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ME Tax Journal '11

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Eighty five years in the Middle East

Spring 2011

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“Many anticipated 2010 to be a significant year of change for the tax regimes within the Gulf Corporation Council (GCC) countries (Saudi Arabia, the UAE, Bahrain, Kuwait, Oman,and Qatar) and indeed, in the latter two states there have been sweeping changes”

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Introduction

Welcome to the 2011 Middle East Tax Journal. The objective of the Journal is to provide you with a more detailed overview of some of the most recent changes from a tax perspective in the Middle East and North Africa that could have an impact on your business. As you will see, starting from the introduction of the world's first transfer pricing guidelines in Arabic to new tax legislation being introduced in Iraq and new withholding tax refund procedures in Qatar, the pace of tax changes in the region has been quickening in 2010 and to date in 2011.

With over 85 years of service in the region, Deloitte is well placed to be your trustworthy partner through these extraordinary and challenging times. We remain at your service and can be reached by using the contact details provided at the end of this Journal.

Tax updates - Jordan
Corporate taxation and value added tax

The Council of Ministers extended the exemption for traders with total sales ranging from JD 50,000 to JD 75,000 recorded from the moment of registration for sales tax purposes until December 31, 2011

Corporate taxation
Effective January 1, 2010, the corporate income tax rates applicable to entities operating in Jordan are as follows:

- 24% of taxable income for primary telecommunication companies, insurance companies, financial brokerage companies and financial institutions (including money exchange companies and financial lease companies)
- 30% of taxable income for banks
- 14% of taxable income for entities in all other sectors

Projects related to construction, contractors and building housing units are subject to corporate income tax at a rate of 14% of the net annual taxable income for projects started on or after January 1, 2010.

However, corporate income tax due on any projects related to construction or contractors that were awarded or commenced prior to December 31, 2009 and building housing units for trading purposes commenced prior to December 31, 2009 will be calculated on a deemed tax basis at a rate of 1.3% of the total contract value and 1.2% of the total housing units value, respectively.

Effective January 1, 2010, a new set of instructions regarding bank provisions have been issued. According to the new regulations the following provisions are considered deductible for tax purposes:

- non-performing loans provisions;
- provisions for substandard loans;
- provisions for doubtful debts;
- provisions for bad debts.

In order to be considered deductible for tax purposes, the above mentioned provisions should be related to credit facilities that created taxable revenue during previous years.

Effective January 1, 2010, the following individuals are exempted from filing income tax returns:

- Individuals whose income is derived only from business activities and his/her annual sales or income did not reach the registration threshold for sales tax purposes.
- Individuals whose income is derived only from retirement compensation provided that his/her annual income does not exceed the following thresholds:

  1) JD 60,000 for single persons.
  2) JD 72,000 for married persons.

- Individuals whose income is derived solely from agricultural activities.
- Resident individuals whose net annual taxable income (except income subject to deemed tax) does not exceed the following thresholds:

  1) JD 12,000 for single persons.
  2) JD 24,000 for married persons.

Value Added Tax (Sales Tax)
The Council of Ministers extended the exemption for traders with total sales ranging from JD 50,000 to JD 75,000 recorded from the moment of registration for sales tax purposes until December 31, 2011.

Business and tax brief Oman
US - Oman FTA Agreement

Generally, a foreign company may only establish a branch in Oman if it has been awarded a contract by the Government of the Sultanate of Oman. In addition, generally foreign investors cannot own 100% of an Omani limited liability company ("LCC").

These restrictions no longer apply if the foreign entity is a 100% U.S. entity, as a result of the Free Trade Agreement between the Government of the Sultanate of Oman and the Government of the United States of America ratified by Royal Decree 109/2006 ("FTA"). Here, we set out the relevant information with regard to both LLCs and branches.

US companies may register their branches in Oman pursuant to Ministerial Decision No. 102/2008 ("MD") and in accordance with the FTA.

The LLC form is usually chosen by foreign investors due to the speed with which it may be established and its being inexpensive in comparison to the establishment of joint stock companies. Also, LLCs are not required to be listed on the Muscat Securities Market in Oman.

The minimum capital of an LLC is RO 20,000 unless there is an element of foreign ownership in which case, the minimum paid up share capital requirement is RO 150,000. However, in accordance with the FTA, U.S. companies are permitted to set up a 100% U.S. owned LLC (without the need of an Omani shareholder) with a minimum capital of RO 20,000.
Generally, a foreign investor may only own up to 70% of the company's equity. However, the foreign investor's equity participation in the LLC may be increased from 70% to 100% provided that:

- the foreign investor who proposes to invest in an Omani company can demonstrate that such entity is in need of foreign technical know-how or expertise which is not readily available in Oman; or

A foreign company may only establish a branch in Oman if it has been awarded a contract by the Government of the Sultanate of Oman

- the foreign investor is participating in developing the national economy and is investing substantial capital in the country. An application would need to be made to the Minister at MOCI in respect of such increase.

