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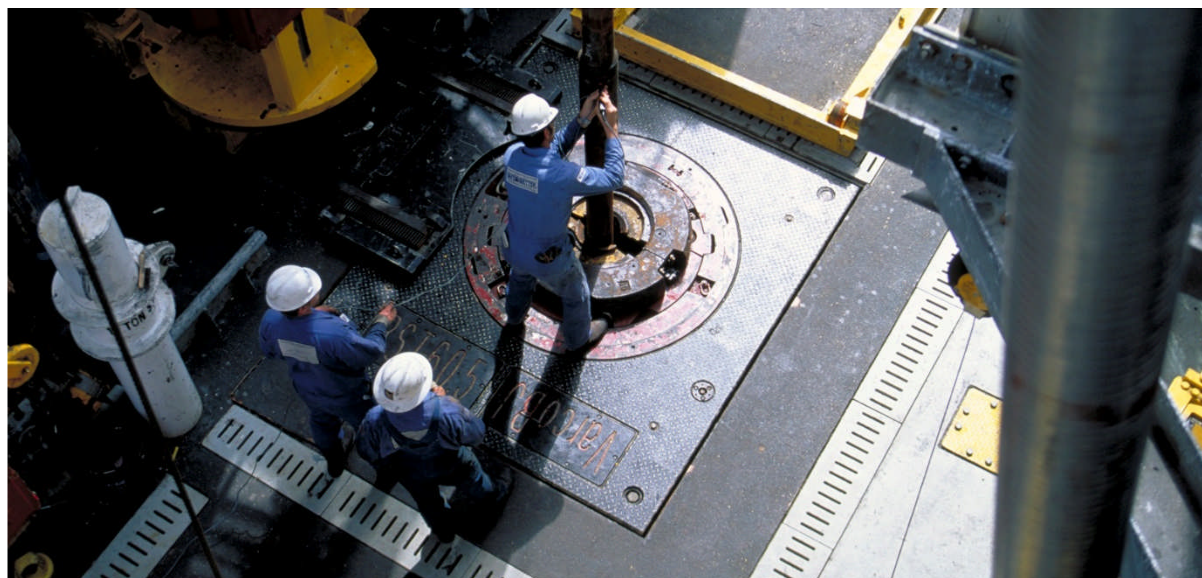
Middle East Tax and Legal Newsletter



In this edition, we highlight tax and legal updates as well as fiscal policy developments within the Middle East region over the 6 months to December 2015.

Introduction

In this newsletter summarising regional developments over the last six months we cover the significant changes in Egypt on taxation and investment laws, and also investment law topics on the agenda in Kuwait and Saudi Arabia.

We have also provided an update on global and region wide reform programmes: the OECD's Base Erosion and Profit Shifting (BEPS) and the progress being made by the GCC on the potential introduction of VAT. Both of which will have significant impacts for taxpayers in the future.

As a piece of global context we share the key findings from the 2016 Paying Taxes report - the Middle East is still the easiest region in which to pay taxes, with the lowest total tax rate and time to comply.

The payment of taxes is one element; how tax law changes are made and applied in practice are import additional elements creating tax risks for companies.

Given the continued budgetary constraints faced by governments due to the significantly lower oil prices, 2016 promises to be an interesting year.

We hope you find this summary of key developments helpful.

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Country Updates

Bahrain

Possible CIT introduction for all types of activities

There have been discussions over the past few years of Bahrain introducing a corporate income tax ("CIT"). Despite ongoing speculation, no new details regarding a potential implementation date for a general CIT regime have been provided, and its implementation would be subject to the tax administration's readiness. Based on progress to date, it is considered unlikely that a CIT regime would be introduced before 2018, but there is no guarantee that implementation would not take place sooner.

No information has been released on the content of a Bahrain CIT law (e.g. non-deductible items, tax depreciation, related party transactions, anti-avoidance measures), or the rates of CIT that may apply. It is expected that the CIT rate will be relatively low, in line with other GCC CIT rates, but this is not confirmed (other GCC rates are: Kuwait – 15%, Oman – 12%, Saudi Arabia – 20%, Qatar – 10%, UAE – 0%.)

Currently, there is no WHT in Bahrain. Again, this could change with the potential implementation of a Corporate Income Tax regime. If the CIT law contains transfer pricing rules, it would be expected that an arm's length price for goods and services in operations with related parties will be considered for tax purposes.

Due to the absence of details, we recommend to closely monitor development of the reforms.

Evolution of corporate law

There have been several updates to the Bahrain Commercial Companies Law ("CCL") including registration procedures may now be completed within 15 days instead of 60 as previously required under the CCL.

The new CCL also allows the Minister of Industry and Commerce to issue resolutions dictating the minimum capital requirements for some forms of companies as well as companies working in specific sectors or undertaking specific economic activities.

Other updates include removing requirements that all shareholders in a public joint stock company shall be Bahraini nationals enabling foreign investors to participate. In addition previous restrictions were removed on trading in stocks and shares representing foreign capital in a public joint stock company until a three-year period from incorporation.

The minimum number of founders has been reduced from 7 to 2. Also, the 40% maximum founders' subscription limit was removed subject to the provisions of the Central Bank of Bahrain and Financial Institutions Law and its executive regulations.

Egypt

New Corporate and Personal Income Tax Legislation Now in Force

A new law was issued in August 2015 to amend certain provisions of the current Egyptian Income Tax Law. The new law entered into force on 21 August 2015.

