



GCC TAX ROUND-UP 2021

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INTRODUCTION

Now that 2021 has drawn to a close, we look back at the big tax news from the year and report on the new stories from quarter four.

Across the region, many of the tax measures introduced to help businesses through the COVID-19 pandemic came to an end in 2021. Hopefully, these measures will not be needed again.

Value Added Tax (VAT) featured prominently in the tax headlines in 2021. In Oman, taxpayers have been busy with the introduction of VAT, which is now almost complete. Oman opted for a phased implementation of the tax and the final phase, which involves the registration of businesses with taxable turnover between OMR 38,500 and OMR 249,999, runs from 1 December 2021 to 28 February 2022. The businesses concerned will be registered with effect from 1 April 2022.

Saudi Arabia also witnessed some important changes in 2021, including the merger of the General Authority of Zakat and Tax with the General Authority of Customs, and the introduction of the first e-invoicing regulations in the region. This type of regulation is becoming more common around the world, and it is likely that other GCC states will introduce their own versions of e-invoicing in due course. There has also been an interesting change to the date of supply rules in Saudi Arabia in the last quarter, which are detailed below.

2022 will undoubtedly bring many new and unexpected changes and challenges to the world of tax. One major change that has already taken place is the increase in the Bharani VAT rate, which rose from 5% to 10% with effect from 1 January 2022. We will bring you updates on that in future editions and when any other tax news breaks across the region, we will report the details and offer our views and insights to keep you informed and ready for the challenges ahead.

We wish all our readers success in 2022.

BAHRAIN



BAHRAIN

KUWAIT

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VALUE ADDED TAX

VAT rate increased to 10% from 1 January 2022

The legislation effecting this change is Law No. (33) for the year 2021 for amending certain Articles of the Decree Law. No. (48) for the year 2018 regarding Value Added Tax (VAT). The law was published in the official Gazette on the evening of 23 December 2021, and this was followed by the publication of a VAT rate change Transitional Provisions Guide and FAQs by the National Bureau for Revenue (NBR).

The amended VAT law has provided for transitional relief for standard-rated contracts straddling 1 January 2022. This relief is explained in the transitional guidelines & FAQs published on the NBR website.

The effect of the rate change is that from 1 January 2022, the supply of all taxable goods or services, goods imported, and certain services supplied by non-residents to residents (imported services), will be subject to the revised VAT rate of 10%, unless they are covered by the transitional rules. Supplies that are subject to VAT at the zero-rate and exempt or out of scope supplies will not be affected.

Transitional rules

The following dates and periods are crucial for application of the transitional rules:

- ▶ Law Enforcement Date: 24 December 2021
- ▶ Effective Date of the VAT rate change: 1 January 2022
- ▶ Transitional Period: From 1 January 2022 to 31 December 2022

Key features of the transitional rules

- ▶ Where a contract is signed before 23 December 2021, taxpayers can apply VAT at 5% until the date of expiry of the contract, the date of change or renewal of the contract or 31 December 2022, whichever is the earlier.
- ▶ Where a contract is signed between 24 December 2021 and 31 December 2021 and the taxpayer has issued an invoice or collected an advance for a supply of goods and services to be made on or after 1 January 2022, VAT at 10% shall be accounted for in the month of December 2021 or for the fourth quarter of 2021.
- ▶ Where a contract is signed on or after 1 January 2022, the supplies made thereunder shall be subject to VAT at 10%.

From 1 January 2022, the importation of goods into Bahrain will be costlier as the transitional provisions have not been extended to cover imports. Bahrain has not yet provided the mechanism for deferral of VAT payment on importation as seen in other jurisdictions in this region such as UAE and Oman, so VAT must be paid at the point of importation.

NBR has provided a definition of 'contract' for the purposes of the transitional provisions. Taxpayers should review their existing contracts, agreements, purchase orders and other business correspondence in light of this definition.

NBR has also given examples of the circumstances that might be seen as a change or amendment to existing contractual terms, and which might therefore result in a loss of the right to apply VAT at 5% during the transitional period. These include extending the duration of the contract, including additional supplies of goods or services within the terms of the contract, increasing the consideration payable and changing the type of supplies.

