

# Focus on Middle East Tax Review

December 2008



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## **Introduction**

Dear clients welcome to the current edition of our *Middle East Tax Review*. Our December 2008 edition of the review looks at tax developments that have occurred throughout the region in the last quarter of the year 2008, and what a year 2008 has been for the region. In our June 2008 Tax review we commented “***With the U.S. and U.K worrying about sinking into recessionary mode, we can expect 2008 to be year where inbound investors into the region will continue to court business opportunities as their own markets continue to be plagued with uncertainty and limited potential for growth***”. Little did we realize how prophetic these comments would be. The year 2008 started with an abundance of optimism and closes with a profusion of uncertainty and misgivings on a world that has been shook at its very foundations by the financial melt down of global stock markets.

We will leave it to the false economists and soothsayers to comment on where 2009 will take us. However as we face into a year of uncertainty it is important to keep an eye on the careful management of business performance, cash flows and reacting to new challenges and opportunities.

Some financial commentators make the point that the Middle East is well placed to ride out the financial storm reasonably unscathed. We believe that this viewpoint is at best naive. The financial strain that global markets are currently facing has the potential to undermine the advances that the Middle East region has achieved in recent years and business leaders need to focus all their energies on guiding companies through a year that has potential upside and downside risks of significance.

Taxation risk is growing throughout the region and with business looking to stave off the potential for unwelcome and unexpected tax bills and funds held pending resolution of uncertain tax positions, tax directors throughout the world will be looking to mitigate their risks and bring closure to any pending open tax issues.

Throughout the Middle East region we continue to see tax reform initiatives taking hold as each country positions itself to develop fiscal systems that will attract inbound investment. We continue to see countries enacting new guidelines and there are also growing efforts to unify and simplify tax systems.

We see many tax challenges for 2009 and beyond and we are pleased to note that the number of our dedicated tax specialists in the region continues to grow to meet the demands of our clients. We will strive hard in 2009 to raise the bar even further when it comes to delivering ideas and solutions that optimize the tax consequences of your business decisions.

Finally we hope that you find this edition of the *Middle East Tax Review* of interest and if you would like us to put any of your colleagues on our distribution list for this and future publications please email our Managing partner, Mr. Khaled Elfakhrani at [k.elfakhrani@uhy-eg.com](mailto:k.elfakhrani@uhy-eg.com).

## **Tax Considerations in a Period of Financial Upheaval**

The ongoing upheaval in the global financial markets clearly continues to be front-page news. The byproducts of this "credit crunch" – more restricted credit, liquidity concerns, losses in real estate and other assets' value, etc. – are causing unprecedented economic turbulence in the Middle East and around the world. In response, legislators, regulators, financial institutions, industry groups, investors and other key stakeholders have committed to finding a way back to stability, and they are already taking some productive steps. As UHY Egypt we committed to understanding our clients' overall business issues and working with them to address challenges across the tax life cycle, we're seeing clients wrestle with a variety of business issues in the wake of this crisis, including:

- ▶ Cost reduction
- ▶ Cash tax management
- ▶ Capital shortages
- ▶ Short-term liquidity problems
- ▶ Asset price falls
- ▶ Confidence in reported numbers
- ▶ Workforce management and reductions

Each of these challenges has a significant tax component, and there are many opportunities for businesses to address them in a tax-efficient manner. Across our tax practice, we have developed a variety of tools to help clients to deal with tax optimization strategies that enable companies to unlock tax assets and accelerate the release of provisions that may have been built up to deal with uncertain tax positions. A key consideration for companies is to efficiently manage cash that may be at risk of being tied up for tax purposes and companies are looking at opportunities to

- ▶ Convert tax attributes to cash
- ▶ Avoid limitation or loss of tax attributes
- ▶ Reduce cash taxes
- ▶ Relook at unrealized losses on investment portfolios to determine whether there are tax Benefits to be gained from crystallizing these losses
- ▶ Ensure restructuring/refinancing required in the downturn is undertaken with no tax leakage there are a number of pressing areas for companies operating in the Middle East that we see will become of increasing concern in 2009. These include the following:

### **Pressure on tax clearance**

Whilst the retention systems in Kuwait, Qatar, Oman and Saudi Arabia have frustrated foreign companies operating in the Middle East for over ten years, the financial crisis has significantly intensified the race to obtain tax clearance certificates and release precious retained funds.

These countries require entities to retain a certain amount from amounts paid to subcontractors undertaking taxable operations until the relevant tax authority issues a Tax Clearance Certificate as evidence that the tax filing obligations have been met, and the authority's inspection finalized. The latter can be a soul-destroying waiting game.

Entities undertake detailed reviews of their aging receivables in times of cash shortages. The tax retentions of five percent (and up to ten percent in some cases) of total revenues which can be tied up for several years are being targeted for action, with pressure directed towards tax authorities to expedite the clearance of key files.

The respective tax authorities, who have traditionally suffered from staff shortages and archaic administrative systems, have struggled to keep up with the exponential growth in the volume of taxpayers. Pressure from the Ministries of Finance to tighten their purse strings in a time of crisis has had the double-edged impact of:

- ▶ Increasing pressure on staff to ensure compliance with thorough audits of each file reviewed by the relevant Director; and
- ▶ Thwarting plans to recruit further staff and improve the procedural aspects of the authorities.

Taxpayers with experience of efficient tax authorities in their home countries can become frustrated with the bureaucratic and sometimes arbitrary nature of the tax clearance process holding up their retentions in a time when cash is clearly king.

### **Thin capitalization**

Managing intra-group financing becomes crucial in an economic downturn when obtaining external finance is increasingly problematic. Typically, in the absence of strict regional thin regimes, companies operating in high-tax jurisdictions in the Middle East are leveraged with related party loans.

The financial crisis creates a double-edged sword when it comes to financing whereby:

- ▶ Reliance on intra-group financing is increased; and
- ▶ Tax authorities in the Middle East are reconsidering their interpretation of arm's length interest rates as the various benchmark rates are dropped, reducing the amount of interest expenses deductible.

