Newsletter

March 2019

MIDDLE EAST TAX NEWSLETTER

Upcoming events

Export controls and sanctions (Basic)
19 March 2019
Webinar
Contact: sal.gonzalez@bakermckenzie.com

Arab Regional Tax Forum 2019
31 March-1 April 2019
Dubai, UAE
Contact: jenny.medina@bakermckenzie.com

International VAT Conference
5 April 2019
London, UK
Contact: blanca.pares@bakermckenzie.com

With Bahrain, Saudi Arabia and the United Arab Emirates having introduced Value Added Tax (VAT), and other Gulf Cooperation Council (GCC) members states to follow suit over the next year, businesses are operating in a new tax regime in the Middle East.

Our Middle East Tax Newsletter aims to provide you with updates, insights and practical guidance on the tax implications of doing business in the region. Below are the most recent tax-related developments from across the GCC.

In this issue

Bahrain

Non-residents can now register for VAT in Bahrain

Non-residents that carry out supplies that are deemed to take place in Bahrain (such as electronically supplied services) and are provided to customers that are not registered for VAT, are required to register for VAT within 30 days from the first supply they make. No registration threshold applies. Because of the staggered introduction of VAT in Bahrain and the increased VAT registration threshold, less customers will be registered for VAT and more non-resident service providers will be liable to account for and pay the VAT (and for bigger sums).

The tax authorities have now announced that it allows non-residents without a commercial registration in Bahrain to register for VAT. The following (additional) documentation is required to submit the application:

- A certificate of incorporation issued in their country of residence
- The incorporation number be such that it can be verified by using publicly available information
- Proof that the entity conducts commercial activity in Bahrain
- The value of supplies made in Bahrain

Notwithstanding the above, suppliers should not charge VAT until the tax authorities have issued the VAT registration certificate to avoid penalties for incorrect invoicing or charging VAT on non-taxable supplies (in case the company is registered prospectively). Those taxpayers affected should pro-actively communicate to their customers that VAT may be charged at a later stage to avoid bearing the VAT out of its margin.

Saudi Arabia (KSA)

Multinationals should carefully consider their procurement and service arrangements

The KSA's General Authority of Zakat and Tax (GAZT) recently published its guide on the VAT treatment of Professional Services, in which, among other things, the VAT treatment of global contracting arrangements is set out. In some cases VAT in the KSA may be due twice in addition to any VAT charged on the services outside the KSA.

Export services to a recipient based outside the KSA are only subject to the zero rate of VAT when strict conditions are met. When there is a direct benefit in the KSA, the service is subject to the standard rate of VAT of 5%. In the absence of a VAT refund mechanism for foreign companies, this VAT results in an increase of the cost of doing business.

Furthermore, from the Professional Services guide, it can be derived that taxpayers should carefully look at the procurement side where services brought in by a foreign company are (partly) used in the KSA. In the guide, the GAZT takes the view that the KSA branch may be regarded as the recipient of a supply that is invoiced and contracted for by its foreign head-office with a foreign supplier. As a result, the branch is required to account for VAT under the reverse charge mechanism (whilst foreign VAT may also be charged by the foreign supplier to its head-office). The GAZT argues that the branch is most closely connected to the supply and is consuming the services and is thus the recipient of the services.

The same result is achieved by Article 18(3) of the Implementing Regulations, although this only appears to apply to intra-GCC transactions (and after all GCC countries have implemented VAT). It is unclear on which amount the branch has to account for reverse charge VAT – the full invoice amount or the portion that is recharged to the branch by its head-office.

Taxable persons that are not entitled to recover input tax in full should ensure that their procurement and service arrangements are optimized and that sufficient substance is in place to support the anticipated VAT treatment.

Publication of transfer pricing bylaws

The GAZT has issued its transfer pricing (TP) regulations (together with FAQs), which can be viewed here: https://www.gazt.gov.sa/en/transfer-pricing. The draft was issued only in mid-December 2018, so not much time was given for public consultation. Whilst the Income Tax Law has general anti-avoidance provisions on related party transactions, there have been no regulations or guidelines to date. It is interesting to note that the tax authorities have incorporated requirements for maintaining local files and their content (Article 17) and Country-by-Country Reporting (CbCR) (Article 18).

United Arab Emirates (UAE)

Disclaimer in Public Clarifications

The United Arab Emirates' Federal Tax Authority (FTA) has now included a disclaimer in its Public Clarifications (including the ones previously issued) stating that: “The Public Clarification states the position of the FTA and neither amends nor seeks to amend any provision of the aforementioned legislation. Therefore, it is effective as of the date of implementation of the relevant legislation, unless stated otherwise.” Taxpayers should carefully consider the position they have taken in respect of the clarified positions and confirm whether they are required to make a correction or submit a voluntary disclosure.

VAT position of holding companies

The UAE has not published any specific guidance on the VAT position of holding companies. However, by issuing its Public Clarification on the VAT treatment of Bank Interest and Dividends and its guidance on Input Tax Apportionment and Financial Services, holding companies should clearly carefully consider their VAT recovery position. Holding companies that are part of a cross-border structure may incur a significant amount of input tax (including reverse charge VAT) on cross-border management fees and cost recharges. When the holding company is receiving dividends, providing loans, trading in debt and equity securities, and/or providing management services, it is likely regarded as a partial exempt supplier which is restricted to recover a portion of its input tax. If the standard method does not lead to a fair and reasonable VAT recovery position, the holding company is required to determine its recovery position on the basis of actual use.

Saudi Arabia and United Arab Emirates Tax Treaty

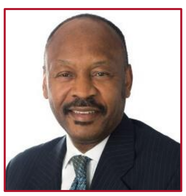
The Double Tax Treaty between the UAE and Saudi Arabia has been ratified by both countries, and was issued this week. The treaty will particularly impact the tax treatment of cross border payments between both countries. More details to be discussed in the next newsletter.

You can also visit our Middle East Insights blog and GCC VAT websites to view this and other materials:

- http://me-insights.bakermckenzie.com/
- http://www.bakermckenzie.com/en/insight/publications/2017/10/doing-business-gulf-vat-regime

To speak to us in relation to any tax issues in the Middle East, please feel free to contact one of the lawyers below, or your usual Baker McKenzie contact.

Contacts



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