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New tax regime overview

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Under Royal Decree 28/2009 (the new law), Oman has adopted a global tax system - thereby replacing the territorial system that has been the basis of taxation since 1971. Most countries have a hybrid international tax system that incorporates features of both the global and the territorial system. The new law replaces the Company Income Tax Law 47/81 and the Profit Tax Law on Commercial and Industrial Establishments 77/88. It also replaces the provisions relating to tax in the Foreign Capital Investment Law 102/94.

The Oman tax authorities extended the scope of taxation in early 2005 by taxing overseas dividends and capital gains. The new law seeks to avoid any disputes by confirming the tax authorities' right to tax all income, wherever earned, of a company in Oman.

Before promulgation of the new law the basis of taxation has been territorial, with notable exceptions - for instance the tax authorities have, for a number of years, been taxing local banks on their overseas profits carried out through branches. Such treatment was confirmed by the previous Authority for Settlement of Commercial Disputes (prior to the authority being replaced by the commercial courts).

However, the new tax law represents a move towards a global tax system, introducing specific provisions to grant relief for taxes paid overseas. The relief would be limited to the extent of taxes applicable in Oman on such overseas income - that is, 12%. Further, such relief would be available even in respect of taxes paid in countries with which Oman does not have a double tax avoidance treaty. Under the old law, such relief was not granted unless the country from which income was earned had a double tax avoidance treaty with Oman.

Foreign companies, other than Gulf Cooperation Council (GCC) companies, were previously taxed at a maximum rate of 30%, if the taxable profits were above OR100,000 ($260,000). The new law provides for a uniform tax rate of 12% for all companies irrespective of the nature of the company, the nationality, or the level of tax profits. As per the new Law, all taxable entities enjoy a basic tax exemption on taxable income up to OR30,000.

The new law specifies the persons subject to Oman taxation - namely, any establishment owned by a natural person, any company incorporated in Oman as per Omani legislation, and any foreign person carrying on a business in Oman through a permanent establishment, either directly or through an agent. A permanent establishment is deemed to include the performance of consultancy services or any other services in the sultanate through employees or other persons engaged for an aggregate period of not less than 90 days within any 12-month period.

Under the new law, provision for losses, as regulated by the Central Bank of Oman, is now tax-deductible for banks and financial institutions. Provision for unexpired risks, unsettled claims and contribution to emergency funds is tax deductible for insurance companies. The new law also provides for depreciation to be allowed in respect of assets that are taken on lease or obtained on a hire-purchase basis. Article 5 of the Banking Law defines leasing, factoring and hire-purchase financing.

Exemptions

Exemptions remain largely unchanged in the new law except for the education and health sectors, where an exemption is now allowed for a limited period (as in the case of other exempted sectors), instead of the previous indefinite period. However, the tax exemption for public utility projects is no longer available. Article 115 of the new law specifies that dividends earned by any establishment of a foreign company from shares or contribution in another Omani company would be exempt from tax.

Under the new law, the following are exempted:

(i) Income that is earned by any establishment owned by an Omani individual or by an Omani company from shipping activities;

(ii) Income earned by any person other than those specified in (i) above from shipping or air transport shall be exempt provided there is reciprocal treatment for Omani companies in the country in which the foreign company is established or in the country in which the management and effective control of the foreign company is conducted;

(iii) Income earned by the investment funds established in Oman pursuant to the Capital Markets Act (CMA), or earned by investment funds established abroad to deal with Omani securities listed with the Muscat Securities Market (MSM);

(iv) Losses on disposal of securities listed in the MSM are not an allowable expense because the gains on disposal are not taxable; and

(v) Any income earned by an Omani company or establishment from carrying out its main business (apart from management contracts and contracts for the implementation of projects) of: industry - pursuant to the Law for the Organisation of Industry; mining; export of products manufactured or processed locally; operation of hotels and tourist villages; farm produce and processing, including livestock breeding; the processing or manufacture of livestock and agricultural products; fisheries; educational institutions; and the setting up of private hospitals.

The new law also stipulates that decisions for renewal of tax exemption shall be issued by the finance minister, instead of the Financial Affairs and Energy Resources Council.

Foreign investment projects are exempt from taxation of profits for a period of five years, effective from the date of establishment. An additional five-year exemption may be granted. Also, foreign investment projects may be exempt from customs duties on imports of machinery and equipment required for their establishment. Raw materials required for the production of products unavailable in Oman are also exempt from customs duties. The exemption from customs duties on such products is granted for five years from the production date and may be renewed for another period of five years.

For the purpose of imposing the tax withheld at source, the new law includes specific definition of the term *royalties* by describing various types of payments to be regarded as royalties. For instance, payments for the use of, or the right to use, computer software, research and development and management fees.

Financial and corporate

Recommended firms
Tier 1
Al Busaidy Mansoor Jamal & Co
Denton Wilde Sapte
Trowers & Hamlins
Tier 2
Curtis Mallet-Prevost Colt & Mosle
DLA Piper
Said Al Shahry Law Office (Saslo)

Oman, like most of the smaller gulf jurisdictions, has felt the faint tremors and aftershocks of the global financial turmoil without being caught in its full fury. This country has to thank its size and the more sedate pace of its economic growth, which has allowed it to avoid the *boom town* issues seen in Dubai and elsewhere. "Oman didn't have the heat in the economy of the other states and so was less affected," says one partner.

