

PwC Middle East Financial Services Tax & Legal Update

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Introduction

New Free Zone Decisions issued for the purpose of UAE Corporate Tax law

Regulating the governance of Tax exemptions & Launch of a new service on the E-portal of the Oman Tax Authority

54 countries pledge to implement global tax transparency standard for crypto-assets by 2027

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Introduction

Welcome to the twelfth 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. We have a packed offering this month as the rapid rate of change in the tax and legal area for financial services businesses continues. This is demonstrated in our updates below, which reflect national, regional and global changes.

In this edition, we have five articles covering the following areas:

1. New Free Zone Decisions issued for the purpose of UAE Corporate Tax law;
2. Regulating the governance of Tax exemptions & Launch of a new service on the E-portal of the Oman Tax Authority;
3. 54 countries pledge to implement global tax transparency standard for crypto-assets by 2027;
4. EU Foreign Subsidies Regulation (FSR) - Impact on the Middle East; and
5. ZATCA guidance on related party financial transactions.

Mohamad



Mohamad EIDirani
 Partner
 Middle East Financial Services Tax Leader
 M: +971 56 549 8252
 E: mohamad.dirani@pwc.com



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New Free Zone Decisions issued for the purpose of UAE Corporate Tax law (1/2)

In brief

The previously issued Cabinet Decision No 55 of 2023 and Ministerial Decision No. 139 of 2023 regarding UAE Free Zones (FZ) have been repealed and are now replaced by:

- Cabinet Decision No. 100 of 2023 on Determining Qualifying Income (QI) for the Qualifying Free Zone Person (QFZP); and
- Ministerial Decision No. 265 of 2023 Regarding Qualifying Activities (QA) and Excluded Activities (EA) for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses (hereinafter referred to as the "CT Law").

Both new Decisions came into effect on 1 June 2023. The new Decisions have incorporated important additional rules and clarifications for FZ entities.

In detail

Some of the relevant points emerging out of the decisions for the financial services sector are provided below:

(1) The meaning of the various Qualifying Activities have been clarified. Some of the relevant ones for the financial services sector are:

(i) The Qualifying Activity of 'Holding of shares and other securities' was changed to 'Holding of shares and other securities for investment purposes'. The Decision clarifies that investment purposes means holding for an uninterrupted period of at least 12 months.

(ii) Fund management services have been defined to include the activities of portfolio management, risk management, discretionary and non-discretionary fund management services and other services relating to the day-to-day management and operation of an investment fund by a fund manager that is appointed by the fund or its investors, including those activities that are delegated by an investment fund or its fund manager to an investment advisor or sub-advisor, that are subject to the regulatory oversight of the Competent Authority in the State

(iii) Wealth and investment management services have been defined to include the activities of providing discretionary and non-discretionary investment management and advisory services, portfolio management and wealth and investment advisory services, that are subject to the regulatory oversight of the Competent Authority in the State.

(iv) Treasury and financing services to Related Parties includes the provision of cash and liquidity management, financing, debt management, and financial risk management and related advisory services to Related Parties, including centralised payment and collection activities for or on behalf of Related Parties.

(v) The definition of Qualifying Activities expanded to include 'Trading of Qualifying Commodities', meaning the physical trading activities of Qualifying Commodities and associated derivative trading. Commodities must be traded on a commodity exchange. This activity can be carried out at any FZ approved for CT, not just Designated Zones.

(vi) The meaning of 'Headquarter Services to Related Parties' explained to include the administering, overseeing and managing of Business Activities of Related Parties, including the provision of senior and general management, captive insurance services, administrative services, procurement services, business planning and development, risk management, coordination of group activities, and in general incurring expenditures on behalf of Related Parties and providing other support services to Related Parties.

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New Free Zone Decisions issued for the purpose of UAE Corporate Tax law (2/2)

(2) Similarly, the meanings of the various Excluded Activities have been provided, including:

- (i) Banking activities have been defined to mean the regulated financial activities specified under Article (65) of Federal Decree-Law No. 14 of 2018.
- (ii) Finance and leasing activities means the provision of credit or financing for any kind of consideration, and the letting or otherwise granting the right to use an asset in exchange for rental or other consideration pursuant to a finance lease, operating lease or other arrangement, that are subject to the regulatory oversight of the Competent Authority in the State.

(3) For the purpose of the above definition, the term Competent Authority has been defined as the Central Bank of the United Arab Emirates, the Dubai Financial Services Authority of the Dubai International Financial Centre, the Financial Services Regulatory Authority of the Abu Dhabi Global Market and the Securities and Commodities Authority as applicable.

