The CRAGUS Group

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Euromoney ranks Cragus as a leading tax transactional firm for the GCC in *International Tax Review*

Following our success at being ranked in Euromoney's *World Tax* 2007 and 2008, as one of the leading tax firms, we are delighted to know that we have also appeared in the February 2008 edition of *International Tax Review* magazine as a leading tax transactional firm for the GCC. We would like to thank our clients and peers for their votes and their support, and ITR for their continued and invaluable coverage.

Latest News Stories

Cragus Group (Dubai branch) hires new tax adviser from Ernst & Young in Finland

In February 2008, Sanna Jäälinoja joined the Cragus Group as the newest addition to their international tax team, advising multinationals both in the Middle East, particularly the Arabic Gulf, and Africa.

Previously a Senior Tax Advisor for Ernst & Young in Helsinki, Sanna's expertise in international tax is vast, spanning transfer pricing, capital markets, and tax due diligence, to name a few. Her previous role in the Finnish Tax Administration, specifically in the Tax Office for Major Corporations, has also added to her strong knowledge of transfer pricing and advance rulings.

Coupled with a Masters in Law from the University of Lapland, and a Masters of Science (Economics) from Helsinki School of Economics, Sanna is also fluent in Finnish, Swedish and English.

Oman's new income tax law

Despite some rumours in the press, the government in Oman has clarified that the new Income Tax law which is currently being approved will not have any effect on personal taxes.

It is understood that the new law is instead to unify the current existing laws within the Omani tax code, whilst also bring it into line with various forthcoming agreements and international developments. It is expected that the new law will be approved and made public very shortly.

Are GCC Nationals liable to Saudi Arabian Taxation?

The introduction of a new Income Tax Law in Saudi Arabia may mean that GCC Nationals are going to be liable to Saudi Arabian taxation on income arising in the Kingdom for the first time. The Economic Agreement between the GCC States signed on 31 December 2001 states that GCC Nationals shall be given the same tax treatment in any Member State as Nationals of that particular state. Under the old Income Tax Law, only profits attributable or arising to non-Saudi or non-GCC persons could be subject to Saudi Income Tax.

Under the new Income Tax, a Saudi company shall only be subject to Income Tax to the extent its profits are attributable to non-Saudi persons. However, a Saudi company will not pay Income Tax to the extent its profits are attributable to GCC persons and such persons will deemed to be Saudi persons for this purpose. However, the new law also applies to non-residents persons, "Saudi or non-Saudi who conduct business in the Kingdom through a permanent establishment (e.g. a branch) located in the Kingdom or who derive income from a source in the Kingdom" (parenthesis added).

It is difficult to envisage a Saudi person being "non-resident" for the purposes of the Income Tax Law. However, the fact that a Saudi non-resident person could, in principle, be taxable means that the tax authorities believe that a GCC person is fully taxable on profits arising from a business branch or source in the Kingdom. This will be a surprise to many GCC Nationals with business or investment interests in Saudi Arabia.

Kuwait to reduce tax rate

Kuwait's parliament has passed legislation to reduce the corporate income tax on net profits of foreign companies from up to 55% to a flat 15%. It is expected that this would encourage foreign investors in all sectors of the Kuwait economy, including the oil sector, and attract FDIs. The reduction, which has been expected for a few years, will come into effect once it is approved by the Emir. The law will apply to foreign businesses operating in the emirate and to Kuwaiti companies which represent foreign firms exclusively, and would be encouraging news for the capital markets, since it will exempt profits made by foreign companies from trading in stocks listed on the Kuwait Stock Exchange, whether made directly or through portfolios and investment funds.

Whilst the reduction should have significant positive impact on the after tax cash outflows of foreign investors, there is a risk that the home country tax regimes of the foreign investors could, in consequence of the lower Kuwait tax rates, impose additional taxes when the Kuwaiti income is repatriated to the home countries. This could particularly apply where the home country tax regimes do not exempt foreign dividends or where the foreign businesses in Kuwait are structured as branches of foreign companies.

Such home country taxes may however be avoided or reduced through careful corporate structuring and tax planning.

