

# Taxing times are here to stay

A recent amendment to Oman's corporate tax law expands the scope of withholding tax with far-reaching implications for business. Al Busaidy, Mansoor Jamal & Co. elaborates.

One of the hottest topics in Oman, and possibly the region at the moment, is the radical reform of Oman's corporate tax regime introduced by Royal Decree 9/2017 ("RD 9/2017"). Alongside new compliance and reporting obligations, increased income tax rates and the removal of beneficial thresholds and exemptions is the extension of withholding tax to overseas payments of interest and dividends as well as services. The effects of the revised withholding tax rules will be widely felt across the economy and, whilst the benefits for the government of Oman are clear, the potential cost to the taxpayer is significant.

The new withholding tax provisions took effect on February 27, 2017. The rate is 10 percent, and the obligation lies on the taxpayer to deduct it at source and remit it to the Omani tax authority within 14 days of the end of the month in which the amounts are paid or credited to the account of the taxpayer. Let's look at the three main impact craters: the effect on interest

payments made to non-Omani lenders, the effect on services provided by non-residents to Omani taxpayers and the payment of dividends to non-residents.

## INTEREST

Banks and corporates resident in Oman will all be affected where they have overseas borrowings. One would expect all cross-border loan agreements or debt securities to contain gross up provisions (such as the LMA standard) that oblige the payer to increase the payment made to the lender such that the lender receives the same amount it would have received, but for the withholding tax.

The increased cost to the Omani borrower will not be borne lightly. Grossing up provisions mean that borrowers are now obliged to pay 11.11 percent more interest than previously. In an already constricted economy, how will struggling corporates cope? Omani banks, part-funding themselves by recourse to the international markets, face the same situation. They find themselves able to absorb these increased costs, however. By Omani banks invoking increased costs clauses in their domestic loan portfolios, Omani corporates will foot this new bill.

## SERVICES

In the context of this point, the question is repeatedly being asked right now in Oman, "What are services?" No definition is contained in RD 9/2017. By inference, "services" must therefore be anything other than goods. It will include legal, accounting, and other advisory and consulting services provided from overseas. It will include shipping, transportation and logistics services. It will include recruitment agency services and outsourced HR functions.

Who will bear the cost of this increased tax liability is much more open to interpretation than in the case of cross-border loans, however. It is less likely than in the case of loan agreements that all contracts for the provision of services will

contain grossing up or similar provisions whereby the Omani tax payer would be required to make whole the non-Omani services provider. If there is no such provision in the services contract, would the overseas provider be content to take the hit on their invoice because the Omani recipient of services has to withhold tax? Expect, in due course, renegotiation of services contracts accordingly, again at the cost of the Omani taxpayer.

Why in due course? There is some uncertainty about the effective date of the application of withholding tax on services. The definition of “income” in the Omani tax law, which has been amended by RD 9/2017 specifically to include fees for provision of services, is effective from January 1, 2018 whereas the extension of the scope of withholding tax to include such fees is effective from February 27, 2017.

#### DIVIDENDS

The amendments made by RD 9/2017 in relation to withholding tax arising on dividend payments are open to interpretation in their scope. They appear to suggest that withholding tax becomes payable only in respect of dividend payments made by companies in Oman in accordance with the Commercial Companies Law (“CCL”).

The CCL provides for the payment of dividends by joint stock companies (public and closed) with respect to the shareholdings held in such companies. With regards to limited liability companies (“LLCs”), the CCL does not refer to shareholders and their shares in the LLC, but instead to participants and their participation rights in the LLC in respect of which the LLCs pay out a profit and not, strictly speaking, a dividend payment. Whilst it may be arguable that withholding tax in respect of dividend payments should not apply to the profits payable by an LLC to its members, it would, however, need to be seen how these provisions are interpreted and applied by the Department of Taxation and the Omani Courts.

#### WHERE TO FROM HERE?

The first meaningful remittance date of April 14 approaches, and it will be interesting to see how much withheld tax makes its way to the government coffers. It will also be interesting to see whether taxpayers have performed the correct

withholding and grossing up calculations.

There are, of course, ways to mitigate one’s tax liability and it would appear that there are various avenues open to Omani taxpayers to do just that. Oman has a number of double tax agreements with various jurisdictions around the world and one of the most favourable is its double tax agreement with the UK.

Anti-avoidance provisions are wide-ranging, nonetheless, and the government of Oman appears to have anticipated potential scams more successfully than the likely impact of the new taxes on the domestic economy. It is very likely that any deliberate or perceived avoidance will be dealt with to the fullest extent.

Penalties for non-compliance under RD 9/2017 are stricter than under the previous regime, including potentially heavier fines and lengthier prison terms for the relevant officer of the offending company. It will also be interesting to see how quickly and how strictly the authorities enforce the new obligations and apply penalties.

In short, it is still early days and businesses and their advisers are still trying to assess the potential ramifications of these major and unexpected changes. Given the potential impact on foreign direct investment in Oman, background discussions are ostensibly taking place and it would be premature to assume that what we have today is the final position. Watch this space. 🇦🇴



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