

Focus on Middle East Tax Review

March 2010



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Introduction

Welcome to the current edition of our *Middle East Tax Review*. The downturn in the global economy over the last year has focused increasing attention on the Middle East region as an area that continues to afford valuable opportunities to grow sales as other markets continue to be in the doldrums. The Middle East has not been immune from the global financial crisis and whilst most economies have weathered the worst of the downturn, business sentiment in the region is one of cautious optimism rather than unbridled hope. Governments in the region hold the key to economic growth in 2010 and business leaders are acutely aware of the need to plan for future growth with particular emphasis on ensuring the stability and durability of their organizations and improving management's ability to manage risk. A key risk that businesses are increasingly focusing on is tax risk. We expect 2010 to be a challenging year for tax professionals in the Middle East region. Tax regimes in all countries continue to evolve and the tax policy in the region is now focused on attracting inward investment with the lowering of effective tax rates. Whilst tax rates are falling we have seen a clear broadening of the tax base in all countries. Lower tax rates are not necessarily indicative of lower Government tax as the introduction of withholding tax regimes in many countries is likely to increase tax collections in the medium term future.

We have seen a marked increase in tax compliance reviews and inspections by taxing authorities in 2009 and this trend is likely to accelerate in 2010. The inexorable move to adoption of transfer pricing practices continues in the region and this initiative will require increased attention by the company tax compliance function in 2010.

In 2009 we welcomed our Saudi Arabia and Bahrain practices into the Middle East practice region and this quarter's update captures recent developments in Bahrain. In the current review we also look at the new tax laws that have been introduced in Jordan and Qatar. We also have updates on the expansion of the double taxation treaty network in the region as well as updates on new interpretations and guidance by tax authorities in each country in the last quarter of 2009.

We are pleased to note that we will be attending our annual Middle East meeting in Spilt, Croatia on 20 May 2010. The theme of the meeting is "Challenges and Opportunities, in the Middle East". We hope that it will provide our partners with the opportunity to learn more about recent developments with respect to tax and foreign investment in the Middle East countries. Meeting agenda have already been sent to our UHY partner's offices for review. If you have not received a meeting agenda by email please contact Ms. Sofia in UK office or any of our partners in the region and they will ensure that a meeting agenda is sent to your office immediately. We look forward to welcoming you to the Middle East meeting in Spilt, Croatia.

We hope that you find this edition of the *Middle East Tax Review* of interest. If you would like us to add any of your colleagues to our distribution list, please email our editor, Mr. Khaled Elfakhrani k.elfakhrani@uhy-eg.com

Khaled Elfakhrani

Managing Partner UHY Egypt Office

Bahrain

Expansion of the Tax Treaty Network

Bahrain continues to expand its tax treaty network. Several treaties have recently been signed, while others are currently being negotiated.

Bahrain – Ireland Treaty

A tax treaty with Ireland has been signed but is not yet effective. Under the terms of the treaty, payment of dividends, interest and royalties between both countries will be subject to a 0% withholding tax.

Bahrain – Pakistan Treaty

A tax treaty between Bahrain and Pakistan entered into force from 27 October 2009. Based on this treaty, payment of dividends, interest and royalties between both countries will be subject to a 10% withholding tax.

Bahrain – Belgium Treaty

On 23 November 2009, Bahrain and Belgium signed a protocol on the amendment of the treaty provisions related to the exchange of information. This treaty is not yet in force.

Tax Treaties currently under negotiation

We understand that Bahrain is currently negotiating tax treaties with Germany, Malta, Estonia and Nepal.

Egypt

Real Estate Law & Executive Regulations Introduction

In June 2008, the Egyptian Tax Authority adopted the new Real Estate Tax Law No. 196 which was issued and published in the official Gazette. In August 2009, the Ministry of Finance issued the Executive Regulations No. 493 of the Real Estate Law which is a first step towards the execution of the Law. The Executive Regulations determine the committees and the process of how the market value of real estate shall be estimated.

The law and its executive regulations introduced major amendments including the removal of area limits which were determined more than 50 years ago that effectively excluded certain buildings from taxation.

Tax Calculation

Tax will be levied at 10% of the annual rental value after excluding the following notional maintenance expenses:

- ▶ 30% of the rental value for properties used for accommodation.
- ▶ 32% of the rental value for properties used for purposes other than accommodation.
- ▶ Exemption of EGP 6,000 for real estate properties used for accommodation.

Article 9 of Law No. 196 clearly identifies the scope and what should be considered as real estate

Rental Value Estimation Process

- ▶ Rental values will be announced and published in the Official Gazette by the real estate tax department. The taxpayer will receive written notification with these values. The taxpayer may appeal the rental value within 60 days of the publication date. The real estate tax department may also appeal the estimate within the same period.
- ▶ A specialized committee will be responsible for researching the appeal. The committee will issue its decision within 30 days of the submission of the appeal. If the appeal is rejected, it can still be appealed in a court of law
- ▶ The revision of the rental value takes place every five years. The rental value should not increase by more than 30% for properties used for accommodation or by more than 45% for properties used for other purposes.

Declaration

All taxpayers are expected to submit the following to the real estate tax department:

- ▶ A real estate declaration every 5 years.
- ▶ An annual declaration summarizing any new properties, additions to properties previously declared or modifications to properties that have changed its features and affected its rental value.

Persons or entities subject to the Real Estate Law must file the required documentation no later than 31 December 2009. And an extension was given up to end of March 2010.

New Declaration based on Type of Activity

▶ The Ministry of Finance has also introduced new declaration forms based on a taxpayers property type in Decree No. 494 of 2009 contains Each taxpayer should select the suitable declaration from the following activity categories:

- ▶ Individual
- ▶ Commercial and administrative
- ▶ Industrial
- ▶ Petroleum
- ▶ Touristic
- ▶ Ports
- ▶ Health, educational, sport and social activities

Jordan

A new Income Tax Law was enacted in Jordan on 30 December 2009 and comes into force on 1 January 2010. The main highlights of the law are summarized as follows:

Permanent Establishment

A new definition for Permanent Establishment which is similar to the same term in the model tax treaty of the Organization for Economic Co-operation and Development (OECD).

Income

- ▶ International telecom and transportation income are now taxable.
- ▶ Interest from treasury bonds is taxable income.
- ▶ Interest in suspense is now considered taxable income.

Expenses

- ▶ Property tax related to rented property is tax deductible up to 50% of the expense and 50% is deducted from the tax payable.
- ▶ All provisions for doubtful debts required by Central Bank of Jordan and Insurance Regulatory Commission for compulsory reserves are tax a deductible expense

Capital Gains

Any gain on current assets held for less than one year or on depreciable assets are taxable.