Given the above and considering that the tax benefit of interest expenses calculated with reference to commercial rates will themselves be lower, the tax benefit of well structured deductions weighs less on the scale of planning vs. simplicity. Stakeholder's insistence on transparency in reporting on their declining stocks might also suggest a preference for some groups to lean toward straight-forward structures.

### **Pressure on tax rates and regimes**

The trend in the Middle East over recent years has been a reduction in tax rates, most notably with Kuwait reducing their rate from 55% to 15% with effect from 2008.

The following table illustrates previous and new or expected new rates.

**Tax rate changes**

<b>Tax Rate</b>	<b>Saudi Arabia</b>	<b>Kuwait</b>	<b>Oman</b>	<b>Qatar</b>	<b>Egypt</b>	<b>Libya</b>
<b>Old Rate</b>	<b>45</b>	<b>55</b>	<b>50</b>	<b>35</b>	<b>42</b>	<b>60</b>
<b>New/Expected Rate</b>	<b>20</b>	<b>15</b>	<b>12</b>	<b>12</b>	<b>20</b>	<b>40</b>

Entities operating in Qatar are awaiting a highly anticipated new law which would introduce a significant reduction in the corporate rate from a top rate of 35% to a flat rate of 12%. The new law has been alluded to by the Ministry of Finance for several years and was almost certain to be introduced in 2008 at the peak of Qatar’s major economic boom. How can a year that burned so brightly, suddenly burn so pale? Speculators are now suggesting that the law could be delayed for yet another year.

**New tax regimes**

Oil prices have been slashed, several major projects are being delayed, and Dubai’s property bubble has burst with a resounding pop 100 billions US\$ total projects was cancelled or delayed, whilst GCC Sovereign wealth funds are in the enviable position of being able to bail out the crumbling giants of the banking world, there is also some concern about sustaining their financial prowess once the oil and gas reserves deplete.

Rather than reducing existing taxes, the new trend looks to be the introduction of new regimes and also the unification of separate tax systems that have existed inefficiently in certain countries – see the country updates on Jordan and Lebanon in this review. Since most of the GCC currencies have defied the rumor mill and remained pegged to the US\$, it has been appropriate that their primary source of income is US\$ denominated from the sale of resources (Oil & Gas).

However, as the possibility of monetary union draws closer, there is a preference to derive an income stream in local currency to finance local expenditure. Introduction of a Value-added tax regime has been on the GCC agenda for the last two to three years.

In the last year we have seen announcements of the impending implementation of VAT in the UAE in 2009 and subsequently these initiatives have faltered as the Federal Authorities have grappled with the dangers and complexities of rolling out a VAT system in haste. In the current financial crisis VAT may be on the back burner but inside sources are still confident that we will see the roll out of this tax. In the region by 2012. In addition the call for a GCC wide tax system is growing with a possible standard Income tax rate in each country. Any such regime would have a relatively favorable impact on entities

Operating in countries that are already levying taxes but could be a shock to the system of those doing business in the mostly tax-free environments of Bahrain and the UAE. For tax advisors in the region the hope is for a central tax authority, comprehensive guidance on the application of the regime and consistency in the interpretation. Would an efficient clearance process also be too much to ask?

UHY Egypt is closely monitoring the impact of the financial crisis in the region and will continue to meet with companies to determine what are the appropriate mix of tax optimization strategies that will best suit the needs of management in unlocking value from the tax positions held.

## **Egypt**

The Egyptian Tax Authority recently issued a new Real Estate Tax Law No. 196 of 2008. The new tax law is effective from 24 June 2008. Under this Law tax will be levied on the Rental value of real estate starting from January 2009.

### **Outline of the Real Estate Tax Law No. 196**

1. All real estate owners will be subject to the new tax law.
2. A unified tax rate of 10% will be applied on the rental value determined by the Authorities.
3. The due date for payment of the tax will be the 1st of January of each year.
4. The annual rental value for properties will be reassessed every 5 years.
5. The ceiling for the increase in the rental value will be as follows:
  - ▶ 30% of the previously assessed value for properties used as accommodation.
  - ▶ 45% of the previously assessed value for properties used for other purposes.
6. Appeals against assessments need to be submitted within a period of 60 days from the date of assessment.
7. A basic exemption on the rental value of EGP 6,000 will be granted to properties used for accommodation.

### **Properties, which are not subject to tax, are set out below**

1. Properties owned by the government, which are used for public purposes.
2. Buildings constructed for religious purposes.
3. Any other properties used for public purposes.
4. Properties owned by Registered Associations.
5. Properties owned by International Organizations.
6. Educational Institutions, Hospitals, City halls and Orphanages.
7. Properties owned by Unions and Parties.
8. Any property or unit with a rental value less than EGP 6,000.
9. Properties owned by Foreign Governments including Embassies and any property used for Foreign Governmental Operations.
10. Properties designed for the benefit of Agricultural Lands.
11. Properties exempted by any other laws.

### **Tax rate**

Tax will be levied @ 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 for properties used for other purposes.

**Example of tax computation for properties used for accommodation:**

	<b>EGP</b>
Market value of the property	5,000,000
Capital Value: 5,000,000 X 60%	3,000,000
Rental Value 3,000,000X 3%	90,000
Deduct: Maintenance expenses: 90000 X 30%	(27,000)
Net rental value	63,000
Less: Annual exemption	(6,000)
Taxable value	57,000
Tax due: 57,000 X 10%	<b>5,700</b>

**Example of the tax computation for properties used for other purposes:**

	<b>EGP</b>
Market value of the property	1,000,000
Capital Value: 1,000,000 X 60%	600,000
Rental Value 6,000,000X 3%	18,000
Deduct: Maintenance expenses: 18000 X 32%	(5,760)
Net rental value	12,240
Tax due: 57,000 X 10%	<b>1,224</b>

## **Jordan**

### **Introduction of a unified tax law in Jordan Introduction**

The Ministry of Finance has issued the draft tax law which covers all taxes in Jordan. The goal of the new tax law is to unify, simplify and create a comprehensive standardized tax in Jordan. The new law will deal with all sources of taxes in a unified manner including income tax, sales tax, property tax and levies on a variety of goods and services.

