Executive summary

Saudi Arabia’s General Authority of Zakat and Tax (GAZT) has released the final Implementing Regulations to the Value-added Tax Law (VAT Bylaws) on its website. With the official publication of the finalized VAT Bylaws in the Saudi Gazette, businesses should be able to move forward with the full implementation of the VAT Law. The implementation steps will include transformation of the financial processes of the business to meet the VAT reporting requirements and the reconfiguration of IT systems to manage the compliance obligations for VAT reporting from 1 January 2018 onwards.

Detailed discussion

There have been a number of fundamental changes introduced in the final regulations in addition to changes in emphasis and additional guidance on compliance obligations. The following paragraphs summarize the key changes introduced in the final regulations.

1) **Extension of taxpayer registration timelines**: The grace period to register for VAT has been increased to 30 days from the date when registration is triggered as compared to 20 days under the draft Bylaws. The GAZT has the discretion to accept late registrations after the statutory deadline set, i.e., 20 December 2017.
2) **Mandatory registration of nonresident persons:** Nonresident persons obligated to pay tax on supplies made in Saudi Arabia must apply for registration within 30 days (20 days under the draft Bylaw) of the first supply on which such persons are obligated to pay VAT.

3) **VAT grouping:** The requirement for a minimum ownership or control of voting rights has been changed from “more than 50%” to “50% or more.” This has widened the scope for VAT grouping to include entities with equal partners holding a 50% share ownership (as against the criteria for the shareholding to exceed 50% as set out in the draft Bylaw).

4) **VAT group registration:** The VAT group registration will take place on the first day of the month following the month of making the application for such registration, as compared to the date of application under the draft Bylaws.

5) **Disbanding of a tax group:** The draft Bylaws stipulated that the suspension of the existing Tax Identification Number of entities forming part of a VAT Group does not constitute deregistration of their individual members. However, this clarification is omitted in the final Bylaws.

6) **Transfer of goods:** The temporary transfer of one’s own goods from Saudi Arabia to another Member State will not be considered as a supply of goods, provided the taxpayer submits evidence that the removal of goods is for the temporary use of the business, or an onwards supply, within 60 days (as compared to 90 days under the draft Bylaws) of the transfer of the goods to the other Member State. The transfer period eligible for exemption has therefore been reduced.

7) **Transfer of going concern:** Upon the transfer of a business as a “going concern,” if the supplier and recipient are required to de-register or register, such notification should be made to the GAZT within 30 days of the date of transfer (as compared to 20 days under the draft Bylaws).

8) **Electronic application for VAT registration:** The reference to the electronic application for VAT registration has been dropped in the final Bylaws.

9) **Documentation requirements to support intra-Gulf Cooperation Council (GCC) supplies:** A customs declaration form has been included as an eligible documentary evidence for intra-GCC supplies apart from commercial invoices and transport documents.

10) **Financial services:** In the definition of “financial services,” the scope is further clarified stating that the transfer of the underlying goods provided as collateral in relation to a financing or other arrangement will not be treated as a separate supply of goods.

   However, it is provided that when the transferee becomes entitled to exercise the full right to dispose of the goods or the transferee otherwise acting in such a way that the transfer may no longer be considered temporary, such transfer of collateral shall be treated as a separate supply of goods.

11) **Sale of medicines:** The definition of qualified medicines and qualified medical goods has been widened by omitting the words “dispensed to an individual for that individual’s personal use on the prescription of an authorized prescriber.” We understand that the sale of qualifying medicines or goods shall be zero-rated, even if sold in a business-to-business sale (as compared to the omission of business-to-consumer sales under the draft Bylaws).

12) **Related person:** The definition of “related persons” has been amended in the case of natural persons by increasing the threshold limit of the interest between related parties to more than 50% (as compared to 50% or more under the draft Bylaws).

13) **Fair market value:** The final Bylaws clarify that in the case of a dispute in the determination of the fair market value of goods or services as to a difference between the value of the supply and the value of a comparable transaction, the decision of the GAZT will be final and binding.

14) **Used goods:** The scope for calculating VAT on the sale of used goods has been widened to include all types of goods that the Authority may specify as eligible for using the profit margin method. The draft Bylaws restricted use of the profit margin method to used motor vehicles.

15) **Lost goods:** In cases where the goods purchased by a person are lost, damaged or stolen, the GAZT may require evidence such as a police report and insurance claim documentation to support any amendment of the VAT related to such goods.
16) **GAZT access to third party records**: The final Bylaws set out the access rights of the GAZT to evidence other than the accounting records of a taxpayer. The GAZT may obtain access to evidence from third parties including government entities, banks and other financial institutions as part of its evidence gathering to validate the correctness of the VAT reporting of a business.

17) **Tax period**: As per the draft Bylaws, the standard quarterly tax period aligned with the Gregorian calendar. However, the final Bylaws has omitted reference to this and hence further clarification may be needed on the interpretation of a quarterly tax period.

18) **Payment of VAT**: The draft Bylaws contained a specific restriction on payments using the SADAD electronic payment service. This has now been dispensed with, and the payment of VAT can be made to the designated bank account of the GAZT.

19) **Rectification of VAT return**: Where errors are made in a tax return which results in an overstatement of VAT paid for a tax period, then the taxable person may correct that error at any time by adjusting the tax in a subsequent tax return within five years from the end of the relevant calendar year.