Corporate Tax

The corporate income tax rate has been reduced from 25% to 22.5%. PwC's interpretation is that this change will be effective from the current fiscal year (2015). The temporary 5% surtax, which was introduced in 2014, is abolished for any fiscal year ending after 5 June 2015.

Dividend Income

Dividends distributed by resident companies to resident or non-resident individuals or companies are subject to a 10% withholding tax. The withholding tax rate is reduced to 5% for qualifying dividends (dividends earned from participations representing more than 25% of the shares or voting rights of the subsidiary company, subject to a two year minimum holding period).

The law clarifies that dividend income earned by resident companies and resident individuals from Egyptian companies is excluded from taxable income for income tax purposes, and any associated costs are non-deductible. Note that the provision in the law stating that associated costs with respect to qualifying dividends are 10% of the dividend received (i.e. 90% participation exemption) has not been eliminated. PwC's interpretation is that the tax authorities will need to define associated costs with respect to non-qualifying dividends.

Profits of foreign companies operating in Egypt through a permanent establishment ("PE") are deemed to have been distributed within 60 days following the PE's fiscal year end. Such profits also attract a 5% withholding tax.

Capital Gains

Sale of listed shares

Capital gains realized from the sale of listed Egyptian shares by both resident and non-resident shareholders are subject to a 10% withholding tax. However, the application of this tax is suspended for two years, as of the 17th of May 2015 (i.e. the date of the official announcement made by the Cabinet of Ministers regarding this exemption).

Sale of unlisted shares

Capital gains realized from the sale of unlisted Egyptian shares by both resident and non-resident shareholders are subject to the regular tax rate for corporate shareholders (22.5%) and individual shareholders (progressive rates of up to 22.5%).

The executive regulations that will be issued in connection with the amended provisions of the law are expected to clarify the mechanism for notification and payment of tax on the disposal of Egyptian shares by non-residents.

Foreign tax credits

Resident individuals may deduct foreign taxes paid on income from commercial and industrial activities, non-commercial professions, dividends and capital gains derived from abroad, from taxes due in Egypt on such income, and within the limits of the taxes due in Egypt.

Amendments to the annual personal income tax brackets

The personal income tax brackets are amended as follows:

- EGP 0 - 6,500 0%
- EGP 6,500 - 30,000 10%
- EGP 30,000 - 45,000 15%
- EGP 45,00 - 200,000 20%
- More than EGP 200,000 22.5%

There are a number of areas in the new law that remain unclear. As such, the aforementioned information is based on our interpretation of the amendments to the Egyptian tax law and is subject to further clarifications from the Egyptian tax authority.

Iraq

Withholding tax on final contract payments

Following the issue of a new instruction by the Iraqi Ministry of Finance ("MoF") concerning economic activities that are deemed as 'trading *in* Iraq' (subject to Iraqi taxation) and 'trading *with* Iraq' (exempt from Iraqi taxation), the General Commission of Tax ("GCT") has changed its analysis of contracts. There have also been amendments to the requirements surrounding withholdings on final contract payments.

Although no major changes were made to the classification of the trading activities considered to be 'in Iraq' or 'with Iraq,' the GCT has changed how it analyzes contracts that include more than one economic activity. As per the new instruction, when a contract includes multiple business activities (for example, the supply of equipment and the supply of complementary/supplementary services), each activity will treated separately for tax purposes. One contract, therefore, may include activities that are subject to tax and activities that are exempted from tax.

The new instruction also addresses final payments due to contractors and subcontractors, now requiring the taxpayer to either obtain an official approval from the GCT before releasing a final payment or withhold 10% of the payment and remit it to the GCT before releasing. Furthermore, the new instruction also touches on the application of the retention rates due on contractors' payments, requiring them to be remitted to the GCT within 30 days of the completion of work, instead of the 90-180 days allowed previously.

Customs tariff

The 5% "Iraq reconstruction levy" was supposed to be replaced from 1 August 2015 by the Iraqi Customs Tariff Law No. 22 of 2010 with a customs duty rate based on the tariff classification of the goods as specified in the customs tariff and agricultural agendas annexed to the Customs Duty Law. However, in practice the Law has not been fully implemented due to administrative and political reasons.

Sales Tax

The scope of Iraqi Sales Tax has been expanded to cover the following goods and services as of 1 August 2015:

- Airline tickets: 15% sales tax rate
- Pre-paid / post-paid mobile phone and internet plans: 20% sales tax rate
- Locally produced alcoholic beverages and cigarettes: 300% sales tax rate
- Imported alcoholic beverages and cigarettes: 300% sales tax rate
- Imported vehicles: 15% sales tax rate on total value of the vehicle

Payroll Tax

The MoF has amended the payroll tax brackets and allowances, substantially reducing the tax brackets at which the higher payroll tax rates apply and also reducing the allowances applicable. The payroll tax burden, therefore, has been significantly increased.

Jordan

New income tax legislation

A new income tax law (No. 34 of 2014) began to take effect early this year, replacing the previous law issued in 2009 (No. 28). The new law states that new executive instructions and legislation will be published in the coming months to clarify and standardize the mechanism for applying the law. Until then, the executive instructions of the previous law must be used. However, new legislation and several new executive instructions were published in the official Gazette regarding the mechanism of applying the new law.

Furthermore, a new publication was issued by the tax authority regarding the mechanism of applying the new income tax law. The publication states that every corporate income tax return should be submitted with a copy of financial statements (including financial position statement, income statement, cash flow statement, changes in owner equity statement, disclosures and inventory's ending balance statement for the tax period). The tax authority will not accept corporate income tax returns filed without the aforementioned financial statements.

