



Monthly Updates on Tax

UNITED ARAB EMIRATES

Transfer Pricing (“TP”)- Overview

On 31 January 2022, the Ministry of Finance (MoF) of the United Arab Emirates (UAE) announced that the UAE will introduce a Federal Corporate Tax (CT) on business profits that will be effective from financial years starting on or after 1 June 2023.

The CT Decree law has been published in December 2022 and with this, UAE now becomes full tax jurisdiction.

Along with CT regime, TP regulations become a reality in UAE. As a welcome step, the TP regulations have been aligned with Organization for Economic Co-operation and Development (OECD) TP Guidelines.

We have covered below some of the important TP aspects.

TRANSFER PRICING ASPECTS OF INTANGIBLE ASSETS – DEMPE FUNCTIONS

Intangible Assets

According to Organization of Economic Cooperation and Development (OECD) intangible assets are “something that is not considered as a physical asset or a financial asset, and that is capable of being owned or controlled for use in commercial activities”. Few examples of intangible assets include goodwill, brand recognition, licenses, trademarks, patents, copyrights etc.

DEMPE

DEMPE is an acronym for Development, Enhancement, Maintenance, Protection and Exploitation.

There are few of the factors to be taken into consideration when determining who is performing what function, which are: control, funding, and risk.

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- Summary points from Ministry of Finance seminar on UAE Corporate Tax on 9th Jan 2023 and 16 January 2023
- Corporate Tax registrations open for selected businesses

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The OECD first introduced the concept of DEMPE in the 2015 Final Report on Actions 8-10, "Aligning Transfer Pricing Outcomes with Value Creation," released in October 2015. DEMPE is formulated to assist taxpayers and tax authorities to achieve an accurate evaluation of certain transactions in order to determine appropriate transfer pricing, identification of entities performing DEMPE functions and ensuring an arm's length return for them.

The revised OECD Transfer Pricing Guidelines mentions that if an entity only has the legal ownership of an intangible asset (and not the economic ownership), then that entity should only receive a certain amount of remuneration for its legal ownership. The residual profit resulting from that intangible asset, on the other hand, should be allocated to the intangible asset's economic owner. To ascertain if an entity has economic ownership of an intangible asset, it is prescribed by the OECD guidelines that the "DEMPE functions" performed by the entity should be outlined.

[click here for detailed guide](#)

TRANSFER PRICING ("TP") BENCHMARKING ANALYSIS – PRACTICAL INSIGHTS

Overview of the TP regime in UAE

- Transfer pricing comes into consideration where there are related party transactions (also referred to as controlled transaction) and payments (cross-border as well as domestic transactions). In UAE context, TP will be applicable not only to RPTs but also on the payment made to connected persons defined appropriately in the law.
- TP regime warrants the covered transaction to be compliant with the Arm's Length Principle (ALP), a price which would have been, had the transaction been undertaken with third party (also referred to as uncontrolled transaction).
- In-scope businesses will be required to maintain TP documentation such as Local File and Master File and submit a disclosure form subject to meeting certain conditions and thresholds
- UAE TP Regime also mandates compliance to ALP in special circumstances, one of the most important case being of the Qualifying Free Zone entities.



Benchmarking Analysis

In TP, ALP criteria can be satisfied/tested by performing benchmarking analysis. A comparison implies examining two terms:

- ▶ the controlled transaction under review
- ▶ the uncontrolled transactions that are regarded as potentially comparable.

[click here for detailed guide](#)



CUSTOMS NOTICE NO. (11/2022) ON PROCEDURES AND FEES OF COMMERCIAL INVOICES ATTESTATION BY THE MINISTRY OF FOREIGN AFFAIRS & INTERNATIONAL COOPERATION FOR IMPORTS TO LOCAL – EFFECTIVE FROM 1ST FEBRUARY 2023

Dubai Customs Authority has issued customs notice No. (11/2022) pursuant to Cabinet decision No. (38) of 2022 Attestation fees of Documents, Commercial Invoices and Certificates of Origin at the Ministry of Foreign Affairs and International Cooperation, and Cabinet Decision No. (94) of 2022 amending some provisions of Cabinet Decision (38) of 2022.

Key highlights of the decision:

- Service Fee of AED 150 for attestation of each commercial invoice of imported goods value AED 10,000 or more.
- Declarants must enter the electronic attestation number issued for attested invoices into Customs electronic system for import or import for re-export declaration, in case attestation fee is paid prior to completing customs declaration.
- Attestation Fees must be finalized within 14 days from the date of completing customs declaration.
- Incompliant customers failing to get the required attestation for imported goods after expiry of the period referred to in Article (3) – Cabinet decision No. (38) will be imposed administrative fines.



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SUMMARY POINTS FROM MINISTRY OF FINANCE SEMINAR ON UAE CORPORATE TAX ON 9TH JAN 2023 AND 16 JANUARY 2023

With the commitment to engage with the tax payers and provide time to time guidance on the newly enacted Corporate Tax Law, the Ministry of Finance (MOF) conducted its very first seminar in Emirate of Abu Dhabi on 9 January 2023 and second session in Emirate of Dubai on 16 January 2023, giving the insights into the Law.

Having an opportunity to be physically present in the first seminar, we hereby highlight the key points emanating from the presentation and the discussions, for the benefit of larger audience.



Deferment of effective date of CT Law or Extension of compliance timelines

- It is likely that deferment or extension shall not be provided as sufficient time has been provided to businesses for the implementation and compliance of the Corporate Tax (CT) Law.