NBR has updated the VAT return format and taxpayers are now required to declare at the time of filing the return for the fourth quarter of 2021, the period December 2021 and for all periods thereafter, whether there are any sales and purchases which are subject to VAT at 10% as per the transitional provisions.

There could be a need for taxpayers to self-amend their prior period VAT returns where an invoice is issued or an advance is collected on or before 31 December 2021 for a supply of goods or services to be made on or after 1 January 2023 (the end of the transitional period) or if there is a change or amendment of the existing contract. Self-amendment of a VAT return is subject to NBR scrutiny and in certain cases may result in a penalty.

COUNTRY-BY-COUNTRY REPORTING (CbCR)

The Ministry of Industry, Commerce and Tourism (MOICT), in circular no. FAEI/11/MSJ/2021 dated 30 December 2021, has issued an important communication regarding Country-by-Country Reporting (CbCR). The circular has been sent to all Bahrain registered entities and is in line with the Ministerial Order No. (28) of (2021) concerning Country-by-Country Reporting, which requires all entities subject to CbCR to file their report and notification for the fiscal year end of 2021 on the International Exchange System (ITIES).

As provided in Article 2 of the Ministerial Order, CbCR requirements would be applicable to covered entities for the fiscal year beginning 1 January 2021. However, the MOICT circular states that the covered entities are required to file a CbCR notification and report for the fiscal year end of 2020. The reporting window for filing CbCR for fiscal year end 2020 will be from 31 December 2021 to 28 February 2022.

These provisions are applicable to Ultimate Parent Entity and Constituent entities of Multinational Entities ('MNE') Groups operating in Bahrain with a consolidated revenue of BHD 342 million during the year immediately preceding the Reporting Fiscal Year.

Filing of the CbCR notification and report will be through the ITIES. Entities that already have access to ITIES for the purpose of submitting Economic Substance Regulations reports or for completing FATCA/CRS can use the same login credentials for filing CbCR. Entities that do not have access to the ITIES will be required to register their organisation on the ITIES in order for the MOICT to grant access approval.

The report can be filed using any of the following methods: XML format, files which are already in XML and CbCR forms which allow the users to complete an online form and the XML will automatically be generated.

Bahrain has simplified the filing procedure for covered entities, which can submit CbCR by completing the online form available on the ITIES. XML is not mandatory.

Penalties for non-compliance will include suspension of commercial registration, imposition of administrative fine, cancellation of commercial registration and administrative investigation.

Violation notices for failure to submit Economic Substance Regulation reports

We have observed that violations for the non-submission of economic substance regulation (ESR) reports are recorded on the commercial registration of Bahraini entities. In certain cases, the violation relates to the non-submission of ESR report for the FY end of 2019.

The due dates for MOICT-regulated entities to file the ESR report were as follows:

Year-end	Extended due date
For FY end 2019	30 June 2020
For FY end 2020	18 September 2021

Failure to comply can lead to monetary fines, termination of commercial registration and prosecution in specified circumstances.

Other VAT news

Key takeaways relating to the online submission of the ESR return:

- ▶ The NBR published an important guide for VAT agents and VAT representatives in 2021. VAT-registered Bahraini businesses and non-residents have the option to appoint a VAT agent or VAT representative, respectively, to manage their VAT compliance obligations in Bahrain.
- ▶ As per the statistics mentioned on the NBR website, more than 19,650 businesses were registered for VAT as of end of third quarter 2021. However, it is believed some businesses operating in Bahrain have not obtained VAT registration even though they have exceeded the registration thresholds. VAT in Bahrain is nearly three years old and there still seems to be uncertainty amongst businesses regarding the mandatory VAT registration threshold, calculation of annual supplies and deadlines for registering for VAT purposes.



KUWAIT



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TAX HIGHLIGHTS FROM 2021

Digitalization of Tax Services

The Ministry of Finance (“MOF”) introduced an electronic system that allows Gulf companies and Individuals to apply for tax residency certificates electronically. Additionally, the MOF launched a web-based portal service (“Portal”) for accepting all correspondence with the MOF, including all tax related filings (covering Corporate Income Tax, Zakat and NLST). The Portal is available through the MOF’s official [website](#). Applications for retention release letters for fully owned Kuwaiti/GCC entities are however required to be filed using the existing electronic system.

