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TAX ALERT

September 3, 2024

Bahrain Corporate Tax Law

Introduction

The Kingdom of Bahrain announced the introduction of a Domestic Minimum Top-up Tax for Multinational Enterprises as outlined in Decree Law (11) of 2024. The necessary Executive Regulations to implement the provisions of the Law would be issued to provide detailed guidance on various aspects.

The new framework for Multinational Enterprises is fully aligned with the Organisation for Economic Co-operation and Development (OECD) guidelines, underscoring Bahrain's commitment to promoting global economic fairness and transparency.

Through this alert, we've brought out the essence of the Decree in a simplified format, highlighting key points for quick reference.

Effective Date

Effective from 1 Jan 2025

Scope

a) Covered taxes would include corporate taxes, ownership share of income or profits and taxes levied in lieu of corporate taxes.

b) Tax to be levied on 'Taxable Income' of constituent entities 'located' in Bahrain.

c) Twin conditions to be fulfilled:

- Annual Revenue of Multinational Enterprise Group is atleast Euro 750 million in the consolidated financial statements of the Ultimate Parent Entity for atleast 2 of the immediately preceding 4 fiscal years.
- Where Effective Tax Rate is less than the Minimum Rate (i.e. 15%) for a fiscal year.

Entity Location

a) Location of an entity which is not a Flow-through Entity shall be as follows:

- Jurisdiction of tax residence based on place of management, creation or any other similar criteria
  - Legal personality incorporated or established in accordance with Bahrain's laws is considered as a tax resident of Bahrain.
  - Legal personality incorporated in foreign jurisdiction with place of effective management in Bahrain is considered as a tax resident in Bahrain.

b) Location of an entity which is a flow through entity is the jurisdiction in which it is established provided either of the conditions are met:

- It is Ultimate Parent Entity of Multinational Enterprise Group.
- The Flow through entity is required to apply rules consistent with the Income Inclusion rule as prescribed under OECD guidelines.

Flow Through entities as defined in the Decree mean fiscally transparent entities or reverse hybrid entities with respect to its income, expenditure or loss.

c) A permanent establishment shall be located in Bahrain if it has a place of business or deemed place of business in Bahrain.

d) Stateless Constituent Entity – In following scenarios, entity will be considered as a Stateless Constituent Entity.
- A flow through entity which does not satisfy the location criteria as mentioned in clause b) above.
- A permanent establishment in Bahrain which does not satisfy the place of business/deemed place of business test as mentioned in clause c) above.

Certain provisions with respect to tax applicability would differ for Stateless Constituent entities.

Calculation of Effective Tax Rate

Adjusted covered tax for Constituent Entities located in Bahrain	**(÷)**	**Net Constituent Entity Income**
(Current tax expense for fiscal year accrued in financial statements)		(Financial accounting net income or loss before any consolidation (intra-group) adjustments)

Calculation of Tax

Tax due shall be aggregate of A, B and C as follows:

A	**Additional tax** [Minimum Tax (-) Effective Tax Rate]	**X**	**Taxable Income** [Net Constituent Entity Income (-) Substance based income exclusion]
B	**Additional Current Tax**	**:**	Amount of Tax arising out of adjustments in covered taxes or due to recomputation of Effective Tax Rate of prior year
C	**Additional Tax for Permanent Differences** *Subject to certain conditions*	**:**	Absolute value of the aggregate Adjusted Covered Taxes (–)Absolute value of the product of Net Constituent Entity Income and Minimum Rate

Substance-Based Income Inclusion

Sum of the following:

a) Certain payroll costs incurred by Constituent Entities located in Bahrain, with a maximum of (9.6%) and a minimum of (5%) of those payroll costs.

b) The carrying value of certain tangible assets of Constituent Entities located in Bahrain at the end of the Fiscal Year, with a maximum of (7.6%) and a minimum of (5%) of the carrying value of those assets.

Relief from tax

a. De minimis Exclusion

a) Average Constituent Entity Revenue of all Constituent Entities located in Bahrain is less than Euro 10 million; and

b) Average Constituent Entity Income or Loss of all Constituent Entities located in Bahrain is less than Euro 1 million

c) The above averages are calculated based on current and two preceding fiscal years financial statement figures before making consolidation adjustments. Losses, if any are to be considered while calculating the Constituent Entity Income or Loss.

d) Necessary annual election is required to be filed with National Bureau of Revenue to apply the De-Minimis Exclusion.

b. Additional Tax Relief

In following additional scenarios, tax shall not be applicable or shall be equal to zero:

a) Entity is an Excluded Entity (i.e. Government bodies, international organizations, Pension funds etc.).
b) Transitional Country-by-Country Reporting Safe Harbor - Only for Fiscal Years beginning on or before 31 December 2026 and not ending after 30 June 2028.
   - Total revenue and profit/loss as disclosed in CbCR does not exceed prescribed amount (as mentioned in the de-minimis exclusion above); or
   - Alternate Effective Tax Rate of Multinational Enterprise Group for that fiscal year is at least 16% for fiscal years beginning in 2025 and 17% for fiscal years beginning in 2026; or
   - Profit/loss of Multinational Enterprise Group as disclosed in CbCR is not more than substance-based income exclusion.
c) Constituent Entity's income as determined under Simplified Computation (to be prescribed) is not more than substance-based income exclusion.
d) Exclusion for Initial Phase of International Activity - Multinational Enterprise Group satisfies all the following conditions:
   - Presence in not more than six jurisdictions
   - Sum of net book value of tangible assets of all entities does not exceed Euro 50 million
   - Ownership interests held by entities other than those which applies Income Inclusion Rule as prescribed in OECD guidelines.

