The Inward Investment and International Taxation Review

Fifth Edition

Editor
Tim Sanders

Law Business Research

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EDITOR'S PREFACE

Cross-border corporate structures and transactions are under ever closer scrutiny. While a global economy requires the free movement of capital, goods and services and legitimate cross-border financing and business acquisitions, governments are increasingly concerned by the potential this activity creates for artificial erosion of their tax base and are taking action to protect it. In response to this trend, the current edition has a chapter dedicated to 'BEPS': the OECD Action Plan on Base Erosion and Profit Sharing.

Recent, tangible examples of governments acting to protect their tax base include Notice 2014-52 issued by the US Treasury on 22 September, in response to US corporates relocating their headquarters to non-US jurisdictions. The Notice describes regulations that the US government intends to issue to curtail tax benefits of US corporate inversions where the transaction closes on or after the issue date of the Notice, with no grandfathering for signed but yet to be completed transactions. The Notice also indicated that the US Treasury is reviewing its tax treaty policy and the extent to which it is appropriate for inverted groups to obtain treaty benefits. A further example is the UK government's plan to publish a consultation document on new measures to prevent multinational companies exploiting differences between countries' tax rules through the use of 'hybrid mismatch' arrangements, the focus of action 2 of the OECD's BEPS action plan on international corporate tax avoidance. In the UK Autumn Statement draft legislation was put forward to introduce a new UK tax called diverted profit tax at 25 per cent on profits deemed to have been diverted from the UK (1) through entities, including UK corporate taxpayers, or by means of transactions that deliver effective tax mismatch outcomes without sufficient underlying economic substance or (2) as a result of planning designed to avoid trading in the UK through a UK permanent establishment. These are not isolated examples.

The concern is that legitimate cross-border commercial activity will become caught up in attempts to curtail what governments regard to be artificial and unacceptable activity. At the extremes the distinction between what is genuine commercial activity and artificial manipulation is clear but there is a middle ground where legitimate commercial transactions and activity also generate tax benefits and how this area will be caught up

in the drive to tackle perceived cross-border abuse is an area to watch. Whatever the obstacles, companies will continue to trade in the global economy, across borders and as governments increasingly target such activity there will be a pressing need for the adviser to consider the potential impact these initiatives could have on their clients' tax affairs.

The aim of this book is to provide a starting point for readers, and to assist businesses and advisers, each chapter providing topical and current insights from leading experts on the tax issues and opportunities in their respective jurisdictions with a chapter on the overarching potential impact of BEPS. While specific tax advice is always essential, it is also necessary to have a broad understanding of the nature of the potential issues and advantages that lie ahead; this book provides a guide to these.

I should like to thank the contributors to this book for their time and efforts, and above all for their expertise. I would also like to thank the publisher and the team for their support and patience. I hope that you find the work useful, and any comments or suggestions for improvement that can be incorporated into any future editions will be gratefully received.

The views expressed in this book are those of the authors and not of their firms, the editor or the publishers. Every endeavour has been made to ensure that what you read is the latest intelligence.

Tim Sanders
Skadden, Arps, Slate, Meagher & Flom LLP
London
January 2015

Chapter 42

UNITED ARAB EMIRATES

Gregory J Mayew and Silvia A Pretorius[1]

I INTRODUCTION

The United Arab Emirates (UAE) was established in 1971 under a written constitution as a federation of the seven emirates of Abu Dhabi, Ajman, Dubai, Fujairah, Ras Al Khaimah, Sharjah and Umm Al Quwain. The significance of the UAE economy is based on the discovery, in the 1950s in Abu Dhabi and the 1960s in Dubai, of major quantities of crude oil and the subsequent generation of very substantial revenues from its export, especially following the price increases in 1973.

Abu Dhabi is the federal capital of the UAE and the site of a number of federal ministries, the UAE Central Bank, and other government institutions and agencies.

Under the Constitution of the UAE, each of the seven emirates retains a very substantial measure of control over the conduct of governmental affairs within the emirate. The important subjects over which the federation exercises control are defence, foreign affairs, communications, education and health. In addition, the federation has legislative authority with regard to a number of matters, including commercial and corporate law. The individual emirates retain control over all matters not specifically stated in the Constitution to be under federal authority.

The UAE attracts substantial foreign direct investment (FDI). The Ministry of Economy estimates that the UAE will attract US$14.4 billion in FDI in 2014, which will mark the fourth straight year of FDI growth.[2] Key advantages for investing and doing business in the UAE include the fact that the UAE has a stable economic and political background, and that the country provides a unique geographical location for worldwide business opportunities. Many financial institutions and international

1 Gregory J Mayew is a partner and Silvia A Pretorius is an associate at Afridi & Angell.

2 'UAE No.1 in GCC for direct foreign investment flow', *Khaleej Times*, 12 August 2014.

industrial companies have taken advantage of the location's appeal. Other factors include no income tax (with limited exceptions) and fast population growth in recent years.