One of the clearest indicators of this contrast is in the real-estate sector, whose collapse in the last few years has crippled the advantage held by the more developed states. "Oman wasn't hit as badly as other countries in the gulf because certain sectors (real estate) are not as well developed," explains one partner.

Where impact has been felt most keenly is in the capital markets. "The last quarter of last year it was impacting," says one partner, "we have not seen any IPOs; activity has slowed down." In M&A, deals are still being done with interest and investment coming from overseas, however the level of work is still down compared to previous years.

Project finance remains a key source of work for most firms in the market as the country continues to pursue its twin goals of improved infrastructure and economic diversification. Significant projects include new airports in Duqm and Muskat and what will be the world's largest dry docks in Duqm. Promisingly the government is still pursuing these developments with no sign of slowdown.

A development which is likely to increase work across all areas in the next few years is the signing of a new trade agreement with the USA which will allow US companies to operate in Oman without the need to link up with a local partner. "There's a real keenness to get US investment into the country," says one partner. This should lead to a greater number of mandates for firms as US companies begin to act with more freedom.

Another interesting development which may be seen more clearly a few years down the line is the increasing number of lawyers trained in Oman itself. "They (law firms) are moving to reinforce the Oman-isation of the market," says one partner, "today the balance is far more to employ more Omani lawyers." Another partner explains: "In the next ten years they'll [law firms] be facing a far greater emphasis from clients who will expect lawyers to speak Arabic. Arabic is the expected language in the gulf."

Al Busaidy Mansoor Jamal & Co

The practice at Al Busaidy Jamal & Co is led by managing partner Mansoor Malik who was highlighted as a key figure: "His level of knowledge is good," says one client "he's also one of the most practical lawyers; he tries to find a solution."

In the capital markets sector, one of the firm's biggest deals saw it acting for BankMuscat over a OR60 million ($156 million) subordinated bond issue. The firm also advised the bank over a OR32.3 million issue of exchange traded compulsory convertible bonds. The capital markets team also acted for Suez Energy among other shareholders over the $409 million IPO of the Sohar Power Company and the subsequent refinancing.

The firm's banking practice was called upon by the National Bank of Abu Dhabi and HSBC Bank Middle East to act in a OR17.8 million syndicated loan facility to Oman Holdings International, while the firm's corporate practice was mandated by Octal Petrochemicals to advise on a joint venture with the Port of Salalah for a chemical storage and transport development.

In project finance a highlight for the firm last year saw partner Mansoor Malik lead a team advising the Sohar Aluminium Company over a $120 million working capital facility for a smelter project. The team was also asked for advice by the Commercial Bank of Qatar as the joint lead arranger, facility agent, issuer and lender, along with the National Bank of Oman, on the $46 million financing for the Al Madina Cement Company.

Leading lawyers
Mansoor Jamal Malik
Marcus Pery

Trowers & Hamlins

Of all the international firms located in the gulf, Trowers & Hamlins has one of the widest reaches, with five offices across the Middle East & North African (MENA) region. This geographical scope is recognised by its clients: "We have been dealing with them for quite some time, they are internationally renowned," says one.

The firm's Oman operations are led by Charles Schofield, who was joined in 2008 by former investment banker Roger Byrne, who relocates from Australia. Byrne now heads the team's banking and finance practice.

One of the firm's largest deals last year saw it acting on the establishment of the government's investment stabilisation fund. The team advised the Ministry of Commerce and Industry over the $470 million fund which is designed to provide liquidity to the Muscat securities market.

In banking, a team led by new partner Roger Byrne acted for the National Bank of Oman, as part of a banking syndicate, in regard to a $240 million syndicated working capital facility to the Oman Refineries & Petrochemicals Company.

Like most firms in the jurisdiction, Trowers found that mandates from the project finance sector were the most common source of work. Alongside partners from their Dubai office the team was appointed by Standard Chartered Bank to act in regard to the financing of the Salalah independent water and power plant.

Another highlight and one of the more intriguing projects the team worked on saw a team led by Roger Byrne advising Bauer Resources on a joint venture for an oilfield water treatment development, consisting of an artificial lake used to filter the wastewater produced through oil production.

Leading lawyers
Majid Al Toky
Charles Schofield

Said Al Shahry Law Office (Saslo)

Said Al Shahry Law Offices is led by Stephen Sayer, while Alastair Neale is recognised as one of the firm's leading figures.

It was Neale who led when the firm advised the Oman Shipping Company over the $126 million financing of the purchase of a number of transport ships including two Methanol tankers, one VLCC (very-large crude carrier) and two Aframax production tankers.

The firm was also called upon by the Oman International Developer & Investment Company to advise in a $1 billion financing for the development of an integrated tourism and residential hotel complex in Salalah, including three five star hotels and 600 villas.

The firm was also active in the project financing sector, acting for Vale Holdings Austria over the $1.37 million financing of an iron pellet project in the Sohar industrial area. The team also advised Harvest Natural Resources over a gas exploration and production sharing agreement with the Omani government.

Leading lawyers
Alastair Neale

Other ranked firms

Curtis Mallet-Prevost Colt & Mosle enters the rankings this year after several notable recommendations from the market. "Curtis Mallet are adding a lot more work," says one rival partner. The firm has had an office in Muscat since 1997 and specialises in project finance.

Another notable entry is **DLA Piper,** whose Oman office is led by Bruce Mullins. In June 2009 the firm advised Funderbank Europe 2, a special purpose vehicle of the Oman Investment Fund, in a £445 million joint venture with Hammerson UK Properties.