

GCC Tax & Regulatory Communique April 2024



UAE Tax and Regulatory updates

FTA Issued Guide on Qualifying Group Relief

On 3 April 2024, the Federal Tax Authority ('FTA') published a Corporate Tax Guide on "Qualifying Group Relief" ('Relief'), aiming to provide general guidance on the Relief available under the Corporate Tax Law ('CT Law'). The objective of the "Qualifying Group Relief" provisions is to facilitate the transfer of capital assets or liabilities between two Taxable Persons within a Qualifying Group, ensuring no gain or loss for CT purposes (transfer is considered at book value). The key highlights of the Guide are outlined below: -

01

The no gain or loss treatment within the QG is only available if the **Transferor makes an election to FTA which means the QG relief is not automatic.**

02

QG Relief is applicable on **transfers such as sale, exchange, relinquishment, sale, and lease back, etc.**

03

QG Relief applies only to the **transfer of assets or liabilities held on capital account** and recorded on the balance sheet of the Transferor.

04

A Taxable Person that is a **Free Zone Person but not a Qualifying Free Zone Person** can be a member of a QG.

05

Transfer pricing rules are not applicable if the transferor has made an election for QG Relief in respect of transferred assets or liabilities that are held on the capital account.

Please refer to our separate communication in this regard for further details.

FTA Issued Guide on Business Restructuring Relief

On 17 April 2024, the FTA published a Corporate Tax Guide on “Business Restructuring Relief” (‘Relief’), aiming to provide general guidance on the Relief available under CT Law. The key highlights of the Guide are outlined below: -

01. BR Relief is specifically applicable in two scenarios: -

- The first category is where there is a **transfer of an entire business or an independent part of the Business from one Taxable Person to another.**
- The second category is where there is a **transfer of an entire business from one or more Taxable Persons to another, and the Transferor then ceases to exist.**

02. Transferor has to make election for application of BR Relief which implies that BR Relief is not automatic.

03. BR Relief can also apply for a Transferor or Transferee that is a Free Zone Person but not a Qualifying Free Zone Person.

04. Business Restructuring Relief could be reversed, commonly referred to as “clawback” under specific circumstances.

Emara Tax portal can be accessed only through UAE Pass starting 30/09/2024

The FTA has announced a mandatory update regarding the Emara Tax portal. **Starting from 30/09/2024, Emara tax portal can be accessed only through UAE Pass.** To ensure seamless access and avoid any disruptions, everyone is encouraged to link their Emara Tax account with UAE Pass account ahead of time.

Following are the steps:

Download the UAE PASS app on smart phone and create your profile in it using your phone number / Emirates ID / email address.

Now go to website : <https://eservices.tax.gov.ae/#/Logon> and select Log in with UAE Pass & enter the phone number / Emirates ID / Email used for the UAE PASS login

Enter the registered email address for login used earlier. OTP will be generated, please enter that OTP received in the email.

Public consultation on potential introduction of Research and Development (R&D)

On 19th April, 2024, The Ministry of Finance (MoF) has initiated a public consultation regarding the potential introduction of Research and Development (R&D) tax incentives under the Corporate Tax Law. The aim is to foster innovation, competitiveness, and economic diversity. This consultation paper is split into the consultation questionnaire and guidance paper. The Key highlights of the consultation are as follows:

Purpose and Aim

The consultation seeks feedback to design an effective incentive accessible to a wide range of businesses.

Design Features

The consultation seeks input on various aspects of the potential R&D tax incentive, including defining R&D, determining qualifying businesses and activities, identifying eligible expenditure, selecting incentive types, managing unutilized benefits, and establishing administrative measures.

Consultation Process

Stakeholders are invited to provide concise & transparent feedback by May 14, 2024.

A separate Guidance Paper has been prepared which provides details on the internationally recognized definition of R&D provided in the Organization for Economic Co-operation and Development's ('OECD') Frascati Manual.

The Keys highlight of Guidance paper are outlined below :-

01

R&D Definition

R&D is characterized by systematic, creative processes aimed at advancing human, cultural, and societal knowledge. It encompasses basic research, application-oriented research, and experimental research.

02

Common R&D Activities

Activities such as transforming research outcomes, modifying product components or processes, conducting tests, and designing tools with new technologies are considered R&D.