Property Transfer Fees (PTF)

The land Property Transfer Fees (PTF) is 7.5% and residential apartments of 300 Square meters or less will enjoy PTF exemption on the first 120 square meters.

Investment Promotion Law

New projects do not qualify for Investment promotion incentives.

Withholding Tax

- ▶ Resident services are subject to 5% withholding tax except for certain services such as, insurance, telecom, interest and bank charges, air tickets, cargo and electricity.
- ▶ Non-resident services are subject to 7% withholding tax.

Exemptions

- ▶ There are no rent exemptions as per the new income tax law and regulations.
- ▶ Agricultural income is now taxable income although the first JD 75,000 is exempted.

Aggregate Tax Liability

The new law permits the offset of income and Sales Tax Liability against any shortfall in both. Accordingly the taxpayer should pay or refund the aggregate tax liability.

Deemed Tax

The Deemed Income Tax Liability on construction, contracting, housing, and land transportation sectors has been cancelled.

Early Payment Discount

The Early Payment discount has been cancelled.

Foreign Branches of Jordanian Companies

The tax rate on foreign branches of Jordanian companies is reduced from 7% to 6% on reported profit after tax.

Payment on Account

Payment of income tax on account should be made on 30 July and 30 January.

Penalties

▶ Late filing penalties have been increased to 0.4% per week of the tax liability but not exceeding 50% of the final tax assessment instead of 1.5% per month.

▶ Additional Penalties will be imposed in the event that the final income tax liability exceeds 120% of the declared income tax liability. Interest is now set at 9 % on late tax refund.

▶ The penalty for late filing is now fixed at JD 500. The penalty for the failure to maintain accounting records has been fixed at JD 500.

Losses Carried Forward

The period for losses to be carried forward is unlimited provided that the loss is incurred from the core business. Any losses incurred from non-core business cannot be carried forward.

Tax administration

▶ A taxpayer can now resubmit an income tax return up to the date of a tax inspection.

Sales Tax law

▶ Sales Tax refunds shall be made within 90 days. Otherwise interest at 9% per annum will be earned.

▶ The sales tax law amendments provides the Council of Ministers with the authority to impose a Special Sales Tax on air tickets and oil products; however these taxes will replace the additional tax on air tickets and municipality fees on oil products.

Employment Income

The following are now considered taxable income:

- ▶ Medical and life insurance premiums
- ▶ Other employee benefits such as subsidized loans
- ▶ Contributions to provident funds
- ▶ End of service benefits which were exempted from Tax is now taxable at 50%.

Family Allowances

- ▶ Single Personal allowance is JD 12,000 and family allowance is JD 24,000.
- ▶ Allowances for children, parents, Housing and university education have been cancelled.
- ▶ Allowances for transportation and entertainment have been cancelled.

Tax Rates

The personal income tax after family allowances is subject to the following rates of taxation:

- ▶ First JD 12,000 at 7%
- ▶ Income bands in excess of JD 12,000 are taxable at 14%
- ▶ The social welfare tax which was previously levied at 10% of income tax has been cancelled.

Kuwait

Trading in securities listed on the Kuwait Stock Exchange (KSE)

The provisions relating to the taxation of foreign entities investing in securities listed on the KSE continues to be an area of uncertainty in Kuwait. The Ministry of Finance (MoF) has provided further information unofficially and on the condition that there would be no responsibility on their part if the final rules were different than those indicated by them. The indications given by the MoF officials are:

i) Income subject to tax

a) No tax shall arise on capital gains arising from trading in securities listed on the KSE, irrespective of the period of the holding of the investment. The MoF has, however, not indicated whether their aforementioned view towards capital gains arising from trading in securities listed in the KSE would differ if the shareholding of a foreign investor in a company listed on the KSE were to exceed a certain threshold, i.e. in the case of strategic investments by foreign entities in companies listed on the KSE.

b) Dividend income shall be subject to a 15% withholding tax. The tax must be withheld by the foreign investor's custodian in Kuwait.

c) The MoF is aware of the fact that certain double tax treaties may have specific provisions different from the Kuwait Tax Law about taxation on dividend income. We expect formal clarification from the Ministry of Finance in due course.

ii) Tax compliance procedures

- a)** The MoF may simply require the local custodian/broker of the foreign investor to provide information about the foreign investor, deduct the 15% tax on payments, dividends and deposit the tax with the MoF.
- b)** The Kuwait MoF has recently approached the major banks and custodians operating in Kuwait to implement tax withholding requirements on dividends from securities listed on the Kuwait Stock Exchange. Any entity wishing to claim a lower withholding tax rate in line with a tax treaty would need to approach the MOF and obtain an exemption or reduced tax rate certificate provided to the local custodian or broker. Should tax at the full rate be deducted, they may have to apply to the MOF for a refund. The procedures for the above are yet to be clarified by the MOF and our comments are based on our informal discussions with senior officials at the MOF.
- c)** 100% GCC owned national investors may also be subject to withholding tax in Kuwait until they are able to obtain a tax clearance certificate indicating that they are not subject to tax in Kuwait. The MoF has recently issued forms to allow 100% GCC owned investors to obtain a tax clearance certificate for the exemption of withholding tax on dividends received from companies listed on the Kuwait Stock Exchange. However, there are no formal procedures defined by the MoF that pertain to the submission of these forms.

- d) Based on our most recent discussions with officials at the MoF, we understand that the relevant forms are still being finalized for cases where investors are from countries that have a tax treaty with Kuwait and are seeking a reduced withholding tax rate in accordance with the relevant tax treaty or a refund. These forms are expected to be issued by the MoF by early 2010.
- e) Based on discussions with the MOF, it would appear that, if a foreign investor was purely investing in securities listed on the KSE and had no other operations or income in Kuwait, there may not be a requirement to submit a tax declaration in Kuwait as tax shall be withheld and deposited by the local custodian or broker. Furthermore, there may not be a requirement for the investor to register with the MOF or obtain a tax card.

We are awaiting formal written guidance from the Ministry of Finance on the taxation of this area.