If, however, a company is established in Oman pursuant to the FTA, then it may be 100% U.S. owned without having to satisfy the above requirements.
With effect from 1 January 2010, the Tax Law Royal Decree 28/2009 provides for a uniform tax rate of 12% for all companies (whether local or foreign) on their annual profits earned in Oman in excess of RO 30,000.

Developing an appropriate tax framework for Iraq

Encouragingly, the tax authorities are welcoming feedback from outside sources, as to how the laws should be implemented in practice, in particular from the professional services firms, and the oil companies operating in Iraq

Iraq has been described as one of the only emerging markets which is yet to fully emerge. It is a jurisdiction which continues to provide a challenging environment in which to operate, from both a tax and regulatory perspective, however it is one which is increasingly on companies' radars, as the oil fields open up and service companies are attracted by a wealth of opportunities.

2010 and 2011 are proving to be particularly interesting years for the tax regime in Iraq, as businesses generally become aware of their tax compliance obligations in Iraq and are seeking guidance as to the actions and positions they need to take from a tax perspective. Further, owing to the relative instability of Iraq over the past few years, and due to inevitable changes in personnel within government departments and tax authorities, the approach adopted by the relevant authorities in respect of certain issues has historically been inconsistent, and the position has been complicated by the fact that many areas of the tax laws are not clearly defined.

The tax environment in Iraq is now changing. Over the past 12 - 18 months in particular, as Iraq has started to attract substantial global investment, the tax authorities are developing a greater understanding of the tax issues facing global companies investing in Iraq, and are taking greater measures to enforce tax compliance in Iraq. Encouragingly, the tax authorities are welcoming feedback from outside sources, as to how the laws should be implemented in practice, in particular from the professional services firms, and the oil companies operating in Iraq. We are in continued dialogue with the tax authorities in this respect to try to gain increased clarity and establish best practices across corporate income tax, payroll taxes, customs duties and withholding taxes/ retentions.

From a regulatory perspective, we have seen a number of foreign companies experiencing difficulties in registering legal entities. This is largely due to inconsistencies within the regulatory framework, coupled with changes to the laws over the past few months. Again, this is an area in which we anticipate improvement as the number of foreign investors increases and regulatory authorities gain greater experience in dealing with such companies and registrations.

We note that the Kurdistan Region, a semi autonomous region in Iraq with its own laws and regulatory environment, can be viewed as largely a business friendly environment. From a practical perspective, there is a degree of uncertainty as to the extent of interaction between Kurdistan Region law, and the laws of Federal Iraq. As an example, Federal Iraq does not recognize that Kurdistan Region has the authority to implement its own tax laws, which it did in 2007, and this is a further area which we are seeking clarity on with the tax authorities.

Key developments and areas of focus for 2011:

- A new Iraq oil and gas tax law was passed in February 2010 which provides for a corporate income tax rate of 35% applicable to oil and gas 'companies' (including subcontractors and supporting industries) operating in Iraq. The oil and gas tax law is very brief, and is to be supported by implementing regulations which were due to be published in September 2010, but at the time of writing, are still in draft. The release of the final instructions is expected to be further delayed following feedback from the Ministry of Oil. The message that we have received from the tax authorities to date suggests that the 35% rate will apply to all upstream oil and gas companies operating in Iraq, however in the absence of the final implementing guidelines, it is difficult to provide conclusive guidance in this respect.

- It has also been announced that new customs duty legislation is to be introduced in Iraq this year, which is likely to see customs duty rates to rise up to 20% on certain goods (particularly in the oil and gas sector) which represents a large increase from the rate of 5% which currently applies to all imports into Iraq. At the time of writing, the customs authorities are yet to confirm the applicable rates, or effective date of the law, and it is anticipated that further guidance will be made available shortly.

- From an employer perspective, the Iraq social security authorities have recently stated that they may be willing to exempt expatriate employees working in Iraq from making social security contributions in Iraq, where they are covered by retirement and social security benefits in their home countries. There are some practical difficulties regarding how employers should apply for such exemptions in practice, and it will be interesting to see what further clarifications and guidance is made available during 2011.