(4) Reference to 'incidental' income as part of Qualifying Income was removed. 'Ancillary' activity being part of a Qualifying or Excluded Activity defined as an activity where it serves no independent function but is necessary for the performance of the main Activity.

(5) For the purposes of FZ substance requirements, core income-generating activities (that are to be undertaken in the FZ) were explained to mainly consist of those significant functions that drive the business value for each activity carried out by a QFZP and are not exclusively or mostly support activities.

Key takeaway - The new FZ regulations provide clarity on the interpretations of Qualifying and Excluded Activities. Having regard to the definitions, it would be important for businesses to evaluate whether their activities would get covered within the Qualifying Activities / Excluded Activities list. It would also be important to align the activities with the licenses, service agreements and other documentation.



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Regulating the governance of Tax exemptions & Launch of a new service on the E-portal of the Oman Tax Authority

In brief

His Majesty Haitham bin Tariq has issued Royal Decree No. 80/2023 (RD 80/2023) to regulate tax exemptions and clearly delineate the responsibilities for granting such exemptions. Additionally, the Oman Tax Authority (OTA) has released an announcement regarding the introduction of a new service on the e-portal.

In detail

On 9 November 2023, His Majesty Haitham bin Tariq issued RD 80/2023 to regulate the Tax exemption.

The responsibility for overseeing tax exemptions has been shifted from the Head of the Tax Authority to the Minister of Finance in all instances specified in laws and royal decrees, encompassing:

- The Financial Law issued by Royal Decree No. 98/47
- Income Tax Law issued by Royal Decree No. 28/2009
- The Excise Tax Law issued by Royal Decree No. 23/2019
- Value Added Tax Law issued by Royal Decree No. 121/2020
- Tax Authority System and Approval of its Regulatory Structure issued by Royal Decree No. 42/2020

It is important to highlight that the responsibility for matters pertaining to customs duties exemption still lies with the Royal Oman Police, as customs duties were not initially under the purview of the Tax Authority.

Due to the aforementioned changes, there is an expectation for substantial revisions to Oman's legislation and regulations.

Key takeaway - In a significant development, the responsibility for overseeing tax exemptions has been transferred from the head of the tax authority to the Minister of Finance. This shift, now applicable in all instances specified in laws and royal decrees, marks a pivotal change in governance. Stay tuned for further updates on this crucial development. Moreover, the introduction of a new service on the OTA E-portal, allowing for the booking of appointments with OTA representatives, will result in saving time and managing tax matters more efficiently.



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54 countries pledge to implement global tax transparency standard for crypto-assets by 2027

In brief

54 countries and jurisdictions have committed to implement the Crypto Asset Reporting Framework (CARF) for exchange by 2027, which would suggest a 1 January 2026 go live date. This commitment also includes amendments to the Standard (CRS).

In detail

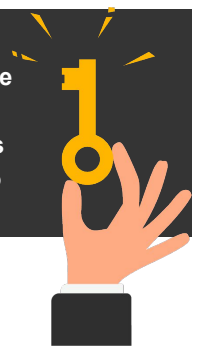
CARF is a key component of the International Standards for Automatic Exchange of Information in Tax Matters developed by the OECD under a G20 mandate. It provides for the automatic exchange of tax-relevant information on crypto-assets and comes against the backdrop of a rapid adoption of the use of crypto-assets for a wide range of investment and financial uses. Unlike traditional financial products, crypto-assets can be transferred and held without the intervention of traditional financial intermediaries, such as banks, and without any central administrator having full visibility on either the transactions carried out or on crypto-asset holdings.

The widespread, consistent and timely implementation of the CARF will further improve the OECD's ability to ensure tax compliance and clamp down on tax evasion, which reduces public revenues and increases the burden on those who pay their taxes. Jurisdictions that play host to active crypto markets, many of which are located in the Middle East, have been encouraged to pledge to the OECD to implement CARF and work towards swiftly transposing the CARF into domestic law and activating exchange agreements in time for exchanges to commence by 2027, subject to national legislative procedures as applicable.

The press release from the OECD also mentioned that in order to ensure consistency and a smooth implementation for both business and governments, those jurisdictions that are signatory to the Common Reporting Standard will also implement, in line with the above timeline for CARF and subject to national legislative procedures as applicable, amendments to this standard as agreed by the OECD earlier this year.