Zakat implications for GCC companies doing business in Kuwait

Under the Zakat law in Kuwait, Zakat is applicable at 1% of the annual net profit of Kuwaiti closed and public shareholding companies. The Zakat law itself does not have any specific provisions requiring GCC shareholding companies operating in Kuwait to comply with the Zakat Law. However, the MOF has been requesting GCC closed shareholding companies doing business in or with Kuwait through a local agent or those executing short-term projects (or even providing remote services) to register with the

MOF and meet their Zakat obligations. The above application is likely to lead to tax litigation in the future unless the law is amended to apply to all GCC companies.

Proposed law relating to the exchange of information for tax purposes

During 2021, the MOF circulated a draft law on the exchange of information for tax purposes (“Draft law”) which covers any international agreements signed by Kuwait that provides for exchange of information for tax purposes except for the Foreign Account Tax Compliance Act (“FATCA”), which is covered under a separate law in Kuwait.

The Draft law applies mainly to financial institutions but contains certain obligations on other entities, as well as individuals. It reiterates the key obligations under the Common Reporting Standards (“CRS”) that Reporting Financial Institutions in Kuwait must meet and introduces hefty financial penalties and significant sanctions for failure to comply with the CRS requirements. As of December 2021, the Draft law has not been presented to the Parliament.

WHAT TO EXPECT IN 2022 – INDIRECT TAX

The local authorities circulated an updated draft plan on the financial and economic sustainable development for Kuwait. The plan looked at several items that the country needs to consider to reduce the State's budget deficit. Amongst other things, the plan proposed the introduction of excise tax in 2022 and VAT in 2023 to raise additional revenue. Excise tax has already been introduced in all GCC countries except Kuwait.

To date, no draft law was issued for excise tax or for VAT. The MOF is however in the final stages of appointing a consultant to set up an integrated tax management system that caters for current and future taxes that may be introduced in Kuwait.



SULTANATE OF OMAN



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VALUE ADDED TAX

Introduction of VAT

With the introduction of VAT in The Sultanate, Oman has taken another step towards its economic reforms plan and overall development of the country's economy. While the world was grappling with the COVID- 19 pandemic, which led to the postponement of major economic reforms elsewhere, Oman went live with VAT on 16 April 2021, using a phased approach. The tax authorities published a detailed guide on VAT registration and the effective implementation date on 5 January 2021.

Phased implementation

A summary of the timeline and effective dates of VAT registration for each phase of implementation is shown in the table below. The value of annual supplies in the table is based on the value of annual supplies for past 12 months and expected annual supplies for the next 12 months.

Phase	Annual Supplies ((OMR)OMR)	Registration deadline	Effective date of VAT registration
Phase 1	Above 1 million	1 February 2021 to 15 March 2021	16 April 2021
Phase 2	500,000 to 1 million	1 April 2021 to 31 May 2021	1 July 2021
Phase 3	250,000 to 499,999	1 July 2021 to 31 August 2021	1 October 2021
Phase 4	38,500 to 249,999	1 December 2021 to 28 February 2022	1 April 2022

The table sets out the timelines for mandatory registration. Businesses in Oman may also voluntarily register for VAT with effect from 16 April 2021, irrespective of the timeline, if the value of annual supplies exceeds OMR 19,250.

Zero rate and exemption

Most supplies of goods or services are taxable at the standard rate of 5%. However, some key sectors are exempt or zero-rated, as follows:

Sector	Zero Rate	Exempt
Oil and gas	a	r
Basic food items	a	r
Construction	r	r
Education	r	a
Healthcare	r	a
Export of goods and services	a	r
International transportation	a	r
Domestic passenger transportation	r	a
Investment-grade metals, pearls and gemstones	a	r
Commercial real estate	r	r
Residential real estate	r	a
Financial services	r	a

Note: All exemptions and zero-ratings are subject to detailed conditions that must be fulfilled.

Taxable person making zero-rated supplies are entitled to claim a full deduction of VAT paid on purchases used for making the supplies, whereas VAT paid on purchases used for making exempt supplies may not be deducted.

Recent VAT updates

VAT registration guide: The Oman tax authority has published a detailed guide on the VAT registration requirements, which includes instructions on the calculation of annual taxable supplies for the pre- and post-VAT period, the documents needed for VAT registration, the manner of VAT registration for Oman residents with or without a commercial registration number and VAT registration for non-residents.