Despite the recent global economic crisis, the UAE has in excess of 97 billion barrels of proven oil reserves, or about 8 per cent of the world's proven oil reserves, and Abu Dhabi commands one of the wealthiest sovereign investment funds in the world. The UAE, furthermore, has one of the highest incomes per capita in the world. All of these factors should cause the UAE to continue to have an income per capita in the foreseeable future that is among the highest in the world, and continue to remain a preferred jurisdiction for inward investment.

II COMMON FORMS OF BUSINESS ORGANISATION AND THEIR TAX TREATMENT

The types of business entity most commonly used in the UAE by inward investing corporates and non-residents are companies or branch offices of foreign companies created under UAE Federal Law No. 8 of 1984 on Commercial Companies, as amended (Companies Law). Another commonly used option is establishing an entity in one of the many free zones in the UAE.

Prior to discussing these various corporate structures in more detail, it is important to note that there is no federal income tax law in the UAE, and although all but one of the emirates have statutory income tax laws providing for tax on corporate bodies that are still technically effective with certain exceptions (principally oil producing businesses and banks), a foreign business currently investing inwardly can safely conclude that its activity will not be subject to taxation.

i Corporate

The Companies Law applies to all companies established in the UAE, and to foreign companies that have one or more branches in the UAE. It regulates existing branch offices of foreign companies, and contains regulations for the establishment of new branch offices of foreign companies. It does not apply to sole proprietorships or to non-commercial entities.

The following provisions of the Companies Law are of particular importance:

a all companies organised in the UAE are required to have a minimum of 51 per cent UAE national ownership;[3]

b all branch offices of foreign companies are required to have a national agent unless the foreign company has established its offices pursuant to an agreement with the federal government or an emirate government; and

c all general partnership interests must be owned by UAE nationals.

3 Citizens of other GCC (Cooperation Council for the Arab States of the Gulf) countries are generally treated like UAE citizens for the purposes of meeting the 51 per cent ownership requirement, although there is a small list of exceptions for certain types of businesses. The GCC Member States are Bahrain, Kuwait, Oman, Qatar, Saudi Arabia and the UAE.

The Companies Law provides for the organisation of seven types of businesses: general partnership, limited partnership, share partnership company, joint venture (a contractual relationship and not a body corporate), limited liability company (LLC), public shareholding company and private shareholding company.

The LLC is the preferred choice as corporate vehicle in the UAE. An LLC must have at least two and not more than 50 owners. Foreigners (individuals or corporate entities) are permitted to hold minority shareholdings of up to 49 per cent of the capital of the LLC.

The Companies Law gives the shareholders considerable freedom in structuring the articles of association for the LLC, and particularly those provisions regarding the management and governance of the LLC, according to their particular needs. *Inter alia*, the parties are free to include provisions allowing the minority shareholder to retain considerable management control of the LLC. This makes the LLC a useful vehicle for foreign companies wishing to set up subsidiaries in the UAE. An LLC may be licensed to conduct any lawful activity, except for the business of insurance, banking and investment of money for the account of others.

Despite the restriction of foreign ownership to 49 per cent, foreign investors continue to invest in local companies. In order to facilitate this, practices have developed to work around the 51 per cent local shareholder requirement. Various contractual arrangements and powers of attorney are often put in place between the UAE shareholder and the foreign owner confirming that the foreign party has the right to receive all distributions, including profits and assets on a liquidation, exercise all voting rights and manage the business. In turn, the UAE shareholder agrees not to interfere with the management of the business, not to make any claim for profits, capital, assets, equipment, dividends, ownership or voting rights, not to transfer or pledge his or her shares, and to provide all reasonable assistance required from him or her.

In exchange for this, the foreign party will pay an annual fee to the UAE shareholder, and accept all liabilities of the company and indemnify the UAE shareholder in respect of any claims and losses brought against him or her as shareholder (as long as he or she is not at fault or in breach).

Although such contractual arrangements are widely used in the UAE, they have not been fully tested in the courts and remain an uncertain tool. In practice, such arrangements are not often challenged, and a court could seek to give effect to such agreements as a private agreement between the parties where third-party interests are not thereby prejudiced. However, a law that came into effect in 2009 may have potential implications for such agreements.[4]

The second preferred choice, a branch of a foreign company, is required by Article 314 of the Companies Law to have a sponsor (termed a national agent). The national agent must be a UAE national or a company wholly owned by UAE nationals. The national agent has no ownership rights in the branch, and is responsible only for rendering certain

4 UAE Federal Law No. 17 of 2004 concerning Commercial Concealment came into effect in late 2009 and, although its intended purpose and implications are open to interpretation, has raised concerns about the validity and enforceability of such contractual arrangements.

basic services, but is not responsible for any financial or other liabilities or obligations of the foreign company. In exchange for this, the foreign party will pay an annual fee to the national agent (usually called a sponsorship fee), and accept all liabilities of the branch and indemnify the national agent in respect of any claims and losses brought against him or her as national agent (as long as he or she is not at fault or in breach). Terminating a relationship with a national agent can often be difficult as a practical matter, and will require the continuing cooperation and consent of the national agent.

