid for one year. The cash security deposit must be made via a bank transfer to the Oman Tax Authority's bank account for a value not less than 5% of taxable supplies for a tax period, or OMR 100,000 if taxable supplies cannot be estimated. In addition, the person must pay the tax due in Omani Rials.

#### What next

The issuance of the updated guidance on the VAT registration procedures for non-resident applicants clarifies some challenges faced by the non-resident person in Oman (such as appointment of Responsible Person in Oman, furnishing a bank guarantee, etc.). This will hopefully ease the VAT registration process for non-resident business in the Sultanate.

Non-residents should follow the necessary options to undertake registration in Oman.

## The takeaway

In cases where it is not possible to appoint a Responsible Person resident in Oman or appoint a Tax Representative, the Oman Tax Authority has allowed the payment of a cash security deposit instead of a bank guarantee for non-resident applicants.



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# Double Tax Avoidance Agreement (DTAA) between Oman & Qatar

## In brief

During the visit of His Majesty Haitham bin Tariq, the Sultan of Oman, to Qatar, Oman and Qatar signed a DTAA on 22 November 2021, to be the first DTAA concluded between Oman and a Gulf Cooperation Council (GCC) country.

## In detail

On 22 November 2021, Oman and Qatar signed a DTAA, which remarks the first DTAA to be concluded by Oman with a GCC country, and the second DTAA to be concluded between two GCC member states, after the DTAA signed between United Arab Emirates (UAE) and the Kingdom of Saudi Arabia (KSA) back in 2018.

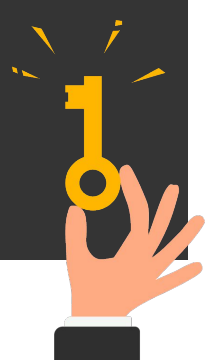
There is no clarity yet on the terms of the agreement signed, however, we understand that the agreement covers double taxation, tax evasion on income, and capital taxes. Signing the DTAA by both states is the first step of the initiation of the DTAA. If the additional procedural requirements are completed by 31 December 2021, the DTAA would become effective from 1 January 2022 or otherwise it is expected to be effective from 1 January 2023 (if the procedural requirements are completed within 2022).

The DTAA is expected to facilitate further cross-border trade and investment between the two countries. We also believe that the DTAA may offer great potential reduction or exemption from tax with respect to cross-payments between Oman and Qatar.

### The takeaway

The signed DTAA is yet to be published in the official Gazette, and once it is issued, greater clarity will be obtained on the terms and provisions of the DTAA as well as on how it may boost relationships, economies and businesses for residents in either Oman or Qatar.

We shall keep you updated on this once we get clarity on the matter.



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# Executive Regulations to the Commercial Companies Law

## In brief

In implementation of the provisions of the Commercial Companies Law issued by Royal Decree No. (18/2019), His Excellency Qais bin Muhammad bin Moosa Al-Yousef, the Minister of Commerce, Industry and Investment Promotion, (MOCIIP), issued a Ministerial Decision No. (146/ 2021), promulgating the much awaited Executive Regulations (the ER) of the Commercial Companies Law.

The ER were issued on 14th October 2021, published in the Official Gazette on 24th October 2021, and is effective from the following day of its publication, i.e. from 25th October 2021.

The ER have set out controls, rules, and procedures for establishing and regulating the commercial companies. These regulations are applicable to all types of commercial companies, established in Oman or carrying out their principal activities in Oman, except public joint stock companies which are subject to separate regulations issued by the Capital Market Authority.

The introduction of the ER forms part of the steps taken by the Omani government to enhance and improve the legislative framework for the commercial companies in a way that contributes to achieving the national priorities of Oman Vision 2040 of stimulating the private sector and activating the national economy.

## In detail

### The key features of the ER introduced

We believe that the ER have been set with the aim of creating a stronger and more transparent corporate governance regime in the country, speedier processing and ease of doing business in Oman and protecting the investors interest. We summarise below the key provisions provided by the ER, among many others that may not be listed below.

### Use of electronic system of the MOCIIP

Major part of the procedures and communications with the MOCIIP are required to be made through the electronic system of the MOCIIP, including but not limited to: filing request to establish a commercial company, registering of a commercial companies or branches of foreign companies, updating share capital whether increasing or reducing it, request for approval for liquidation, transforming legal form of the company, mergers, appointment of board of directors, etc. In the case of filing any request, the MOCIIP may request for further information and documents and the company is required to respond to the same within 7 days from date of request made otherwise the MOCIIP has the right to reject such request.

### Branches of foreign companies

The ER specified the controls for registering branches of foreign companies with the MOCIIP through the electronic system, provided that the branch takes the legal form of the company in its head office and with the same purposes.

### Establishment of commercial representative offices (CRO)

The ER also contained provisions related to establishment of CROs to take care of the interests of companies and institutions whose headquarters are outside the Sultanate. The ER specified the permissible and non permissible activities of the CROs.