Registration

- Registration process to begin in coming months. Taxpayers will have time to register with the FTA till the due date for filing the tax return approaches near.
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- Penalty for late registration is not envisaged. However, non-compliance of other requirements could attract prescribed penalties.

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CORPORATE TAX REGISTRATIONS OPEN FOR SELECTED BUSINESSES

UAE Corporate tax (CT) law becomes effective from financial years commencing on or after 1 June 2023.

As the next step towards the implementation of the CT, it is now learnt that Federal Tax Authority (FTA) has launched the registration campaign through the EMARATAX portal.

Further, FTA has also issued CT registration manual to help in-scope persons to register on the EMARATAX portal. Summarized below is the list of information / details that would be required to be furnished during registration process:

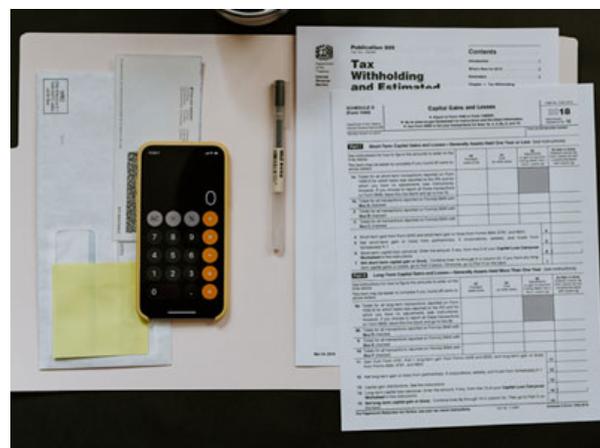
- 1 Year of incorporation of the entity
- 2 Business License of the entity
- 3 Identification documents of owners / partners / directors / managers of the entity
- 4 Name of authorized signatory and Power of Attorney (POA) in his favor
- 5 Memorandum of Association (MOA)

Executive Regulations

- Cabinet Decisions and Ministerial Decisions providing rules, conditions and other administrative procedures necessary for the implementation of CT in the UAE shall be issued in 2023. There shall not be any other Executive Regulations for time being.
- A Cabinet decision specifying the income threshold of AED 375,000 for applicability of the CT law has already been issued in Jan 2023.

As communicated by the Ministry of Finance in the recently held CT awareness sessions, the registrations were to open soon, primarily for selected registrants on invitation basis.

Having opened the registration window, it is currently believed that selected business houses (likely the public joint stock companies and large private businesses) have been invited by email and / or SMS to participate in the early registration campaign.



KINGDOM OF SAUDI ARABIA

KSA Zakat, Tax and Customs Authority (ZATCA) issued Circular on VAT Treatment of Financial services industry.

It provides information and guidance on the application of VAT rules in respect of two types of transactions involving banks and financial institutions in the Kingdom of Saudi Arabia (KSA):

- Supplies of services by international banks established in KSA to non-resident customers; and
- Incentives provided by credit card companies to banks in return for achieving operational targets.

1. Supplies of services by international banks established in KSA to non-resident customers

Supplies of services to non-resident customers are considered exported services and provided that the conditions for zero-rating prescribed in Article 33 of the VAT Implementing Regulations are met, the supply of exported services can be subject to the zero-rate.

Article 33 (1) of the Implementing Regulations states that a supply of services is zero-rated where it is made by a taxable person to a customer without a place of residence in any GCC member state.

3. Interchange Services

Interchange fees are amounts paid by the Retailer's bank (Acquirer Bank) to a cardholder's bank (Issuing Bank) for the service provided by the Issuing Bank.

Payment Network Operator (PNO) - The payment network operator determines the percentage of internal exchange fees that are acceptable to both the issuing bank and the POS bank (Retailer's bank), and also receives fees for its services, in addition to verification services and use permits for transactions. In KSA, this is the Saudi Payments Network or "mada".

Interchange fees where the PNO, the Issuing Bank and the Acquirer Bank are based:

OUTSIDE KSA

ZATCA considers that, in arrangements where interchange fees are charged and collected by a non-resident PNO, the Acquirer Bank remains the service recipient. This means that zero-rating may only apply in circumstances where the Acquirer Bank is known to be a non-resident.

[click here for detailed guide](#)

2. Incentives provided by credit card companies to banks in return for achieving operational targets

The VAT treatment of the incentives will depend on the contractual arrangement entered into by a credit card company and a bank. It is expected that these would fall into two major categories:

- Payments are consideration for a supply of services by the bank to the credit card company
- Payments are considered a settlement made by the card issuer to reduce consideration in respect of an earlier supply by the credit card company.

IN KSA

Is consideration for a supply of services by the Issuing bank. Whilst interchange fees receivable and payable are often communicated to banks on a net basis, the Issuing Bank must determine the gross value of its supplies made to apply Output Tax to the appropriate amount.



OMAN

Recent tax updates in Oman:

- ▶ The suspension of withholding tax applicable on the lease of ships, aircraft and aircraft engines is effective from December 29, 2022.
- ▶ The decision to prevent the sale or circulation of cigarettes without tax stamps is in force and effective from 1st February 2023. Thus, it will not be allowed to sell, trade, import or produce any cigarettes in Oman unless it holds digital tax stamp

QATAR

- Digital tax stamp scheme timeline – Starting 1st February 2023, it will not be allowed to sell or trade other tobacco products (cigars or shisha tobacco) in Qatar without valid and activated Digital tax stamps



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