The 54 jurisdictions are: Armenia, Australia, Austria, Barbados, Belgium, Belize, Brazil, Bulgaria, Canada, Chile, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Liechtenstein, Lithuania, Luxembourg, Malta, Mexico, Netherlands, Norway, Portugal, Romania, Singapore, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, the United Kingdom, the United States of America, the Crown Dependencies of Guernsey, Jersey, and Isle of Man, the United Kingdom's Overseas Territories of the Cayman Islands, Gibraltar, Bermuda, Colombia, Faroe Islands, Indonesia, Mauritius and Monaco.

Key takeaway - The introduction of CARF provides for the automatic exchange of tax-relevant information on crypto-assets and comes against the backdrop of a rapid adoption of the use of crypto-assets for a wide range of investment and financial uses. Jurisdictions have been encouraged to pledge to the OECD to implement CARF and work towards swiftly transposing the CARF into domestic law and activating exchange agreements in time for exchanges to commence by 2027 and therefore financial institutions in the Middle East will need to begin assessing the impact of CARF.



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EU Foreign Subsidies Regulation (FSR) - Impact on the Middle East

In brief

An European Union (EU) regulation ('The Implementing Regulation') setting out notification procedures regarding non-EU subsidies that might distort the internal market was adopted by the European Commission on 10 July. In particular, it establishes the form of notification, the degree of aggregation of information and some exclusions in applying the rules of the Foreign Subsidies Regulation ('FSR') which was adopted by the European Parliament and Council in November 2022.

The FSR will apply from 12 July 2023. As of 12 October 2023, companies will have to notify either mergers and acquisitions ('concentrations') or participation in public procurement bids, where they involve foreign financial contributions, meet the relevant notification thresholds and do not fall within the new exceptions. Notifications under the Commission's ex-officio power of investigation in other cases are to be determined in each case.

In detail

Within the EU, the Commission can already use the State aid and public procurement rules to scrutinise "financial contributions" by EU Member States to undertakings economically active in the European Union. Built upon the same mechanisms developed within the internal State aid and public procurement rules, the FSR now grants the Commission the power to redress the distortive effects of financial contributions granted directly or indirectly by non-EU countries which benefit undertakings economically active in the EU. A foreign subsidy only exists if it confers a benefit specifically to one or more companies or industries. The notion of a financial contribution under the FSR, which is also built upon the EU State aid concept, is broad - further guidance is expected in this regard.

In addition, to be in scope, the foreign subsidy must distort competition. A distortion shall be deemed to exist where a foreign subsidy is likely to improve the competitive position of an undertaking and it negatively affects competition in the internal market. A potential distortion will be assessed based on indicators, such as amount, nature, and purpose of the foreign subsidy. Subsidies of less than €4 million (over three consecutive years) to an undertaking are unlikely to be regarded as distorting competition. Please note that 'an undertaking' could also mean a group.

The FSR introduces three tools to assess distortion: two ex ante notification-based tools and an ex-officio power of investigation tool. More specifically, the FSR sets out an obligation for companies to notify:

- Concentrations where at least one of the merging companies, the acquired company or the joint venture generates an EU turnover of at least €500 million, and the transaction involves parties that have received foreign financial contributions from any number of non-EU countries of at least €50 million in the previous three years;
- Bids in public procurement procedures where the estimated contract value is at least €250 million and the bidder (or various group members or bid subcontractors or suppliers) was granted foreign financial contributions of at least €4 million per non-EU country in the previous three years.

Notification obligations generally begin on October 12, 2023. Companies must report detailed data generally looking back three years, and may be surprised to find that they have a large number of 'financial contributions.' Compiling this amount of data may be difficult in a short time frame, e.g., in the middle of a time-sensitive bid.

Key takeaway - Middle East businesses investing or otherwise willing to enter the EU internal market receiving a non-EU financial contribution are likely to fall within the FSR scope and, on this basis, it is important to assess whether the FSR impacts your situation and consider what further actions may be appropriate.



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ZATCA guidance on related party financial transactions

In brief

On 26 November 2023, the Zakat, Tax and Customs Authority (ZATCA) issued detailed guidelines on the Zakat treatment of related party transactions applicable to Zakat payers maintaining statutory accounts (the Guidelines).

The much awaited Guidelines provide Zakat payers with important clarifications and practical examples on what may be considered as “related party transactions” and the applicable Zakat treatment in light of the application of the Transfer Pricing Bylaws to such transactions.