Middle East Customs and Global Trade update INCOTERMS 2010

Even if a company is not immediately planning on implementing INCOTERMS 2010, it can be expected that they will be confronted with these new Incoterms, through their suppliers and/or their customers

Introduction

Incoterms are a set of standard delivery terms (such as EXW, CIF, DDP) which are commonly used in international trade. The terms, as well as their official interpretation, are governed by the International Chamber of Commerce ("ICC"). Importantly for businesses trading internationally, they deal with the assignment between seller and buyer of transport risks (insurance) and of obligations and costs relating to transport, customs clearance, the packing of goods and the delivery of goods. They also cover the obligation to provide proof that the respective obligations have been duly fulfilled. For the first time in a decade the ICC implemented changes to the set of Incoterms, which have become applicable through the replacement of INCOTERMS 2000 by INCOTERMS 2010 on January 1, 2011. A major change is the decrease of the number of standard delivery terms from 13 to 11. Four terms are cancelled, two are new and nine remained unchanged.

What does it mean?

Although the use of Incoterms, nor the transition to INCOTERMS 2010, is mandatory, based on the experience of previous changes of Incoterms, it is to be expected that soon after their implementation the majority of companies active in international trade will adopt these changes and that INCOTERMS 2010 will quickly become the new standard in international trade. Even if a company is not immediately planning on implementing INCOTERMS 2010, it can be expected that they will be confronted with these new (interpretations of) Incoterms, through their suppliers and/or their customers.

For the above reasons it is advisable that companies prepare themselves for INCOTERMS 2010 by getting acquainted with the new terms and interpretations and by reviewing and where necessary adapting their international supply chain contracts. This would also be an excellent occasion to refresh knowledge of Incoterms and the consequences of their use; and to check their correct use throughout the company. It is well known that incorrect use of Incoterms might lead to consequences such as unforeseen liabilities in the field of customs duties and VAT. Furthermore, proper use of Incoterms can facilitate strategic decision-making and reduce costs throughout the global supply chain. Because of their impact on various levels of the international supply chain, Incoterms should be on the agenda of heads of departments responsible for international purchasing, sales, business planning, tax, supply chain/logistics, and global trade.

Egypt introduces the world's first transfer pricing guidelines in Arabic

Developments in Cairo

November 2010 saw a significant event in the MENA region's taxation landscape when the tax authorities of its most populous nation, Egypt, launched their long-awaited transfer pricing guidelines.

The significance of the guidelines is not so much in their scope (which is in line with accepted OECD-based concepts) but the fact that they have been made available in both English and, for the first time, Arabic.

As such, it is highly likely that other Arabic-speaking jurisdictions will look to the form and content of the Egyptian Tax Authority ("ETA") guidelines when, in future, looking to issue their own detailed transfer pricing guidance.

Arm's length in Egypt

Egypt's domestic tax legislation has contained basic transfer pricing provisions (ie. the basic requirement for affiliates to transact on arm's length terms) since its complete reform, and the issue of Egypt's new tax law, in 2005.

The concept of pricing at arm's length is set out in Article 30 (Law 91, 2005) and the accompanying Executive Regulations to this primary legislation (set out in Articles 38, 39 and 40) further clarify the scope of Egypt's transfer pricing provisions as well as setting out the three principle acceptable pricing methodologies (Comparable Uncontrolled Price, Resale Price and Cost Plus methods).

Until recently, aside from the above provisions little or no clarification had been issued by the ETA as to the method, scope, and application of the law's transfer pricing provisions.

Tax authority policy

To date, the ETA has not been extensive in its initiation of specific transfer pricing audits or inspections. However, Egyptian taxpayers have seen company auditors increasingly look to clients and requiring them to justify related party pricing and to evidence the policies applied. The issue of detailed explanatory guidelines is, accordingly, likely to be welcomed by taxpayers, auditors and tax advisors alike.

Egypt's new transfer pricing guidelines have no binding effect in law. Indeed, upon their release, the head of the ETA explicitly acknowledged the degree of subjectivity inherent to transfer pricing and gave an undertaking that the ETA would look to work with taxpayers to achieve a flexible interpretation of the law and its application. This is illustrated by the fact that whilst the ETA recommends that contemporaneous transfer pricing documentation is maintained, it has also acknowledged that the authorities will endeavor to make only reasonable demands in terms of timing and extent of documentation requested.

In addition to the spirit of co-operation and flexibility communicated by the ETA, the guidelines themselves also explicitly state that "taxpayers who provide sufficient documentation proving that they have exerted efforts to establish transfer prices that comply with the arm's length principle are likely to be assigned a low tax risk rating by the ETA". Such a low tax risk rating should ultimately operate so as to decrease the degree of tax compliance and audit defense efforts placed on the taxpayer in question.