List of zero-rated basic food items: The tax authority has extended the list of zero-rated basic food items to 488 from the initial list of 94 items.

VAT Taxpayer Guide – VAT Return Filing: The tax authority released a guide on filing VAT returns, which provides detailed comments on the information required to populate the return.

Contentious VAT treatment on supplies to the oil and gas sector: The zero-rating of supplies to the oil and gas sector continues to be a contentious topic. In a letter dated 13 July 2021, the Ministry of Energy and Minerals announced that operators in the oil and gas sector should not reject contractors or subcontractors' invoices with 5% VAT.

VAT Taxpayer Guide– Special Zone: Supplies of goods or services to or within a special zone will be subject to VAT at the zero rate, subject to conditions set out in the VAT Executive Regulations. The tax authority has issued a guide that includes information on the documents that must be maintained by the supplier to substantiate zero-rating.

VAT Taxpayer Guide – Real Estate: The tax authority has released a detailed guide on the VAT treatment of supplies connected with commercial and residential real estate. The guide includes the VAT treatment applicable to the construction sector, highlighting topics such as retention payments, snagging and transitional provisions. The guide also confirms that non-resident businesses supplying services related to real estate located in Oman to an un-registered person must register for VAT purposes in Oman and account for VAT on such supplies.

VAT Taxpayer Guide – Oil & Gas : The long-awaited VAT guide on the Oil & Gas sector has been published by The Oman Tax Authority (OTA) on 06 January 2022. The guide issued is clarificatory in nature, and hence may have retrospective impact. As Businesses in Oman prepare for FY2021 year-end closing, the VAT guide on Oil & Gas sector will remove some of the ambiguity regarding the VAT treatment applicable under Article 51, read with Article 93 of the Executive Regulations.

The Guide explains the extent of VAT zero-rating in the upstream, midstream, and downstream activities of the Oil and Gas sector, along with the conditions for VAT zero-rating. The Guide also touches on certain contentious issues such as the applicability of VAT on training levy and the recovery of input VAT on catering services and similar activities.

‘Taxpayer Checklist’ and carry forward of input tax credit: Every taxable person with input tax credit that is more than the output tax for a tax period is required to enclose a “Taxpayer Checklist,” along with other relevant documents, when filing the VAT return for the period. The taxpayer checklist consists of a detailed questionnaire designed to assess the taxpayer’s VAT implementation preparedness and the accuracy of the information submitted in the VAT return.

Upcoming deadlines

- ▶ Business with annual supplies between OMR 38,500 and OMR 249,999 must apply to the tax authority for VAT registration during the period 1 December 2021 to 28 February 2022.
- ▶ The deadline for filing the VAT return and paying any tax due for the period October 2021 to December 2021 is 30 January 2022.



QATAR



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CORPORATE INCOME TAX

Submission deadline for 31 December 2020 year ends

The deadline for filing the annual corporate income tax return and audited financial statements for 31 December 2020-year end Qatari companies and resident GCCs is 31 December 2021.

TRANSFER PRICING

Pursuant to the President's Decision No. 4 of 2020, the Qatar General Tax Authority (GTA) confirms additional transfer pricing guidelines on the submission of transfer pricing disclosure forms.

The master file, local file and transfer pricing declaration are the main documentation requirements under the "Statement of Transfer Pricing," which is effective from financial years beginning on or after 1 January 2020. These requirements ensure that the taxpayer reports related party transactions at the time it files its corporate income tax return and demonstrates compliance with the arm's length principle.

DHAREEBA PORTAL UPDATES

The GTA has activated more features on its "Dhareeba" portal (e.g., correspondence with the GTA and tax audit notifications). Taxpayers should check the Dhareeba portal on a weekly basis to avoid missing deadlines.



KINGDOM OF SAUDI ARABIA



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VALUE ADDED TAX**VAT Implementing Regulations amended**

Effective 1 November 2021, Saudi Arabia's VAT Implementing Regulations are revised to change the date of supply for certain supplies where the payment is due and payable in periodic installments (Article 20 of the regulations). Changes also have also been changes to the invoicing and record-keeping rules, in part to accommodate the new e-invoicing rules (Articles 53, 54 and 66 of the regulations), which are effective from 4 December 2021.