General Anti-Abuse Rules

Transaction or arrangement to be disregarded that result in tax advantage in following situations:

a) Transaction or arrangement not for a genuine commercial purpose or for a financial purpose other than economic considerations.
b) Where the primary purpose, or one of the primary purposes is to obtain a Tax advantage that defeats purpose or objective of this Law.

Financial Statements

Consolidated Financial Statements shall mean the following:

a) Financial Statements prepared in accordance with Acceptable Financial Accounting Standard in which assets, liabilities, income, expenses and cash flows of the Entity and the Entities in which it has a controlling interest are presented as those of a single economic unit.
b) Financial Statements of an Entity that have been prepared in accordance with Acceptable Financial Accounting Standards, where the Entity meets the definition of being a Group as mentioned in the Decree.
c) If the Ultimate Parent Entity does not adopt Acceptable Financial Accounting Standards, Financial Statements that have been prepared subject to adjustments to prevent any material competitive distortions.
d) Where the Ultimate Parent Entity does not prepare financial statements in accordance with a), b) or c) above, then Financial Statements prepared in accordance with Authorized Financial Accounting Standard (either Acceptable Financial Accounting Standard or another Financial Accounting Standard adjusted to prevent material competitive distortions).

Registration and Deregistration

a) Registration to be taken by the Filing Constituent Entity with National Bureau of Revenue.
b) Excluded Entity may be required to register for tax, as necessitated by Bureau.
c) A request for deregistration may be submitted depending on the cases prescribed in the Regulations.

Tax payments and Refund

a) Tax due shall be paid by way of advance payment or in installments as prescribed.
b) Tax computation and payment to be made in Bahraini Dinar.
c) Claim for Tax refunds may be submitted no later than 5 years from date of payment of tax.

Tax Audit and Review, Objection & Appeal procedures

a) National Bureau of Revenue may conduct tax audits to verify the accuracy of tax returns and to ensure compliance. In the process, the Bureau may request necessary data, clarifications and documents from the relevant party.
b) A review request may be submitted to the Bureau within 60 days from date of notification of decision. If the concerned party objects to the review decision, an objection may be filed before the Tax Objections Committee within 60 days. If aggrieved by the decision of the Tax Objections Committee, the concerned party can file an appeal before the competent Court within 60 days.

Penalties and Fines

a) Failure to apply for registration – 100,000 Bahrani Dinars
b) Failure to submit tax return – 30% of tax amount
c) Failure to pay tax or delayed payment of tax –1% of unpaid tax per month (subject to cap of 70% of unpaid tax)
d) Submission of incorrect tax return – 30% of tax amount or 20% of tax amount (in case of voluntary disclosure) or 100,000 Bahraini Dinar (in case tax is not underreported)
e) Tax Evasion (in certain prescribed situations) – 100% of Tax Due (subject to 300% cap) and imprisonment between 3 months – 5 years. In case of repeated default within 6 years, the penalty shall be doubled.

Tax Evasion

Intentionally committing any of the following acts:

a) Failure to register for Tax purposes.
b) Failure to submit the Tax Return or pay the Tax Due within the prescribed deadlines.
c) Submission of an incorrect Tax Return.
d) Alteration of data in commercial books, agreements, etc. with the intent of misleading the Bureau by understating profits, inflating losses, affecting the computation of the Tax Due, or obtaining a Tax advantage.
e) Submission of incorrect, forged or counterfeit data, documents, records, accounting books, financial statements, or invoices with the intention of obtaining tax advantages.
f) Concealing or failing to disclose one or more activities subject to Tax.
g) Destroying or concealing data, documents, records, accounting books, etc, that must be retained, thereby affecting the Bureau's ability to verify elements of income computation and the Tax Due.
h) Failure to maintain records, accounting books, financial statements, and all documents, invoices, and materials that must be retained in a regular manner.

Transitional provisions

Deferred tax assets/liabilities (other than excluded items) of Multinational Group entities to be considered to determine Effective Tax Rate.

Dhruva comments:

This move aligns with Bahrain's commitment to the comprehensive framework of the Organisation for Economic Co-operation and Development (OECD), which it joined in 2018 along with over 140 other countries, including those in the GCC. It also aligns with the two-pillar tax reform project that introduced a global minimum corporate tax rate, ensuring that multinational enterprises pay a tax rate of at least 15% on profits earned in each country they operate in.

WTS Dhruva Consultants has been recognized as the **"Best Newcomer Firm of the Year"** at the ITR European Tax Awards 2020.

Dhruva Advisors has been consistently recognized as the **"India Tax Firm of the Year"** at the ITR Asia Tax Awards in 2017, 2018, 2019, 2020 and 2021.

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