Burden of proof

In terms of the issue of tax authority challenges, inspections and audits, it should be noted that the burden of proof in relation to transfer pricing (and tax compliance in general) in Egypt rests initially with the ETA (as set out in Article 129 of Law 91).

Documents relating to transfer pricing should be retained for at least five years starting from the legal deadline for filing each tax return

However, this provision may be overridden by the fact that the tax authority has the power (under Article 90 of the above mentioned law) to adjust the amount of tax due on the basis of the "data set out in the (taxpayer's) tax return and its supporting documentation". In the event of such an adjustment being found to be due and adjustment made, then the burden of proof shifts from tax authority to taxpayer (under Article 130, Law 91).

The guidelines

The guidelines issued by the ETA set out a four step process that provides an outline as to the likely scope of the authorities' expectations in terms of the documentation it would expect taxpayers to have in place.

This four step documentation process is summarized as comprising documents which:

- Identify the intra-group transactions in question and provide an overview of the nature of such transactions;
- Show the rationale used to select the most appropriate transfer pricing method(s);
- Illustrate the analysis conducted in order to determine the reliability of data used; and,
- Determine the appropriate arm's length price and introduce a review process to identify and reflect any future variations in such price(s).

Egyptian tax law does not (and the transfer pricing guidelines recently issued do not) require that transfer pricing documentation be submitted to the ETA along with its corresponding tax return. Instead the supporting documentation should be available for submission on a "timely" basis.

In terms of documentation to be prepared, it should be noted that taxpayers may prepare or maintain their transfer pricing documents in languages other than Arabic. However the ETA does have the power to require an official translation be provided.

A suitable benchmark

One, as yet, key area of the transfer pricing landscape which remains unclear is that of benchmark data that might be used in the above pricing study and documentation process. There is an absence of any country-specific (or regional) information database currently existing upon which benchmarking studies might be based and documented.

To date, the ETA has made no announcement as to the suitability of alternative benchmark data (as used elsewhere in the world) other than to state at the launch of the guidelines that data and documentation used for the purposes of transfer pricing compliance in other jurisdictions may be also used (where applicable) to support the transfer pricing position of Egyptian taxpayers.

Staying compliant

Documents relating to transfer pricing should be retained for at least five years starting from the legal deadline for filing each tax return. It should, however, be noted that keeping transfer pricing documents for a longer period is preferable, especially when such documents relate to long-term transactions.

Finally, in the event that taxpayers are found to have not complied with Egypt's transfer pricing regime, the ETA is authorized by law to adjust an entity's taxable profit if it is found that conditions set between associated enterprises for their commercial or financial relations are not at arm's length. Any understatement of tax liabilities (which could be deemed to be willful due to a non-compliance with or disregard of transfer pricing rules) could result in penalties on underpaid tax. Such penalties could range from 5% of the tax due up to 80% of the tax due, depending on the quantum of the liability understated.

The next stage

The ETA has confirmed that the recent release is the first in a series of official transfer pricing guidelines. Future volumes are planned, and as such changes and additions to existing practices are likely.

Areas that will be the subject of future volumes of transfer pricing guidelines include:

- Intangible property
- Intra-group services
- Cost Contribution Agreements ("CCA's")
- Advance Pricing Arrangements ("APA's")

Any understatement of tax liabilities (which could be deemed to be willful due to a non-compliance with or disregard of transfer pricing rules) could result in penalties on underpaid tax

Qatar's new tax law
A post implementation update

Qatar has been working since 2006 to reform its tax laws to attract more foreign investments in various sectors of the economy. On November 17, 2009, a New Tax Law was issued in Qatar which repealed the old tax law No. (11) of 1993. The only element of the prior tax law which was not repealed was the application of Circular No. 41/1-1995 and Circular No. 95/1-1996 with respect to retaining the last payment on a contract made with taxpayers that have foreign ownership and a permanent establishment in the State.

Law No. (21) of 2009 became effective as of January 1, 2010 and introduced some major changes including the introduction of a flat rate of income tax, a new withholding tax, changes to the taxation position of Qatari and Gulf Cooperation Council ("GCC") nationals and new penalties.

The New Tax Law has changed the corporate tax rate to a flat rate of 10% of taxable income

Old legislation

Prior to January 1, 2010, Qatar's tax was calculated on a progressive scale rising from 0% for companies whose taxable income was less than QR 100,000 in a given year to a maximum rate of 35% for companies whose taxable income is above QR 5 million. The New Tax Law has changed the corporate tax rate to a flat rate of 10% of taxable income. This reduction in tax from a high income tax bracket of 35% to a flat rate of 10% will mean major tax savings for large corporations; however, for small entities, that were taxed at the lower tax bracket of 10% and that enjoyed the first QR. 100,000 of their taxable income tax free, the result is not advantageous.