New sales tax legislation

From a sales tax perspective, the following legislation and instructions have been published in the last six months:

1. Amended instructions related to the exportation outside the Kingdom, Aqaba Special Economic Zone and free shops, zones and cities;

2. Amended legislation regarding the threshold of registration for the purposes of general sales tax. The amended legislation states that the threshold of registering for the purposes of general sales tax for the industrial sector is JOD 75,000 instead of JOD 50,000;
3. Amended instructions for the methods of payment, remittance, instalment and postponement of sales tax;
4. Reduction in the general sales tax, with effect from 19 October 2015 on sales of the following items from 16% to 8% on clothing, bags and leather clothes, watches, shoes, perfumes and cosmetics, jewelry and toys.
5. Reduction in the special sales tax, with effect from 19 October 2015 on the sales of the following items from 25% to 8% on perfumes, cosmetics and natural leather clothes.

Social Security

The Social Security Corporation has announced that Social Security contributions will increase as of 1 January 2016. The announcement states that employees' contribution will become 7.25% (Currently, 7%) and employers' contribution will become 13.75% (Currently, 13.25%) with total contribution of 21%. Also, the voluntary social security contribution will increase to 16.75% from 1 January 2016.

Kuwait

New Supporting Evidence Requirements Concerning 'Service PEs'

Under Kuwait's 'source' based taxation laws, foreign companies that are not based in the Gulf Cooperation Council ("GCC") are liable for tax on income from service contracts unless tax treaty protection is available.

Recently, the Kuwait Tax Authority ("KTA") has started to require detailed supporting documentation and information from non-GCC foreign corporate taxpayers from service contracts when seeking to claim tax treaty exemption on the basis of not have a Permanent Establishment ('Service PE') in Kuwait.

In order to access to treaty benefits, companies may be asked to provide:

- A valid tax residency certificate issued by the tax authority of the other treaty country;
- The Articles of Association of the foreign tax payer;
- A reference in the relevant contract clearly showing the duration of operations in and out of Kuwait;
- Confirmation by the contract owners reflecting the same and the onshore/offshore split of components; and
- Copies of entry/exit stamps in the passports of employees and other personnel (on a sample basis) to confirm the duration of the presence in Kuwait.

With the KTA applying additional scrutiny to claims of tax treaty relief, taxpayers may also be required to prove that they have settled applicable taxes on the same income in their home country and are therefore seeking relief from double taxation as opposed to exemption from tax in both countries (i.e., Kuwait and the home country).

The "source" based rules of Kuwaiti tax have the potential to catch businesses by surprise, resulting in tax liabilities for services and income from Kuwait. Companies operating in Kuwait now face an additional burden to substantiate

claims of tax treaty relief and should consider appropriate, effective mechanisms of demonstrating the duration of employees' presence in Kuwait and other relevant factors.

New Incentives for foreign investors in listed securities

A series of amendments have been made to the Capital Market Authority Law of Kuwait designed to help attract foreign investors. Key elements of the amendments surround the ability of foreign investors to invest in securities listed on the Kuwait stock exchange ("KSE"), possibility of investment funds to be listed on the KSE and added measures designed to increase investor protection.

This law also provides exemption from taxation on dividends for investing in securities listed on KSE from 10 November 2015. However, there is no corresponding amendment under Kuwait Tax Law and accordingly, application of the exemption in practice is still unclear.

Change in Foreign Direct Investment ("FDI") Law

Changes in the FDI Law allow foreign investors operating in Kuwait to increase their equity share up to 100% when establishing a Kuwaiti company, rather than being restricted to a maximum of 49%, in accordance with the commercial law.

An entity may apply for an investment license and operate under the provision through the following:

- Kuwaiti company with a 100% foreign entity ownership.
- Licensed branch.
- Representative office.

The Kuwait Direct Investment Promotion Authority ("KDIPA") had previously proposed to grant investors a tax holiday up to ten years upon fulfillment of certain conditions. The KDIPA has decided to adopt a different methodology by introducing a Tax Credit Framework/allowable credit (as opposed to a tax holiday) based on the criteria mentioned below:

- The transfer of advanced technology.
- Stimulation of the local market through engagement of local suppliers for operational purchases.
- Creation of job opportunities for local staff.

The KDIPA has also introduced the 'one stop shop' unit, with the intention of serving as a guidebook on post investment matters for ease of investors and also provides solutions on day-to-day issues concerning investors.

The FDI Law attempts to shift to the adoption of a 'Negative List' approach whereby the Council of Ministers has determined the sectors of direct investments to be excluded from the scope of the FDI Law.

Public Private Partnerships (PPP) Law

In line with the FDI Law, another form of investment has been introduced in Kuwait through the PPP Law by providing investors the benefits of 100% shareholding in the Kuwaiti entity (depending on the funding requirements) and tax benefits in line with FDI Law.

Under this Law, the foreign investor is allowed to initiate, implement, and operate the project for a specified term. The Law provides general guidelines on project procurement procedures/incorporation/investment terms and transfers of the project to the state. The PPP Law strengthens and enables the institutional framework for PPPs and broadens the benefits of PPP projects. The Executive Regulations to the Law have been introduced, which provide for various provisions to enforce this Law (including processes, criteria and committees).