Date of supply - Article 20

Article 20(1) of the Implementing Regulations deals with cases where payment for a supply is to be made in installments. In such cases, a separate supply is deemed to take place in respect

of each installment, on the earlier of the due date for the installment payment or the date payment is actually made. Article 20 is revised so that a supply takes place on the earlier of:

- ▶ The date the payment is due;
- ▶ The actual payment date;
- ▶ The invoice issue date; or
- ▶ At least once in every 12-consecutive month period.

A new Article 20(5) provides that: in cases where goods or services are supplied to a government entity in accordance with contracts concluded in accordance with the Government Competition and Procurement Law, the date of the supply is considered to have occurred and tax is due on the date the payment order is issued to

the supplier for the supply or on the date of receipt of the consideration or part of it (limited to the amount received) whichever comes first.

The practical effect of this change is that for qualifying government projects, VAT is not due as output tax until the customer issues a payment order or the payment is actually made.

Invoicing, books and e-invoicing - Articles 53, 54 and 66

The changes to these **articles** can be summarised as follows:

Article	Old	New
Article (53) point 3	A tax invoice may be issued by a third party on behalf of a supplier who is a taxable person in respect of a taxable supply of goods or services. The supplier shall be responsible for the accuracy of the information shown on the tax invoice and for reporting output tax on the supply.	The taxable person may, after the approval of The Authority, seek the assistance of a third party to issue tax invoices on his behalf, The supplier will have all the obligations stipulated in the law and these regulations. The supplier is responsible for the accuracy of the information in the tax invoice and to declare correctly the due Output in the VAT return.
Article (53) point 9	N/A	The Authority's governor has the right to amend the details that must be provided in the invoices issued in accordance with this article, and he has the right to specify any additional details that must be available in Those bills are for the purposes of applying the rules of the electronic billing regulation.
Article (53) point 10	N/A	The Authority has the power to suspend or cancel the obligation to apply the provisions of the e-invoicing regulations - in whole or in part - to a category of taxpayers or to specific taxpayers after studying the reasons of this, and it may issue the necessary decisions for that.
Article (54) point 4	N/A	The taxable person who issued a tax invoice and discovered an error in his data or the customer's data mentioned in the invoice, to provide the customer with a debit or credit notice – as the case may be – under which the data of that invoice will be corrected, provided that both the supplier and the customer keep the tax invoice and the debit or credit notice The issuer under this paragraph to fulfill their tax obligations stipulated in the Law and these Regulations.
Article (66) point 4	VAT implementing regulations was accepting the taxable person who has an establishment located in the Kingdom may maintain the ERP abroad, provided that it has a terminal or a terminal connection in its branch in the Kingdom through which all data and entries related to the accounts of the establishment located in the Kingdom.	Invoices, documents and records must be saved in the Kingdom, on paper or electronically, by accessing the servers or databases in which those invoices, documents or records were saved via a terminal or terminal connection in the Kingdom.

SAUDI ROUND-UP FOR 2021**ZATCA**

Some important changes were made in Saudi Arabia in 2021, not least of which was the merger of the General Authority of Zakat and Tax (GAZT) with the General Authority of Customs, to form a new tax authority, the Zakat, Tax and Customs Authority or “ZATCA.”

E-invoicing

The implementation of the e-invoicing rules has kept many Saudi businesses busy in 2021.

E-invoicing is defined as the generation of a tax invoice, simplified tax invoice, credit or debit note that is generated in a structured electronic format through electronic means. A paper document that is converted into an electronic format through copying, scanning or other method is not considered an electronic invoice for purposes of the regulations. The purpose of e-invoicing is to transform the process of issuing invoices and paper notices into an integrated electronic process that allows the exchange and processing of invoices and related notices in an electronic format, organized between the seller and the buyer.

The e-invoicing Implementing Regulations issued on 4 December 2020 gave taxpayers 12 months (i.e., until 4 December 2021) to prepare their electronic systems for issuing and keeping e-invoicing and e-notes.