This initiative follows the ZATCA’s announcement on 7 April 2023, where the Board of Directors of ZATCA announced the approval of the proposed amendments to the Transfer Pricing Bylaws, extending the applicability of the Transfer Pricing (TP) provisions to Zakat payers effective for Financial years (FYs) starting on or after 1 January 2024.

In detail

Overview of the Guidelines

The Guidelines provide details, as well as illustrative examples, regarding the Zakat treatment of the following eight types of related party transactions:

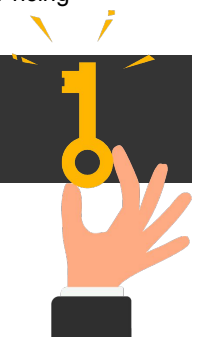
1. Commercial transactions: Include related party transactions pertaining to selling goods or providing services or both, involving Zakat Payer(s). It also extends to situations involving reimbursement of costs and financing transactions leading to the creation of a liability
2. Financing working capital: Includes transactions pertaining to working capital financing by related parties leading to the creation of current liabilities
3. Shareholders loans: Includes transactions pertaining to short-term or long-term loans from shareholders for the purpose of using them in operational or investment activities.
4. Shareholder’s equity: Includes transactions pertaining to financing by shareholders in cash or in kind as equity, as recognised in the statement of equity.
5. Asset financing: Includes transactions where assets are provided by shareholders, which is recognised as part of fixed assets
6. Board of directors remunerations: Includes lump sum or other forms of compensations for board members
7. Shareholders salaries: Includes salaries, allowances, and other benefits allocated to the shareholders
8. Assets owned by the shareholders: Includes fixed assets registered in the names of the shareholders being used by the Zakat Payer(s) and recognised in their financial statements.

Applying transfer pricing principles for Zakat Payers

The Guidelines clarify how the application of the Transfer Pricing ByLaws will impact the Zakat treatment for these eight transactional groups. In general, the Zakat treatment will depend on the commercial nature of these transactions and the appropriate application of the arm’s length principle.

For all related party transactions, the Guidelines refer back to the existing Transfer Pricing Bylaws and the Transfer Pricing Guidelines for the Transfer Pricing methodologies to be applied with respect to the related party transactions.

Key takeaway - Zakat payers should review their related party financial transactions and assess their compliance preparedness with the new requirements. This includes having robust policies, controls and agreements to govern these transactions.



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Contacts

Mohammed Yaghmour
Middle East Tax & Legal Services Leader

T: +971 56 406 3384
E: mohammed.yaghmour@pwc.com

Mohamad EIDirani
Partner, PwC Dubai
International Tax / Mergers and Acquisitions

M: +971 56 549 8252
E: mohamed.dirani@pwc.com

Sajid Khan
Partner, PwC Qatar
Qatar Tax Leader

M: +974 662 6234
E: sajid.khan@pwc.com

Bilal Abba
Partner, PwC Dubai
Middle East Tax Information Reporting Leader

M: +971 54 793 4271
E: bilal.abba@pwc.com

Gaurav Kapoor
Partner, PwC Oman
Tax Reporting & Strategy Leader for Oman

M: +968 93891546
E: gaurav.x.kapoor@pwc.com

Mohamed Al Obaidi
Partner, PwC Saudi Arabia

M: +966 54 621 5555
E: mohammed.alobaidi@pwc.com

Yaseen AbuAlkheer
Partner, PwC Saudi Arabia

M: +966 54 425 6540
E: yaseen.abulalkheer@pwc.com

Zachary Noteman
Partner, PwC KSA
Transfer Pricing

M: +966 54 020 2902
E: zachary.noteman@pwc.com

Chadi Abou Chakra
Partner, PwC KSA
Value Added Tax

M: +966 56 068 0291
E: chadi.abou-chakra@pwc.com

Darcy White
Partner, PwC Oman

M: +968 2455 9154
E: darcy.white@pwc.com

Umer Subhani
Director, PwC KSA
Value Added Tax

M: +966 54 042 0721
E: umer.aziz.subhani@pwc.com

Zeeshan Humayun
Director, PwC Dubai
Transfer Pricing

M: +971 056 3697728
E: humayun.zeeshan@pwc.com

Kirti Joshi
Director, PwC Dubai
Indirect Taxes

M: +971 50 213 4942
E: kirti.a.joshi@pwc.com

Tara Assaad
Senior Manager, PwC Dubai
ME Tax Information Reporting

M: +971 56 177 7698
E: tara.assaad@pwc.com



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