EXECUTIVE REGULATIONS TO THE NEW INCOME TAX LAW - QATAR

Qatar published the Executive Regulations to the New Income Tax Law No 24 of 2018 by way of the Decision No. 39 of 2019 of the Council of Ministers in the official Gazette on 11th December 2019. The new Executive Regulations are now revoked the previous Executive Regulations and the new Executive Regulations provided clarifications on the applications of the New Tax Law in taxable income, withholding tax application, exemption of Qatar/GCC natural persons, subsidiary of listed entities and transfer pricing requirements.

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MAIN HIGHLIGHTS AND KEY CHANGES:

Corporate Income Tax

- Changes the timeline for tax registration from 60 days to 30 days to register and obtain the Tax Card. Reference is also made to use the new digital Tax Administration System (TAS).
- Tax losses can be carried forward for a period of 5 years under the new ERs starting when such losses have been incurred, as compared to three years in the previous regulations.
- Additional guidelines on Permanent Establishments (PEs) where a construction project/site, installation, or supervisory activities last more than 6 months; and/or services including consultancy services (by employees or others) continue in Qatar for a period totaling 183 days in any 12 months period. This was applicable in the previous regulations, but they did introduce it in detail.
- Taxability of subsidiaries of companies listed on the Qatar stock market to the extent of non-Qatari shareholding in the listed parent company. Companies carrying out Petroleum Operations and operating in the Petrochemical industry will remain fully taxable, in case the State of Qatar wholly or partly owns the company, whether directly or indirectly.
- The new ERs entitle the taxpayers to deduct the depreciation according to the applicable accounting standards provided that such depreciation charge should not exceed the depreciation rates calculated based on the straight-line method specified under the new ERs.
- Detailed provisions and timelines have been introduced on conducting field inspections/tax audit and approach that the GTA will perform during tax returns assessment. The GTA should inform the taxpayer regarding its intention to undertake a field inspections/tax audit at least 15 days prior to the commencement of the field inspections/tax audit, and taxpayers must submit details requested by the GTA within 20 days from the date of request.
- Interests on loans and similar amounts paid by a taxpayer to related parties, as defined in the international accounting standards, shall be deducted within the limits of interests calculated on loans, which shall not exceed three times the taxpayer's equity recognized in his accounts during the accounting period provided that the loan generated economic benefits to the taxpayer, by virtue of an agreement between them specifying the loan term and purpose.
- Interests paid by a Permanent Establishment in the State to its head office or an entity related to such head office within or outside the State shall not be deducted.

MAIN HIGHLIGHTS AND KEY CHANGES:

Capital Gains Tax

Detailed guidance on the application of Capital Gains Tax on the sale of shares in Qatari resident companies by a non-resident corporate body.

Withholding Tax

The new ERs provide more clarity regarding the withholding tax's applicability along with the refund process.

- Government agencies, Ministries, public bodies and institutions, private foundations, private charitable foundations, and private foundations of public benefits are now required to register for WHT (as WHT agent), even if they are not subject to the provisions of the Tax Law. Companies subject to WHT may in future be required to request for WHT certificates from their Qatari entities stated above (in particular from Ministries and other Government bodies) in order to apply for refunds with the GTA.

- Changes to the rule on when WHT payment will be due and who will be subject to registration requirement as WHT agent. Amounts subject to WHT will now be deemed as paid within a maximum of 12 months' period from the payment due date (with the exception of Ministries and other Government agencies/public foundations). This is contrary to the previous practice where WHT was only due upon actual settlement. This implies that amounts subject to the withholding tax will be considered as paid and require submission to the GTA according to the regulations regardless of the actual settlement.

- The previous ERs, WHT applicability was based on the "Performance Test" (where the services were performed, wholly or partly rule). However, the new ERs indicate a broader and detailed scope for WHT applicability to include a "Consumption Test," i.e., services shall be considered as having been performed in the State as long as they are used, consumed or exploited in the State of Qatar even if they are carried out in whole or part outside the State.