As from 1 January 2023, ZATCA will commence the process of linking and integrating its systems with pre-determined groups of taxpayers that are subject to the e-invoicing regulations. An overview of the phased implementation process for Saudi Arabia is set out in the table:

General requirements	First phase Ending 4 December 2021	Second phase From 1 January 2023 (in stages)
Install or update the invoice system (stop issuing hard copies of invoices)	✓	✓
Add a QR code to the invoice	*✓	**✓
Add the customer’s VAT registration number***	✓	✓
Issuance of invoice in (XML, PDF/A-3) format	Optional	✓
Tamper-prevention properties (e.g., cryptographic function, digital stamp)	Optional	✓
Other technical properties (e.g., UUID)	Optional	✓
Integrate with ZATCA’s systems	N/A	✓

* Mandatory for simplified tax invoices as from the first phase.

**Mandatory for tax invoices as from the second phase.

***Mandatory for tax invoices as from the first phase.

To comply fully with the e-invoicing requirements, taxpayers need to understand the detailed technical requirements announced by the tax authorities and make all the necessary changes to their IT systems. Our tax team in Saudi Arabia can provide support and technical advice to help you achieve these objectives.

End of transitional rules

The transitional rules for the 15% VAT ended in 2021. When Saudi Arabia increased the VAT rate from 5% to 15%, transitional rules applied during the period 1 July 2020 to 30 June 2021 to mitigate the potential impact of the rate hike. As from 1 July 2021, the 15% VAT rate should be applied for all supplies (unless the supply is zero-rated or exempt).

End of the tax amnesty

The tax amnesty, a successful initiative to support taxpayers during the COVID-19 period, ended in June 2021. The initiative covered all taxes and waived fines for late payment and late submission of tax returns. Taxpayers are now liable to the full, normal penalties for any failure to comply with the tax legislation.

Transfer pricing




Transfer pricing is firmly embedded in Saudi Arabia and taxpayers have completed their third year of compliance. ZATCA increased its focus on transfer pricing during 2021, with a number of taxpayers receiving enquires and audits. The key risk areas identified during audits include:

- ▶ Significant transactions with low tax jurisdictions
- ▶ Transfers of intellectual property to related parties
- ▶ Business restructuring
- ▶ Specific types of payments made to related parties (i.e., intragroup charges)
- ▶ Continuous losses
- ▶ Lack of or non-existent transfer pricing documentation
- ▶ Excessive debt

To avoid problems, transfer pricing should be managed proactively, including addressing the following areas:

	Prospective transfer pricing analyses/Rulings		Robust supporting documentation		Transfer pricing risk management
	Timely reviews and compliance		Keeping track of global perspectives and developments		Agility to adapt to changes/transfer pricing policies

Transfer pricing is likely to become increasingly important across the GCC region. The following table outlines the current transfer pricing requirements in the GCC:

Country	TP Return / Disclosure form	Local File	Master File	CbCR	BEPS Inclusive framework
 Bahrain	✗	✗	✗	✓	✓
 Kuwait	✗	✗	✗	✗	✗
 Oman	✗	✗	✗	✓	✓
 Qatar	✓	✓	✓	✓	✓
 KSA	✓	✓	✓	✓	✓
 UAE	✗	✗	✗	✓	✓

Corporate Income Tax and Zakat

No major changes were made to the corporate income tax or Zakat legislation or practice during 2021, but these remain an essential part of tax compliance requirements in the Kingdom.

UNITED ARAB EMIRATES



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VALUE ADDED TAX - QUARTER 4 NEWS

Mobile Phones

The UAE Federal Tax Authority (FTA) released a public clarification (VATPO28) on 6 December 2021 setting out its policy on the recovery of input tax relating to the cost of providing mobile phones and airtime/data packages to employees.

Input tax on phones and packages acquired for use by employees will be recoverable provided the business has a strict policy in place to restrict the use to solely business purposes.

According to the clarification, the following conditions must be fulfilled for the business (taxable person) to be entitled to deduct input VAT incurred on mobile phones and airtime/data packages:

- ▶ The business must have a documented policy on the restricted use of mobile phones and packages;
- ▶ The business must demonstrate that it monitors the use of airtime and packages and takes appropriate action against employees who do not follow the documented policy; and
- ▶ Employees should be made aware of the consequences of failing to comply with the policy and the business should retain proof of action taken against noncompliant employees.

As part of the use monitoring process, the taxable person will be expected to consider any variance between the actual usage and the expected average business usage for the role. Any excess usage identified from this monitoring will be regarded as a non-business use, and input

tax recovery will not be allowed unless the additional use is recharged to the employee with output tax, or there is robust additional monitoring in place to substantiate the actual use.