United States Foreign Account Tax Compliance Act ("FATCA")

Kuwait has signed an Intergovernmental Agreement ("IGA") with the United States of America ("US") in light of FATCA dated 29th of April 2015. Further, Ministerial Order Number 48 of 2015 ("MO No. 48") was issued by the Ministry of Finance ("MoF') on the 3rd of September 2015, setting compliance framework for Financial Institutions ("FI") operating in Kuwait.

FIs operating in Kuwait are required to follow a series of compliance procedures provided by MO No. 48, which include registration, appointment of a Responsible Officer, and implementation of compliance requirements with extended deadlines up to 31 December 2015. While MO No. 48 broadly provides the timelines for compliance, there are still some open areas which are yet to be clarified, in terms of reporting deadlines and method of reporting.

Customs & International Trade

As per Instruction No. 58 of 2015, national goods of a GCC country manufactured and shipped using a local invoice are granted preferential tariff treatment upon import into Kuwait (i.e. customs duty exemption), as long as the mark of origin (i.e. GCC) is affixed to the goods.

Even though the Instructions do not offer clarity on this matter, we understand that the above mentioned preferential treatment is in principle not directly applicable to national goods imported into Kuwait using an invoice issued in one of the GCC free zones.

Lebanon

Exchange of information

The Lebanese Ministry of Finance ("MoF"), Central Bank, Association of Banks in Lebanon ("ABL") and the Parliamentary Committee worked on a draft legislation to allow exchange of information with other countries, similar to FATCA with the US and CRS in the OECD. This draft legislation was passed into law and published on 26 November 2015.

Unlike FATCA and CRS, this legislation does not allow periodic or automatic exchange of information, but in a rather complex process the Special Investigation Commission ("SIC"), which was founded in 2001 to fight money laundering, is allowed to provide information to countries that request it. Information requests from other countries should be documented with a court order or evidence beyond reasonable doubt incriminating the person in question in a tax evasion act. In addition to the above, sufficient information about this person's financial accounts should be provided as part of the request.

If the request is covered by the 3 September 1956 banking secrecy legislation, the MoF should forward such request to the SIC along with the MoF's opinion on the request. The MoF being the competent authority to receive such requests has no visibility on the exchanged information. The MoF is also required to provide an opinion on the request when it is transferred to the SIC. However, it would be difficult for the MoF to issue an opinion without any visibility on the details of the information to be exchanged.

No doubt, this legislation is a big step in the right direction, however, it is very far from meeting global exchange standards such as FATCA or CRS. This law would have been more effective if the MoF had the authority to confirm the required Lebanese tax has been paid by the person in question or not.

Lebanese FIs were among the first in the region to be FATCA compliant. The concept of the law is not new to Lebanese FIs. Exchange of information with the SIC is a normal practice. What the banks need to know is whether they have the information that they may be asked for.

As we have seen with the FATCA implementation that many "data elements" were not available as they were not required to be collected. It is not clear whether there will be a requirement from Lebanese FIs to collect the additional information and if so, if this will be a requirement on a case-by-case basis or a new general requirement.

Oman

Corporate tax reforms

The Consultative Assembly of Oman has voted in favour of major tax reforms to offset the country's budget deficit for 2016 on account of continued low oil prices.

The proposed tax reforms will become law only once approved by the State Council and once the legislative changes are published in the Official Gazette, they are expected to apply to fiscal periods commencing on or after 1 January 2016. Based on past experience, we do not expect all proposed changes to be approved.

General tax rate

It has been proposed to increase the general corporate income tax rate from 12% to 15%.

Tax rate for oil and gas

The proposals suggest an increase in the tax rate applicable to companies in the oil and gas sector from 12 percent to 35 percent. However, it is not clear at this stage what activities would be covered under the ambit of oil and gas sector companies.

Tax on LNG companies

We understand that an increase has been approved for the tax rate applicable to LNG production activities from 12% to 55%. We believe this proposal is meant to bring the taxation of LNG production activities at par with oil exploration and production companies.

Minimum tax exemption

The proposals recommend that the minimum taxable income exemption of OMR 30,000 be removed. Currently, the first OMR 30,000 of taxable income is exempt from tax.

Imposition of penalties for non-compliance

In addition, the Omani tax authorities continue to take an increasingly aggressive stance when issuing tax assessments. Additionally, over the past six months the authorities have begun to enforce existing provisions within the Oman tax legislation enabling them to impose a penalty on companies for failure to file a tax return on time. The amount of the fine is discretionary and can range from 100 to 1,000 OMR.

Remittance tax

The introduction of 2 percent tax on remittances which has been suggested before is not part of the proposed tax reforms.

Qatar

Temporary Qatar Branches – Registration of New/Existing Contracts

Qatar's Foreign Investment Law stipulates that foreign investments can be made in most sectors in Qatar provided that a legal presence is registered in the country. One option frequently used by foreign investors seeking to set up a legal presence in Qatar is a project or contract-specific ("temporary") branch.

A foreign company is generally only permitted to set up a temporary branch in Qatar if it has a governmental or quasi-governmental contract. The branch is then set up in respect of a specific contract and requires ministerial approval. It is possible for the branch to perform additional governmental / quasi-governmental contracts, but this is subject to obtaining approval for each contract to be added to the branch's Commercial Registration ("CR").

If a branch does not obtain ministerial approval to add an additional contract to its CR, it will be considered non-compliant with the Foreign Investment Law. Potential consequences of non-compliance can include double taxation, delays in releasing 'retention amounts', fines, and possible imprisonment. Practical challenges to compliance include the requirement for a 'support letter' from the government / quasi-governmental contractor and the time and costs involved in registering each and every contract.