What is the price of Value Added Tax

Some Gulf countries, such as Qatar and UAE, are considering the introduction of a Value Added Tax ("VAT"). But what will be the consequences for businesses operating in such countries? VAT is not a simple sales tax that is levied on the final sale of goods or services to a consumer. Rather it is applied on the "added value" at each stage of the supply chain.

Typically, businesses are allowed to offset VAT they collect on sales with VAT paid on purchases so that the cumulative VAT cost is passed on to the consumer who cannot recover VAT on purchases. This requires businesses to keep accurate VAT records to account for all VAT collected and paid, so that those businesses can submit tax returns to the authorities. If collected VAT exceeds paid VAT, the businesses must pay the balance to the authorities within strict time limits. Excessive paid VAT may be claimed by the business and recovered from the authorities.
Tax compliance may be further complicated by different rates of VAT applied to different categories of goods and services, and possible uncertainties over which category a particular product belongs to. Further issues arise when goods or services are exempted from VAT and VAT paid on related purchases is no longer recoverable from the authorities. There may be severe penalties and fines for incorrect tax returns or failure to pay the correct amount of VAT. With the introduction of VAT in the Gulf countries, businesses will need to ensure that they are properly prepared for the new accounting records and tax return requirements it will entail.

Speculation continues on Nigeria potential tax changes

In October last year, the Presidential Committee on National Tax Policy released a draft National Tax Policy document. The focus of the document was to provide direction for the future of the Nigerian tax system in order to help stimulate the economy, through the provision of guiding principles for all taxes in the country. The document recognised the need to reduce the number of taxes, and advocated shifting the focus from direct to indirect taxation by reducing the rates of direct taxes and increasing the VAT rate. It puts forward the case for the number of tax incentives to be reduced and streamlined, for the tax administration to be improved by strengthening the joint tax board and for the collection system to be improved by ensuring taxes are collected by career administrators instead of outside consultants. It also advocates a comprehensive review of the tax system every 3 years.
It is uncertain when, and the extent to which, these principles would be put into practice. The political will to increase VAT rates (and consequently reduce direct taxes) may not be strong, but the document gives a clear signal that the Government is putting more emphasis on general taxes (apart from petroleum taxes) as a major revenue earner and that intends to be much tougher on tax collection and avoidance.

Notes from Iraq

Foreign companies that are registered in Iraq or otherwise have a permanent establishment in Iraq are generally subject to corporate income tax at a flat rate of 15% on their income earned in Iraq. There are few exemptions. The most notable is that income earned from contracts in connection with work performed under special agreements, such as "Agreement for Economical and Technical Cooperation between the USA and Iraq" are exempted from tax. The CPA (Coalition Provisional Authority) Order 49 specifically makes it clear under section 4(3) and (4) that:

> "3) Foreign (non-Iraqi) employees and foreign (non-Iraqi) contractors and subcontractors of the CPA, Coalition Forces, forces of countries acting in coordination with Coalition Forces, and departments and agencies of Coalition Forces' governments, that are providing technical, financial, logistical, administrative or other assistance to Iraq, and foreign employees of such contractors and subcontractors, shall not be liable to pay any tax on income or similar charge within the territory of Iraq on income from foreign sources or on income from or paid on behalf of the CPA, Coalition Forces, forces of countries acting in coordination with Coalition Forces, or departments or agencies of the governments of Coalition Forces.
> 4) Foreign (non-Iraqi) employees and foreign (non-Iraqi) contractors and subcontractors of foreign (non-Iraqi) governments, international organizations, and non-governmental organizations registered pursuant to CPA Order Number 45, that are providing technical, financial, logistical, administrative or other assistance to Iraq, and foreign employees of such contractors and subcontractors, shall not be liable to pay any tax on income or similar charge within the territory of Iraq on income from foreign sources or on income from or paid on behalf of such governments, international organizations, and non-governmental organizations."