The national agent is not the same as a commercial agent, and the provisions of Federal Law No. 18 of 1981 Regulating Commercial Agencies Law (Commercial Agencies Law) (discussed below) should not apply to the national agent.

The term 'free zone' refers to one of the many areas designated as such within the UAE. Free zones are often established to cater to particular types of businesses.

Foreign companies are generally permitted to establish branches in free zones, and such branches are exempt from the requirement to appoint a local agent. Legislation in each of the free zones also permits the incorporation of corporate entities that exist and operate outside the purview of the Companies Law, and that do not require the involvement of a UAE national partner (i.e., 100 per cent foreign ownership is permitted). The establishment of a free zone branch or a corporate entity is handled by the relevant free zone authority. Free zones generally guarantee freedom from corporate and income taxes for a specified period.

Conceptually, companies operating in a free zone are treated as offshore or foreign companies for non-export purposes, and are not permitted to conduct business activities within the rest of the UAE without complying with the rules generally applicable to the establishment of a foreign business presence. Normal import duties are payable on sales by free zone companies to customers within the UAE.

In 2005, the Emirate of Dubai launched the Dubai International Financial Centre (DIFC). The DIFC represents a radical development, in that it is designed to operate independently of UAE civil and commercial laws generally, and it has its own legislation and court system modelled generally on English common law. The language of the DIFC is English, and a majority of DIFC judges have common law experience.

As an alternative option, many foreign companies will appoint a commercial agent to offer their goods and services to consumers in the UAE through local agents and distributors. The Commercial Agencies Law governs the relationship between foreign principals and local agents and distributors. It offers significant protections to the local party if the agency or distributorship is registered with the Ministry of Economy. In order to register the agency or distributorship, the agent or distributor must be a UAE national or a company wholly owned by UAE nationals. The statutory protections to the local party flowing from registration include, *inter alia*, exclusivity, restrictions on the foreign party's right to terminate or withhold renewal of the relationship, and the right to receive compensation on termination or non-renewal of the relationship. Although there are a number of disadvantages to registration of an agency or distributorship from

the foreign party's perspective, certain government departments may insist on dealing only with registered agents or distributors.[5]

ii Non-corporate

All general partnership and limited partnership interests can only be owned by UAE nationals. They are not subject to any taxation and are not fiscally transparent as, unlike other companies, they are not required to have their annual financial statements audited by accountants registered in the UAE and to submit such audited statements to the Ministry of Economy.

III DIRECT TAXATION OF BUSINESSES

i Tax on profits

There is no federal income tax law in the UAE, or any federal taxes on income (except as noted further below in this section). Accordingly, the pre-federation income tax decrees of the individual emirates remain applicable.

Corporate income tax statutes have been enacted in each of the emirates, but they are not implemented. Instead, corporate taxes are collected with respect to branches of foreign banks (at the emirate level) and courier companies (at the federal level). Further, emirate-level 'taxes' are imposed on the holders of petroleum concessions at rates specifically negotiated in the relevant concession agreements. There is no personal income tax.

Dubai and certain other emirates impose taxes on some goods and services (including sales of alcoholic beverages, hotels, restaurant bills and residential and commercial leases), but there is no sales tax or value added tax (VAT) in the UAE.

Each emirate, except for Umm Al Quwain, has an income tax decree. The income tax decrees of the emirates of Fujairah (1966), Sharjah (1968), Ajman (1968), Dubai (1969) and Ras Al Khaimah (1969) are based on and broadly similar to the Emirate of Abu Dhabi Income Tax Decree of 1965 (together, as amended, Income Tax Decrees), which will be the basis for discussion here.[6] No other taxes are imposed on corporate income.

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5 Many agency relationships in the UAE are not registered, and non-registration generally works to the foreign principal's advantage.

6 The official language in the United Arab Emirates is Arabic; as such, all legislation is promulgated in Arabic. The discussion in this chapter is based largely on unofficial translations of this legislation, although the official Arabic texts of the Abu Dhabi Income Tax Decree of 1985 (as amended) (Abu Dhabi ITD) and the Dubai Income Tax Decree of 1969 (as amended) (Dubai ITD) have been consulted. Some of the material differences in treatment between the Abu Dhabi ITD and the Income Tax Decrees of the other emirates are indicated in these footnotes.

