Oman Tax Law amendments

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Executive Regulations (ERs) to Oman Tax Law amended

The much awaited amendments to the ERs have been made through Ministerial Decision No. 14/2019 (MD) published in the Official Gazette today. In principle, the ERs clarify certain provisions of the Oman Tax Law that were amended pursuant to Royal Decree No. 9/2017 (RD), issued in February 2017 (hereinafter referred to as “amended Tax Law”).

The MD is effective from the day following its publication date i.e., 11/02/2019, except for donations and withholding tax (please refer the respective sections below for details).

In principle, the following key amendments have been made in the ERs. Each are discussed in detail in the ensuing paragraphs:

- **Withholding taxes:**
  - The terms “interest” and “income realized in Oman” have now been defined
  - Withholding tax obligations for banks have been reduced through key exclusions in the definition of “interest”
  - A list of seven categories of payments for services excluding from withholding tax has been defined
  - Non-applicability of withholding tax on LLCs dividends clarified
  - Domestic General Anti-Avoidance Rules (GAAR) introduced in withholding tax provisions

- **Rules introduced in relation to tax cards**
- **New tax compliance requirements added for government and other public bodies**
- **Regulations relative to tax inspection, search and seizure**
- **Amendments made to regulations governing deductibility of bad debts, managerial remuneration to partners and in-kind donations**
- **Amendments clarifying tax exemptions**
- **Rules regarding electronic submission of tax returns and other documents clarified**
- **Specific rules introduced for small taxpayers (STPs)**
- **Other residual amendments**

Our alert analyzes key clarifications introduced in the amended ERs in order of importance, starting with withholding taxes, as this impacts a majority of taxpayers in Oman.

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A. Key amendments in the ER on withholding taxes:

- The term “income realized in Oman”, fundamental to trigger withholding tax provisions in the Sultanate, is now defined in the amended ER.
- As per the new definition, income would be considered as realized in Oman “whenever the source of such funds is from Oman”.
- One possible interpretation of this could be where the payer is located i.e., in Oman if the payer happens to be a taxpayer in Oman.
- A list of “seven categories of payments” excluded from “fee in consideration of rendering services” for withholding tax purposes:
  - Conferences, seminars or exhibitions
  - Training
  - Transport and shipping of goods and insurance thereupon
  - Airline tickets and cost of staying abroad
  - Board meetings
  - Payments for re-insurance
  - Services rendered in relation to any activity or property located outside Oman

It is to be noted that the amended ERs have not defined the term “provision of services”; but rather have excluded only the above payments from the scope definition. This would imply that all other services except for the above, irrespective of place of rendition, are now subject to withholding tax in Oman (subject to tax treaty benefits, wherever applicable).

In regard to dividends, it has now been clarified in the amended ERs that withholding tax is applicable only on “dividends distributed by joint stock companies and investment funds in relation to investment instruments” and not by LLCs. This implies that dividend distribution by a real estate investment fund (REIF) to a foreign investor would also trigger withholding tax under Omani Tax Law, subject to benefits available under a tax treaty.

- The term “interest”, for the purpose of withholding taxes, has now been defined in the amended ER. Earlier, the definition of interest existed in the tax law only in relation to “related party loans”.

- Interest shall mean any amount received “because of loan”, regardless of:
  - Its type, advances, arrangements or financial facilities
  - Whether backed by guarantees or not
  - Whether it did or did not grant the right of participation in the debtor’s profits
  - Whether it included any amounts received in lieu of interest in application of the provisions relating to the determination of the taxable income for parties in Islamic financial transactions

- Income generated from bonds and sukuk (except those issued by government or Oman-based banks, as discussed later) shall also be considered as “interest” for the purpose of withholding taxes.

- The following payments have been specifically excluded from the definition of “interest” for the Government of Oman and banks, and have, therefore, in principle relaxed their withholding tax obligation in Oman:
  - Interest paid on amounts deposited in banks based in Oman
  - Returns on bonds and sukuk issued by the Government or banks based in Oman
  - Interest on inter-bank transactions and facilities with the purpose of providing and managing liquidity or finance (the term of the loan not to exceed five years)

- Withholding tax provisions discussed above are applicable on the tax due, which shall be payable effective from the implementation date of this regulation. It would be advisable to discuss this with the tax authorities to clarify the effective date and applicability on past transactions.