Lebanon

Double tax treaty (DTT)

The Lebanese double taxation treaty network is one of the widest in the Middle East region and as at 31 December 2009 Lebanon had concluded with 33 countries which are summarized as follows:

Treaty Country	Signed	Ratified	Enforced	Legal Reference
Algeria	26-Mar-02	29-Aug-02	19-Jul-06	Law # 456 – Official Gazette 50 – 5/9/2002
Armenia	16-Sep-98	23-Feb-99	13-Dec-00	Law # 38 – Official Gazette 38 – 1/3/1999
Bahrain	7-Aug-03	11-Feb-04	13-Sep-05	Law # 569 - Official Gazette 9 – 13/2/2004
Cyprus	18-Feb-03	20-Oct-03	14-Apr-05	Law# 530 - Official Gazette 48 - 22/10/2003
Egypt	17-Mar-96	24-Jul-96	22-Mar-98	Law# 582 - Official Gazette 35 - 8/8/1996
Jordan	31-Oct-02	20-Oct-03	12-Dec-03	Law# 534 - Official Gazette 48 - 22/10/2003
Kuwait	21-Jan-01	03-Apr-01	20-Mar-02	Law# 293 - Official Gazette 19 - 19/4/2001
Morocco	20-Oct-01	05-Jun-02	09-Aug-03	Law# 404 - Official Gazette 34 –13/6/2002
Qatar	23-Nov-05	11-Nov-06	Not yet	Law# 762 - Official Gazette 56 – 27/11/2006
Sudan	9-Mar-04	20-Nov-04	Not yet	Law# 64 - Official Gazette 64 – 2/12/2004
Sultanate of Oman	12-Apr-01	16-Aug-01	28-Oct-01	Law# 353 - Official Gazette 42 – 23/8/2001
Syria	12-Jan-97	24-Jul-97	10-Mar-98	Law# 658 - Official Gazette 37 – 31/7/1997
Tunisia	24-Jun-98	23-Feb-99	03-Jun-00	Law# 36 - Official Gazette – 1/3/1999
U.A.E	17-May-98	23-Feb-99	21-May-99	Law# 42- Official Gazette – 1/3/1999
Yemen	29-Sep-02	16-Jul-03	20-Feb-06	Law# 513 - Official Gazette 35 – 24/7/2003
France	24-Jul-62	23-Aug-63	1963	Decree-Law N. 13673.
Italy	22-Nov-00	03-Apr-01	Not yet	Law# 288 - Official Gazette 19 - 19/4/2001
Canada	29-Dec-98	Not yet	Not yet	Not yet enforced
Malta *	23-Feb-99	25-Oct-99	10-Feb-00	Law# 119 - Official Gazette 52 – 3/11/1999

* The double tax treaty protocol between Lebanon and Malta is being currently amended. The amending protocol was signed on 16 April 2009 but has not yet been ratified or enforced.

The first tax treaty Lebanon entered into was the double tax treaty with France which was enforced in 1963. In recent years the Government has issued a number of instructions to reinforce the concepts that the treaty provisions override domestic tax law

Article 3 of the Tax Procedures Law 44 dated 11 November 2008 which gives precedence to international agreements over local tax laws as well as in the instructions issued by the Minister of Finance 2357/S1 dated 9 December 2005 and the Head of Revenues Directorate's instructions 521/S1 dated 3 May 2008 on the tax treatment of the provisions of the tax treaties.

A. Ministerial instructions 2357/S1 dated 9 December 2005 concerning the taxation of dividends paid to a resident in France

Under the Lebanon and France tax treaty and subsequent protocol a taxpayer resident in France receives dividends from a Lebanese company, the French taxpayer has to provide, to the tax authorities in Lebanon proof of payment of the dividend tax in France in order to get a waiver from the tax in Lebanon.

In addition to the above and in the context of providing more clarity on the treaty between Lebanon and France, the Ministry of Finance issued instructions 2357/S1 dated 9 December 2005 concerning the taxation of dividends paid to a resident in France.

As per Ministerial instruction 2357/S1 dated 9 December 2005, the entity paying the dividends should submit a list of the beneficiaries and attach proof that those beneficiaries are under the control of the tax authority in France with respect to the payment of tax in France on any dividends received from a Lebanese company. Such proof should be available and submitted at the date of payment of the dividend tax. The relevant tax authorities upon inspecting the dividend distributions made by Lebanese resident companies should validate the proof of tax payment. If the proof presented is not valid, the tax inspectors will levy penalties in accordance with Law 44 (Law of Tax Procedures).

B. Head of Revenues Directorate instructions 521/S1 dated 3 May 2008 concerning payments to entities resident in treaty countries

These instructions stress the importance of honoring the provisions of treaties in place and the need for tax inspectors to validate the supporting documents that are presented by the tax payer resident in the treaty country and taking decisions in light of any relevant tax treaties.

In spite of the above instructions, the subject of double tax treaties in Lebanon continues to be dealt by the tax authorities on a case by case basis and there is no body of case law or practice that can be relied upon when contesting an open issue with the tax authority.

Sultanate of Oman

Protocol between Oman and United Kingdom

The Sultanate of Oman and United Kingdom signed, on 27 November 2009, a protocol amending the agreement on avoidance of double taxation of income and capital gains. The original agreement was signed on 23rd February 1998.

The new protocol is likely to remove the withholding tax on dividends (previously a maximum of 10%), but allows a withholding rate of 8% on royalties.

Currently under the Oman – UK double tax avoidance agreement, no withholding tax is imposed on royalties paid to a UK resident, subject to the satisfaction of certain conditions. Further, no withholding tax is imposed on dividends under the domestic tax law in Oman.

The agreement is likely to incorporate tax information exchange provisions in line with the OECD standard on tax information exchange.

The text of the protocol is awaiting ratification in Oman. The protocol will enter into force once both countries have completed their legislative procedures.

It will take immediate effect from the date of entry into force except for taxes withheld at source, for which it will take effect in respect of amounts paid on or after January 1 in the following calendar year in which it is ratified.

However, until the ratification of protocol by both countries, the current position in respect of double tax treaty will continue to be applicable.

Treaty between Oman and the Netherlands

A double tax treaty between Oman and Netherlands was signed on 5 October 2009.

The treaty follows the OECD Model Convention.

Withholding tax rates applicable are:

► Dividends: 10% in all general cases but 0% of gross amount of dividend if the beneficial owner holds directly at least 10% of the capital of the company paying the dividend. (However, Oman does not impose any withholding taxes on dividends.)

► Royalty: 8% of the gross amount

The definition of a Permanent Establishment (PE) also includes a clause on construction PE, where the site or project continues for a period of more than nine months.

The business profits of an enterprise which are directly attributable to a PE are to be taxed as per treaty provisions whereas the expenses which are incurred by the PE including executive and general administrative expenses, are allowed as deductions.

Concept of a Dependent Agency under the New Tax Law

With the promulgation of a new tax Law in Oman effective from the tax year 1 January 2010, the concept of agency permanent establishments has been introduced.

The new tax law extends the definition of PE by including a fixed place of business through which a business is wholly or partly carried on in Oman by a foreign person either directly or through an agent thereof. This new provision will impact both foreign companies with agencies as well as Omani companies that act as agents for foreign principals. The dependent agency rules may also extend to subsidiaries that may create unintended PE, for a foreign parent or group company in Oman.

