Tax Alert - New Executive Regulations

22 December 2019

The new Executive Regulations (ER) to Law No. 24 of 2018 were issued by way of the Decision No. 39 of 2019 of the Council of Ministers and published in the Official Gazette on 11 December 2019. The new Executive Regulations repeal and replace the old Executive Regulations.

The new ER's contain a number of substantive changes, with determination of Taxable Income, withholding tax application, exemption of Qatar/GCC natural persons, subsidiary of listed entities and Transfer Pricing.

Effective date

The effective date of the new Executive Regulations will be the day after the issuance of ER in the Official Gazette, i.e. **12 December 2019**

Permanent Establishment ("PE")

The new ER's provides further clarity on constitution of a PE as follows:

- A building site, or a construction, installation or assembly project which lasts longer than six months, including the supervisory activities relating thereto (project PE)
- A non-resident provides services (including consultancy services) in Qatar through employees or other personnel for a period or periods aggregating more than 183 days in a twelve months period (Service PE).

The new ER also bring in the risk of attribution of income or revenue earned in Qatar to an existing PE, where the activities are similar in nature. The definition of taxable income is now widened, especially for non-resident. It is also noted that the general principles of OECD have been taken into consideration while determining scope and definition of taxable income.

Withholding tax

One of the major change that the new ER's have brought in is the shift from the principle of "place of performance of services" to the principle of "**usage, consumption or utilization"** to test taxability of payments made to non-residents. The services are now subject to WHT if they are consumed, used, or utilized in Qatar even if they are rendered outside the State of Qatar.

The new ER stipulate that the amounts payable to non-residents (whether related parties or not) shall considered as effectively paid after the elapse of a maximum period of 12 months from due date of the payments (with the exception of amounts owned by ministries, other government agencies and public foundations). The new ER further provides detailed guidelines on the WHT refund process.

Exemption to wholly owned Qatari companies

The new ER have prescribed for the test of residency of Qatari nationals while determining the exempt status of **wholly owned** Qatari Companies.

We understand this residency test could be relevant for wholly GCC Companies and such companies being potentially taxable when the GCC nationals/shareholders are not resident in Qatar. This could have a huge impact on many entities claiming exemption on the basis that these are wholly owned by GCC nationals.

Taxation on shareholding of listed companies

As per the new ER's, subsidiaries and companies owned by listed companies shall now be taxable to the extent of non-Qatari shareholding in the listed entities. Please note that the listed company which is listed on Qatar stock exchange will continue to remain exempt.

The practical aspects of determining the said taxable shareholdings is to be tested.

Transfer Pricing

The new ER have brought in detailed Transfer Pricing (TP) regulations. The regulations require

- Entities to determine the price of related party transactions in accordance with the arm's length principle and to evaluate those at the time of the transaction, and in any case no later than the time of submitting the annual tax return.
- entities to perform a detailed functional analysis at the time of preparation of the tax returns. A search for comparable transactions / operations can be conducted once in three years, however it is expected that the financial data of the comparable operations be updated annually.
- submission of transfer pricing declaration with the annual tax return, if the amount of total revenues or assets meet or exceed the thresholds determined by the GTA.

Master file and local file filing requirements have also been introduced. These requirements shall be effective for the tax year beginning on or after the effective date determined by the GTA. The master file and local file requirements shall be applicable to entities meeting or exceeding the total revenues or assets thresholds determined by the GTA for this purpose.

The GTA may send out specific questionnaire to be filled out and request for relevant information and supporting documentation for the purpose of conducting transfer pricing audits. It onus shall be on the taxpayer to prove that transactions with associated enterprises meet the arm's length principle.

The above mentioned requirements shall also apply to transactions between any entity residing in the state and another entity *not associated*, if

- one of the two entities benefits from a preferential tax system
- the other entity resides in one of the non-cooperating countries or territories. The state or territory is considered as non-cooperative if no agreement that permits the exchange of information for tax purposes has been signed with the State of Qatar.

Thin capitalization provision

The new Executive Regulations have introduced thin capitalization provisions whereby interest on the loans, to related parties are restricted to the extent of amount loans that do not exceed three times the ownership rights. The ER also requires that the loan must be necessary for the purpose of taxpayer's business.

Provisions for doubtful debts for Banks and financial institutions:

As per the new ER, the provision for doubtful debts for Banking and financial institutions shall be determined based on the limits and instruction issued by QCB only. The earlier cap of 10% of net income has been removed.

Tax Depreciation:

The new ER’s have abolished the written down value (WDV) method, and now depreciation is to be computed in straight line method (SLM) based on detailed new prescribed rates for various asset. More clarification of the GTA will be required on transitioning from WDV method to SLM and determining the opening value of each asset based on previous tax returns.

Notification of change in entity

Changes in the entity which lead to reduction of tax liability will be effective from date of notification and not the date of actual change. Thus delay in notification will lead to delay in availing the benefit of change.

Tax returns

- Income tax return and capital gains tax return shall be deemed to be self-assessed
- The new ER specify the requirements of filing tax return for capital gains

Process of audit and examination

- Submission of details and document will have to be made within 20 days
- The GTA will notify taxpayers at least 15 days prior to initiating a tax audit or examination. Further, the GTA will also notify the taxpayers of the results of the tax examination before issuing the assessments.

Tax Exemption - Interest and dividend

The new ER states that interest paid by bank to non-resident natural persons and capital gains earned by non-resident natural persons is not covered under exemptions. However, the methodology to recover the tax and compliance requirements are not specified therein.

Other changes

Description	Under old regulations	Under new regulations
Carry forward of losses	**3** years	**5** years
Tax Card Registration	Within **30 days** from date of the commercial registration or first day of generating income, whichever is earlier?	Within **60 days** from date of the commercial registration or first day of generating income, whichever is earlier.
Entertainment hotel, restaurant food, vacations, club contributions and customer gifts	2% of net income or **QR 200,000 whichever is lower**	2% of net income or **QR 500,000 whichever is higher**
Gifts, donations, subsidies and contributions to charitable works etc.	**5%** of net income	**3%** of net income

Penalty for delay in contract reporting	Nil	**QR 10,000 per contract**
Change in accounting year	**90 days** prior to the due date of filing the tax return for the previous accounting year	**30 days** prior to the due date of filing the tax return for the previous accounting year
Request for extension for filing of tax return	Should be submitted before **30 days** of filing deadline	Should be submitted before **60 days** of filing deadline

This alert provides a brief summary of the new Executive Regulations and has been written in general terms and therefore cannot be relied on to cover specific situations; application of the principles set out in the new law and executive regulations will depend upon the particular circumstances involved and we recommend that you obtain professional advice before acting or refraining from acting on any of the contents of this publication.

How can we help you?

KPMG in Qatar can help you analyze the applicability of the new Executive Regulations and evaluate the potential impact of the same on your business in Qatar. If you have any questions or would like to discuss this directly, please contact us.

Kind regards,

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