#### **Summary of major changes**

- ▶ Corporate Income tax rates will be reduced to 20% and 35% instead of the current 15%, 25% and 35% rates.
- ▶ Individual income tax rates will be reduced to 10% and 20% instead of the current 5%, 10%, 20% and 25% rates.
- ▶ Permanent establishment, thin capitalization, tax credit, transfer pricing, capital gain and related parties rules have been introduced in the draft tax law
- ▶ No early payment discounts.
- ▶ Foreign tax credit permitted.
- ▶ No deemed tax basis
- ▶ Agricultural income to be subject to income tax.
- ▶ Carry forward losses limited to five years instead of an unlimited period.
- ▶ Interest on Treasury Bonds will be taxable.
- ▶ No rent neither exemption nor tax credit of property tax
- ▶ Entertainment and Head Office expenses are not tax deductible.
- ▶ Individual employee tax deductions limited to JD 13,000 for married spouse and JD 5,000 for single person. There will be no salary exemptions or transportation and entertainment allowance deductions.
- ▶ Contribution to provident fund more than JD 2,000 per annum, interest from provident funds, medical expenses. Life insurance premium will be included in taxable income.
- ▶ Pension salary above JD 6,000 per annum will be taxable income
- ▶ Cancellation of other taxes such as Welfare tax, Stamp duty, University Tax and Technical Vocation Education and Training Fees.

The proposed new law will revoke the following laws and their related amendments:

1. Income Tax Law. No.57 of 1985
2. General Sales Tax Law No. (6) Of 1994
3. Social Tax Law No. 89 of 1953
4. Stamp Duty Law No. 20 of 2001
5. Livestock Tax Law No. 41 of 1963
6. University Fees Law No. 4 of 1985
7. Additional tax fees law No. 28 of 1963
8. Land Registration Law No. 26 of 1985
9. Land Sale Tax Law No. (21) Of the year 1974 In addition the following articles contained in other laws that provide for levies and fees will also be revoked:
  1. Article (6/g/1) of Training Vocational & Educational Training fund temporary law No. 58 of 2001.
  2. Article (13) of Higher Education and Scientific Research Law No. 4 of 2005.
  3. Article 48 of Municipalities Law No. (14) Of 2007.
  4. Articles (3, 4, 5, 25, and 27) of Temporary Investment Law No. 68 of 2003.
  5. Article (15) of Royal Films Commission No. 27 of 2003
  6. Article 7 and article 5/8 of Culture Act No.36 of 2006.

**The following tables highlight the changes that will be made on specific taxation issues under the new law**

**Income Tax Law**

<b>Issues</b>	<b>Current laws and regulation</b>	<b>Draft law</b>
Permanent Establishment	No definition	Definition is similar to the terms in the OECD Model.
Capital gain	No specific period	To fall under the classification of a capital gain, the holding period of the asset should be more than one year and the main activity should not be trading in shares, bonds or real estate.
Services performed outside Jordan	Not taxable income	Taxable Income
Reinsurance premium paid to non resident party	Exempted income	Taxable income
Early payment discount	The Income Tax Law and regulations provide incentives to taxpayers who Choose to make payments in advance. The following credits can be claimed: a) 6% for payments made in the first month after the fiscal year-end; b) 4% for payments made in the second month after the fiscal year-end; and c) 2% for payments made in the third month after the fiscal year-end.	No discount
Corporate Income Tax Rates	Corporate Income Tax is levied at the following rates.	
<b>Sector</b>	<b>Rate (%)</b>	
Hospitals, hotels, industrial, mining, Construction and transportation	15	First taxable income of JD 50,000 at 10%, the rest at 20%
Banks and financial institutions	35	First taxable income of JD 50,000 at 10%, the rest at 35%
Insurance, exchange (foreign exchange(Dealers), telecommunication, trade, services and other companies	25	First taxable income of JD 50,000 at 10%, the rest at 20%

Issues	Current laws and regulation	Draft law
Foreign Tax	Taxable expense	A tax credit is permitted provided that the foreign tax jurisdiction allows reciprocity and is not a tax haven as defined by the OECD. In Addition the tax credit should not affect the tax liability on local income.
Foreign Branch	Taxable at 7% from reported profit after tax	Taxable at normal rate whereas foreign tax can be claimed as Tax Credit.
Interest in suspense	Interest in suspense according to Central Bank of Jordan (CBJ) is classified as taxable expense provided that interest is overdue for more than 180 days.	Interest in suspense is taxable income when received.
Doubtful debt	Debts written off should not exceed 25% of taxable income and the overdue period should be more than 12 months up to JD 100,000 and 24 months amount up JD 500,000 and 36 months for amount above JD 500,000.	For banks and financial An institutions bad debt according to CBJ is tax expense. For other companies only debt written off according to instructions will be issued.
Provisions	Insurance companies may deduct reserves. In addition, banks, insurance companies and certain other companies may deduct doubtful debt provisions as follows:	Insurance companies' compulsory reserves are deductible expense No reference to deemed tax
	a) 5% of the balance of debts due for more than one year but less than two years; and	
	b) 10% of the balance of debts due for more than two years but not more than three years.	
	However, the deductible amount of a provision may not exceed in a year 1% of the outstanding debts relating to the taxable activity	
	Beginning in 2002, banks may deduct a provision for bad and doubtful debts as calculated in accordance with the Central Bank of Jordan guidelines, subject to certain limitations.	80% from the provision required by CBJ is a tax deductible expense

## **Kuwait**

### **New Tax Law**

On 20 July 2008, the Ministry of Finance (MOF) issued the Executive Bylaws for implementation of the Provisions approved under Law No. 2 of 2008.

Law no. 2 has amended the original Income Tax Decree No. 3 of 1955 and became effective for the Fiscal periods commencing after 3 February 2008.

Many recent discussions are done with the MOF to obtain their clarification on certain provisions set out below.