Further, under the new tax law, dependent agents will be considered to be principal officers where business activities in Oman are carried out by the permanent establishment through the agent. The principal officer is ultimately held to be responsible for discharging all the obligations imposed on PE by the new tax law.

The changing attitude of Omani tax authorities with respect to withholding tax versus permanent establishments

The corporate tax rate in Oman is 12% on net taxable profits whilst the withholding tax rate is 10% on gross amounts. Therefore, under certain circumstances it was possible to minimize an organization's tax impact by opting to file tax returns on a net income basis rather than being subjected to a 10% gross tax.

With the new tax law introducing a uniform tax rate of 12% on net income for all companies and PEs in Oman, the Omani tax authorities are now challenging the position taken by foreign companies that have created PEs, as a means of avoiding falling under the scope of the withholding tax in Oman.

The new tax law has expanded the scope of the withholding tax, especially with reference to the definition of royalties. This extended definition covers a broader range of income types accruing or arising in Oman.

State of Qatar

Qatar enacts new corporate income tax law

On 17 November 2009, His Highness the Deputy Emir and Heir Apparent Sheikh Tamim bin Hamad Al Thani issued Law 21 of 2009. Qatar's new tax law, which has been eagerly anticipated as it brings the top rate of tax down from 35% to a flat rate of 10%, will be effective from January 1, 2010. This places Qatar as the lowest taxing country in the Gulf (with the exception of the UAE and Bahrain which are generally tax free jurisdictions) and should make Qatar a more attractive destination for foreign inward investment.

The new law aims to encourage foreign investors to set up businesses in Qatar rather than servicing the market from outside. The new rate of 10 % will be the lowest tax regime among countries that levy corporate taxes in the region. For companies that operate in Qatar, the law will herald a new era of low taxes and the enactment of the law will be well received – it is a very much a pro inward investment move by the Qatari Government. The law retains a 35 % tax rate for the oil and gas sector with the lower rate being applicable to other sectors. There are a number of key changes in the new law including the introduction of withholding taxes on a number of sources of income and the first steps towards the introduction of transfer pricing rules, with the law clearly highlighting the importance of arms length pricing principles for transactions between related parties.

The new tax rate for companies aims to boost international investments and help diversify Qatar's economy away from hydrocarbons. Soaring hydrocarbon revenue has allowed Qatar to sidestep the global recession and attract foreign companies thus far. In the coming years, however, competition to attract inflows will be intense. The relatively high rate of corporate taxation was seen as a major obstacle to encouraging foreign investment. This revision will offer Qatar a distinct competitive advantage in positioning itself as a destination of choice for investment flows.

The new law has introduced key changes in the areas of withholding taxes, taxation of offshore revenues and anti-avoidance provisions.

Withholding Tax

The law introduces withholding taxes that will apply in respect of certain payments to non-residents which are not connected with a Permanent Establishment (PE) in Qatar.

Tax Resident

Under Article 1 of the law, a company will be tax resident in Qatar if it meets ones of the following conditions:

- ▶ It is incorporated under Qatari laws
- ▶ It has its headquarters in Qatar, or

- ▶ It has its place of effective management in Qatar an individual will be tax resident in Qatar if he/she meets one of the following conditions:
- ▶ Has a permanent residence in the State of Qatar
- ▶ Resides in Qatar for a period of more than 183 continuous or intermittent days within a 12 month period, or
- ▶ Qatar is the Centre of his/her vital interests

Permanent Establishment (PE)

Article (1) of the law defines a PE as a fixed place of business through which the business of the taxpayer is wholly or partly carried on. The following are examples included in the law of what would be considered as a PE – a Branch, Office, Plant, Workshop, Mine, Oilfield or Gas Well, Quarry, Construction site, Assembly Project and a location for extraction of natural resources. A PE will also be deemed to exist if a foreign company has a person in Qatar acting on his behalf or in his interest, other than an agent of independent status. This is referred to as the “dependent agent” concept. Therefore, if a foreign company has an agent in Qatar who habitually negotiates or concludes contracts on behalf of the foreign company or holds consignment stock, this agent may constitute a dependent agent and therefore may result in the foreign company having a PE in Qatar, in which case the foreign company would be taxable in Qatar.

Withholding Tax Rates

Article 11 of the law provides for two rates of withholding tax as follows:

- ▶ **5%** on payments of royalties and technical fees, and
- ▶ **7%** on payments of interest, commissions, brokerage fees, director’s fees, and any other amounts paid for services carried out wholly or partly in the State.

The term "technical fees" covers managerial, technical, technological and consultancy services and will be very broadly interpreted by the tax authorities. For example, it would include engineering, design, architectural, marketing, and advisory, IT, accountancy and legal services. Payments for equipment rentals will also be subject to withholding tax at 5%.

The introduction of withholding tax on interest created a large degree of concern among the banking community and large project companies that were servicing significant project debt. As a result of these concerns the tax authorities officially announced on 4 January 2010 that the requirement to operate withholding tax on interest was being suspended until further notice. We understand from discussions with the tax authorities that the withholding tax on interest and directors fees will now be abolished and that the remaining items which were previously subjected to the 7% rate of withholding tax (e.g. commissions, brokerage fees and other amounts) will be subject to 5% withholding tax.

No official confirmation has yet been issued by the tax authorities on this matter and therefore there remains some uncertainty regarding the exact nature of the changes which will be made to the law. As per the tax authorities clear, we understand that an official confirmation will be issued in the next few weeks.

Operation of withholding tax regime

Where a company is tax resident in Qatar or has a PE in Qatar, it will be able to register with the tax authorities and obtain a tax card. Accordingly, the company will not suffer withholding tax on payments which it receives but rather will file an annual income tax return in Qatar in respect of income earned.

Where a company has a tax card and files an annual income tax return, it will be subject to income tax on its net profits (as adjusted for tax purposes) at the rate of 10% (unless it is a company involved in petroleum operations which will generally be taxed at 35%). If the company does not have a tax card, it will suffer withholding tax (at 5%) and this will apply to the gross income receivable by a company.

Where a non-resident entity is subject to withholding tax, there is no requirement for that entity to file a tax return in Qatar. The withholding tax is a final tax in this respect and satisfies the tax compliance obligations of the foreign company in Qatar.

It is the responsibility of the payer to deduct withholding tax from the payment to vendors, suppliers and service providers who do not have a tax card and to remit this to the Qatari Public Revenues and Tax Department (PRTD) by the 15th day of the month following the month in which the payment was made. Failure to withhold tax and remit it to the Tax Department by the specified date will result in a penalty equal to the amount of withholding tax in addition to payment of the withholding tax itself.