New legislation

The New Tax Law established a separate tax rate of not less than 35% for taxpayers that have an agreement which relates to "oil operations" as defined in Law No. (3) of 2007. In addition, if there is an agreement between the taxpayer and the Qatar Government or other governmental bodies which was signed before the entry into force of the New Tax Law then the rate specified in the agreement will continue to apply. Where there was no rate specified in such an agreement, then the tax rate will be 35%.

Withholding tax

For foreign entities, the most significant development of the New Tax Law is the introduction of withholding tax. There has also been a substantial burden imposed on entities and persons making payments to non-residents as it is their responsibility to assess the withholding tax, collect any withholding tax due and submit the payment to the Qatar Tax Department. Any violation of the withholding tax rules will subject the company that is making the payment to the non-resident to a penalty equal to the amount of tax that should have been withheld in addition to the tax due.

Technical fees, which are subject to 5% withholding tax, are defined very broadly in the draft Executive Regulations and they include any amounts paid in return for technical, managerial, or consulting services performed wholly or partly in the State. The law initially stated that withholding tax should also apply to payments of interest to non-residents; however, the tax authorities subsequently issued a circular suspending this until further notice.

The new law contains some substantial changes with respect to the tax position of Qatari and GCC nationals. In effect, a residence test has been introduced into the tax law. Qatari and GCC nationals who are resident in Qatar will not be taxable on their share of profits from a Qatari company. However, Qatari and GCC nationals who are not resident in Qatar will now be taxable on their share of profits from a Qatari company. An exception to the law is where the company itself is resident in Qatar (for example a Limited Liability Company incorporated in Qatar), and is also 100% owned by Qatari nationals or GCC nationals; in this

case, the company will not be taxable in Qatar, regardless of where the Qatari/GCC nationals are themselves resident. It will now be very important to assess the shareholders of companies and their residence position.

The New Tax Law imposes various penalties for not complying with the provisions of the New Tax Law. For example, late filing of tax returns is subject to fines of QR100 per day up to a maximum of QR36,000. Another example is that non-payment of tax by the deadline incurs penalties of 1.5 percent of the tax due per month of delay or part thereof, up to the amount of tax due.

QFC

In September 2010, it was also formally announced that the Qatar Financial Center (“QFC") tax law had been finalized and that it became effective retrospectively from January 1, 2010. QFC entities had benefited from a tax holiday up until December 31 2009, however they will now be subject to a flat 10% rate of tax in line with businesses established in the State of Qatar. The QFC tax department is currently in the process of producing a technical guidance manual which will advise on the practical interpretation of the Regulations.

Practical approach

Withholding tax theoretically applies to payments made to companies which are not able to produce a Qatar tax card. However, in reality, there have been long delays in obtaining the tax cards from the Qatar tax department. Therefore, many companies have simply been requesting a current copy of the commercial registration of a company before they decide whether or not to deduct withholding tax. This is because the Qatar tax department has been consistently issuing tax cards where a company has a current commercial registration in Qatar. Therefore, effectively, the test of whether a company has a permanent establishment in Qatar or not is determined based on the presence of a commercial registration.

In rare cases where a company is operating in Qatar but does not have a commercial registration then it can be very difficult to make a successful application for a Qatar tax card. Nevertheless, Deloitte Qatar has been successful in a number of cases in obtaining tax cards for businesses which are operating in Qatar via a ‘fixed place of business’ but do not necessarily have a current commercial registration. This ensures that the business can submit their annual tax return and pay taxes at a 10% flat rate of net profits, rather than be subject to withholding tax.

Withholding tax refund

Following discussions with the tax department, there are procedures being put into place for non-residents to obtain a refund of withholding where they have suffered withholding tax which would not otherwise have applied under the terms of an applicable double tax treaty.

In order to submit an application for a refund, an application form must be completed and certain documents should be provided to the tax department including a copy of the withholding tax certificate provided by the Qatar company withholding the tax and a certificate of residence from the tax authority in the non-resident’s country.

Although this process has been put in place where relief under a double taxation treaty may apply, it may also be possible to make an application where withholding tax has been deducted in error. For example, where withholding tax had been deducted prior to the company receiving the tax card and may therefore have been deducted in error. Each case should be considered separately to determine if a refund may be possible.

It is not clear yet how long a refund application will take to process.

2010/2011 Libyan tax reform
How the recently introduced Income Tax Law No. 7 and Investment Promotion Law No. 9 can impact your business

Impact of recent events
It is difficult to comment on any potential implications from or impact of the current political events in Libya on the tax system there. We will seek to provide an update when appropriate, in the event there are further changes to the tax system in Libya.