Taxable persons are defined as juristic entities or any branches thereof,[7] wherever organised, that conduct trade or business[8] at any time during the tax year through a permanent establishment[9] based in the respective emirate, whether directly or through the agency of another juristic entity, unless exempted.[10] The Income Tax Decrees make no distinction between resident and non-resident corporations, but instead define a taxable person as, *inter alia*, having a permanent establishment within the respective emirate.

Banks

The principal difference in the treatment of local and foreign commercial banks is that local banks are not subject to any taxation on their income, whereas foreign banks may be subject to taxation at the emirate level. Additionally, a foreign bank may not establish more than eight branches in the UAE. The tax paid by banks varies from emirate to emirate and also within each emirate where certain banks are allowed to make annual payment of an agreed sum without reference to the level of profits or losses. In Abu Dhabi, banks are required to pay a tax of 20 per cent on net profits.

The government of Dubai issued Regulation No. 2 of 1996 (Regulation No. 2) setting out guidelines to be used by branches of foreign banks in calculating income tax due to the government of Dubai from taxable income arising from the conduct of business in the Emirate of Dubai.

Foreign banks operate in the Emirate of Dubai without local equity participation pursuant to special arrangements with the government. Generally, foreign banks are required to pay 20 per cent of their net profits to the government of Dubai as an income tax. Regulation No. 2 enumerates the permissible deductions that foreign banks may take in determining taxable income. For example, a foreign bank may not deduct more than 2.5 per cent of its total revenue in any year for head office charges and regional management expenses combined. Furthermore, centralised or shared expenses (including regional management expenses) of foreign branches of banks operating in Dubai may

7 Abu Dhabi ITD, Article 2(3) refers to a 'body corporate', a term that does not refer solely to corporations. Dubai ITD, Article 2(3) refers to any 'body having juristic personality' as being a taxable person.

8 Conduct of trade or business encompasses the sale of goods or rights therein; the operation of any manufacturing, industrial or commercial enterprise; the leasing of property; and the rendering of services. The simple purchasing of goods or rights therein is excluded (Abu Dhabi ITD, Article 2(4)). Dubai ITD, Article 2(6)(e) specifically includes the production of petroleum or other hydrocarbons. The Fujairah Income Tax Decree of 1966 (Fujairah ITD), Article 1 provides that only entities engaged in oil production or extraction of other natural resources are taxable persons.

9 'Permanent establishment' is defined as a branch, place of management or other place of business. It does not include an agency relationship unless the agent is authorised, and habitually exercises this authority, to conclude contracts on behalf of the principal (Abu Dhabi ITD, Article 2(10)).

10 Abu Dhabi ITD, Article 2(3).

be deducted on a prorated basis. Head office expenses must be reflected in the Dubai branch's books and certified by the external auditors of the bank's head office.

The guidelines also set out acceptable methods for calculating 'doubtful debts,' losses, amortisation of assets and capital expenditures. Losses may be carried forward and set off against taxable profits in the next tax year. Losses, however, may not be deducted from a previous year's tax obligation.

Branches must file an annual tax declaration together with audited financial statements. The financial year for foreign banks operating in Dubai must be 1 January to 31 December. Taxes are due and payable to the Dubai Department of Finance no later than 31 March of the following year. The penalty for late payment has been fixed at 1 per cent for each 30-day period that such payment is in arrears.

Oil companies

The revenue of oil-producing companies is subject to the payment of both a royalty and an income tax. Royalties are calculated as a percentage of total revenue derived from production, while the income tax is on net profit after depreciation.

In the Emirate of Abu Dhabi, the Supreme Petroleum Council (SPC), created pursuant to Abu Dhabi Law No. 1 of 1988, was designated as the supreme authority responsible for petroleum affairs in Abu Dhabi, in charge of formulating and implementing policy in the oil sector. However, Law No. 1 of 1988 did not delegate to the SPC any powers of the Ruler to, *inter alia*, levy taxes on petrochemical activities in Abu Dhabi according to the Abu Dhabi ITD. Accordingly, any royalties levied by the SPC on concessions in the Emirate of Abu Dhabi are not taxes levied in accordance with the Abu Dhabi ITD, but duties levied pursuant to the SPC's role as a petroleum policy and regulatory body, and distinct from the power of the Sovereign or Ruler of Abu Dhabi to impose taxes.

A taxpayer's taxable income is defined as its net income arising in the respective emirate from the conduct of trade or business, after making permitted deductions.[11] Taxable income is to be computed by the method of commercial accounting regularly used by the taxpayer for its own records, provided that such method fairly reflects taxable income. Such method may be on either a cash basis or an accrual basis.[12]

Costs and expenses incurred in the production of income are treated as deductions.[13] Such deductions include:

a the direct costs to the taxable person of producing goods sold or of providing services rendered by it;[14]

11 Abu Dhabi ITD, Articles 2(5) and 6.

12 Id, Articles 5(1) and 5(2).

13 Id, Article 6(1). In Dubai, banks are expressly permitted to treat as deductions head office overhead expenses charged to branches in Dubai (Government of Dubai, Circular to All Banks Subject to Dubai Tax, 24 December 1984).

