TAKING THE RETT APPROACH

2022 kicked off with amendments to Saudi Arabia's Real Estate Transaction Tax Implementing Regulations. **Michael Camburn** and **Manish Bansal** of Deloitte explain the impact of these changes and the areas where clarifications are still needed.

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"The second of two amendments to the Real Estate Transaction Tax (RETT) regime in Saudi Arabia came into effect from 18 February 2022," states Michael Camburn. "RETT was introduced through Saudi Arabia Royal Decree No. A84/1442 and Saudi Arabia Ministerial Decision No. 712/1442 on 4 October 2020 when the Implementing Regulations covering Tax imposed on Real Estate Transfer took effect."

"Somewhat unusually despite the introduction of the implementing Regulations in this area as well as two subsequent amendments to them the RETT law itself has not yet been formally published," states Manish Bansal. "However, the draft RETT Law has been published, was subject to consultation and is currently being finalised which means that there could also be further changes to this area when the law is finally published ."

WHAT IS RETT?

"Unless there is a specific exemption, this tax applies to all land and property sales, and associated rights, usufructs of over 50 years, transfers and similar transactions which take place in Saudi Arabia," Camburn continues. "In addition, sales of shares in property owning companies may also attract a RETT charge. In Saudi Arabia RETT is charged at a rate of 5% of the value of the land, property and associated rights."

"RETT generally becomes due there when a relevant deal has been notarised at the appropriate authority," states Manish Bansal. "Although there is an earlier tax point for transactions which do not require notarisation procedures such as grants of usufruct of over 50 years."

"The primary responsibility for collecting RETT lies with the seller but if tax is not remitted by them, the purchaser may become liable," Bansal continues.

"However, there are a number of RETT exemptions. These mostly involve property transfers to close family members or for public good, such as charitable purposes, and transfers which result from inheritance," Camburn continues. "In addition, the Saudi government will bear the cost of RETT when a Saudi national buys their first home of up to SAR 1 million in value."

"It should also be noted that both taxable and exempt RETT transactions need to be reported to Zakat Tax and Customs Authority (ZATCA) and unlike with VAT, no RETT grouping is provided for in the law, so intercompany transfers of land and property are still liable to this tax. This can potentially cause problems for groups, (especially family-owned groups) which are embarking on intra-group restructuring."

RECENT CHANGES

"The amendments to the RETT Implementing Regulations which came in at the start of this year have brought with them some significant changes to the RETT exemption regime, " states Camburn. "Apart from a couple of additions to the existing exemptions, the main focus has been rationalising and widening the scope of the existing exemptions and ironing out some of the problems which were faced in applying these exemptions. "

"It is now possible to claim a RETT exemption when there is a real estate property transfer to a Waqf or licensed charities at any time. Previously, this exemption was only available if the transfer was made at the time the Waqf or licensed charity was originally established".

"Generally, what we have seen is an expansion in the scope of the available exemptions," Bansal adds. "For example, the donation of real estate property to a person who is a relative, up to the third degree is now exempt subject to certain conditions, when previously this exemption only applied to relatives up to the second degree."

"Another area where there has been a change has been to the available inheritance exemptions," states Camburn. "In the past there was a cap of up to one quarter of the testator's estate which could be subject to a RETT exemption."

"This has now changed so there is no cap on the disposal of property pursuant to a legally certified Shariah compliant will which can be exempt from RETT."

"However, there are also some new areas where RETT exemptions have been removed," Camburn continues. "These include the specific exclusion of (unincorporated) joint ventures from the scope of the exemption in relation to in-kind contribution to the capital of companies. There is confusion on whether or not such joint ventures are eligible for this exemption or not."

"In January 2021, an exemption involving the in-kind contribution of real estate in the capital of companies was extended to an in-kind contribution in the capital of limited liability companies, partnerships and limited partnerships as well as joint stock companies."

"In Saudi Arabia it is common practice for real estate to be transferred to a company and appear in the company's books although the title deed for that property is still in the name of the original owner," states Bansal. "This practice created RETT issues so a new exemption has been introduced to avoid genuine hardship in cases where beneficial ownership was transferred before RETT was introduced, but the title deed could not be changed."