Verbal clarifications received to date from tax authorities

Based on various discussions with the tax authorities to date, we understand the following:

- ▶ Payments for a pure supply of goods are not subject to withholding tax; however, if there is a service element involved, this portion would be subject to withholding tax.
- ▶ Payments related to services rendered in the calendar year 2009 and paid in 2010 should not be subject to withholding tax.
- ▶ Where services are performed 100% outside of Qatar, payments for such services should not be subject to withholding tax.
- ▶ Withholding tax on other payments (i.e. royalties, technical fees, commissions, etc) must be operated with effect from 01 January 2010.

► The requirement to operate the 5% retention on payments to non-GCC contractors pending receipt of a tax clearance will continue under the new law. This requirement may be abolished at some future date depending on how successful the tax card registration system is.

Transfer Pricing and Anti-Avoidance provision

Article 50 of Law No. 21 of 2009 introduces anti-avoidance provisions. Under Article 50, where a taxpayer enters into agreements, operations or transactions the main purpose of which is to avoid tax, the tax authorities have the power to;

► examine the substance of such transactions and re-characterize the arrangement where it does not reflect the economic substance.

► Apply arm's length principles and

► Adjust the amount of tax due by the taxpayer or any other person involved in the arrangement or transaction.

Consideration for services paid to head offices, branches or related companies are now deemed to be taxable income under article 3 (5) of the new tax law. Although the intent of Article 3(5) is not clearly defined, it is likely that the Qatar Tax Authority will seek to bring services from the related entities into the tax net, be it corporate tax or withholding tax.

Taxation of Offshore Income

Article 3 of the new law states that "gross income derived from contracts wholly or partly performed in the State" shall constitute income derived from the State. Accordingly, where any part of a contract is performed in Qatar, the full contract value will now be taxable in Qatar. Under the old tax law, it was possible to exclude revenue derived from offshore activities from the Qatar tax net. With effect from 1 January 2010, contractors will be subject to tax in Qatar on the full contract value on the basis that part of the work is being performed in the State.

Double Tax Treaties Considerations (DTT)

As a result of the withholding tax changes introduced, the importance of the Double Tax Treaties which Qatar has entered into has increased significantly. Qatar has entered into several double tax treaties with other countries and is actively expanding its DTT network. The following are the effective DTTs to date:

France, India, South Korea, Singapore, Malaysia, China, Azerbaijan, Sri Lanka, Pakistan, Belarus, Cuba, Macedonia, Lebanon, Syria, Russia, Tunisia, Cyprus, Armenia, Romania, Senegal, Turkey, Seychelles, Venezuela, Indonesia, Yemen, Nepal and the Netherlands.

Qatar has also signed the following treaties which are not yet effective:

Bangladesh, Belgium, Morocco, Sudan, Italy, Poland, Jordan, Algeria, UK, Philippines, Malta, Norway, Luxembourg.

Qatar Financial Centre (QFC)

It is expected that the income tax law in respect of companies based at the Qatar Financial Centre will be enacted shortly, with the law also incorporating a flat rate of tax of 10%. The QFC tax regime only applies to licensed entities within the QFC and is distinct from the domestic tax regime. However, once enacted it will result in a uniform tax rate for the financial services sector across both the domestic and QFC jurisdictions. Banks operating in the domestic market will benefit from the reduced 10 % rate. The government has introduced a level playing field for banks operating in the domestic market and the Qatar Financial Centre –consistent with the Government’s plan to have a single regulator for both markets. The tax break on Qatar Financial Centre (QFC) free zone registered companies is expected to end in January 2010 and they would then pay the same 10 per cent tax as would be due outside the Centre.

Saudi Arabia

Recent developments and clarifications on tax issues by the Saudi Arabian Department of Zakat and Income Tax (DZIT)

1. Reimbursed employee salary costs of a non-resident branch

The DZIT has reversed its earlier action of levying a withholding tax on reimbursed employee costs paid by the head office of a non-resident branch where the head office is acting as a financing agent of the branch.

However, such positions must be supported by sufficient appropriate documentation, including:

- ▶ Copies of employee contracts with the branch.
- ▶ GOSI registration and certificates supporting the settlement of GOSI liability in respect of individual branch employees.

2. Surplus cash treated as remittance of profits by branch

The DZIT conducted a field audit in respect of a taxpayer filing tax returns on an arbitrary basis. During the field audit, the DZIT requested copies of bank statements to compute the cash remittances by the branch to its head office during the year. Based on its review of the bank statements, the DZIT treated the remittance of surplus cash as remittance of profits by the branch to the head office and accordingly imposed a 5% withholding tax on these amounts.

3. Information omitted from WHT returns

In response to a clarification sought in respect of information inadvertently omitted from WHT returns, the DZIT has clarified that the WHT return for the relevant month should be revised by settling WHT and the delay fine on the payments not included in the previous return. The revised WHT return should also accompany a copy of the revised WHT return supported by payment receipts.

Tax treaty network update

1. Saudi Arabia - UK Double Tax Agreement (DTA) to become effective 1 January 2010

The Saudi Arabia-UK DTA takes effect from 1 January 2010. Where certain conditions are met, the Saudi-UK DTA may provide relief from Saudi Arabian WHT on royalty income, interest and business profits earned by UK residents from Saudi Arabian sources. The Saudi-UK DTA provides a detailed definition of a permanent establishment (PE), including prescribing minimum in-Kingdom presence requirements for construction and installation related activities (six months) and the furnishing of services (period or periods aggregating more than 183 days in any 12 month period). Under certain conditions, the DTA may also avail relief from Saudi Arabia capital gains taxes. In short, only those capital gains realized by UK residents in respect of shares in

Saudi Arabian companies that represent ownership holdings of 25% or more may be taxed in Saudi Arabia.

Finally, the DTA allows residents in each jurisdiction to offset their local tax liability by any income or withholding taxes paid in the other jurisdiction.

2. Saudi Arabia - Italy Double Tax Agreement (DTA) to become effective beginning of 2010 fiscal year

On October 23, Italy published laws ratifying its pending tax treaties with Saudi Arabia which entered into force the day after publication and will apply beginning fiscal 2010. Where certain conditions are met, the Saudi-Italy DTA may provide relief from Saudi Arabian WHT on royalty income and business profits paid to residents in Italy. Similarly, the Saudi-Italy DTA may avail capital gains tax relief. Broadly, capital gains will generally only be taxable in Saudi Arabia when realized by a resident taxpayer, except in cases where capital gains are realized in respect of shareholdings of 25% or more in a Saudi Arabian company's shares.