### **Trading in securities listed in Kuwait Stock Exchange**

Many public firms obtain discussions with senior officials at the Ministry of Finance (MOF) to seek Additional clarification on the tax situation of foreign investors trading in securities listed on Kuwait Stock Exchange (KSE). The MOF has provided additional information with respect to the compliance Procedures that may be required by foreign investors:

- ▶ Foreign investors in securities listed on the KSE will be required to register with the Department of Income Tax (DIT) and obtain a tax card to confirm that its income has already Been subject to tax withholding and to confirm that they do not have any further compliance Requirements.
- ▶ Foreign investors will be required to obtain a tax card from the MOF within 30 days of investing In a Kuwaiti Company. This tax card must be renewed annually.
- ▶ The details of the procedures under which a foreign investor can obtain a tax card have not yet been issued by the MOF. Clarification from the MOF is expected in the coming weeks.

It is important to note that the application of the provisions of Law No. 2 and the Bylaws are yet to be tested in practice.

We are also expecting formal clarification from the MOF on the following aspects:

1. Whether capital gains arising from trading in securities listed in the KSE are tax exempt, Irrespective of the period of holding of the investment; and
2. Whether dividend income shall be subject to a 15% withholding tax and the tax shall be required to be withheld by the foreign investors' custodian in Kuwait.

### **Extension in time for filing tax declaration**

In a recent case the MOF has started to apply the new rules set out in the Bylaws with respect to extensions in time for filing tax declarations.

The Bylaws provide that a request for extension in time for filing the tax declaration should be submitted to the MOF by the 15th day of the second month (previously the third month) after the fiscal year end. The maximum extension in time to be granted will be 60 days (it was 75 days previously).

For example, although the tax declaration for a continuing tax payer in Kuwait for the year ended 31 December 2008 will be subject to tax under the original tax law (i.e. subject to tax at a rate of up to 55%), any request for an extension on time for filing the tax declaration should be submitted by 15 February 2009. The MOF is now restricting the maximum time extension allowed to 60 days.

The MOF advised that further clarifications on some of the amendments contained within Law No.2 and the Bylaws would be officially issued by the MOF in the coming weeks.

## **Lebanon**

The Lebanese Parliament has recently approved the New Tax Procedures Law No. 44. This Law is effective starting from 1 January 2009

This law reflects the Lebanese Government's strong commitment to improve the business environment and to provide transparency and clarity in tax procedures.

Law No.44 does not replace the current tax laws; however it unifies tax procedures contained in the different tax laws under one law.

The main features of Law No. 44 include:

- ▶ It streamlines the tax procedures including tax appeals, penalties, statute of limitations etc.
- ▶ It clearly sets out the rights and requirements of the taxpayer as well as the tax authorities
- ▶ It clarifies tax issues that were considered as gray areas in the past
- ▶ It defines the concept of related parties for tax purposes

### **Important Amendments:**

#### ***Article 1***

##### **Tax includes:**

- a. Income Tax
- b. Built Property Tax
- c. Inheritance Tax
- d. Capital Gain Tax
- e. Value Added Tax
- f. Indirect taxes and any new tax

#### ***Article 2***

**The law sets out the common rules and formalities for different types of taxes with respect to:**

1. The rules and formalities associated with levy and collection of the tax.
2. The rights and obligations of the tax authorities and the taxpayers.
3. The penalties due in case of non tax compliance.
4. Objection on taxes and its formalities.

#### ***Article 3***

##### **Tax Governance:**

1. Tax issues are governed by this law, other legislation and international agreements.
2. When a conflict arises between this law and other tax laws based on international agreements, the international agreements should govern.
3. Tax issues are governed by this law when a conflict arises with other legislation whether the legislation is of a private or of a public nature.

**Article 9**

**Deadlines:**

1. Where the law is silent on a certain deadline, the tax authority will determine a deadline which suits the tax issue. The determined deadline should not be less than 3 working days.
2. Notification date should not be considered.
3. Monthly/yearly deadline ends in the 1st day of the following month/year.
4. The deadline starts on midnight of the first day and ends on midnight of the last day or in the last hour of the official working hours of the last day.
5. In case the deadline falls on a public holiday or Sunday, the deadline is extended automatically to the next working day.
6. Documents/tax returns that were sent within the deadline via mail or e-mail is acceptable.

**Article 10**

**Reclassification of certain transactions:**

The tax authority has the right to reclassify certain transactions in the following instances:

- A. Virtual transaction for the purpose of tax evasion
- B. Legal transaction in form but for the purpose of tax evasion
- C. Transactions between related parties if these transactions are not at arms length. Parties are considered related if one has control and supervisory authority over the other

**Article 14**

**Information about withholding tax:**

Principal taxpayer has the right to get information from the tax authorities about the withholding tax withheld and paid on his behalf.

In the case of a change in legal form, the tax reporting and payment obligation will arise as set out in the following cases:

1. Where the new legal form has the reporting and payment obligation of the tax due.
2. Where the new legal form is liable for all tax due prior to change of the legal form.
3. Where the new legal form should pay the tax due within the deadlines applicable to the old legal (Deadlines remain unchanged).
4. Where the new legal form has the right to claim back any refundable tax by the old legal form (i.e. input VAT).
5. Old partners remain jointly liable to pay the tax due regardless of the change of the legal form of the company (i.e. joint stock Company).

**Article 17**

**Sale of the entity:**

In case of sale of an entity or business, the purchaser and the seller are jointly liable for the tax due arising during the year of sale and prior years. However, this joint liability is not applicable to a tax assessment raised after 1 year from the date of notification of the relevant tax authority about the sale transaction.

**Article 21**

In the case of any tax evasion or intentional non tax compliance, the General Manager of a limited liability company and the Chairman / General Manager in case of a joint stock company are jointly liable for tax along with the company.

**Article 26**

**Rights of Tax Payers:**

Taxpayers have the right to enquire about the tax treatment of certain activity or transaction.

Tax authorities should respond to written tax queries within 2 months.

The written response of the tax authorities will be considered as a tax ruling.

**Article 29**

Accounting books and record may be maintained electronically.