Recent tax cases

The tax courts have issued some important decisions in recent months, including the first judgement by the UAE Federal Supreme Court involving tax fraud. The court ruled in favour of the FTA and confirmed a penalty of five times the evaded tax amount. The background to the decision was that in October 2020, the Federal Primary Court determined the penalty to be paid based on an expert opinion. This was contested by the taxpayer in an appeal filed with the Federal Appeals Court, which upheld the decision of the Primary Court.

The Federal Tax Procedures Law defines tax evasion as the use of illegal means that result in a reduction of the tax due, the non-payment thereof or a refund of a tax that a person does not have the right to have refunded under the tax law. The penalties for tax evasion include imprisonment and penalties up to five times the amount of tax evaded, and these penalties are separate from the administrative penalties imposed for errors, late filing and other administrative violations.

This decision is significant as it confirms the intention of the federal courts to strictly enforce the Tax Procedures Law in tax evasion cases. Another case before the Federal Supreme Court has been reported, which involves VAT and excise tax fraud. In this case, tobacco products, which were subject to excise tax, were imported without digital tax stamps being applied. Eighty thousand packets of cigarettes were seized in connection with the investigation and the Supreme Court ruled that two taxpayers, who had worked together, were jointly liable for the evaded tax. Prison sentences were imposed in addition to confiscation of the goods, an order was issued for the payment of the taxes due, and monetary penalties were imposed.

Designated Zones

The FTA issued a public clarification in October 2021 to explain the impact of an amendment to Article 51 of the UAE VAT regulations. The amendment allows certain supplies of goods and associated services made in designated zones to be treated as outside the scope of UAE VAT if the goods are consumed outside the designated zone.

This relief is intended to prevent double taxation on goods supplied from a designated zone in certain circumstances, and to provide registration relief to non-resident suppliers that also ship or deliver these goods. Supplies of goods that are eligible for relief (provided certain requirements are met) are:

- ▶ Goods that were intended to be incorporated into or used in the production of other goods in the designated zone;
- ▶ Goods delivered to a place outside the UAE (as supported by official and commercial evidence kept by the supplier); and
- ▶ Goods are imported from the designated zone to the mainland UAE (supported by proof that import VAT has been paid).

Changes to procedures for administrative penalties

There have been some important changes to the processes and rules governing appeals and reconsiderations, effective 1 November 2021; these changes were made through the issuance of Decree-law 28, which amends Decree-law No. 7 of 2017.

Decree-law No. 28 extends the deadlines for taxpayers to request reconsideration of decisions issued by the FTA and for the FTA to issue its decision regarding the disputed case.

The Decree-law also revises the procedures for submitting objections and appeals, including eliminating or reducing the requirement to pay the disputed penalties as a prerequisite for access to the Tax Dispute Resolution Committee (TDRC) and courts.

The changes to timeframes for the appeal process are set out in the table below:

Time limit	Decree-Law No. 7 of 2017 (Old)	Decree-Law No. 28 of 2021 (New)
The time limit for any person to submit a reconsideration request to the FTA for any decisions issued by the FTA	20 Business Days from the date the taxpayer was notified.	40 Business Days from the date the taxpayer was notified.
The time limit for the FTA to review the reconsideration request and issue a decision to the applicant.	20 Business Days from the date of receipt of application.	40 Business Days from the date of receipt of application.
Time limit to submit an objection to the FTA's decision to the TDRC in respect of a reconsideration	20 Business Days from the date the taxpayer was notified.	40 Business Days from the date the taxpayer was notified.
The time limit for the person or the Authority to submit an appeal to the TDRC's decision before the competent Court	20 Business Days from the date the taxpayer was notified.	40 Business Days from the date the taxpayer was notified.

The amendment eliminates the requirement to pay penalties before filing an appeal with the TDRC, provided the full amount of tax has been settled and all other conditions for an appeal have been fulfilled.

Access to the courts will be allowed if partial payment (normally at least 50%) of the penalty has been made and certain conditions are fulfilled.

The FTA has released an alternative payment mechanism to settle penalties where a taxpayer can provide an approved bank guarantee in favour of the FTA.