The Saudi-Italy DTA also provides a detailed definition of a permanent establishment, including prescribing minimum in-Kingdom presence requirements for construction and installation related activities (six months) and the furnishing of services (period or periods aggregating more than six months in any 12 month period).

The DTA allows residents in each jurisdiction to offset their local tax liability by any income or withholding taxes paid in the other jurisdiction.

Syria

1. New Legislative Decree

Tax Exemption for Projects Located in the Eastern Provinces of Syria

On 10 September 2009 Legislative Decree No. 54 of 2009 was issued granting a 10 year tax exemption for projects established in the eastern provinces of Syria which include the following:

- ▶ Al Hasakeh Province,
- ▶ Al Raka Province and
- ▶ Deir -ez- Zor Province

The projects that qualify for exemption must be those that are licensed under Investment Law 8 of 2007, Real Estate and Development Law 15 of 2008 or Decision 186 of 1985.

The Higher Council of Investment or Tourism may grant all or part of the above mentioned exemptions for projects licensed before this decree based on the Minister of Finance's recommendation, providing that the total exemption period shall not exceed 10 years.

2. Decision no. 2103 of 2009 issued by the Ministry of Finance

- ▶ If that importer's activities include a local activity in addition to its importation activities, the tax advance will be considered final only for the importation activity. Consequently, a separate imposition will be issued regarding its local activities as per income tax law. 24 of 2003 and its amendments.
- ▶ Tax advances paid in 2007 will not be considered as final where the tax intelligence authorities discover different figures to those declared in the annual tax return submitted to the tax authorities
- ▶ If the importer sells part of his imported goods where tax advances have already been paid to one of those taxpayers responsible for deducting withholding tax according to Tax Law. 60 of 2004, then a pro rata basis calculation should apply for returned.
- ▶ Decision No 2103 of 2009 was issued by the Minister of Finance on the treatment of tax advance paid by importers in 2007.
- ▶ Tax advances paid by import traders on their imports during 2007 to custom trusts are considered final.
- ▶ If that importer's activities include a local activity in addition to its importation activities, the tax advance will be considered final only for importation activity.

Consequently, an independent imposition will be issued regarding its local activities as per income tax law. 24 of 2003 and its amendments.

► Tax advances paid in 2007 will not be considered as final where the tax intelligence authorities discover different

3. Raising the Minimum Capital for Conventional and Islamic Banks

The Prime Minister's Office approved a draft law in respect of the minimum required capital for Conventional and Islamic Banks

The minimum capital as per the draft law is:

1. USD 300 million for Conventional Private Banks.
2. USD 500 million for Islamic Banks.

4. Decision 2473 of 2009

► Decision 2473 issued on 23 August 2009 by the Ministry of Trade and Economy amended the capital required for branches of foreign companies, to SYP 25,000,000 million instead of SYP 50,000,000 million.

Tunisia

Tax regime in force

Tunisia's legal and regulatory environment is characterized by its transparency, liberalism and efficiency. Tunisia offers a favorable business law, reduced tariff barriers, a flexible tax system and simple and homogeneous rules for investment.

The Tunisian tax system has gone through significant reforms in recent years in response to economic developments and requirements. The tax laws should be considered in conjunction with the tax incentives available to investors and businesses (the Investment Incentives code).

Tax laws are enacted through legislation and decrees. Amendments are usually introduced each year through the enactment of the annual finance law. The fiscal administration publishes memoranda interpreting the tax law. Tunisian tax legislation is mainly governed by

- ▶ The Corporate Income Tax and Income Tax on Individuals' Revenues Code (1989);
- ▶ Investment Incentives Code (1993)
- ▶ VAT and Consumption Duties Code (1988);
- ▶ Stamp and Registration Fees Code (1993);
- ▶ Local Tax Code (1997) and
- ▶ Procedures and Tax Contentious Code (2000).

Corporate Income Tax for Companies

Resident Companies:

General Rules:

Resident companies are subject to tax on their income derived from business activities conducted in Tunisia. The standard rate of corporate income tax is 30%. However, oil companies, banks and telecommunications companies are subject to corporate tax at the rate of 35%. A reduced rate of 10% applies primarily to companies engaged in agriculture and fishing and to benefits from exportation realized from 1 January, 2011. The minimum tax payable is 0.1% of annual turnover (excluding turnover from exports).

Determination of Taxable Basis:

Taxable income is based on financial statements prepared in accordance with generally accepted accounting principles, subject to certain adjustments. According to the tax laws exempted profits are deducted from the taxable income base and non deductible expenses are added back to arrive at the taxable income.

Exempted revenues

Dividends are not subject to tax in Tunisia. Consequently, dividends paid to foreign affiliates are exempt from tax in Tunisia. However, dividends received from foreign companies are taxable.

Deductible expenses

All ordinary and necessary expenses incurred in carrying on a business activity are deductible, unless specifically disallowed by the tax law. To be deductible, expenses must be documented and should meet other specified conditions.

The tax common law disallows the deductibility of some expenses such as: gifts and reception expenses exceeding 1% of the gross turnover with a maximum of TND 20,000 per year, losses of establishments based abroad; fines, seizures and penalties; and provisions and depreciation under some conditions.

In general, provisions are not deductible. However, the tax law allows the deduction of the following: a provision of doubtful debts if a lawsuit has been instituted to collect the debts; a provision on inventories (finished goods); and a provision on listed shares. The total amount of the deductible provision may not exceed 50% of taxable income before the deduction of the provisions. Certain financial institutions benefit from more flexible rules concerning the deductibility of provisions.

Depreciation is deductible for tax purposes in accordance with the rates provided under the Tunisian tax law.

Resident Companies:

Under the Tunisian tax law, companies with a permanent establishment in Tunisia are considered Tunisian resident companies. Consequently, permanent establishments are generally subject to the tax rules applicable to other Tunisian resident companies.

Certain double tax treaties allow permanent establishments to deduct expenses incurred by the head office, including research expenses and administration overhead expenses. However, these expenses must be invoiced at cost.

Non-resident Companies:

Non-resident companies are only subject to tax on certain types of Tunisian-source income such as royalties and interests. A final withholding tax is imposed on the following types of payments to non-resident companies:

- ▶ Remuneration for copyright royalties;
- ▶ Payments for the use of - or the right to use - patents, trademarks, designs, models, plans, formulas, manufacturing processes and movies, including proceeds received from sales of such items;
- ▶ Payments for the use of - or the right to use - industrial, commercial, agricultural, harbor or scientific equipment, except for amounts paid to charter a plane or vessel for international operations;

- ▶ Payments for information concerning industrial, commercial or scientific experience; and

- ▶ Payments for technical or economic studies or for technical assistance.