14 Abu Dhabi ITD, Article 6(1)(a).

b other costs and expenses incurred by the taxable person for the purpose of carrying on trade or business;[15]

c a specified annual allowance in respect of depreciation, obsolescence, exhaustion, or amortisation of physical and intangible assets;[16]

d uninsured losses sustained by the taxable person in connection with carrying on trade or business;[17] and

e any net operating loss of the taxable person incurred in carrying on trade or business that is carried forward from a previous tax year.[18]

Deductions allowed to a taxable person dealing in oil[19] as costs and expenses incurred for the purpose of carrying on trade or business are specifically defined[20] to include certain costs and expenses incurred for the exploration for and development of petroleum or other hydrocarbons,[21] and certain royalties paid on crude petroleum dealt in by such taxable person,[22] but not to include any sums included in the credit aggregate[23] or certain sums paid to the ruler of the respective emirate as the ruler's share in profits from oil under an agreement between the taxpayer and the ruler.[24]

The following amounts may not be deducted from the taxable income of a taxable person dealing in oil: expenses deemed to be contributions to capital by agreement with the ruler of the relevant emirate,[25] sums included in the credit aggregate,[26] and certain sums paid to the ruler of the respective emirate as the ruler's share in profits from oil

15 Id, Article 6(1)(b).

16 Id, Article 6(1)(c).

17 Id, Article 6(1)(d).

18 Id, Article 6(1)(e). Dubai ITD does not provide for loss carry-forward, but does provide for deduction of losses on sales of certain depreciable property (Article 4(1)(d)), and of 10 per cent of certain expenses incurred prior to commencing trade or business in Dubai (Article 4(1)(e)).

19 'Dealing in oil' is defined by Abu Dhabi ITD, Article 2(15) as 'dealing [...] in oil or in rights to oil'.

20 But not in Dubai ITD.

21 Id, Article 6(2)(a)(i).

22 Id, Article 6(2)(a)(ii). The royalty payable under all concession agreements is 14.5 per cent pursuant to Article 1 of Federal Decree No. 55 of 1974.

23 Abu Dhabi, ITD Article 6(2)(a)(iii). Article 2(18) provides as follows:

'[...] credit aggregate' means in relation to oil of a producing company the aggregate value of all royalties (other than royalties on Crude Petroleum equal to one eighth of the value, or such greater amount as may from time to time be agreed between the Ruler and such producing company, at the applicable posted price in Abu Dhabi, of crude petroleum produced in Abu Dhabi and exported therefrom) and rentals, and of all taxes (other than the tax imposed by this Decree), duties, imposts and other exactions of a like nature and of any payments in lieu of any tax which accrue from or are paid by whomsoever to the Ruler or to any State, governmental or other public authority in Abu Dhabi (whether central or local) in respect of the relevant income tax year in connection with the production, transportation, sale, shipment or export of such oil.

24 Abu Dhabi ITD, Article 6(2)(a)(iv).

25 Id, Article 6(2)(a)(i).

26 Id, Article 6(2)(a)(iii). See footnote 23 for a definition of credit aggregate.

under an agreement between the taxpayer and the ruler.[27] No non-deductible business expenses are specifically enumerated with respect to taxable persons not dealing in oil.[28]

An annual deduction in respect of the depreciation, obsolescence, exhaustion or amortisation of physical and intangible assets calculated as a reasonable percentage of the original cost of such assets, and any additions thereto, are allowed. For certain specified assets, a straight-line depreciation in percentages stipulated in the Abu Dhabi ITD is presumed reasonable, subject to proof to the contrary.[29]

The total of deductions for depreciation and losses in any tax year in respect of any asset may not, when added to the total of deductions previously allowed in respect of that asset, exceed the actual cost to the taxable person of such asset.[30]

The Income Tax Decrees do not specifically address accounting issues relating to stock and inventory as a discrete category of asset. Therefore, valuation of stock and inventory may be accomplished by the method of commercial accounting regularly used by the taxpayer in maintaining its own records, provided that it fairly reflects the taxpayer's taxable income.[31] The Income Tax Decrees do not specifically refer to the depreciation of stock and inventory.[32]

Since the Income Tax Decrees do not specifically address the treatment of reserves, such treatment is to be governed by the method of commercial accounting regularly followed by the taxpayer in keeping its own records, provided that such method fairly reflects the taxpayer's taxable income.[33]

The Income Tax Decrees do not provide that dividends paid affect the taxpayer's taxable income; nor do they require a dividend-paying taxpayer to withhold a portion of the dividend as a withholding of the recipient's income tax.

Dividends received and income from capital gains are treated no differently from other types of income.