In addition to these changes, a new committee will be established that may approve the payment of penalties by instalments and waive or refund penalties. Requests to the FTA to waive penalties or pay penalties in instalments will be processed once the Cabinet Decision setting out the controls and procedures for the new committee is enacted.

VAT ROUND-UP FOR 2021

The most significant change to UAE VAT during 2021 was the overhaul of the penalty provisions, which is set out in Cabinet Decision Number 49 of 2021, which came into effect on 28 June 2021.

The decision revised some penalty rates and procedures and introduced an amnesty that allows unpaid penalties levied under the previous regime to be reduced in certain circumstances. The key impacts of these changes are outlined below.

Tax Amnesty

The amnesty scheme allows unpaid penalties, which were levied under the previous rules, to be reduced by 70%, provided the taxpayer settles the unpaid tax and penalties by 31 December 2021.

The FTA issued a public clarification giving more information about the amnesty and confirms that it applies to all administrative penalties set out in Cabinet Decision 40 of 2017 that were issued before 28 June 2021. The conditions for the amnesty are as follows:

- ▶ The taxable person did not settle all of the relevant penalties before 28 June 2021; and
- ▶ The taxable person pays all tax due by 31 December 2021 and pays 30% of the unsettled penalties by that date.

If these conditions are fulfilled, the FTA will amend the taxpayer's account after 31 December 2021 to reduce the penalty by 70%.

Voluntary disclosures

With effect from 28 June 2021, the late payment penalty for voluntary disclosures will be levied from the date the voluntary disclosure was lodged, rather than the date of supply of the transaction. This was a significant and welcome change, as it should encourage taxpayers to deal with voluntary disclosures quickly to minimise the penalty cost.

Late payment penalties

In addition to reducing the impact of late payment penalties on voluntary disclosures, the Cabinet Decision reduced the rate of the late payment penalty from 1% per day to 4% per month. The 300% maximum for late payment penalties remains in place.

Other penalties

The Cabinet Decision will result in the reduction of several other penalties, including:

- ▶ Late registration
- ▶ Late deregistration
- ▶ Failure to keep specified tax records
- ▶ Failure to notify a change in circumstances
- ▶ Failure to display tax-inclusive prices
- ▶ Failure to provide the FTA with price lists for excise goods
- ▶ Failure to issue tax invoices or tax credit notes correctly.

In addition to the changes to the penalty regime, smaller changes were made to the legislation and the FTA also issued several public clarifications and guidance notes to clarify or explain the operation of the legislation in discrete areas.

There were some important tax cases in the UAE courts during 2021, which demonstrates that the tax dispute process is working efficiently and effectively, and as time passes, case law will become an important source of guidance and reference for taxpayers, their advisors and the FTA. Many of the cases involved penalty appeals or disputes relating to tax avoidance and fraud. It is likely that in the future, disputes concerning technical interpretations of the tax legislation will become more common.

UAE ECONOMIC SUBSTANCE REGULATIONS (ESR)

Although no major changes were made to the ESR in the last quarter, it is worth giving a reminder of the continuing importance of the ESR rules. ESR is firmly embedded in the UAE's regulatory framework and all businesses established in the UAE, or considering establishing in the UAE, need to ensure they understand their obligations.

It is important that companies operating from the UAE know their annual compliance tasks for ESR and that penalties will be imposed for noncompliance. Businesses that fail to file their notifications or reports on time will be subject to penalties amounting to AED 20,000 and AED 50,000, respectively.

Furthermore, penalties for noncompliance increase significantly as from the second year, i.e., up to AED 400,000, with a possibility of the suspension or cancellation of the company's trade license.

Note: The ESR deadlines are determined by the financial year end of the company concerned. The deadline for making notifications is six months after the company's financial year end and the deadline for reports is 12 months after the year end. Businesses should ensure they know the deadlines for their companies, and that the deadlines are met.

EXCISE TAX

No major changes were made to excise tax during 2021, with the rates remaining at 50%-100%:

Product	Rate (%)
Carbonated drinks	50
Energy drinks	50
Sweetened drinks	50
Tobacco and tobacco products	100
Electronic smoking devices/ tools and liquids used in these devices	100

Importers, manufacturers, stockpilers and warehouse keepers of excisable goods are liable to pay excise tax.

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