There appears to be a new drive within government circles in Qatar to enforce compliance. Given this development, companies with a Qatari temporary branch may wish to review their current operations and Qatari contracts, seek assistance in making their Qatari operations compliant, or consider alternative structures to do business in Qatar.

Saudi Arabia

Strict Enforcement of Qawaem

The Qawaem program is a tool provided by the Ministry of Commerce and Industry ("MCI") of Saudi Arabia that allows enterprises and audit firms to electronically submit financial statements to the MCI.

Historically, the MCI has not strictly enforced compliance with use of Qawaem; however, on 11 October 2015 the MCI issued a statement to the media saying that companies failing to comply with the Qawaem program will now face severe consequences, which may include cancellation of registration, up to one year imprisonment, and fines of up to SAR 20,000 (approximately USD $5,330). The deadline to comply was the end of October.

Going forward, companies should consider finalizing their financial statements at the same time as finalizing the tax / zakat form, and, in doing so map the accounting headings with the DZIT tax / zakat return form for consistency.

Companies engaged in related party transactions should also remain alert for anticipated transfer pricing regulations and how this electronic database may be potentially used by DZIT in transfer pricing audits.

Annual fee on "unexploited" land

On 23 November 2015, the Cabinet passed, upon recommendation of the Shura Council, an annual fee of 2.5% on the value of undeveloped urban lands with details on the implementation regulations ("new system"), which will be issued by the Ministry of Housing in collaboration with relevant bodies. The new system will come into force after 180 days from publishing it in the official gazette.

This fee may create potentially significant additional liabilities to land holders. Depending on valuation approach and mechanism that the new system will use, it may exceed the Zakat deduction benefit, which is based on net book value.

Also, taking into account the recent trends in real estate market, which is showing signs of stabilization, land holders may no longer expect quick returns by way of appreciation.

These factors combined together may cause investors to re-assess holding this type of land just for the purpose of investment, and encourage them to either develop or dispose, which is believed to be the ultimate aim for setting this fee.

Foreign ownership in wholesale and retail trade

Royal Directives have been issued to open the way for foreign companies to invest in the wholesale and retail sector, with ownership proportions exceeding the ratio committed by the Kingdom in the World Trade Organization ("WTO"). Foreign ownership may reach up to 100%.

The aim of the Royal Decree is to:

- Attract directly the international manufacturing companies;
- Allow international companies may sell their products directly to the consumer;
- Take advantage of unique after sale services;
- Increase competitiveness;
- Provide opportunities for Saudi youth;
- Train and develop the abilities of Saudis in training centers belonging to the investing companies;
- Encourage foreign companies to manufacture their products in the Kingdom; and

- Establish the Kingdom an international center for distributing, selling and re-exporting products.

World Customs Organization ("WCO") SAFE framework

Saudi Arabia expressed its intention to apply the WCO SAFE Framework in June 2015, making KSA the last country in the Middle East to join this key WCO tool to secure the international supply chain while facilitating global trade.

Saudi Arabia announced the introduction of the Authorized Economic Operator ("AEO") in April 2015, which is one of the fundamental pillars of the WCO SAFE Framework.

There is a potential for increased security measures at the borders in the coming months and potential delays in the clearance process at some of the Saudi Arabia borders. Trusted importers, however, will have access to a number of significant advantages once the AEO initiative is fully operational, including faster release of goods and preferential treatment in case of physical inspections.

United Arab Emirates

Companies Law: Compulsory Changes Required by June 2016

Following the adoption of the new Commercial Companies Law ("New CCL") in July, 2015, all UAE companies are required to amend their existing memoranda and articles of association ("Articles") to mirror and comply with the changes introduced in the New CCL.

Companies that fail to make the required amendments to their Articles by 30 June 2016 will be 'deemed as dissolved.' The New CCL also includes substantial financial penalties for non-compliance, ranging from AED 10,000 to 100,000 (~USD $2,717 – 27,170).

Important changes applying to limited liability companies ("LLC") in the New CCL include new rules concerning pre-emption rights, expert valuation of shares, and general meeting procedures, among others. These changes and others are mandatory to the extent that a LLC's current Articles conflict with the provisions in the New CCL. References in the Articles to the now-defunct old Commercial Companies Law ("Old CCL") should also be revised.

The Departments of Economic Development ("DED") throughout the Emirates have issued various required additions to the evidential detail within a LLC's Articles that companies should include when changing their Articles.

Given that all LLCs must review their Articles to ensure compliance with the New CCL, PwC Legal's view is that they also may wish to consider additional changes which, although not mandatory, may be commercially beneficial to the operation of the company.

Dubai Customs to introduce the AEO program

Dubai Customs announced the introduction of the AEO program in September 2015. The AEO is still being developed and Dubai Customs has not yet confirmed when the program will be fully operational for businesses. The AEO is one of the key tools provided by the WCO to local customs authorities to secure the international supply chain while facilitating global trade.

An AEO certified company is any party involved in the international movement of goods in whatever function (e.g. importer, exporter, clearing agent, shipping line, etc.) that has been approved by or on behalf of a customs administration (Dubai Customs in this case) as complying with WCO or equivalent supply chain security standards. The AEO process would operate as follows:

1. Dubai Customs will identify "trusted" importers/ exporters that comply with WCO standards and customs regulations locally through an audit process;

2. Once identified, the "trusted" businesses will be granted a number of customs benefits;

3. The customs authorities will then be able to focus their resources on non-AEO companies (which have not been pre-audited) as the risk of customs offences and security concerns should be higher on non-AEO companies.