Please find below the key changes initiated by the 2010 tax reforms which were introduced to encourage foreign investment in Libya.

Summary of changes under Income Tax Law No.7
On April 24, 2010, Income Tax Law No. 7 was introduced and became effective for corporate tax purposes from 1 January 2010.

The most significant change under Income Tax Law No. 7 is a reduction of the corporate tax rate with the introduction of a flat tax rate of 20%. Previously, corporate income tax was assessed at progressive rates ranging from 15% up to 40%.

Additionally, Income Tax Law No. 7 simplified and reduced the progressive tax rates levied on wages and salaries to 5% for the first 12,000 LD and 10% thereafter. Previously, taxable income was divided in three different bands with the highest rate being 15%.

Jihad Tax of 4% remains (although this is titled an Annual Defense Contribution under the new law).

Stamp duty at 0.5% on all payments to the Tax Department is unchanged.

On this basis, entities preparing and submitting corporate income tax returns for 2010 should apply the rates mentioned above.

Summary of Investment Promotion Law No. 9
On May 1, 2010, Investment Promotion Law No. 9 came into effect replacing Law No. 5 of 1996 (and all its amendments) for Promoting Foreign Investment, Law No. 6 of 2007 on Investment on National Capitals and Article 10 of Law No. 7 of 2004 on tourism.

The provisions of Investment Promotion Law No. 9 apply to national, foreign or joint venture capital invested in specific projects that promote development in Libya and contribute to diversifying its economy, such as increasing export, promoting local employment, etc.

The approvals/licenses to set up an investment project under Investment Promotion Law No. 9 strictly fall under the discretion of the Secretary (i.e. the Secretary of the relevant industry to which the project relates) and the Executive Regulation which is yet to be issued.

Investment projects that are granted a license (or are established) under Investment Promotion Law No. 9 benefit inter alia as follows: exemptions from customs duty, export tax, corporate income tax, and taxes levied on dividends and interest for a period of up to 5 years (renewable for an additional 3 years at the discretion of the relevant body if certain requirements are met).

One of the biggest amendments under the Investment Promotion Law No. 9 is that the promotions no longer apply to national or foreign capital invested in oil and gas projects. Investment Promotion Law No. 9 does not provide a specific definition of oil and gas projects and therefore it is currently uncertain if this applies to service companies, etc. Further clarifications are expected to be announced in due course.

Business and tax in Saudi Arabia
Using double tax treaties to maximize Saudi investment effectiveness

Saudi Arabia is currently developing its international ties and increasing its network of tax treaties.

Traditionally, Saudi Arabia has had only one tax treaty in place, with France. However, within the last two to three years, there have been a number of treaty negotiations leading to the recent signing of tax treaties with many jurisdictions.

Saudi Arabia has so far signed approximately twenty tax treaties with other countries. Of these, treaties with 13 countries i.e. Austria, China, France, India, Italy, Malaysia, Netherlands, Pakistan, South Africa, Russia, Spain, Turkey and the UK, are already in force. The remaining tax treaties will come into force shortly.

Many of the tax treaties signed are based on the OECD model and do not contain specific anti-abuse provisions. Such treaties typically cover income taxes including the natural gas investment tax and the Zakat, etc. Tax treaties tend to reduce taxes of one treaty country for residents of the other treaty country in order to reduce double taxation of the same income. Reduced withholding tax rates vary from one treaty to another and in the case of the treaty with France, the rate could be reduced to zero.

The expansion in number of treaties is expected to promote bilateral and global business investment into and out of Saudi Arabia. Additionally opportunities now exist for tax planning for international investment and the mitigation of double taxation.
Utilizing tax treaties should be discussed at the planning stage of any investment into Saudi Arabia, as applications are required to be submitted to the tax authorities in order to take advantage of the relevant tax treaty. It should be noted that the Department of Zakat and Income Tax ("DZIT") is not necessarily familiar with the application of all the provisions of the tax treaties. Nevertheless, the DZIT is making ongoing efforts to improve the implementation of treaties by providing specific guidance as to the interpretation or application of a tax treaty.

In this context, last year the DZIT issued a Circular No 3228/19 dated May 23, 2010 setting out procedures to be followed to claim treaty benefits on payments to non-residents. It is expected that additional rulings will be issued as the network of treaties expands.

Understanding what double taxation treaty your own country may have with Saudi Arabia, and how to implement the regulations can result in considerable tax savings.

Generally, as an overlooked area of investment structuring into Saudi Arabia, foreign investors both current and new should consider the availability of any tax treaties and seek professional advice if it is possible for them to be eligible for a more favorable tax treatment.