- Administrative and general expenses paid to the head office to its permanent establishment as provided for in Article (7) of the ERs, shall not be subject to withholding tax.

- Detailed guidelines on the WHT refund process. This includes a list of supporting documentation and conditions that must be met in order to apply for a refund. Timelines for the WHT refund process have also been provided.

MAIN HIGHLIGHTS AND KEY CHANGES:

Transfer Pricing

- Transfer Pricing (TP) requirements for taxpayers have been introduced along with new reporting requirements applicable from the tax year ending 31 December 2019.
- Transactions between related parties were expected to be undertaken on an arm's length principle and in accordance with the Comparable Uncontrolled Price (CUP) method or any other Organization for Economic Co-operation and Development (OECD) acceptable pricing method. However, there was no specific requirement for filing TP documentation with the General Tax Authority (GTA). The new ERs have outlined specific transfer pricing requirements.
- Reaffirmation of the arm's length principle between the related parties' transactions, as described in the International Accounting Standards.
- Treating all related parties' transactions on arm's length basis as if you are dealing with any independent entity in which difference quotations and procedures have be to followed to ensure that arm's length principle is applicable.
- Performing a "Functional Analysis" of the related parties transactions disclosed in the tax return and financial statements and describing a taxpayer's economic role with the related entities, identifying the functions performed, risks assumed, and the tangible and intangible assets owned and used.
- Updating the financial data of comparable related parties' transactions between an independent entity or between two independent entities every year. Each related entity shall perform a new search for comparable transactions in financial databases every three (3) years, if and to the extent that the activity's circumstances remain unchanged.
- A new requirement of a transfer pricing declaration as part of the annual income tax return, of which the GTA should specify the form and content. The declaration will be provided to the extent that the amount of turnover is equal or exceed the threshold specified by the GTA.
- The Transfer Pricing requirements include four tiers of compliance: (i) Transfer Pricing Form/Questionnaire to be provided with the Tax Return, (ii) Masterfile, (iii) Local file and (iv) Country by Country Reporting requirements (already introduced in 2018/2019).

MAIN HIGHLIGHTS AND KEY CHANGES:

Transfer Pricing

- Using the Comparable Uncontrolled Price (CUP) methodology as a primary methodology. However, if the CUP method is not applicable, the taxpayer should lodge a request to the GTA for the application of a different transfer pricing methodology.
- Preparing TP documentation (Local File and Master File) by the time of filing the tax return for the period of occurrence of the respective related party transaction(s) or at any other date that the GTA may specify otherwise.
- The Local File and Master File shall be established according to the OECD Guidelines. The GTA did not establish a specific format/template for this purpose and to the extent that the following conditions are met:
  - The threshold (to be established by the GTA) on total revenues or total assets of the taxpayer is met;
  - One of the related parties of the Qatari taxpayer is established outside the State of Qatar.
- GTA will rely and use the Master and Local file to ensure that the related parties' transactions have occurred based on arm's length transaction.
- GTA will request the entity to provide any necessary documents to support the subject matter. The deadline for the taxpayer to provide such information upon request from the GTA shall not exceed 30 days from the date of the GTA's request.
- GTA will no longer accept the absence of a Local file / Master File, based on the argument that other companies of the group are responsible for establishing and documenting the arm's length principle. Also, the absence of adjustment to the intercompany prices in case such prices are not established to be arm's length.

MAIN HIGHLIGHTS AND KEY CHANGES:

What remains unclear

Certain areas of the Regulations still remain unclear. Amongst others, the key uncertain items are:

- Exemptions in certain scenarios applicable to legal entities partly owned by Qatari nationals.
- Practical challenges related to the calculation of the share of profits attributable to non-Qatari shareholders in subsidiaries of listed entities.
- Group basis depreciation will continue to apply.

CONSULTATION

If you need any further information or advice regarding the new Income Tax Law and its Executive Regulations, you can communicate directly with us. Should any discrepancies or misunderstandings arise, the original Arabic text of the law shall prevail.

No one should act on such above information without appropriate professional advice after a thorough examination of the particular situation.

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