Some of the benefits for AEO companies include faster clearance of goods, priority in physical inspections, direct contact and advice from local customs authorities, fewer physical and document-based controls, international recognition as "trusted" importer/ exporter, with the possibility to obtain similar benefits in other jurisdictions, etc.

Payment of Pension Contributions

Effective 1 October 2015, the Central Bank of the UAE and General Pension and Social Security Authority ("GPSSA") have mandated all organisations in the UAE to make payments for pension contribution for all UAE national employees through the UAE Fund Transfer System ("UAEFTS"). This is pursuant to Notice 239/2015 issued by Central Bank of the UAE.

Regional indirect tax updates

GCC

New "Makasa" system

A new system for sharing customs duty revenues collected at first point of entry has been agreed by the GCC States, replacing the existing "Makasa" mechanism. This new system is being progressively implemented and is in principle subject to a trial period of 1 year.

We understand that the new system has already been introduced by the UAE, Saudi Arabia, Kuwait and Bahrain, where the "Makasa" stamp has been replaced by a bar code. This new system will allow online customs duty payments that are deposited in one account and subsequently automatically transferred between the GCC States (direct e-transfer of customs duties between the GCC States).

It is expected that the system would facilitate the clearance process and intra-GCC movements of duty paid goods, which is currently creating practical difficulties to businesses engaged in this type of traffic. Note, however, that the system is not yet fully operational.

The GCC – European Free Trade Association Free Trade Agreement

The GCC - European Free Trade Association ("EFTA") Free Trade Agreement (FTA) entered into force in July 2014 and has been applicable from July 2015.

Among other benefits for businesses, EFTA countries (Switzerland, Norway, Iceland and Liechtenstein) will abolish all customs duties on imports of originating products from the GCC, while the GCC States will eliminate the customs duties applied on most EFTA originating goods. Goods covered by this FTA are industrial products, processed agricultural products, fish, and other marine products. Certain goods considered to be extremely sensitive and some processed agricultural goods are excluded from the FTA.

Dubai and Kuwait Customs Authorities have officially implemented the above mentioned FTA through local policies. Even though no official instructions have been issued yet, we understand that the FTA is also being applied by the Qatar Customs Authorities.

The FTA specifically mentions Free Zones whereby goods manufactured in a Free Zone may also be granted preferential treatment if the rules of origin and the other FTA conditions are met. Given the recent application of the FTA, we recommend free zone licensees further explore possible benefits the FTA may provide.

Introduction of VAT

The GCC States have met on several occasions and have agreed in principle to introduce a common legal framework for the future introduction of a VAT system. This common framework will cover common principles that will guide the VAT systems that will be implemented in each GCC State. Each state would still have the authority to implement its own specific provisions in certain areas.

Our understanding is that the objective would be to introduce a standardized VAT system; accordingly, VAT would be charged on importation and on supplies of goods and services at each stage of the supply chain.

There is no clarity yet on an implementation date as this is pending the final adoption of the common framework and the issuance of national VAT legislation by GCC States. We believe that governments would most likely give businesses a transitional period of 12 to 18 months to allow them to get ready for VAT implementation, which allow for a fully operational tax administration to be implemented by state governments.

Arab League

Introduction of a Unified Arab Customs Law

The Unified Arab Customs Law Committee at the Arab League met on 11 October 2015 to discuss the Unified Arab Customs Law. As a result of the meeting, the Committee announced the completion of the law pending two articles only. We understand that the rules of implementation are also being prepared.

There is no clarity on when the Unified Arab Customs Law will enter into force, and how the current local customs regulations, including the GCC Common Customs Law will interact with the expected Pan-Arab customs law.

The law aims to reduce discriminatory tax treatment, where there is a tax on imported goods is different than for the local product. The law includes more than 180 articles concerning the Legal Affairs of the Arab Customs Union and common legal matters relating to import, export, customs offences and matters related to transit trade.

Base erosion and profit shifting ("BEPS")

Status update

On 5 October 2015, the OECD released the final BEPS reports for all action items. Although the reports are marked as final, significant additional work needs to be done, particularly in relation to Action Item 5 (Harmful Tax Practices), Action Item 6 (Tax Treaty Abuse), Action Item 7 (Permanent Establishments) and Action Item 15 (Multilateral Instrument). In November 2015, the final BEPS reports were endorsed by the heads of state of the G20 in the G20 Summit in Istanbul.

Implementation and impact on the Middle East

Now that the recommendations are final, the OECD and G20 member states are likely to move into implementation first, with the other developing countries following. It is likely that some of the BEPS recommendations see earlier implementation than others. For example, Saudi Arabia, a G20 member, is already in the process of assessing its implementation priorities with regards to BEPS recommendations and other taxing jurisdictions (e.g. Egypt, Qatar, Jordan, Lebanon, Kuwait, Oman) are expected to follow suit shortly. The current low oil prices are likely to act as a further catalyst to accelerate BEPS implementation in the region.

The BEPS agenda will have a profound impact on businesses operating in the Middle East. Areas most likely to be impacted by the BEPS agenda include tax treaty access, intellectual property, operating models, permanent establishments and additional documentation requirements.

Currently, none of the Middle East countries has similar rules and implementation in the Middle East region would mark a significant departure from existing thin capitalization rules (which restrict interest deduction on the basis of the debt to equity ratio). Given the complexity of the rules and current capacity constraints of many tax authorities in the region in analyzing and applying these rules, there remains questions as whether these will be adopted. In addition, some of the challenges of the new rules (such as difficulty to align debt with EBITDA) are stronger in the Middle East, where there are often strict regulatory constrictions on moving debt within the group.