Some practical points to note:

1. It is not a blanket exemption, and only applies where the foreign contractors are carrying out the relevant contract.

2. "Contractors" is defined as "non-Iraqi legal entities or individuals not normally resident in Iraq, including their non-Iraqi employees and subcontractors not normally resident in Iraq, supplying goods or services in Iraq under a contract". Establishment of normal residence in Iraq could therefore lead to forfeiture of the exemption.
There currently appears to be some uncertainty regarding US government contractors in Iraq who register with the Ministry of Trade, in compliance a US State Department Mission Policy issued last year following the Ministry of Interior's introduction of new procedures for the entry, stay and exit of non-Iraqi nationals. The registration is now required if the US contractors wish to obtain fee-free visas and residency permits for their employees. Registration could result in the establishment of normal residency in Iraq, and consequently forfeiture of the income tax exemption, since the contractors would then submit to Iraqi legal process. As the position is at best unclear, the affected contractors may wish to raise the issue with the US embassy or the Ministry of Interior before they register.

Practical Application of Algeria Windfall Profits Tax

By virtue of Article 3 of Ordinance N°06-10 of July 29, 2006, modifying and completing Act N°05-07 of April 28, 2005, a windfall profits tax was imposed in Algeria on the profits of foreign oil companies. The tax is imposed on a sliding scale, between 5 up to 50% on all profits on petroleum beyond the crude oil price level of $30/b, FOB (Free on Board) price (the tax applies when the monthly arithmetic average price for Brent Crude exceeds $30 per barrel).

However, and because of the ambiguity of Decree N°06-440 of the 2nd December 2006 related to the procedures, conditions and methods of Windfall Profits Tax calculation, it appears that it is being applied in practice to the full value of production rather than to the value in excess of $30 per barrel.

There was also uncertainty on how the collection and relief of the tax will ultimately be resolved. It was unclear whether the tax would be applied retrospectively and whether tax stabilization clauses in already signed petroleum contracts would prevail over the tax. The national oil company has however taken the view that the tax applies retrospectively and that tax stabilization clauses do not protect the oil companies, on the basis that the aim of the tax was to restore the economic balance of the relevant hydrocarbon contracts (as they had been premised on lower oil prices).

It would therefore be sensible for prospective investors to reflect these parameters in their economic evaluations.

If you would like further information on The Cragus Group or tax matters relating to the Arabian Gulf or surrounding region, please contact:

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About The Cragus Group

The Cragus Group is made up of hand-picked individuals from tax, legal and accounting backgrounds, with experience of international tax in the Middle East dating back 20 years. Primarily dealing with **corporate international tax planning**, they also provide advice on **transfer pricing**, **tax controversy**, **legal structuring**, **oil and gas** and general **corporate advisory** services. They serve a range of clients across the Middle East and Africa.
The Cragus Group consists of well known international tax advisors based in Dubai and a long standing network of trusted independent Member law firms and advisors of high professional reputation in Kuwait (Kuwait City), Oman (Muscat, Salalah, Sohar), Saudi Arabia (Jeddah), Qatar (Doha), UAE (Abu Dhabi, Dubai), and the USA (Washington DC).

Tax Leadership:
Reggie Mezu (Tax leader)
Over 20 years tax and legal experience: including roles from the UK, Nigeria, Singapore, The Netherlands, and the UAE; within Andersen, Price Waterhouse, and Shell (most recently serving as regional tax manager for the Middle East, Caspian, and South Asia).

Mark Stevens (Strategic adviser)
Over 20 years tax and legal experience within "big 5" audit firms, including 10 years based in the Middle East. Formerly part of the original Ernst & Young International Tax Services team in the region, then serving with Arthur Andersen, and later also heading tax and legal for PwC in the Lower Gulf.
Robert E. B. Peake (Strategic adviser)
International tax advisor experienced in advising global investors on managing tax risks and maximizing investment return by reducing tax liabilities. Formerly, Director and Partner of International Tax Services with Ernst & Young Middle East and Head of Tax and Legal Services for Lower Gulf with Arthur Andersen. Subsequently, senior tax advisor to a government investment institution and a member of the UAE Free Trade Agreements negotiation team with particular responsibility for matters relating to investment and dispute settlement.

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