**Article 30**

Accounting books and records may be in English or French. The tax authority will have the right to request an official translation of contracts or correspondence to Arabic.

**Article 33**

Inspection of the cessation of activity should be completed within 4 months from the date of request.

**Article 34**

The taxpayer will be provided a Unified Tax number, which will cover the different kinds of taxes.

**Article 35**

The tax authorities shall maintain the documents relating to a taxpayer for 10 years.

**Article 38**

The taxpayer has to mention the name of the preparer of the tax return and his tax number. The taxpayer, the auditor, and tax preparer are subject to legislative Decree. No.156 dated 16/9/1983 and its amendments by law No. 276 dated 4/11/1993.

**Article 39**

Extension for filing of the tax return

Extension will be granted for a maximum of one month for tax filing.

**Article 40**

Submission of revised tax return and eligibility to tax refund

- ▶ Submission of revised tax return and claiming tax refunds are possible
- ▶ In case of an error in the tax return, the taxpayer has the right to file a revised tax return and claim a refund of the excess tax paid, provided that the filing of the revised return is within the period of the statute of limitation.
- ▶ The filing of the revised tax return within the deadline is not subject to a late declaration Penalty.

► When filing a revised tax return within 3 months after the deadline of filing a yearly tax return and 30 days of filing any other tax return, the revised tax return will not be subject to late declaration penalty provided that the additional tax as per the revised tax return does not exceed 10% of the amount of tax due.

**Article 49**

A taxpayer will have 30 days from the date of receiving the preliminary tax assessment to provide comments. The tax authority will also get 30 days from the date of receiving the taxpayer's comments on the preliminary tax assessment to release the final tax assessment.

**Article 54**

A request for tax refunds should be processed within 45 days from the date of filing a tax refund request. Tax refunds are eligible for interest @ 0.75% per month.

**Article 55**

A delay penalty will be charged @ 1% for each month of delay and 1.5% for withholding taxes and Value Added Tax. The penalty will be calculated on additional tax and not on the tax due.

**Article 61**

**Tax Installment**

Taxes, other than Withholding taxes and Value Added Taxes, may be paid in installments over a maximum period of 3 years.

**Article 104**

Penalties as per the new law will replace penalties as per the other tax laws.

## **Oman**

### **Foreign source income:**

The Omani tax law applies tax on income based on territorial source rules.

Foreign sourced income earned by companies registered in Oman (except for banks) was, accordingly, not taxed in Oman until recently.

In a recent judgment, the Supreme Court ruled that dividends received in Oman from a foreign source were taxable in Oman subject to the principle of "Economic Dependency". This decision has extended the territorial source rule to apply to income arising outside Oman under certain circumstances.

The principle of "Economic Dependency" is not defined by the Omani tax law; it appears that, whilst branches would be considered to be "Economically Dependent", subsidiaries would not fall under this category.

With this judgment the foreign income of an Omani company will be considered taxable in Oman. A foreign company with a permanent establishment (PE) in Oman is unlikely to be taxed on income arising to the foreign company out side Oman, unless the income earned abroad is attributable to the PE in Oman.

### **ePayment Gateway**

The Information Technology Authority (ITA) formally launched the national ePayment Gateway (ePG) on 30 August 2008. ePG provides an operational e-government infrastructure and full e-commerce facilities that allow secure online payments (ePayments).

The ePayment Gateway enables efficient electronic government services in Oman and simplifies the processing of payment transactions within the country. Enabling the gateway is expected to increase the adoption of e-Services with electronic payments, particularly internet-enabled payments. This ePG should enable tax authorities in Oman to accept fees and other payments electronically. In due course, it is expected that corporate taxes may also be settled through ePG.

### **Tax treaties:**

Oman has recently ratified an agreement with Bangladesh on avoidance of double taxation on income generated from international air transport.

Oman has recently signed double taxation treaties with Vietnam and Brunei. The current status of tax treaties in Oman are as follows:

- ▶ Oman has entered into double tax treaties with Algeria, Canada, China, France, India, Italy, Lebanon, Mauritius, Moldova, Pakistan, Seychelles, Singapore, South Africa, Korea, Sudan, Syria, Thailand, Tunisia, United Kingdom, and Yemen.
- ▶ Oman has signed double tax treaties with Belarus, Egypt, Iran, Morocco, Russian Federation and Vietnam. However, these treaties are not yet in force.
- ▶ The double tax treaties signed with Brunei, Germany and Kazakhstan have not yet been ratified.

## **Treatment of head office expenses**

Article 13 of the Omani Tax law (OTL) allows the deduction of expenses from taxable income to the extent that such expenses are necessary to generate the gross revenue for that tax year. Accordingly, direct costs from the head office attributable to Oman branch operations are allowable as a deduction.

The tax department treats the head office (HO) costs that are not directly attributable to Oman operations as head office allocations. Head office allocations are restricted in accordance with Ministerial Decision (MD) 91/84.

Double Taxation Treaties (DTTs) entered into with certain countries such as the UK, Italy and Canada override the provisions of MD 91/84, and allows the deduction of executive and general administration expenses for the purpose of business without any limitation while DTTs with India, Singapore etc do not overrule the provisions of MD 91/84.

The Oman tax department is increasingly taking a position that each of the components of HO overheads should benefit the Oman branch in determining the extent of the deduction of HO expenses allowed against the taxable profit of a branch.

As a result of these initiatives undertaken by the Oman Tax department Omani branches of foreign companies that are covered by DTTs are unable to take advantage of the treaty provisions. It will be necessary for tax payers to elevate disputes in this area to the appellate levels to ensure that the treaty provisions supersede domestic law.

## **Treatment of interest**

The deduction of interest costs as per tax practices in Oman depends on whether the loan is from a third party, an affiliate or head office. The extent of deductibility in the absence of any prescribed rules clearly depends on the practices adopted by Oman Tax Authorities (OTA).

In cases where a loan is availed from a third party, the interest costs are generally allowed as a deduction.

In cases where the loan is from an affiliate, the rates of interest should be reasonable and comparable with the market rates. In such cases the deduction of interest costs are generally allowed in full by the OTA.