Losses

Net operating losses not allowed to be deducted from a taxpayer's income in a tax year may be carried forward indefinitely.[34]

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27 Abu Dhabi ITD, Article 6(2)(a)(iv).

28 The corresponding non-deductible business expenses apply to all taxpayers under Dubai ITD, Article 4(1)(b).

29 Abu Dhabi ITD, Article 6(1)(c)(i).

30 Id, Article 6(c)(iii).

31 Id, Articles 5(1) and 9.

32 Id, Article 6(1)(c).

33 Abu Dhabi ITD, Articles 5(1) and 9.

34 Id, Article 6(2)(e). In Dubai, banks are not permitted to make general provisions for bad debts, but are permitted to make specific provisions in respect of doubtful customer accounts (Government of Dubai, Circular to All Banks Subject to Dubai Tax, 24 December 1984). A bank may carry forward losses no more than two years (Id).

Rates[35]

Taxable amount (dirhams)	zero– 1 million	1,000,001– 2 million	2,000,001– 3 million	3,000,001– 4 million	4,000,001– 5 million	5,000,001 and over
Rate	–	10%	20%	30%	40%	50%

The rate of tax payable on income of oil-producing taxpayers in the emirates of Ajman and Fujairah is 50 per cent.[36] The corresponding figure in the emirates of Abu Dhabi and Dubai is 55 per cent,[37] and in the Emirate of Sharjah, 65 per cent.[38] Ras Al Khaimah has no separate provision governing petroleum-producing taxpayers.[39]

Administration

All foreign companies, public and private shareholding companies, LLCs and share partnership companies are required to have their annual financial statements audited by accountants registered in the UAE, and to submit such audited statements to the Ministry of Economy. Branch offices of foreign companies are required to prepare their annual accounts on an independent basis for operations in the UAE, and to maintain the necessary books and documents of account within the UAE.

Within three months of the end of each tax year (1 January to 31 December), taxable persons are required to file a provisional income tax return. Taxable persons with taxable income below the threshold of 1 million dirhams are exempted unless specifically directed to file. The returns are filed with the respective director of tax appointed pursuant to the Income Tax Decrees.[40]

Income tax is to be paid in quarterly instalments based upon the provisional declaration. Within nine months of the end of the tax year, taxable persons are required to file a final income tax declaration. Discrepancies between the provisional and final declarations are to be reconciled by adjustment of the final quarterly tax instalment and, if necessary, a partial tax refund.[41]

Failure to file the declaration or to pay income tax without reasonable cause incurs liability for a fine of 1 per cent of the amount payable for each 30-day period or portion

35 Abu Dhabi ITD, Article 4(1); Ajman Income Tax Decree of 1968 (Ajman ITD), Article 4(1); Dubai ITD, Article 2(19)(a); Sharjah Income Tax Decree of 1968 (as amended) (Sharjah ITD), Article 4(1). Fujairah ITD omits this progressive tax on non-petroleum producing entities. Under the Dubai ITD, a taxpayer whose income reaches a particular tax bracket has the rate of that bracket imposed on his or her entire income. In contrast, the other income tax decrees impose the progressive tax rates only on that portion of the taxpayer's income that falls into the relevant brackets.

36 Ajman ITD, Article 4(2); Fujairah ITD, Article 1; Ras Al Khaimah Income Tax Decree of 1969 (as amended), Article 4(2).

37 Abu Dhabi ITD, Article 4(2); Dubai ITD, Article 2(19)(b).

38 Article 4(2), Sharjah ITD.

39 Ras Al Khaimah Income Tax Decree of 1969 (as amended), Article 4.

40 Abu Dhabi ITD, Article 8(1).

41 Id, Article 8(2).

thereof during which the failure continues. Extensions of time for filing may be granted upon proof of a justifiable reason.[42]

The director of tax has power to inspect relevant books and records.[43] Penalties for falsification of records or making false statements include imprisonment or a fine, or both. A taxable person affected by such falsification, if legally responsible, is also liable to a fine.[44]

Disputes as to application of the tax laws are subject to the jurisdiction of the UAE courts or, by agreement, to arbitration.[45]

ii Other relevant taxes

Establishment of a branch office or an LLC in the UAE will entail payment of various fees in the course of the licensing and registration process. Although these fees are not taxes as such, the amounts involved can be significant and should be taken into consideration as a potential cost of doing business in the UAE.

Establishment of a branch office in the UAE will also mean payment of sponsorship fees to the national agent of such branch.

Customs duties are generally low. Under the GCC agreement to impose uniform rates for customs duties, the UAE imposes a uniform 5 per cent customs duty on the import of goods from outside the GCC.[46] Limited exemptions apply to military and security purchases and some foodstuffs.