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OFF-PLAN SALES

"There has also been a change in the way RETT operates for off-plan property sales as the due date for RETT payment is no longer-linked to the date of signing the contract or sales agreement, which means the RETT payment has now been deferred until notarisation takes place, rather than the previous potentially earlier point for RETT to be paid when signing the off-plan sales agreement."

"This has probably been one of the most notable RETT changes to have been brought in as the previous practice of RETT being payable when signing an off-plan sales agreement could cause problems as the Regulations were not clear on the due dates, so taxpayers had been following different interpretations, and having an earlier due date generally meant developers had to finance the RETT amount due."

RELATED STORY

Saudi Arabia: Tax Exemption for Real Estate Properties Transferred by Wills Announced

Saudi Arabia's Zakat, Tax, and Customs Authority has announced it has approved amendments to the Implementing Regulations to the Real Estate Transfer Tax Law. They also approved other amendments to the date for paying tax in respect of the transactions made for off-plan sales.

The amendments came into force on 18 February 2022. They include amending the degree of relative who are covered by the exemption for paying tax in cases where there is a documented gift. Under the amendments, relatives of up to the third degree can now transfer the ownership of the property and there will be a tax exemption. However, the person receiving the gift cannot transfer the property until after three years to someone who is not entitled to the exemption if the property was transferred to them directly by the person giving the gift. Previously, only gifts by second degree relatives could benefit from the exemption.

MINISTERIAL DISCRETION

"Another area of change has been to a residual category of exemptions, where a decision on the exemption of any matter could be made by the Finance Minister, has been deleted, possibly because of the large number of requests the Minister was getting on this subject," Camburn adds. "Unfortunately, this removal of the Finance Minister's power to use their discretion on the application of RETT, means that new exemptions are less likely to be introduced going forward, which is a shame as it could have been helpful to have this flexibility as this is an area where a new law is being introduced."

WHAT IS NEXT?

"There has been no official confirmation from the ZATCA on when the law itself will be published," states Camburn. "However, it is generally expected it will be published by the middle to end of this year."

WHERE CHANGES COULD BE USEFUL?

"In the case of the vast majority of transactions undertaken in Saudi Arabia, particularly in the private sector, it should be comparatively easy to identify whether they are liable to RETT," Camburn adds.

"However, there will be more complicated arrangements, such as those involving Private Public Partnership Projects, major infrastructure projects where multiple partners are involved, as well as transactions involving joint ventures, property investment companies and real estate funds which will require careful and detailed review. "

"As a result, there are several areas where additional clarification in the finally published law would be helpful including a clarification on the levying of RETT on public-private partnership projects which involve Build, Own, Operate and Transfer (BOOT) contracts."

RELATED LEGISLATION

Article 13 of Saudi Arabia Ministerial Decision No. 712/1442

Those affected by a decision issued by the Authority may object to the Decision in line with the rules of the functioning of tax disputes and violation resolution committees.

(Source: Lexis Middle East)

"At present, the exemption on in kind contributions of real estate into estate funds could also do with being widened," states Camburn.

"For example, currently this exemption is not available for funds which have been set up for the purpose of renting real estate, which seems a little too prescriptive."

"It would also be helpful if there was further clarification on the definition of what were real estate rich companies and how RETT will operate on the transfer of shares of those companies."

"In Saudi Arabia, VAT no longer applies to the sale and disposal of property and these transactions are treated as VAT exempt," Bansal adds.

"A Licensed Real Estate Developer Scheme has also been introduced to allow land and property development companies in Saudi Arabia to recover VAT on expenses."

"However, given the close interaction between RETT and VAT it is possible in certain circumstances both taxes could apply to the same transaction and could impact the current and historical VAT position of the taxpayer. It is worth noting that an incorrect position taken could lead to hefty penalties under RETT and/or VAT legislation, so going forward close attention will be needed to both the substance and form of these types of transactions."