In cases where the branch has borrowed from the HO, interest expenses directly charged to the Oman branch is allowed as a deduction provided that the entity is able to demonstrate that the interest cost is directly attributable to the Oman branch. Allocation of interest is not allowable.

There are no specific regulations for thin capitalization in Oman. The OTA scrutinizes the interest on loan critically, where the loan is significantly disproportionate to the capital.

## **Registering branches of American companies in commercial register**

A branch registration is granted by the Ministry of Commerce and Industry (MOCI) for a foreign company only if the foreign company has been awarded a contract by the Government of Oman or a Government owned company.

Recently a Ministerial Decision has been issued by MOCI in respect of registering branches of American Companies. Consequent to the Free Trade Agreement between Oman and

USA, even before obtaining any private contract or agreements with the Government of Oman, American Companies are entitled to register branches in Oman. In these cases, the branches can even register in Commercial Register with MOCI without the physical presence of a branch in Oman.

### **New Tax Law**

A New Tax Law that was expected to be issued by the end of the year 2008 is now expected to be promulgated in 2009.

According to the Basic Law of The Sultanate of Oman, imposition of a new law to levy tax cannot be issued with retrospective effect.

Therefore, even if the new tax law is issued in 2009, we understand that it will be effective only from the tax year 2010.

## Qatar

### **Qatar income tax law update:**

There has been no news as to the final enactment date of the new Qatar tax law. The law has been finalized and is on the agenda for approval by the Advisory Council.

Exemption for foreign investors holding Qatari shares.

A new law has been enacted allowing a tax exemption for non-Qatari investors' share of profits of Qatari shareholding companies, where the shares are listed on the Doha Securities Market.

Prior to enactment of the 1993 tax law, tax exemptions were awarded to public companies on a case by case basis and a company had to apply to the Minister of Finance for an exemption. Exemptions were awarded for a period of five years prior to 1993 and these exemptions could be renewed.

The provisions of the new law are retrospectively applicable to 3 April 2005. This date corresponds to the date when Decree Law No 2 of 2005 amending the Foreign Capital Investment Law No 13 came into force. The amending law specified the following:

*"Non-Qatari investors may own up to a percentage not exceeding 25% of shares of Qatari Shareholding companies traded on the Doha Securities Market".*

Therefore the new tax exemption applies from the date which foreigners were invited to participate in companies listed on the Doha Securities Market.

The law does not refer to dividends received by foreign investors, therefore there is still some risk that foreign shareholders who have a taxable presence in Qatar may be subject to tax on the dividends received, given that the profits would not have been subject to tax at the public company level.

Structuring advice should therefore be obtained where a foreign shareholder is seeking to undertake to hold shares in listed companies in addition to undertaking operations locally.

### **Sport and social levy**

The Deputy Emir and Heir Apparent H H Sheikh Tamim bin Hamad al Thani has issued a new law requiring shareholding companies to contribute to a fund which will support social and sports activities in Qatar.

Any Qatari shareholding companies which submit their shares for public subscription will be subject to a levy of 2.5 per cent of the annual net profits.

The levies will be allocated to a fund, which will support sport, cultural, social and charitable activities. An Emiri decision on the establishment of the fund, the determination of its objectives, financial resources and management of the fund shall be issued upon a proposal by the Minister of Finance.

## **Exemption for Islamic lenders**

The Advisory Council recently reviewed two Decree Laws which will allow an income tax exemption for foreign Islamic financing institutions participating in financing certain projects in Qatar.

Qatar does not have specific tax laws applicable to Islamic Financing arrangements. The arrangements for the financing of projects tend to fall under the definition of leases for the purposes of *International Financial Reporting Standards*, which are followed by the Public Revenues and Taxes Department as the basis for calculating taxable income (with specific tax amendments required).

As such, the Islamic Financing arrangements for major projects can give rise to unintended tax outcomes for the financier, with taxable profits upfront and losses at the back end which cannot be carried back under Qatari law.

The projects which have been specifically addressed by the Draft Laws are the Ras Abu Funtas desalination power plant A1 which is with Kahraama (Qatar General Electricity and Water Corporation) and the Ras Laffan 'C' project for power and water

## **Qatar Financial Centre**

The Qatar Financial Centre's tax law is still awaiting approval from the Council of Ministers. Given that the QFC's three-year tax holiday from 1 May 2005 expired on 30 April 2008, it is likely that the effective date of the regime will not be 1 May 2008 as originally planned.

The effective date could be pushed back to 1 July 2008 or as late as 1 January 2009 to ensure that QFC entities have enough time to include tax provisions and undertake tax compliance planning for their various year ends.

## **Saudi Arabia**

### **Tax Treaties with United Kingdom and South Korea in force**

The Council of Ministers in its meeting dated 20 October 2008 has approved the tax treaty between the Kingdom of Saudi Arabia and United Kingdom which was signed in London on 30 October 2007.

After the exchange of official notifications between the two governments, the treaty will be in effect for Saudi Arabia as follows:

1. In respect of withholding taxes, for amounts paid on or after 1 January 2009.
- 2 In respect of corporate tax, for taxable years beginning on or after 1 January 2009.

The Council of Ministers has also approved the tax treaty between the Kingdom of Saudi Arabia and Republic of South Korea. The effective date of the tax treaty for Saudi Arabia is 1 December 2008.

### **New 10 years tax incentives for investors in six underdeveloped provinces in Saudi Arabia**

The Saudi Government has decided to provide 10 year tax incentives on the investment in the following

Six underdeveloped provinces in Saudi Arabia:

- ▶ Hail
- ▶ Northern Border
- ▶ Jizan
- ▶ Najran
- ▶ Abha
- ▶ Al-Jouf

Under these incentives an investor will be granted tax credit against the annual tax payable in respect of the following costs incurred for Saudi employees, which will be calculated as follows:

- a) 50% of the annual cost incurred on training of Saudi employees; and
- b) 50% of the annual salaries paid to Saudi employees, if there is any balance of tax payable after applying (a) above.