IV TAX RESIDENCE AND FISCAL DOMICILE

i Corporate residence

Tax residency is not clearly defined under UAE law, in the absence of any enforced income tax legislation. The Income Tax Decrees make no distinction between resident and non-resident corporations, but instead define a taxable person as, *inter alia*, having a permanent establishment within the respective emirate. In addition, double taxation treaties provide a basis for determining tax residency under the applicable treaty. Eligible foreign companies can obtain tax residency certificates from the UAE Ministry of Finance.

ii Branch or permanent establishment

Entities incorporated outside of the UAE can have a fiscal presence through licensed branches in the UAE. Indeed, a branch of a foreign company is treated the same as a company incorporated in the UAE under the Income Tax Decrees, as both constitute

42 Id, Article 8(3).

43 Id, Article 11.

44 Id, Article 12.

45 Id, Article 13.

46 In 2003, the GCC became a customs union (i.e., a free trade area with a common 5 per cent external customs tariff).

permanent establishments in the UAE. However, with limited exceptions (discussed above), there are no UAE tax consequences as a result of such fiscal presence.

Tax residence may be relevant to tax considerations in the foreign company's home jurisdiction under the relevant double taxation treaty.

V TAX INCENTIVES, SPECIAL REGIMES AND RELIEF THAT MAY ENCOURAGE INWARD INVESTMENT

i Holding company regimes

The applicable laws and regulations in the UAE do not provide for any special holding company regimes.

ii IP regimes

Similarly, there are no special IP regimes in the UAE.

iii State aid

Tax law should be considered in the context of any major project, notwithstanding that the UAE is generally a tax-free jurisdiction. The tax treatment that will be extended to the project should be negotiated in detail and in advance. For major projects, tax holidays or the extension of national treatment may be available for a specified period of time.[47]

Some entities that would otherwise be taxable persons have been expressly exempted by the respective rulers,[48] by federal legislation or by their location in a free zone. For other taxable persons, the Income Tax Decrees have in practice only been enforced against oil companies and certain foreign banks.[49] This selective application, however, is neither codified nor assured for the future.

As discussed above, free zones in the UAE generally provide inward investors guaranteed freedom from corporate and income taxes for a specified period.

iv General

As noted above, the UAE is essentially a tax-free jurisdiction, and the absence of corporate or personal income tax is one of the UAE's most attractive features for foreign investors.

47 The reason for seeking a tax holiday is to guard against the possibility of income tax being implemented before completion of the project.

48 See, for example, the order exempting the Middle East Bank from income tax, Dubai Official Gazette No. 129 of 1979. Such exemptions are expressly contemplated by the Income Tax Decrees (Abu Dhabi ITD, Article 2(3) and Dubai ITD, Article 2(3)).

49 As noted previously, courier companies are also taxed by the federal government.

VI WITHHOLDING AND TAXATION OF NON-LOCAL SOURCE INCOME STREAMS

i Withholding outward-bound payments (domestic law)

There are currently no withholding taxes on dividend, interest and royalties paid out by a company or other business entity.

ii Domestic law exclusions or exemptions from withholding on outward-bound payments

There are currently no withholding taxes, and accordingly the issue of exemptions does not apply.

iii Double taxation treaties

The UAE has an extensive and growing list of double taxation treaties with more than 50 countries.[50] Under these treaties, profits derived from shares, dividends, interest, royalties and fees are taxable only in the contracting state where the income is earned. Although corporate income tax is not levied in the UAE, the provisions of the treaties do not state that such income must be taxed to qualify for benefits. Thus, dividend income paid by a UAE company to a company that has a double taxation treaty with the UAE may not be taxable in the hands of the foreign parent corporation; however, it is wise to study the text of the treaties themselves before assuming anything about the tax treatment of untaxed income flows originating in the UAE.

It is possible to make an application and pay a fee to obtain a tax residency certificate issued by the Ministry of Finance to confirm a company's residence in the UAE, and to qualify for the benefits that may accrue to it in another tax jurisdiction with which a double tax treaty has been signed.

iv Taxation on receipt

As noted previously, the UAE is essentially a tax-free jurisdiction, and most businesses are not taxed at all. Companies falling into the small list of exceptions (foreign banks, foreign petroleum companies and courier companies) are not subject to taxation on receipt.

50 This network includes treaties with Algeria, Armenia, Austria, Azerbaijan, Belarus, Belgium, Benin, Bosnia and Herzegovina, Brunei, Bulgaria, Canada, China, Cyprus, the Czech Republic, Egypt, Fiji, Finland, France, Georgia, Germany, Greece, Hungary, India, Indonesia, Iraq, Italy, Japan, Jordan, Kazakhstan, Kenya, Korea, Kuwait, Latvia, Lebanon, Libya, Luxembourg, Malaysia, Malta, Mauritius, Mongolia, Montenegro, Morocco, Mozambique, the Netherlands, New Zealand, Pakistan, Palestine, Panama, the Philippines, Poland, Romania, Russia, Serbia, the Seychelles, Singapore, Slovenia, Spain, Sri Lanka, Sudan, Switzerland, Syria, Tajikistan, Thailand, Tunisia, Turkey, Turkmenistan, Ukraine, the United Mexican States (Mexico), the United States, Uzbekistan, Vietnam, Venezuela and Yemen.