Action 4 – Financial payments

In terms of financing, the OECD has defined best practice rules to prevent base erosion through the use of interest expense by limiting an entity's net deductions for interest and payments economically equivalent to interest to a percentage of its EBITDA. The report suggests a range of acceptable fixed ratios between 10% and 30%, with factors identified for countries to determine their appropriate fixed ratio. In addition, the OECD has defined best practice rules under which deduction for payments on hybrid instruments are denied.

Action 6 – Treaty abuse

The OECD recommends a minimum standard for treaties, comprising a Limitation on Benefits ("LOB") clause plus anti-conduit rules, a principle purpose test ("PPT") or a LOB in combination with a PPT. It also proposes a number of additional targeted rules dealing with specific circumstances. As these changes will be made directly in the OECD Model Convention and (through the multilateral instrument) in existing tax treaties, these are very likely to affect all of the Middle East countries in the short to medium term. Treaty access will be more difficult and the PPT and LOB tests may empower tax authorities to deny tax treaty access without any clear basis.

Action 8 – Transfer pricing and intangibles

For intellectual property ("IP"), the OECD has recommended changes to its transfer pricing guidelines that will broaden the definition of intangibles and divide them into several broad categories. This is a risk because it broadens the scope for tax authorities to infer or characterize IP transactions and reallocate taxable income. It may be an opportunity, however, as it may open up possibilities for more transfer pricing planning around IP. The OECD also released recommendations in respect of hard-to-value intangibles, which describes situations in which it is acceptable to judge the transfer pricing on the basis of ex-post outcomes, rather than the contemporaneous expectations and forecasts. This recommendation may make tax planning for IP tougher in the future and may render any past planning unsustainable.

In terms of operating models, the OECD has recommended changes to its transfer pricing guidelines that will mandate that transactions be recognized on the basis of economic substance, with much less respect given to the legal form where the two differ. For IP and financial transactions, this means that the income from IP will be taxable where the development, exploitation and protection of that IP occurs, not necessarily where it is held legally. And financial income will be expected to be recognized where the relevant risks are controlled. This change heralds the end of so called "cash box" IP and holding companies and financing companies in low or no tax jurisdictions. At most, such entities will earn a risk-free return on their committed capital. This change will affect Middle East-headquartered companies that use IP holding company and financing structures. It will also affect foreign companies that have chosen to use a Middle East jurisdiction for any IP holding companies. Since the OECD Transfer Pricing Guidelines inform the practice of transfer pricing in most countries, the effect will be global, and not dependent upon the implementation of legislation.

Action 7 – Permanent establishment status

In terms of permanent establishment ("PE"), the OECD recommends a broader permanent establishment concept with a lower threshold. Most of the Middle East countries (including Saudi Arabia, Egypt, Qatar and Oman) have permanent establishment concepts in their domestic tax law. Also, as these changes will be made directly in the OECD Model Convention and (through the multilateral instrument) in existing tax treaties, these are very likely to affect all of the Middle East countries in the short to medium term. In fact, denial of tax treaty access and crystallization of more PEs (i.e. taxable presence) are the two areas which have already started to manifest themselves since the commencement of the BEPS project. This trend is likely to accelerate.

Action 13 – Transfer pricing documentation

The OECD has recommended a three pillar approach to transfer pricing documentation consisting of a master file, a local documentation file and the country-by-country ("CbC") report. Broadly, the new documentation will provide tax authorities with much more information about the operations of the consolidated business, and the division of income, people, functions, and assets within the corporate group. CbC reporting has been taken up rapidly in Europe with many large European countries promulgating legislation consistent with the OECD's recommendations. Moreover, other major economies such as the United States, India and China have verbally committed to implementation. The implication for large Middle East-based corporate groups is that they will have to prepare to comply with CbC reporting regardless of whether it is implemented immediately in Middle East countries. Furthermore, aside from CbC reporting, reporting requirements worldwide are in flux, requiring taxpayers to pay close attention to the new regulations and legislation.

PwC Paying Taxes 2016 report

Summary

Based on PwC's 2016 Paying Taxes report the Middle East still remains the region in which it is the easiest to pay taxes, with both the lowest average Total Tax Rate and the lowest average time to comply of all the regions. Most of the economies in the Middle East region have a Total Tax Rate below the threshold of 26.1% that is used for the distance to frontier calculation.

Economies with a Total Tax Rate that is on or below this threshold are treated for the distance to frontier and ranking calculations as having reached the frontier. Any reductions in Total Tax Rate below 26.1% therefore have no further impact on the distance to frontier score or the overall ranking.

The Middle East region's time to comply is just 160 hours, some 455 hours lower than South America which is the region where it takes the longest on average for companies to comply with their tax obligations.

Perhaps unsurprisingly given its relatively low Total Tax Rate, the average Total Tax Rate has increased slightly by 0.2 percentage points due to reforms in some of the economies. In part, the low average Total Tax Rate in the region can be explained by a number of the economies deriving much of their revenues from the extraction of oil and gas and therefore needing to raise less revenue through taxation than many other economies in other regions. The Total Tax Rate of the United Arab Emirates increased by 1.1 percentage points due to an increase in the rate of the land transfer and registration tax from 2% to 4% (split equally between the buyer and the seller) and increases in business licence renewal fees. Both of these are counted as 'other' taxes. Jordan and Saudi Arabia increased employers' labour and social security contributions resulting in increases in their Total Tax Rates of 0.5 percentage points and 0.4 percentage points respectively. There were no reforms that had an effect on the time to comply or the payments sub-indicators between 2013 and 2014.