Middle East Customs and Global Trade update

UAE soon expected to join ATA Carnet system for temporary import

Introduction – What is the ATA Carnet system?

The ATA Carnet is an internationally recognized customs document that is administered by the International Chamber of Commerce ("ICC") in cooperation with the World Customs Organisation. The Carnet allows the exemption of customs duties upon temporary importation of goods for up to one year.

The ATA Carnet system is based on an international guarantee chain in which national guaranteeing associations provide reciprocal guarantees, assuring customs administrations that duties and taxes due in case of non-compliance with the rules for temporary import, will be paid. Under the system, each country that is a member to the system has a single guaranteeing body approved by the national customs authorities and the ICC World Chambers Federation. These single guaranteeing bodies can issue ATA Carnets and can authorize local chambers of commerce on the national territory to deliver them on their behalf.

The main advantage of temporary import under the ATA Carnet system is that no customs duties or other import related taxes become due provided certain conditions are met.

Further advantages of the ATA Carnet system over other, country specific, temporary import regimes, are the possibility of making advanced customs arrangements at a predetermined cost, visiting several countries during several trips with limited customs related administrative burden and avoiding problems and delays at borders. ATA Carnets can be used for the international movement of virtually any goods (except perishable or consumable items and goods for processing or repair) and are mainly used for commercial samples, professional equipment, goods for presentation or use at trade fairs, shows, exhibitions and so on.

A number of examples of goods for which the ATA Carnet system is often used are: jewelry, medical appliances, industrial equipment, sports equipment, vehicles, clothing, film and sound equipment, etc.

From a practical point of view, the ATA Carnet is composed of two sheets for presentation for each foreign country one wishes to visit, and two sheets for presentation to customs when leaving and returning to the home country. One sheet of the ATA Carnet is submitted to the foreign customs authorities at the time of importation, and the other one is submitted at the time the goods are re-exported.

What is new?

Recently it was announced by the Director General of the Dubai Chamber Hamad Buamim and Director General of the UAE Ministry of Foreign Trade Abdullah A. Al Saleh that the UAE is aiming to become the 69th member of the ATA carnet system from April 1, 2011, with the latter date depending on determination of bond amounts. Further it was communicated that the UAE will commence applying the system by accepting ATA Carnets for goods for trade shows and fairs, thereby aiming at simplifying procedures for the companies involved. Under the current plans, it is the intention that the Dubai Chamber of Commerce will act as a national guaranteeing association for the UAE, thereby assuming responsibility for issuing and guaranteeing ATA Carnets throughout the UAE.

What does it mean?

With an estimated 200 trade shows per year in Dubai alone, this implementation can be expected to have a significant positive impact on the sectors involved. Companies temporarily importing goods into the UAE for participating in trade shows and fairs, were previously already able to benefit from customs duty relief under the temporary import regime foreseen in the GCC customs law. However, making use of the ATA Carnet system can benefit the same customs duty relief, combined with reduction of import related administrative burdens, costs and lead times.

Export controls and the new Iranian sanctions
What every company needs to know

Export controls and the new Iranian sanctions are compulsory laws and regulations that have the potential to affect all industries and every part of the business supply chain. In order to avoid violations and their subsequent penalties, companies should be aware of these laws and regulations for all relevant jurisdictions and implement comprehensive and effective compliance policies.

What are export controls?

Export controls are regulations that support a country's national security policies, preventing the proliferation of weapons of mass destruction and related terrorist activities. These controls are restrictions imposed by governments on the movement and transfers of activities relating to certain listed goods, software and technology (including technical assistance such as repair, maintenance, installation, etc.). Companies must obtain approval from the relevant national authorities before exporting or trading in these controlled items. Controlled goods, software and technology are controlled either because of the items themselves, what the final end-use of the items will be, who will ultimately receive these items (the end user), or because of the destination the items are being exported to (i.e. sanctions and embargoes.)

These regulations impact commercial goods, software and technology that may have a sensitive or potential defense-related application. For example, a standard chemical ingredient in paint that is often used to reflect light can also be used to make a missile invisible to infrared detection. Similarly, analog-to-digital converters used in digital cameras, camcorders and scanners can be used in high-speed data processing for clandestine communications and surveillance equipment, and software used to protect data sent over the Internet could be diverted and used for sending encrypted messages between terrorist groups or attaching communications systems.

For international companies, there is now the increased complexity of potentially being required to remain compliant with multiple jurisdictions simultaneously such as national, European Union and United States controls.

