

WATSON FARLEY & WILLIAMS

BRIEFING

UAE TAKES FIRST STEP IN IMPLEMENTING NEW TAX REGIME AUGUST 2017

- THE TAX PROCEDURES LAW DEFINES THE ROLE OF A NEW UAE GOVERNMENT AGENCY, THE FEDERAL TAX AUTHORITY.
- THE LAW IMPOSES GENERAL OBLIGATIONS ON ALL PERSONS CONDUCTING BUSINESS TO MAINTAIN ACCURATE ACCOUNTING RECORDS, REGISTER A PAY TAX AND PREPARE TAX RETURNS.
- THE FTA MAY PERFORM A TAX AUDIT ON ANY PERSONS TO DETERMINE THEIR COMPLIANCE WITH ANY TAX LAWS.
- THE LAW SETS OUT A CLEAR PROCEDURE FOR DEALING WITH ANY DISPUTES THAT MAY ARISE OUT OF DEALINGS WITH THE FTA.



The United Arab Emirates has recently issued a new law that establishes the legal framework for a new tax regime planned in the UAE, commencing with the implementation of value added tax ("VAT") in January 2018. Among other things, Federal Law No 7 of 2017 for Tax Procedures (the "Law") defines the role of a new UAE government agency, the Federal Tax Authority ("FTA"), which has been tasked with managing and collecting federal taxes and related fines, distributing tax-generated revenues and applying the tax-related procedures in force in the UAE.

Background and overview

The Law was issued on 1 August 2017 and will come into effect within 30 days from publication in the *Official Gazette* (on or around 31 August 2017). The Law:

- imposes general obligations on all persons conducting business to maintain accurate accounting records, register to pay tax and prepare tax returns;
- mandates that a register of tax agents be established at the FTA;
- sets out the parameters of the FTA's conduct of a tax audit; and
- lists the penalties for tax evasion and the procedure for a review and a legal challenge of any decision taken by the FTA.

General obligations

Under the Law, all persons conducting a business have to accurately maintain accounting records, commercial books and any tax-related information.

“THE LAW ESTABLISHES THE LEGAL FRAMEWORK FOR A NEW TAX REGIME PLANNED IN THE UAE, COMMENCING WITH THE IMPLEMENTATION OF VALUE ADDED TAX ON 1 JANUARY 2018.”

Taxable Persons must register with the FTA and include their tax registration number in all correspondence with the FTA. They must inform the FTA of any circumstances that might require the amendment of information related to their tax record within 20 working days of the occurrence of such circumstance.

Each Taxable Person must prepare tax returns for each financial period while registered as a Taxable Person. Tax returns will be submitted to the FTA and taxes payable specified in the tax return or any tax assessment must be promptly paid within the stipulated time frame. Taxable Persons must submit all tax returns and related documents to the FTA in Arabic, but the FTA may accept documents in any other language, as long as a translated copy is provided if requested.

"Taxable Person" has not yet been defined. The criteria for businesses that may be a Taxable Person are expected to be clarified in upcoming tax laws.

Register of tax agents

The Law mandates that all tax agents are to be registered with the FTA, which will maintain a register of tax agents containing files for each tax agent (outlining all matters relating to their conduct). Executive Regulations (to come out within six months of the Law being issued) will outline the procedure for registration as a tax agent and set out the rights and obligations of the tax agent before the FTA.

Tax audits

The FTA may perform a tax audit on any person to determine their compliance with any tax laws. The FTA may perform the tax audit at its office or the place of business of the person subject to a tax audit. At least five business days' notice will be given prior to the conduct of any tax audit at such person's place of business. The tax audit will be conducted during the official working hours of the FTA. In exceptional cases, the FTA may, by a decision of the Director General, conduct the tax audit outside its regular working hours.

During the tax audit, the FTA may ask for original records or copies of documents, take samples of goods, equipment or other assets available at the person's place of business.

The FTA may order re-audits if new information arises that may affect the outcome of a tax audit.

All necessary assistance must be provided to the FTA and its staff appointed as tax auditor in the performance of a tax audit. Any person being audited may:

- request the tax auditor to show their professional identification cards;
- obtain a copy of the tax audit notification;
- attend any audit procedures that take place outside of the FTA's offices; and
- obtain copies of any original documents removed or obtained by the FTA during the tax audit.

Penalties

The Law establishes two types of penalties: (i) administrative penalties; and (ii) penalties for tax evasion.

“UNDER THE LAW, ALL PERSONS CONDUCTING A BUSINESS HAVE TO ACCURATELY MAINTAIN ACCOUNTING RECORDS, COMMERCIAL BOOKS AND ANY TAX-RELATED INFORMATION.”

Administrative penalties are levied under the Law for (among other things), failure to observe general obligations (referenced earlier in this briefing). Administrative Penalties should be no less than AED500 for any violation and should not exceed three times of the amount of tax in respect of which such administrative penalty is levied.

Penalties imposed for tax evasion should not exceed five times the amount of evaded tax.

Legal challenges

The Law sets out a clear procedure for dealing with disputes arising out of dealings with the FTA. Any request for a review of any of the FTA's decisions must be made within 20 business days of the notification of the FTA's decision. The FTA will have 20 business days to respond with a reasoned decision and must inform the person requesting such a review within five business days of such decision.

Objections may be submitted against the FTA's decisions on applications for review to a Tax Disputes Resolution Committee comprising a member of the judiciary and two experts registered on the Register of Tax Experts appointed by the Minister of Justice and the Minister of Finance. The Committee should rule on the objection within 20 business days (with an extension of an additional 20 business days if necessary) and the person submitting such an objection should be informed within five business days of such ruling. The Committee's decision should be final if the penalty due does not exceed AED100,000, otherwise the ruling can be challenged before the UAE Courts.

Important changes

The Law lays a foundation for the implementation of tax laws in the UAE and most importantly, the forthcoming introduction of VAT on 1 January 2018. Further detail is anticipated on the scope and effect of the Law once the Cabinet has issued Executive Regulations.

We will provide a full briefing once the Executive Regulations have been issued.

FOR MORE INFORMATION

Should you like to discuss any of the matters raised in this Briefing, please speak with one of the authors below or your regular contact at Watson Farley & Williams.



SUHAIL MIRZA
Partner
Dubai

D +971 4 278 2312
M +971 52 866 5039
smirza@wfw.com



CAROLYN ANG
Senior Associate
Dubai

D +971 4 278 2320
M +971 55 152 8499
cang@wfw.com



DHRUV PAUL
Senior Associate
Dubai

D +971 4 278 2334
M +971 52 104 7158
dpaul@wfw.com