Analysis

Often any headline concerning taxes and the Middle East region is focused around the relatively low taxation levels. And for some economies in the Middle East, this is reflected in their Paying Taxes results. However this

headline does not tell the whole story. While paying tax is shown to be easy in the UAE, Qatar, Saudi Arabia, Bahrain, Oman and Kuwait, in the rest of the economies in the region including Lebanon, Jordan, Iraq and Iran, the results show a very different picture with a variety of tax rates as well as quite a range in the time required to fulfil the various compliance obligations.

Some economies across the region have been slow to adopt electronic filing technologies and self-assessment mechanisms, and it is also the case that post-filing obligations can be cumbersome, drawn out and time consuming.

The pace of change in those Middle East economies where paying taxes is currently more burdensome, (including Iraq, Jordan and Lebanon) is slower and the Paying Taxes sub-indicators have remained largely the same as in previous years, so that now where reforms have been undertaken to improve tax systems by economies in other regions of the world they are now outperforming these Middle East economies.

A final issue to watch for the future for this region is that the oil exporting economies, given continued lower oil prices, appear increasingly likely to introduce new taxes, such as VAT, and this as a consequence will increase the necessary documentation and other compliance requirements.

As governments across the Middle East consider tax reform there remains significant opportunity to enhance collection mechanisms, providing greater certainty and reduced complexity for taxpayers through reform of administration practices.

Double tax treaty updates

The following double tax treaties have been signed, ratified or brought into force since 1 July 2015:

Countries	Dates	Key information
Qatar – Spain	Signed on 10 Sept. 2015 Will enter into force after final ratification.	The treaty generally follows the OECD model and includes provisions related to the exchange of information, including banking information. The treaty is expected to boost bilateral investment and trade, which is currently in excess of €1 billion annually.
Saudi Arabia – Morocco	Signed on 22 October 2015. Will enter into force after final ratification. Provisions will apply from 1 Jan. of the year after entry into force.	The treaty dictates that dividends are taxable at a maximum rate of 5% if the beneficial owner is a company (other than a partnership) that directly owns at least 10% of the dividend payer's capital. In all other cases, a 10% rate applies. Interest and royalties are subject to withholding tax at a maximum rate of 10%. Both countries generally use the credit method to eliminate double taxation.
Saudi Arabia	Signed on 19	Under this treaty, dividends are taxable at a

- Sweden	Oct. 2015. Will enter into force after final ratification. Provisions will apply from 1 Jan. of the year after entry into force.	maximum rate of 5% if the beneficial owner is a company (other than a partnership) that holds at least 10% of either the voting power or the shares of the paying company. A 10% rate applies in all other cases. Interest is taxable only in the beneficial owner's country of residence. Royalties paid for the use of or rights to industrial, commercial, or scientific equipment are taxable at a maximum rate of 5%. A 7% rate applies in all other case. KSA typically uses the credit method for the elimination of double taxation; Sweden uses a combination of both credit and exemption methods.
Saudi Arabia - Venezuela	Signed on 11 November 2015. Will enter into force after final ratification. Provisions will apply from 1 Jan. of the year after entry into force.	Treaty details not yet available.
Saudi Arabia - Kenya	Signed on 23 November 2015. Will enter into force after final ratification. Provisions will apply from 1 Jan. of the year after entry into force.	Treaty details not yet available.
Saudi Arabia - Gabon	Signed on 7 September 2015. Will enter into force after final ratification. Provisions will apply from 1 Jan. of the year after entry into force.	Treaty details not yet available.
United Arab Emirates – Andorra	Signed on 28 July 2015. Will enter into	Treaty details not yet available.

	force after final ratification.	
United Arab Emirates – Belize	Signed on 2 Oct 2015. Will enter into force after final ratification.	Treaty signed on the side-lines of the 70th session of the U.N. General Assembly. Treaty details not yet available.
United Arab Emirates – Liechtenstein	Signed on 2 Oct 2015. Will enter into force after final ratification.	Treaty signed on the side-lines of the 70th session of the U.N. General Assembly. Treaty details not yet available.
United Arab Emirates – Mauritania	Signed on 21 Oct 2015. Will enter into force after final ratification.	Treaty details not yet available.
United Arab Emirates – Senegal	Signed on 22 Oct 2015. Will enter into force after final ratification.	Treaty details not yet available.

Further information

Please follow the link to PwC's Middle East Tax and Legal news webpage to access all the latest updates and webcasts.

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PwC helps organizations and individuals create the value they're looking for. We're a network of firms in 157 countries with more than 195,000 people who are committed to delivering quality in assurance, tax and advisory services.

Established in the Middle East for 40 years, PwC has firms in Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Oman, the Palestinian territories, Qatar, Saudi Arabia and the United Arab Emirates, with over 3,000 people.

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- Tax and Legal

PwC Tax and Legal

The Middle East Tax practice offers expertise in jurisdictions across the region with over 500 staff. We can provide assistance with the following areas:

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- International taxation
- Global mobility and Human Resource Services
- Legal services
- Mergers and acquisitions / private equity
- Services for U.S. citizens and Green Card holders
- Tax and Zakat advisory
- Tax compliance, management and accounting services
- Transfer pricing

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Let's talk

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