### Bank account

The ER obligated commercial companies to open a bank account in a bank licensed to operate in the Sultanate of Oman, in which the value of the shareholders contribution in cash as specified in the incorporation documents shall be deposited from the date of their registration with the MOCIIP.

### Contributions to the Capital

Certain provisions of the ER has detailed rules related to evaluation of contribution to capital in-kind, as well as contribution by services or labour, when establishing the company or increasing its capital. The ER further provides that an agreement between the partners shall be made to guarantee the partners' right to the assessed in-kind share that exceeds the value of the capital contribution according to the evaluation made by the approved valuers.

### Corporate transformation and merger

One of the landmark provision is relating to allowing for one or more companies - even if it is under liquidation - to merge with another company of its own form or from another form, provided that the application is submitted to the Registrant through the electronic system.

### The company buys its shares

A company wishing to purchase its shares must obtain the approval of the Registrar based on an application submitted for this purpose through the electronic system, provided that the application is accompanied by approval of the regulatory authorities under which the company is subject to control, the company's board of directors' decision, the form of the advertisement that must be approved by the Registrar before publication and any other data or information requested by the Registrar.

### Employee Stock Option & preference shares

The ER has also set out provisions and rules related to issuance of employee stock options and preference shares.



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# Executive Regulations to the Commercial Companies Law

## In detail (cont'd)

### Legal Advisor

Every company must have a legal advisor, either by appointing a full-time worker in the company, or contracting with one of the law firms and legal advisors registered in Oman.

### The Limited Liability Company

The ER has provided detailed provisions in respect of the new form of legal companies introduced by the Commercial Companies Law which is the One Person Limited Liability Company.

### Disposal of Shares

Every disposition of the partners' shares must be published via the electronic system after being registered with the Registrar. Management of Limited Liability Company Partners in a limited liability company may not appoint a manager to work in another company, except after he terminates his services in the company in which he works. An exception to this is the appointment of managers in companies that own shares in the company in which he was appointed.

### Information required to be shown in formal documents

The ER requires commercial companies that wish to issue any advertisements, contracts or documents, warnings, receipts, papers or publications, to include the company's name, legal form, address, work center, commercial registration number, means of communication, and any other data specified by the MOCIP.

### Closed joint stock companies

The ER has detailed provisions related to rules of establishing a closed stock joint company, appointment of its board of directors, appointment & removal of external auditors, limits of remuneration & sitting fees of the board of directors, rules related to transactions with related parties etc. A new provision introduced on possibility of conducting ordinary general meetings via virtual means provided by Muscat Clearing & Depository SAOC.

## The takeaway

The issuance of the ER has brought clarity to a number of provisions enacted in the Commercial Companies Law, which are in line with the overall direction of the country to strengthening the corporate governance regime, speedier processing and enhancing the ease of doing business for the local and foreign investors. We expect to gain more insights of the implications of the new ER as they start to be implemented in the coming period.



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# Kuwait's Ministry of Finance Considers Levying CIT on local branches of GCC banks

## In brief

The Kuwait Ministry of Finance is studying the possibility of imposing Corporate Income Tax (CIT) on branches of GCC banks operating in Kuwait, on the basis of the approach followed by other tax authorities in GCC countries of imposing tax on local branches of GCC banks, including Kuwaiti banks.

## In detail

Recent practices applied by tax authorities in other GCC countries toward taxing local branches of GCC banks, including branches of Kuwaiti banks, has in turn raised the concern of the Kuwait Ministry of Finance (MoF) to study the possibility of levying CIT on fully owned GCC banks that are operating in Kuwait.

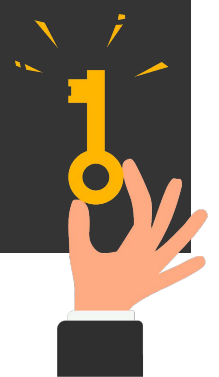
Recently, Kuwaiti banks operating in the UAE, Saudi Arabia, and other GCC countries are being subjected to tax in those jurisdictions. Nonetheless, local branches of GCC banks operating in Kuwait are currently exempt from CIT on the basis of the Economic Agreement signed between GCC states which provides for equal economic and tax treatment between GCC states.

Nonetheless, the MoF believes that the Kuwait Tax Law (Law No. 3 of 1955 amended by Law No. 2 of 2008) is general enough to allow them to impose CIT on local branches of GCC banks, since it does not explicitly state the definition of 'incorporated bodies' subject to CIT. Hence, they can impose CIT on GCC banks/branches or similar vehicles operating in Kuwait without any additional notice or announcement, since they do not need to seek any prior approval from the parliament.

At the moment, the Kuwait Ministry of Finance has not taken a clear position on this matter and it is unclear as to how the rules will be applied.

## The takeaway

In light of the above, in order for your organisation to respond rapidly and decisively to the proposed plan, you need to promptly assess the potential impact on your business and your organisation's readiness for this challenge.



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