The Keys highlight of Guidance paper are outlined below :-

03

Excluded Activities

Certain engineering and scientific activities, as well as those related to scientific and technical information services, testing and standards unification, feasibility studies, policies, funding management, and indirect support, are excluded from R&D.

04

Identification of R&D Projects

Criteria for identifying R&D projects include project objectives, novelty, implementation methods, general applicability of outcomes, staff involvement, and classification of research projects and institutions.

Please refer to our separate communication in this regard for further details.



KSA Tax and Regulatory updates

Saudi Arabia announces 10th wave of Phase 2 e-invoicing integration

Saudi Arabia's Zakat, Tax and Customs Authority has announced the criteria for taxpayers to be included in the 10th wave of Phase 2 e-invoicing integration. The key highlights are outlined below:-

01

Taxpayers resident in Saudi Arabia with **a taxable turnover exceeding SAR25m during calendar year 2022 or 2023 should comply with the Phase 2 e-invoicing requirements that are effective from 1 October 2024.**

02

The ZATCA will notify the impacted taxpayers in preparation for linking and integrating their electronic invoicing systems with the ZATCA's e-invoicing platform (Fatoora).

03

Furthermore, taxpayers coming under the 10th wave should comply with the Phase 2 e-invoicing requirements between 1 October 2024 and 31 December 2024, inclusive of both dates.

Saudi Arabia issues guidelines for Regional Headquarters Tax and Zakat rule

On 15 April 2024, the Zakat, Tax and Customs Authority (ZATCA) published on its website the Guidelines of the regional headquarters in the Kingdom to clarify the tax and zakat provisions applied on the activities of regional headquarter, offering additional details on the Regional Headquarters Tax Rules (RHQ Tax Rules) published in February 2024. The key highlights of the guidelines are outlined below:-

It confirm that the **30-year tax holiday is restricted to corporate income tax and withholding tax** – i.e., the general rules for zakat, value-added tax (VAT) and real estate transaction tax (RETT) will continue to apply to RHQs.

It provides additional details on the economic substance requirements applicable to RHQs and how the ZATCA is expected to evaluate compliance with economic substance requirement.

It also provides illustrative examples with respect to RHQs' qualification criteria, reporting and other requirements.

Minister of Finance approves new Zakat Implementing Regulation

ZATCA announced the issuance of a new Zakat Implementing Regulation. The objective of the Bylaws is to provide more clarity on the existing zakat regulations regarding taxpayers' rights and zakat calculation methods. Below are the key highlights-

The Bylaws apply to fiscal years starting on or after 1 January 2024. However, they can also be applied to fiscal years that began before 1 January 2024 subject to prior application.

Zakat assessment will be based on shareholders and their **shareholding percentages at the end of the fiscal year**, regardless of ownership changes during the year.

The Bylaws introduce certain changes in the computation of the zakat base, including:

- The zakat base calculation will align with a company's financial statements' **closing balances for additions and deductions**.
- Net adjustments to profit/loss will be calculated separately and added to/deducted from the zakat base.
- Noncurrent payables and equivalents will be considered as financing noncurrent assets, irrespective of which one comes first.
- The rules for classifying shareholder loans as debt or equity for zakat purposes will be stricter.
- Provisions will be treated differently for zakat purposes (e.g., employee benefits and vacation provisions are considered long-term debts).
- Introduce a new concept of maximum and minimum limit of Zakat base.



International Tax updates

New Zealand enacts OECD GloBE (Pillar Two) rules

New Zealand has enacted legislation to adopt the OECD Global Anti-Base Erosion Pillar Two rules into domestic law. Predominantly, the rules apply to fiscal years beginning on or after 1 January 2025. The key highlights are:

All multinational (MNE) groups operating in New Zealand with consolidated accounting revenue exceeding €750m in at least two of the preceding four years are within scope of the new rules.

The Income Inclusion Rule (IIR) and Under Taxed Profits Rule (UTPR) will apply equally to both New Zealand-parented MNE groups and foreign-parented MNE groups. Both rules apply from 1 January 2025.

Conversely, the Domestic Income Inclusion Rule (DIIR) will apply only to New Zealand-headquartered MNEs and is deferred to 1 January 2026.

