Qatar publishes amendments to the Executive Regulations to the Income Tax Law No. 24 of 2018

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Following the issuance of the Law No. 11 of 2022 (“amended Tax Law”) on 2 February 2023, amending several provisions of the Income Tax Law No. 24 of 2018 (“the Tax Law”), Qatar has now published amendments to the Executive Regulations to the Tax Law (“amended ERs”) in the official Gazette. The amended ERs are effective from 16 May 2023 (i.e., the date of their publication in the official Gazette).

The amended ERs have introduced a number of important changes to the Executive Regulations to the Income Tax Law No. 24 of 2018 (“the existing ERs”).

We have summarized some of the amendments below.

Significant changes to the Permanent Establishment (“PE”) criteria

a. Preparatory and auxiliary activities and registration requirements

The amended ERs introduce new exclusions for preparatory and auxiliary activities that do not constitute a PE. These exclusions are accompanied by anti-fragmentation and anti-avoidance provisions.

It is important to note that in certain circumstances, entities engaged in preparatory and auxiliary activities (even in the absence of a PE) will be required to comply with registration and notification requirements. The is a significant change as such entities will be required to register for tax purposes with the General Tax Authority ("GTA") and obtain a Taxpayer Identification Number through Dhareeba. It is not clear if there will be any further compliance requirements beyond tax registration.

b. Changes to Dependent Agency in connection with a PE

The regulations lay a strong emphasis on “exclusivity” and “semi-exclusivity” tests in determining the existence of a ‘Dependent Agent’ PE. Since there is no definition of ‘semi-exclusivity’, it can create considerable uncertainty in determining ‘dependency’ in certain circumstances. Determination of the existence of ‘dependent agency’ solely on the basis of ‘exclusivity or semi-exclusivity’ appears to deviate from current OECD guidance on this matter.

> **“The amended ERs introduce significant changes to the PE criteria.”**

c. Insurance activities

The amended ERs state that except for reinsurance activities, certain foreign insurance companies collecting premiums from Qatar or insuring Qatari risks may now be considered to have a PE in Qatar. This change can have a significant impact on non-Qatari insurance companies.

d. Others

There are also certain changes to the Fixed Place PE concept. In addition to the list included in the existing ERs, the amended ERs expand the scope and now include “sales outlet” and “warehouse providing storage facilities”.

Additionally, the amended ERs provide further clarity on the ‘force of attraction’ rules in relation to an enterprise that has a PE in Qatar and also carries out same or similar activities to those carried out by its PE.

Deductibility of expenses for a PE / Branch

The amended ERs have revised the expense deductibility criteria for a Qatari PE / Branch. Going forward, a PE / Branch will be allowed to deduct expenses incurred for the purposes of the PE's / Branch's business (including general executive and administrative expenses). It is important to note that these deductible expenses shall be “real expenses” related to the business of the PE.

As an exception to the deductibility criteria mentioned above, the following amounts paid by a PE / Branch to its head office or another related entity shall not be deductible for tax purposes:

- Royalties
- Fees or other similar payments for the use of patents or other rights
- Commissions for certain services rendered or management
- Interest on loans to the PE / Branch (excluding banking PEs / Branches)

In addition to the expenses mentioned above, the existing ERs previously allowed taxpayers to deduct a portion of the head office's administrative and general expenses (limited to 3% of the total income of the PE / Branch for non-banking entities after deducting certain expenses; 1% for banking entities). The amended ERs do not allow this expense to be claimed as a deduction for tax purposes going forward. This could in certain cases increase the tax cost of existing PEs / Branches.

There are still uncertainties in relation to how the GTA will interpret what constitutes "real expenses" which will be allowed as a deduction for tax purposes, particularly if charged by a related entity. Furthermore, at this stage, no guidance has been provided on the type of services that may not be allowed as a deduction for tax purposes included in the specified category of “commissions for certain services rendered”.

“The amended ERs have revised the expense deductibility criteria for a Qatari PE / Branch.”

Reporting of core activities in the annual income tax return

The amended Tax Law introduced a new requirement to submit a report to the GTA as part of the annual income tax return in relation to the details regarding Core Income Generating Activities ("CIGA") in Qatar. The amended ERs specify the criteria for this reporting based on revenue, assets and operational management. "Projects" (as defined in the amended Tax Law) meeting the set criteria are required to disclose to the GTA whether they meet certain minimum indicators of substantial activity as specified in the amended ERs. The amended ERs have also outlined Projects that are excluded from this reporting obligation.

Substantial activity

The amended ERs mandate that residents may not facilitate structures or arrangements aimed at making profits that do not reflect a substantial activity in Qatar. This provision appears to 'discourage' any 'proxy' type of arrangements or where 'concealment' of real economic activity may take place.

> **"The amended ERs have now specified the criteria for reporting the minimum indicators of substantial activity as part of the annual income tax return."**

PwC's observations

a. Global Minimum Tax ("GMT")

We have noticed that no further information has been provided in relation to the implementation, compliance or administrative provisions related to the GMT in the amended ERs. The GTA may issue this guidance separately in due course.

b. Deductibility of expense for a PE / Branch

Considering that a large number of taxpayers in Qatar carry out projects through branch structures, the revised rules in relation to deductibility of expenses have significant implications for taxpayers in Qatar. In addition to denying the deduction for head office overheads, going forward, other expenses, such as royalties, commissions for certain services rendered or management, etc., will also not be allowed as deduction for tax purposes. This will lead to increased taxable profits for PEs / Branches in Qatar and subsequently, a higher tax expense in the future. Therefore, we recommend that all existing PEs / Branches should consider the impact of this change.

c. New registration obligation

There is a new obligation for entities engaged in preparatory and auxiliary activities (that do not result in a PE) to register for tax purposes with the GTA. This is a significant development and foreign entities without a PE in Qatar should review their activities and ensure compliance with the registration requirements to avoid any penalties.

d. Direct Qatari ownership for claiming tax exemption

Under the existing ERs, there was a requirement for Qatari natural persons to be direct owners of certain legal entities in order to claim a tax exemption in respect of their profit shares in legal entities resident in Qatar. The GTA subsequently issued Circular No. 4 of 2020 and clarified that indirect Qatari ownership will be entitled to tax exemption regardless of the tiers involved in the corporate ownership. We note that although the amended ERs include the direct ownership requirement for Qatari natural persons to avail tax exemption, we expect that the current practice of the GTA will continue to apply.

PwC's observations *(continued)*

e. Uncertainty in relation to application of Gulf Cooperation Council ("GCC") parity rules

The amended Tax Law introduced a new rule that any individual holding Qatari nationality is now considered to be a 'resident' in Qatar for tax purposes. This implies that any Qatari national, regardless of his place of residence, is now considered to be a Qatari Resident. This would allow a Qatari entity to claim a tax exemption for profits attributable to its Qatari shareholder even if the Qatari shareholder resides outside Qatar.

While the Law No. 9 of 1989 ("Parity Law") provides that the same treatment shall apply for all GCC nationals, it is not clear whether the above change can be extended to nationals of other GCC countries. In the absence of any guidance on this matter, we expect that GCC nationals' (other than Qatari nationals) share of profits in Qatari companies will continue to be subjected to tax in Qatar unless the GCC national is resident in Qatar.

Let’s talk

For a deeper discussion or in case of any queries, please contact our below colleagues or visit our dedicated TLS web page.

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Let’s talk

For a deeper discussion of how this issue might affect your business, please contact:

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