The project must comply with the following conditions to avail of the tax incentives:

1. Capital invested in the project should not be less than SR 1 million.
2. The number of Saudi employees should not be less than five, who should be employed as technical or senior administrative staff and the employment contracts signed with the Saudi employees or trainees should not be less than one year.

## Syria

### **Law no.15 of 2008**

- ▶ On July 9, 2008, the President of the Syrian Arab Republic issued law no. 15 of 2008 setting up the General Commission for Real Estate Development and Investment (GCREDI) to organize dealings and encourage investment in this sector.
- ▶ Projects licensed under this law can benefit from the following facilities and advantages:
  - ▶ Temporary entrance for all requirements of machinery, vehicles, apparatus, equipment, means of transport, buses that are needed to serve the projects.
  - ▶ Importation of all construction materials necessary for the execution of the projects.
  - ▶ The previously mentioned importations are exempted from all restrictions on importation and direct import regulations.
  - ▶ Temporary export of the previously temporary entered vehicles, equipment and apparatus but subject to approval by the Council of GCREDI .
  - ▶ To replace outdated imported items that had been imported on a temporary basis with more technologically-advanced alternatives.
  - ▶ Profits of licensed projects are subject to the favorable tax rates and advantages mentioned in article 3 and provision H of article 5 of legislative decree no.51 of 2006.
  - ▶ Arab and foreign real estate companies are allowed to open branches of their own in Syria under the provisions of legislative decree no.151 of 1952 and its executive instructions.
  - ▶ Investors may establish Syrian limited liability companies, public shareholding companies and joint companies shared with the public sector where the percentage of the public sector share is to be determined by the Prime Minister.
  - ▶ Licensing requests are subject to the approval of the Council.
  - ▶ Syrian expatriates, resident Arabs and foreigners investing in real estate development projects in Syria are allowed, after the completion of the project, to repatriate the net value of the project's foreign funds, determined based on the real value of the project, in a convertible currency and in accordance with the regulations of the foreign currency issued by the Central Bank of Syria.
  - ▶ Based on a decision from the Council, an investor shall have the right to repatriate his foreign capital abroad, if difficulties and conditions beyond the investor's ability prevent him from investing that capital in Syria.
  - ▶ An investor shall have the right to annually repatriate abroad the profits resulting from the invested foreign capital in a convertible currency.
  - ▶ Arab and foreign experts, workers and technicians working for any approved enterprise, shall have the right to transfer abroad 50% of their net wages, salaries and bonuses, and 100% of their end of service benefits, in a convertible currency.

## **Damascus security exchange market fees**

A new regulation, Regulation no 124 dated 2 September 2008, was issued by the Damascus Security Exchange (DSE) to determine the market fees.

### **1. Membership**

- ▶ A licensed company is required to pay a one off enrolment fee to the DSE of SYP 1,500,000.
- ▶ A company that has listed securities on the market is required to pay a one off enrolment fee to the DSE of SYP 150,000.
- ▶ Thereafter, the DSE collects SYP 75,000 as an annual subscription fee.

### **2. Listing**

- ▶ The DSE shall collect a one time fee, for listing the securities in the market, amounting to 0.04% of the par value of these securities, with the condition that this amount should not exceed SYP 1,500,000.
- ▶ The DSE shall collect a fee, for the listing of bonds related to Syrian Joint Stock Companies, amounting to 0.01% of the par value of these bonds.
- ▶ Except for the first year, the DSE shall collect a 0.03% annual listing fee of the par value for the listed securities.
- ▶ The DSE does not collect any annual fees for bonds listing in the market.
- ▶ The DSE does not collect any fees for listing securities issued by the Syrian government.

### **3. Trading**

- ▶ The DSE shall collect from the trading parties a 0.06% of the market value of the traded Securities as a commission.
- ▶ The DSE shall collect from the trading parties a 0.01% of the market value of bonds and Governmental securities as a commission.

## **System of brokerage company commissions**

- ▶ A new decision no.125 was issued by the Syrian Commission on Financial Markets and Securities regarding the commissions of brokerage companies.
- ▶ Commissions of brokerage companies are determined as follows:
  1. A range between 0.34% and 0.54% of the market value of traded securities.
  2. A range between 0.03% and 0.05% of the market value of bonds and treasury bonds.
  3. The above mentioned commissions do not include trading commissions and transfer of Ownership fees for the Commission, Market and Center.

## **By-laws of the Clearing and Depository Center**

- ▶ A new decision no.116 was issued by the Syrian Commission on Financial Markets and Securities regarding the establishment of the clearing and depository center.
- ▶ The depository department is responsible for the following tasks:
  1. The registration and deposition of listed securities.
  2. Securities transfer of ownership.
  3. The execution of the company's procedures for the deposited securities.
  4. Ensuring the restrictions of ownership i.e. mortgage for deposited securities and remove

Such restrictions when appropriate.

▶ The clearing department is responsible for the following tasks:

1. Clearing financial securities.
2. The settlement of securities' prices.
3. Notifying the Commission of any breach for any of the laws and regulations by any of the Members of the Center.

▶ Membership of the Center is obligatory for all listed joint stock companies and brokerage Companies that are members in the market.

▶ Listed joint stock companies have to apply for the membership of the Center within 15 days of the approval of listing.

### **Clearing and Depository Center fees**

▶ A new decision no.126 was issued by the Syrian Commission on Financial Markets and Securities regarding the fees of the clearing and depository center.

▶ The Center enrollment fees are a one time payment and are determined as follows:

1. SYP 250,000 for joint stock companies.
2. SYP 100,000 for brokerage companies. However, an additional SYP 50,000 is added to the fee for each additional activity that the company will perform with the condition that the Total fees shall not exceed SYP 200,000.

▶ The Center's annual subscription fees are as follows:

1. Except for the first year, the Center collects an annual subscription fee for Joint Stock Companies amounting to 0.02% of the par value of securities with a maximum of SYP 750,000.
2. Except for the first year, the Center collects an annual subscription fee for brokerage Companies amounted to SYP 50,000. However, an additional SYP 25,000 is added to the Fee for each additional activity that the company may perform with the condition that the Total fees do not exceed SYP 100,000.