In order to ensure that all personnel are compliant with all laws and regulations, there should be documented and embedded policies and procedures in place

The hardening of attitudes by governments and the strengthening of enforcement and penalties for violations has also made it imperative that companies comply with all relevant laws and regulations in order to avoid business and supply chain disruptions, monetary fines, prison sentences and reputational damage.

Internal Compliance Programs ("ICPs")

Companies around the world are recognizing the importance of a robust ICP. When establishing or revising an ICP, companies must embed and sustain a culture of excellence which takes into consideration all regulatory obligations.

A comprehensive ICP should include leading best practice foundations. A commitment from Senior Management creates an environment of compliance with all applicable laws and regulations because of a senior directive integrated into the Code of Conduct by which all employees must abide. There should be dedicated, responsible personnel in charge of compliance in each department as well as a designated Trade Compliance Officer (TCO) with oversight of the entire business' compliance. There should be general awareness training for all personnel, related to export controls and sanctions requirements, recurring as needed or determined by senior staff. Bespoke training should also be conducted for each department or functions as it relates to and affects their daily operations.

In order to ensure that all personnel are compliant with all laws and regulations, there should be documented and embedded policies and procedures in place.

Alongside this best practice are record-keeping procedures and systems that ensure compliance with all record-keeping requirements and provide accurate reporting to government authorities. Internal and external reporting and disclosure mechanisms should be implemented, so that in the case of a violation, the proper personnel and government authorities are notified. Lastly, periodic audits should be performed in order to review the business' performance against the procedures and legal requirements. These audits allow for the reassessment of procedures and processes, if necessary, to better ensure compliance.

The new Iranian sanctions

The U.S., E.U., Canada, Australia and Japan have implemented new sanctions against Iran. The significantly tightened restrictions focus on trade and other dealings with Iran.

Both the U.S. and the E.U. sanctions are extra-territorial in nature and can have a severe impact on companies' global operations

The U.S. sanctions were written by the U.S. authorities in a way that makes companies choose between doing business either with the U.S. or with Iran. The U.S. sanctions can prohibit companies that deal with the U.S. from having dealings with any affiliate/entity that has ties to the Iranian petroleum industry, investments in the development of Iran's petroleum industry, sales or provision of refined petroleum products to Iran, the provision of goods, services, technology, information or support that could directly and significantly facilitate the maintenance or expansion of Iran's domestic production of refined petroleum products and the export of U.S. goods, services or technology from the U.S. to Iran or by a "U.S. person" wherever located.

The E.U. sanctions contain lists of newly-sanctioned persons and entities, including financial institutions and shipping lines. Companies will be prohibited from selling, supplying, transferring, exporting, providing technical or financial assistance, directly or indirectly, in relation to certain designated goods and technologies to any Iranian person/entity or for use in Iran, including key equipment and technology in relation to the oil and gas industry (i.e. exploration and production of crude oil and natural gas, production of crude oil and natural gas, refining and liquefaction of natural gas.) Certain financial transactions, such as money transfers to and from Iran, will require authorization and others, such as the provision or insurance or re-insurance to certain persons and entities, will be prohibited. All goods being brought into, or leaving the E.U. from or to Iran will be subject to pre-arrival and pre-departure information submissions to customs authorities.

Both the U.S. and the E.U. sanctions are extra-territorial in nature and can have a severe impact on companies' global operations. Penalties for violations of the U.S. sanctions can include fines of up to $1,000,000 and prison sentences of up to 20 years, or both; denial of export licenses for exports to the violating company; a ban on all or some imports of the violating company; and prohibition on access to the US banking system. Penalties for violations of the E.U. sanctions will be determined by each member state.

The impact on companies in the Middle East

These regulatory changes are driving companies in the U.S. and the E.U. to re-evaluate their relationships with business partners and their global business operations. The recent tightening of export regulations in the U.S., E.U. and around the world have led many U.S. and E.U. companies to demand that key business partners are able to demonstrate their ability to comply with these regulations. Clearly the issues here are complex and go beyond mere compliance but companies in the Middle East that do choose to enhance their ICP and demonstrate compliance may find it easier to do business with E.U. and U.S. companies, while simultaneously, of course, mitigating the risks of non-compliance in the eyes of the E.U. and U.S.

Conclusion

An increasing focus by governments around the world on new export control measures and the implementation of the new sanctions against Iran have placed more of an onus on companies to be ever more diligent and compliant with these trade laws and regulations. The new sanctions against Iran are designed to be all-encompassing, imposing ever-strengthening controls over the movement of certain products and technology, and have the potential to impact all areas of business.

These regulations and sanctions are compulsory and increasingly enforced around the world. If not complied with, they can lead to major disruptions in the supply chain, significant monetary fines, custodial sentences and denial of export privileges.

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