VII TAXATION OF FUNDING STRUCTURES

i Thin capitalisation

There are no thin capitalisation rules (restrictions on loans from foreign affiliates) applicable in the UAE.

ii Deduction of finance costs

For most types of business, the absence of corporate taxation in the UAE renders the issue of deductions meaningless. However, for foreign banks and oil companies there may be relevant considerations relating to deduction of finance costs. These will vary depending on the emirate and the type of business. For example, for foreign oil companies in Abu Dhabi, finance costs may be deductible if they reflect costs incurred in the production of income and are computed by the method of accounting regularly used by the company, provided such method fairly reflects taxable income.

iii Restrictions on payments

Any rules that may prevent the payment of dividends are not tax-driven, and would depend on the provisions in a company's constitutional document (such as its articles of association) or whether the shareholders have specifically agreed conditions that may prohibit paying dividends (e.g., unless the directors are satisfied the paying company can pay debts as they fall due).

iv Return of capital

There are no applicable tax rules or regulations relating to equity capital, and accordingly no UAE tax consequences.

VIII ACQUISITION STRUCTURES, RESTRUCTURING AND EXIT CHARGES

i Acquisition

Foreign companies acquiring interests in a local business generally use foreign entities for the acquisition. The reason is not tax-driven, but rather a result of local ownership requirements. As noted above, UAE law requires 51 per cent UAE ownership of companies incorporated in the UAE.

UAE tax considerations are not relevant to the structuring of the financing of the transaction. Note that share capital must be paid in cash at the time the shares are issued. Some investors contribute capital through a combination of equity and shareholder loans. The reasons for using shareholder loans rather than equity are generally to lower statutory reserve requirements and facilitate return of investments to shareholders without having to go through the process of applying to reduce the share capital of the company.

ii Reorganisation

There is no taxation levied when a business in the UAE merges with (or demerges from) an existing local business.

iii Exit

Should a business decide to exit from the UAE, this will not give rise to any taxes or penalties as such. It will, however, attract fees in the course of the de-registration process, and the amounts involved can be significant.

Where an inward investor has done business in the UAE through a local agent or distributor (and which has been registered pursuant to the Commercial Agencies Law), the statutory protections to the local party flowing from such registration include, *inter alia* , exclusivity, restrictions on the foreign party's right to terminate or withhold renewal of the relationship, and the right to receive compensation on termination or non-renewal of the relationship.

IX ANTI-AVOIDANCE AND OTHER RELEVANT LEGISLATION

i General anti-avoidance

There are no applicable general avoidance rules owing to the fact that the majority of businesses are exempt from taxation.

ii Controlled foreign corporations

There are no controlled foreign corporation rules in the UAE.

iii Transfer pricing

No transfer pricing rules apply in the UAE.

iv Tax clearances and rulings

It is possible to obtain advance tax rulings to secure a measure of certainty. Although the UAE is generally a tax-free jurisdiction, taxes are imposed on foreign oil companies.[51] The tax treatment that will be extended to, for example, a specific petroleum project must be negotiated in detail and in advance, and a legislative relief required to implement the desired tax relief must be validly obtained under local law. For major projects, tax holidays or the extension of national treatment may only be available for a specified period of time.

X YEAR IN REVIEW

There have been no noteworthy developments within the past year. Potential changes in taxation policy have been publicly discussed off and on for many years. Some experts have advised that the UAE will eventually need to consider adopting certain forms of generally applicable taxation.

For example, the UAE has considered the possibility of implementing VAT. In 2008, the six GCC Member States announced plans to form a common market and related plans to implement a VAT system across the GCC; however, these plans have

51 As discussed above, foreign banks and courier companies are also subject to taxation.

so far failed to materialise. In 2011, the UAE announced plans to introduce VAT with full implementation by 2015. Such plans were subsequently indefinitely put on hold. If the UAE were to embark on a new plan to implement VAT, implementation would likely take at least a few years. At the present time, there is no federal tax authority, and one would presumably need to be created in order to implement VAT or a similar tax scheme. Reports that the creation of a federal tax authority is under consideration have been circulating for several years.

Another possibility that has reportedly been under consideration in recent years is the implementation of a corporate income tax, perhaps initially applicable only to certain companies. However, it is not possible to make any accurate predictions as to whether or when this might happen.

XI OUTLOOK AND CONCLUSIONS

While, in recent years, the authorities have apparently considered the possibility of implementing new tax schemes, thus far no legislation has been enacted to facilitate such changes, and there appears to be no imminent plan to implement VAT or any other new form of taxation.

Appendix 1

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