- Diluted GAAR now introduced in withholding tax provisions:
  - Tax authorities to disregard the transaction if the main objective (versus one of the main objectives) is to avoid withholding tax in Oman.
B. Procedural amendments in the ER:

1. Tax card:
   - The amended Tax Law introduced the concept of a “tax card”, requiring every taxpayer in Oman to mention a tax card number on all correspondence, invoices, memoranda, contracts or other similar documents entered into by the taxpayer.
   - The following key rules have now been issued in relation to the tax card:
     - Tax cards need to be applied in Form 11
     - Tax cards must be issued by tax authorities within 1 week of application submission
     - Details mentioned on the tax card will include:
       - Name of taxpayer
       - Tax file number
       - Commercial registration number or license number
       - Expiry date of the card
       - Any other details as may be specified by the tax authority
     - Tax card to be endorsed by the tax department or its appointee and stamped by the tax department
     - The card may be issued in paper form or as a smart card and is valid for two years
     - A renewal application is to be filed at least one month prior to expiry. The tax department will not renew the tax card if the taxpayer in Oman has not complied with all obligations under the Tax Law as of the date of the renewal. Please note that a similar approach is currently followed by the tax authorities when issuing Tax Clearance Certificates (TCC) to taxpayers. Any changes to tax card details must be immediately communicated to the tax department.
     - Only one tax card will be issued for a foreign person conducting operations/business in Oman through more than one permanent establishment.
     - In case of cessation, dissolution or liquidation, the tax card must be surrendered within 14 days of such event.

Please note that the following aspects have not yet been addressed by the ER on the tax card:
   - Timeframe post implementation within which the tax card needs to be applied by the taxpayer
   - Prescribed fees

2. New compliance requirements introduced for ministries and other public bodies:

<table>
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<th>Applies to</th>
<th>Requirement</th>
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<tbody>
<tr>
<td>Ministries</td>
<td>If a contracting party does not submit its tax card to public bodies, then such public bodies are required to submit the contracting party’s details in Form 20</td>
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<tr>
<td>Authorities</td>
<td>Semi-annual filing of contract details executed in Form 19 and other specifics requested by the tax department</td>
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<td>Public establishments and other such public juristic persons</td>
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<td>Units of the state administrative apparatus</td>
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<td>Companies where the Sultanate owns more than 40%</td>
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The proposed compliance would assist tax authorities in identifying non-compliant taxpayers.

3. Tax inspection, search and seizure related rules:
   - As a brief background, prior to issuance of this MD, the ERs provided tax authorities the right to inspect a taxpayer’s premises during his working hours. However, RD 9/2017 brought specific provisions regarding inspection proceedings within the Tax Law.
   - The amended ERs introduced and clarified certain procedural provisions related to inspection proceedings. Authorities are required to provide written notification to taxpayers, highlighting the following:
     - Date and time of visit
     - Tax years under inspection
     - Documents, accounts and other items necessary for perusal
In case there is suspicion of tax evasion, there is no requirement for the tax authorities to issue notification prior to entering the business premises of the taxable person during his working hours.

The taxpayer is to enable the tax department to inspect documents, accounting records, etc.

The tax department is required to provide receipt of the seized documents. The original of the seized documents is to be returned within 30 days, however, the tax authorities can retain copies of the same.

The tax authorities have been further empowered to seek assistance from the authorities if it is revealed that the taxpayer has attempted to hide, destroy or falsify records/documents.

4. Amendments pertaining to expense deductibility:

Bad debts:

Previously, bad debts were allowed as a deduction only if the taxpayer complied with certain conditions inter alia undertaking legal proceedings in relation to bad debts exceeding OMR 1,500.

The tax authorities have now made it more onerous to be able to get a deduction for bad debts. Merely undertaking legal proceedings is no longer sufficient to claim a deduction.

The taxpayer is now required to provide evidence to substantiate that the taxpayer undertook steps to recover the amount post issuance of a final judgment obliging the debtor to pay the debt.

Managerial remuneration to partner/proprietor – salary limits revised

Earlier ERs specified a limit in relation to the salary allowed to be paid to the proprietor of an establishment/partners of an Omani company. This has now been revised as mention below:

For an establishment/company not practicing professional activities, lower of the following:

- Actual amount paid
- OMR 1,500 (earlier OMR 1,000) per month per owner/partner
- 25% (earlier 10%) of the taxable income

Establishment/company practicing professional activities, lower of the following:

- Actual amount paid
- OMR 3,500 (earlier OMR 3,000) per month per owner/partner
- 35% (earlier 30%) of the taxable income

Donations in kind:

Tax Law prior to its amendment:

Previously, the Tax Law specified that “donations” are allowed as a deduction only if the same were made to specified institutions, subject to prescribed limits.

Change introduced under the amended tax law:

RD 9/2017 introduced changes in relation to the deductibility of donations inter alia the word “donation” was substituted by “donations in cash or kind”.