Entities making payments under a QDMTT will be eligible for a foreign tax credit in New Zealand. Payments made under the DIIR will be eligible for imputation credits in New Zealand, but credits will not be available for payments under the IIR or UTPR.

Thailand releases draft Top-up Tax Act

The Thai Revenue Department released a draft legislation for an adoption of the Global Anti-Base Erosion Rules (GloBE rules) in Thailand, aligning with the Organization for Economic Co-operation and Development's (OECD) Base Erosion and Profit Shifting (BEPS) 2.0 Pillar Two project. **The draft legislation was open for a public consultation from 1 March 2024 to 15 March 2024.** The key highlights are:

The draft legislation will be applicable to all Constituent Entities in Thailand that are members of an MNE group with an Ultimate Parent Entity (UPE)

Thailand proposes to collect the Top-up Tax through the following mechanisms:

- **Domestic Top-up Tax (DMTT)**

All Constituent Entities in Thailand will be subject to the Top-up Tax under the DMTT if Thailand's Effective Tax Rate (ETR) is lower than 15%.

- **Income Inclusion Rule (IIR)**

Thai UPEs, Intermediate Parent Entities, or Partially Owned Parent Entities in Thailand (as the case may be) will be subject to the Top-up Tax under the IIR if one or more foreign jurisdictions in which they have direct and indirect ownership are low-taxed jurisdictions (i.e., where the ETR is lower than 15%).

- **Undertaxed Payment Rules (UTPR)**

All Constituent Entities in Thailand will be subject to the allocated Top-up Tax under the UTPR if the Top-up Tax in low-taxed foreign jurisdictions has not already been paid, or fully paid, either under qualified DMTT or qualified IIR, in such foreign jurisdictions.

Netherlands implements EU Public CbCR Directive

The Dutch Government has finalized legislation to implement the European Union Public Country-by-Country Reporting (CbCR) Directive in the Netherlands. The key highlights are:-

In line with the deadlines established in the Directive, the first year of reporting in the Netherlands will be the financial year starting on or after 22 June 2024, and publication must take place within 12 months from the end of the reporting financial year.

According to the Directive, EU-headquartered multinational enterprises (EU MNEs) and non-EU-headquartered MNEs doing business in the EU through a qualifying branch or medium and large subsidiary undertakings (non-EU MNEs), with total consolidated (group) revenue exceeding €750m in each of the last two consecutive financial years, must publicly disclose the income taxes paid and other tax and non-tax related information, such as a breakdown of profits, revenues and employees per jurisdiction (for the EU and the EU list of noncooperative jurisdictions for tax purposes, with all other jurisdictions aggregated as "Rest of World").

India and Mauritius signs Protocol amending double-tax treaty

India and Mauritius have signed the protocol amending their Double Taxation Avoidance Agreement (DTAA), which now incorporates the Principal Purpose Test (PPT). The key amendments include:

The Preamble to the India-Mauritius tax treaty is replaced to state that the intention of the tax treaty is to avoid double taxation without creating opportunities of non-taxation or reduced taxation through tax evasion/tax avoidance.

A new Article has been included to **satisfy the PPT condition** (in line with the MLI) for availing the beneficial provisions of India-Mauritius tax treaty.

The Protocol requires India and Mauritius to notify one another regarding completion of the procedures required by their respective laws to implement the provisions of the Protocol. Once the notification has been issued by both the countries, the Protocol will enter into force on the date of later of the two notifications.

The provisions of the Protocol shall have effect from the date of entry into force of the Protocol – without regard to the date on which taxes are levied or the taxable years to which the taxes relate.

Mauritius has been one of the major destinations for investment into India due to the benefit provided by the tax treaty between the two countries. One may need to evaluate whether the Protocol, once notified, would apply prospectively or retrospectively. The impact of the Protocol on the grandfathering benefit provided for capital gains exemption on sale of shares also needs to be evaluated.

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Disclaimer

Please note that our views mentioned above are based on current prevailing regulatory regime in UAE and refers specifically to Federal Decree Law No. 47 of 2022. Our views or advise does not cover implications under any other laws or regulations that may govern the situation and are limited to the taxability consequences in UAE alone. For any other implications, we would recommend to obtain specific advice in that connection.

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