The withholding tax rate applicable on royalties is 15% except when a lower rate is provided by double tax treaties.

Joint Ventures:

Joint ventures do not have any special tax status in Tunisia. The taxation of members of joint ventures depends on the form of business entity through which the joint venture operates.

Corporate Income Tax for Individuals:

Residents of Tunisia are taxed on their worldwide global income. Consequently, certain income may be subject to double taxation, but relief may be available under double tax treaties.

Definition of Resident:

Individuals are considered tax residents of Tunisia if any of the following applies:

- ▶ They maintain their home in Tunisia;

- ▶ They are present in Tunisia for at least 183 days out of the year; or

- ▶ They are civil servants or government officials performing their duties or assignments in a foreign country, and they are not subject to personal tax on their global income in such country.

Taxation of Residents:

Income Subject to Tax:

Taxable global income is divided into various categories: industrial and commercial income; non-commercial activities income; agricultural and fishing income; wages, salaries and life income (pension income); real estate income; income from transferable securities; income from financial investments; and other income.

First, the net income in each category is determined. In general, the net income for each category is equal to the gross income minus the expenses incurred to earn and maintain such income. The income and expenses are determined in accordance with the rules applicable to the particular category. To compute the amount of income tax due, the following additional steps must be taken:

- ▶ The net income for each of the categories that is not separately taxed is added together;

- ▶ The deductions listed under deductions in computing taxable income are subtracted to determine global taxable income; and

► The progressive tax rates are applied to the amount of global taxable income to determine the amount of income tax.

Computation of corporate income tax

Global taxable income is subject to progressive tax rates: Net Income	Rate (%)
From TND 0 to TND 1,500	0
From TND 1,500 to TND 5,000	15
From TND 5,000 to TND 10,000	20
From TND 10,000 to TND 20,000	25
From TND 20,000 to TND 50,000	30
Up to TND 50,000	35

Taxation of Expatriates

The taxation of expatriates generally depends on their residency status. A special regime applies to expatriates employed by petroleum companies, companies operating offshore or companies wholly engaged in exporting. These expatriates are taxed at a rate of 20% of their employment income. Expatriates can opt for the taxation on the general regime. In addition, they are exempt from customs duties and other taxes on imports of personal belongings and of one sedan car per individual.

Taxation of Non Residents:

Non-resident individuals are subject to a final withholding tax on certain types of Tunisian-source income such as royalties.

Indirect Taxes

Value-Added Tax

The principal indirect tax in Tunisia is value-added tax (VAT). Enterprises subject to VAT effectively act as intermediaries in collecting the tax. If they are required to invoice and collect VAT on their sales, they may deduct VAT paid on their purchases. VAT liability (output VAT) is computed by multiplying all taxable sales by the applicable VAT rate. From the resulting amount, the enterprise subtracts the total VAT paid on purchases of goods (input VAT) and pays the net amount to the tax authorities. In the case of VAT credit, this is refunded by a request to the tax authorities and after a tax review.

Enterprises Subject to VAT

Companies and individuals engaged in taxable operations, as well as those that elect to be subject to VAT or to invoice VAT, are subject to VAT.

Exemptions and Suspensions

The appendices to the VAT code specify certain exempt transactions. VAT may also be suspended. A special authorization from the tax administration is required to obtain a suspension over VAT purchases. A VAT suspension is available for enterprises

engaged in exporting and, in certain circumstances, to enterprises engaged in activities described in the Investment Incentives Code.

Rates

The standard VAT rate is 18%. Services and specific activities provided by the appendices of VAT Code are subject to reduced rates of 6% and 12%.

Other Indirect Taxes

Consumption Duties

Consumption duties at various rates are imposed on certain imported and domestic products, such as tobacco, alcohol and gas.

Customs Duties

Customs duties on principal types of equipment range from 0% to 43%. Duties on consumption goods vary significantly, depending on the type of product.

Stamp Duties and Fees

Stamp duties and fees are due when registering legal documents. The purpose of the document determines the amount payable. This amount is fixed or proportional to the value of the relevant transaction.

Miscellaneous Matters

Investment incentives:

To open up the economy and encourage foreign investment, the government has introduced significant tax amendments and other incentives. The Investment Incentives Code, which was enacted by Law 93-120 on 27 December 1993, is the primary source of investment incentives in Tunisia. It covers all sectors with the exception of the energy, finance, mining and trade sectors. Specific incentives under other legislation are granted to: companies engaged in foreign trade; oil-exploration companies; offshore banks; and companies operating in offshore free zones.

The Investment Incentives Code is applied especially to the various major sectors: agriculture and fisheries; handicrafts; environmental protection; health; manufacturing; non-financial services; public works; real estate; tourism; and transportation.

The code offers two types of incentives: common incentives and specific incentives.

Common Incentives:

Common incentives are granted to companies involved in the sectors provided by the Investment Incentives Code.

Individuals or companies subscribing to the initial capital or capital increases of companies engaged in activities listed in the Investment Incentives Code, as well as companies engaged in activities listed in the code that reinvest profits, may deduct from their taxable income the amounts paid for the subscriptions or the profits reinvested by them, up to a maximum of 35% of their taxable income.

Specific incentives:

Specific incentives are available for companies engaged in specified activities. These incentives are described below:

- ▶ Companies wholly engaged in exporting;
- ▶ Companies partially engaged in exporting;
- ▶ Regional development incentives;
- ▶ Agriculture and fishing activities;
- ▶ Environmental protection and waste removal;
- ▶ Technology and research and development;
- ▶ Supporting investments.

Transfer Pricing:

There are no specific transfer pricing rules in Tunisia. However the tax administration expects transactions between related parties to be on an “arms length” basis.

Statute of Limitations:

For individual income tax and corporate income tax, the statute of limitations is four years for partial adjustments and ten years for omissions of declarations. Registration fees may be adjusted for four years for deficient valuations and ten years for the tax on insurance contracts.

Highlights of the 2010 Finance Law

The finance law of 2010 focuses on investments and exports, improvement of entrepreneurial competitiveness, promotion of job-creating in new technology sectors; and pursuance of the fiscal reform. This law which took effect from 1 January 2010 introduces a series of changes which demonstrate the government understands of economic needs and evolution.

The major reforms include:

I. Exportation:

The Tax Regime in place until 31st December 2009 for businesses engaged in exporting with no local trading activity will continue:

- ▶ Companies which expect 100% of their output benefit from an exemption in their export revenue for a period of 10 years from inception.

- ▶ Exporting companies which have completed a ten years exemption period between 2004 and 2009 will be granted a further exceptional exemption until December 31st, 2009.