Amendments introduced in the ERs, made effective from January 1, 2018:

Specific provisions regarding valuation of “donation in kind” were introduced:

- Donated assets should be recorded in the financial statements of the donor
- The value of donated assets should be computed as follows:
  - For depreciable assets, the lower of the following:
    - Net book value in the year in which the donation took place
    - 10% of original cost
  - For non-depreciable assets:
    - Original cost of the assets
- The original cost is to be substantiated through supporting documents. Absent supporting documents, the original cost will be determined by the tax department
- The total donation (cash as well as kind) is still subject to restrictions as imposed under the Tax Law (inter alia 5% of taxable income)
- Specific conditions have been introduced in relation to donations made (cash or in kind) through a fund:
  - Fund to be independent from the taxable person
  - Fund constituted to carry out charitable activities
  - Fund licensed in accordance with the applicable laws and regulations
  - Donated asset to the fund should have been recognized under the assets of the donor and should have been used for his business activity before such donation
  - Donor to submit supporting documents for original cost incurred to acquire the asset being donated
5. Tax exemption related clarifying amendments:

- Regulations concerning tax exemption removed given the amended Tax Law removed all exemptions, except for taxpayers engaged in industrial activity.
- Provisions in relation to renewal of exemption also now removed.
- Previously, ERs specified certain conditions for granting exemptions to tax payers engaged in the field of industrial activity. These have been retained with the following two additional conditions being inserted:
  - Minimum amount of investment in fixed assets shall not be less than OMR 1 million
  - Omanization quotas specified by the Ministry of Manpower to be achieved during the last three financial years of the exemption period. Additionally, Omanization quotas should be a balanced distribution between different management levels for the Omani establishment or company, such as the upper management level, professional functions and supporting functions.

6. Electronic service of notice or decision deemed valid:

- RD 9/2017 made online filing of tax returns by taxpayers mandatory. The amended ERs now further clarify that delivery of a notice/decision through the portal to the taxpayer is to be treated as a valid delivery of such notice/decision. Accordingly, it will be important for the taxpayer to keep continuous track of online communications from the tax authorities to ensure timely receipt of notices, query letters, orders, decisions, etc.
- This amendment will prevent conflicts in relation to non-delivery of assessment orders and decisions for determining the due date of filing objections and appeals.

7. Special rules introduced for STPs

- A new lower tax rate of 3% was introduced under the amended Tax Law in relation to STPs who meet certain specified conditions.
- The amended ERs provide STPs with an option to apply for presumptive taxation where:
  - Eligible taxpayers submit a request to the tax authorities along with the tax return. Such choice will remain valid until the taxpayer files an application for cancellation along with the tax return submitted for any subsequent tax year.
  - The Tax Authority will determine the deductibility of cost and expenses subject to a maximum of 95% of the gross income of the taxpayer i.e., taxable profit will be determined at least at 5% of the gross income in such cases.
  - Losses from earlier years are allowed to be carried forward and offset as per the existing law.
  - STPs will be taxed at the lower rate subject to fulfillment of the following conditions:
    - The owner or partner of the STP is fully dedicated to its management, and does not engage in any other work in any other unit or party.
    - In cases where the owner or partner is fully dedicated to more than one establishment or company, then exemptions shall be provided to one as chosen by the owner or partner. This will be based on the declaration provided by such owner or partner along with the return. In the absence of such declaration, the tax authorities will determine the exempted company/establishment.
    - There should be at least two Omani persons working on a permanent basis and the period of service should be at least six months in the tax year. The STP is required to submit proof of their employment—specifically manpower records—to SGT.
    - In case of an unjustified exemption, tax authorities may determine the tax liability for the tax year.
    - As per the amended Tax Law, if after granting a lower tax rate, any conditions specified under RD 9/2017 (subject to which the benefit was granted) are not met, the benefit of the lower tax regime will be withdrawn.
    - The ERs have been amended to include provisions clarifying that STPs may continue to avail the benefit of a lower tax rate during any tax year where:
      - Increases in share capital at the start of the tax year do not exceed 20% of original limit of OMR 50,000 as introduced in the amended Tax Law i.e., ≤ OMR 60,000 in total.
      - Increases in the total income at the end of the tax year does not exceed 50% of original limit of OMR 100,000 as introduced in the amended Tax Law i.e., ≤ OMR 150,000 in total.
      - Increase in the average number of workers during the tax year does not exceed 10 workers from the original limit of 15 workers i.e., ≤ 25 in total.
      - Form No. 17 for submitting the return in case the STP has been notified.
    - As per the ERs, relaxation available to STPs not to submit returns/accounts is no longer applicable.

8. Other matters:

- As per the amended ERs, tax authorities are empowered to suspend dealings with any accounting and auditing firm/individual, if such firm/individual has assisted taxpayers to furnish incorrect information/accounts/returns.