▶ The Center collects a one time fee for the registration and depository of securities as follows:

1. 0.04% of the par value of securities.
2. 0.01% of the value of bonds issued by Joint Stock Companies.

▶ The Center collects a fee for the transfer of ownership of securities as follows:

1. 0.05% of the market value of securities from each trader.
2. 0.01% of the market value of bonds and public debt instruments from each trader.

### **Minimum wages tax exemption**

▶ A recommendation by the Economic Committee has been presented to the Prime Minister's office in order to amend the minimum exemption related to the wages and salaries tax.

▶ The Prime Minister's office referred this recommendation to the Ministry of Finance to be Studied.

▶ The new recommendation proposes that the minimum salary to be exempted from tax is to be SYP 6,250 instead of SYP 5,000.

## **Tax Committee By-laws**

▶ With reference to law no.41 issued on 31/12/2007 regarding the establishment of the General Tax Committee, the Ministry of Finance has issued a decision No.10 of 2008 in which the bylaws of the Committee are adopted. The decision also adopts the organizational structure of the Committee. The Committee was originally established to fulfill the following objectives:

1. To suggest any future tax laws and other related executive instructions. These laws will be issued by a ministerial decision.
2. To prepare the estimated annual tax revenues for the annual budget.
3. To prepare and execute a plan for combating tax evasion.
4. To sign tax treaties and agreements, and attend international, Arab and local tax Conferences.
5. To co-ordinate with the control system in order to guarantee the right execution of the Passed laws.
6. To co-ordinate with the custom authorities including exchanging information on all levels to guarantee the right execution of the passed laws.
7. To execute any other tasks assigned by the Minister.

## **Foreign Companies Act Law No. 34 of 2008**

▶ A new foreign companies act has been passed by the President of the Syrian Arab Republic on December 24, 2008. This law replaces the old legislative decree no 151 of 1952 regarding the registration of foreign companies in Syria.

▶ The new law tackles many issues related to the registration of foreign companies and the types of such registration

▶ Foreign companies that wish to perform their activities or perform services in Syria are obliged to have a legal existence in Syria.

▶ Foreign companies can establish one of the following legal forms as their legal existence:

- ▶ A branch office.
- ▶ A temporary office.
- ▶ A representation office.
- ▶ Regional office.

### ***Branch office registration***

▶ The law clearly states the procedures and documents required to open a branch office in Syria.

▶ This section of the law also mentions the conditions that constitutes a permanent Establishment.

### ***Temporary office registration***

▶ These offices can be established in case foreign companies acquires specified periods contracts. However, such establishment should also be approved by the Prime Minister's Office.

▶ The temporary office will be closed as soon as the specified period contract ends.

### ***Representation office registration***

- ▶ Representation offices are only permitted to promote the activities of the foreign company.
- ▶ Representation offices can also provide technical support to its mother company's products and contracts.
- ▶ Financial Institutions can apply for a representation office after getting the approval of the competent authorities.

### ***Regional office registration***

- ▶ Representation offices should be directly linked with the head office.
- ▶ Representation offices can not perform any commercial activities in Syria.

### ***General provisions***

- ▶ The law has also stated the condition for appointment of the general manager of the branch and its related authorities.
- ▶ Branches of foreign companies are obliged under the provisions of this law to keep official records and books of accounts. In addition, they are obliged to prepare financial statements for their operations in Syria. These statements have to be reported within the first three months of each fiscal year.
- ▶ Branches of foreign companies are required to appoint a licensed auditor.

## **Implementation of Value Added Tax (VAT)**

A conference regarding the implementation of value added tax was held recently with attendance of key officials from the Ministry of Finance.

The Ministry is working on the implementation requirements for introducing VAT by 2010. It is expected that the roll out of VAT system will lead to the cancellation of 12 other tax including consumption tax. It is expected that exemption from VAT will be allowed for basic foodstuffs, health services, agricultural products, water, electricity and gas for home using, residential real estate transactions, and education, finance and banking services, insurance services and not for profit activities.

In addition, exports are expected to be exempted from VAT.

## **United Arab Emirates**

Between 1976 and 1978, two successful projects were introduced in Dubai. Firstly, the construction of the world's largest man-made harbour at Jebel Ali and secondly, a premier ship repair and industrial marine yard, Jadaf Dubai. Shortly thereafter, Jebel Ali established itself as one of the world's busiest ports, and Jadaf Dubai as a world-class dockyard. Dubai quickly became a global import and re-export centre. Now, under UAE Law No.11 of 2007, Dubai Maritime City (DMC) is building on these well established maritime traditions, and seeks to propel the worldwide maritime industry into even higher levels of excellence.

### **Structure**

DMC is the world's first purpose built maritime centre and member of the Dubai World Group. Located near Port Rashid on mainland Dubai, DMC stretches across 2.27 million square meters of reclaimed land.

The tax-free business environment of Dubai, 100% legal ownership, responsive government support, an effective port structure and plans to become a unique maritime hub are all prime advantages generating widespread interest in DMC by foreign investors.

The city aims to integrate diverse sectors of the maritime industry whilst being divided into six prime zones:

1. The industrial precinct;
2. Academic Quarter;
3. The Maritime Centre;
4. Harbour Offices;
5. The Marina District; and
6. Harbour Residences

Furthermore, the establishment of a dedicated training institution, Emirates International Maritime Academy, is an important initiative to support the steady supply of highly qualified professionals in the region.

### **Corporate establishments and licensing requirements**

Although the DMC is not a free zone, foreign investors are permitted to apply for a license to form a representative office; Free Zone Establishment (DMCEST); or Free Zone Company (DMCCO).

Licences are offered to establishments that qualify within sectors of the marine and maritime industry.

Although this was initially the responsibility of Dubai's Department of Economic Development (DED), under the new setup, DMC now centrally facilitates all maritime-related transactions including trade name, issuance of license, renewal of license, amendment of license and cancellation of license.