► Any exporting companies not yet operating will benefit from the ten years exemption period with the condition that their investment certificate is filed in 2009, and their first exportation operation is planned in 2010.

In order to be as fair as possible and to prevent harming new projects, the finance law of 2010 provides that exporting companies not yet operating will benefit from the 10 years exemption period with the condition that their investment certificate is filed before 1 January, 2011, and their first exportation operation is planned before 1 January 2012.

II. VAT incentive:

Construction and public works companies operating outside Tunisia will benefit from the suspension of VAT on its supply of any foreign works, with the condition that the purchasing must be within the local market and the invoiced revenue must exceed TND 5m.

III. VAT recovery:

Fiscal reforms mainly consist of improving the recovery of excess VAT payments for statutory audit companies (operating VAT noted in 6 successive declarations).

The recovery value advance of overpaid VAT will be increased from 35% to 50% without previous tax administration control within 60 days starting from the recovery request (against 90 days at present).

Furthermore, it was decided to immediately repay any fraction of the overpaid VAT confirmed by the administration control, without waiting for the final issue of the amounts that have not been agreed yet.

IV. Provision

Substantial progress has also been made to improve clarity and simplify the application of tax provision deductions for financial institutions in order to improve their business competitiveness. These new measures were decided in response to the 2009 financial crisis to enable banks to account for none or poorly performing assets.

► Financial institutions (including banks and other financial companies) will benefit from a full deduction of tax provisions made for doubtful debts.

► Investment companies (SICAR) receive a full deduction of tax provisions made for the decline in value of securities.

V. Financial incentives

The finance law of 2010 offers new incentives for Information Technology and Communication (ICT) and the research & developmental field. The state will wholly or partially finance staff training and companies will also benefit from investment grants.

UAE

GCC VAT Update/Tobacco Tax Increase

In the last week of October 2009, the director of the GCC Customs Union Department Mohammed Al Haif was reported as saying that VAT was not a possibility for 2010. He then went on to say that the formulation of a VAT system throughout the GCC would take at least another two to three years as the GCC states were gathering ideas on how to best implement a VAT system. Mr. Al Haif also suggested that higher taxes on tobacco and cigarettes would be considered when GCC finance ministers met in November as GCC prices on tobacco and cigarettes are some of the lowest in the world.

The above comments regarding VAT follow on from earlier discussions where the Dubai Customs Authority had suggested that VAT could be implemented in the UAE in Q1 2009. It was more recently announced by the UAE Ministry of Economy as being off the table earlier this year. In the last week of October when the UAE Government handed down their budget for 2010 they confirmed that VAT would not be implemented next year in the UAE.

Whilst VAT seems to be off the table until at least 2012 (showing that the GCC governments are confident in the fiscal stability of their budgets), VAT is still being discussed and considered.

Wage Protection System Introduced

To guarantee full and timely payment of employee wages, the Ministry of Labour issued a decree which requires that all institutions registered with the Ministry of Labour across all sectors and industries, beginning 1 September 2009, transfer employee wages to banks and financial institutions in the UAE via the Wages Protection System (WPS).

WPS explained

WPS is an electronic salary transfer system developed by the Central Bank of the UAE (UAE CB) that allows institutions to pay workers' wages via banks, bureaux de change and financial institutions approved and authorized to provide the service. Those banks, bureaux de change and financial institutions that offer the wage payments services via the WPS are considered as agents. The UAE CB will regularly issue an updated list of approved and authorized agents. WPS enables the Ministry of Labour to create a database with the relevant details on salary or wage payments in the private sector.

Parties and processes

The legislation provides that all institutions registered with the Ministry of Labour must pay their workers' wages, through the authorised agents under the WPS system, at least once a month or on the dates that are specified in the work contract should such wages be paid more frequently than once a month. Under the guidelines issued by the Ministry of Labour, the term "worker" is defined as, "each and every individual who works in the private sector in return for agreed-upon wages and who has a labour card issued by the Ministry."

According to the same guidelines, the WPS mechanism operates as follows:

- ▶ An employer company has to have an account with one of the banks operating in the UAE; if not, the company should open one.
- ▶ The Company shall enter into a contract with a WPS agent to provide the wage payment services.
- ▶ The Company shall issue instructions to its bank to transfer wages to the workers. Such instructions shall be accompanied by a detailed wages list and the agent shall also be provided with the list.
- ▶ The WPS will send the workers' details and wages and the salary transfer instructions electronically to the UAE CB who will then forward those details to the Ministry of Labour database for verification.
- ▶ The WPS will send the approved information to the agent for payment of the wages,

Timeline

The requirement to transfer workers' wages via the WPS should be undertaken on or before the deadlines stated below:

Number of workers	Period granted (starting September 1)	Deadline
100 and above	3 months	30 November 2009
15 to 99 workers	6 months	28 February 2010
Less than 15	9 months	31 May 2010

During the transition period, employers with 50 or more workers are required to submit a monthly declaration as provided under the decree.

Penalties

If the stated deadlines are not complied with, the decree provides that employers will not be issued new work permits. The ban will only be lifted in the month following the transfer of the workers' wages in full through the WPS.

The periods stated above are not applicable to:

1. Institutions which had already been denied new work permits for failing to pay workers' wages on time when the decree was issued;
2. Institutions which failed to pay their workers' wages for one month or more after this decree was issued.

Other violations of the decree could result in civil and criminal liabilities.

Implication

Whilst the initiative to protect workers' wages was originally understood to be aimed at labourers and other non-skilled workers who were deemed susceptible to abuse by their employers, the new legislation as promulgated is now a matter concern for almost all expatriates. Expatriates make up most of the workforce in the UAE. As such, although this decree should certainly benefit the labourers and other non-skilled workers, it is deemed to be disadvantageous for other expatriates (mostly professionals) who receive their salaries under their UAE employment contract wholly or partly outside the UAE since this decree effectively precludes such an arrangement. As a result of requiring wages to be paid in the UAE through a UAE bank, bureaux de change or financial institution approved and authorized by the UAE CB, employees could face issues in terms of costs and delays in transferring money to their home country, foreign exchange losses or additional administrative burdens. This legislation may also act as a deterrent for expatriates thus making it difficult for employers to find a suitable employee willing to work in the UAE.

Next steps

Going forward, employers in the UAE should ascertain whether the new legislation is applicable to them considering the laws governing their companies. If determined to be applicable, employers should priorities compliance with this new legislation keeping in mind the stated deadlines. Employers should also ensure that current and prospective employees are fully informed of the requirements under the new WPS legislation. Any possible issues arising there from should be discussed between and among the employers and employees.

Disclaimer

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