20) **Tax invoice**: There is no requirement to issue a hard copy of a tax invoice as per the final Bylaws (the draft Bylaws required that all tax invoices be printed in Arabic and maintained in a hard copy for a period of two months. This is not mandated in the final Bylaws). Similarly, the requirement to generate periodic printouts of all data has now been eliminated.

21) The following articles have been completely omitted in the final Bylaws:

- Article 65 on “execution and conservatory measures” containing 13 sub-clauses on recovery measures and seizure proceedings.
- Article 67 on “Review and appeals - Appealable Decisions” containing six sub-clauses on the right of taxpayer to request the GAZT for a review of the assessment, list of appealable decisions and conditions for filing an appeal.
- Article 68 on “Internal Review” containing two sub-clauses on the process of internal review.
- Article 69 on “Appeals” containing six sub-clauses on the manner and procedure of filing appeals are completely revamped. The final Bylaws simply provides that the appeals shall be filed with the competent judicial authority in accordance with the Royal Decree No. (M/113) dated 2-11-1438 H amending the Income Tax Law.
- Article 70 on “Mediation process” containing eight sub-clauses on the mediation mechanism for resolving disputes have been omitted. However, it is provided that the Minister of Finance may make provisions to establish a mediation procedure to resolve disputes between the GAZT and taxpayers where parties consent to the use of such mediation.
- Article 71 on “Other corrections outside of the formal review process” containing two sub-clauses on rectification of erroneous assessments by GAZT have been omitted.
- Article 72 on “Onus of proof” containing two sub-clauses on the onus of proof in the case of tax evasion and other cases have been omitted.

22) The powers vested with the GAZT Board of Directors with respect to determining or announcing the list of eligible persons that can file for a VAT refund (input VAT credit on their procurement) in Saudi Arabia are now vested with the Ministry of Finance.

23) **Advance ruling**: The GAZT has been empowered to issue any advance rulings, decisions and instructions necessary to implement the provisions of the Law and the Bylaws.

24) **Electronic filing**: The mandatory requirement to provide all documents in electronic form will be at the discretion of the GAZT.

25) **Grandfathering provisions**: The time period allowable to zero-rate long term existing contracts under the grandfathering provisions has been reduced under the new Bylaws to the earlier of: (i) expiry of the contract, (ii) renewal of the contract, or 31 December 2018 (as compared to 31 December 2022 under the draft Bylaws).
Implications

There is now four months for businesses to finalize their readiness projects for VAT. This represents a very short duration for most businesses and the challenges in achieving compliance for VAT by the implementation date of 1 January 2018 cannot be underestimated. Businesses must now take immediate steps to register with the GAZT and accelerate the pace of their VAT impact assessment projects. With so many businesses in Saudi Arabia undertaking readiness projects at the same time significant demands are expected on the time availability of finance, supply chain, tax, legal, sales and marketing, and IT functions that have responsibility to transform the business processes to manage VAT.

Endnote

For additional information with respect to this Alert, please contact the following:

**Ernst & Young & Co (Public Accountants), KSA Tax Leader, Riyadh**
- Asim Sheikh +966 58 301 9999 asim.sheikh@sa.ey.com

**Ernst & Young & Co (Public Accountants), Riyadh**
- Ahmed Abdullah +966 11 215 9439 ahmed.abdullah@sa.ey.com
- Amr Farouk +966 11 215 9898 amr.farouk@sa.ey.com
- Craig McAree +966 11 215 9898 craig.mcaree@sa.ey.com
- Hosam Abdul Kareem +966 11 215 9805 hosam.abdulkareem@sa.ey.com
- Imran Iqbal +966 11 215 9807 imran.iqbal@sa.ey.com
- Nitesh Jain +966 11 215 9842 nitesh.jain@sa.ey.com
- Parvez Maqbool +966 11 215 9849 parvez.maqbool@sa.ey.com
- Sohail Nini +966 11 215 9825 sohail.nini@sa.ey.com
- Vladimir A Gidirim +966 11 215 9455 vladimir.gidirim@sa.ey.com
- Yousef Eldaw +966 11 215 9877 yousef.eldaw@sa.ey.com

**Ernst & Young & Co (Public Accountants), Al-Khobar**
- Syed Farhan Zubair +966 13 8499 500 farhan.zubair@sa.ey.com
- Ali Sainudheen +966 13 8499 500 ali.sainudheen@sa.ey.com
- Hatem Ghobara +966 13 8499 500 hatem.ghobara@sa.ey.com
- Javed Aziz Khan +966 13 8499 500 javed.aziz@sa.ey.com
- Jude deSequeira +966 13 8499 500 jude.desequeira@sa.ey.com

**Ernst & Young & Co (Public Accountants), Jeddah**
- Franz-Josef Epping +966 12 221 8400 franz-josef.eppping@sa.ey.com
- Ayman Abu El Izz +966 12 221 8400 ayman.abuelizzz@sa.ey.com
- Hanif Khatri +966 12 221 8400 hanif.khatri@sa.ey.com
- Hussain Asiri +966 12 221 8505 hussain.asiri@sa.ey.com
- Imran Ahmed +966 12 221 8400 imran.ahmed@sa.ey.com
- Irfan Alladin +966 12 221 8510 irfan.alladin@sa.ey.com
- Mohammed Desin +966 12 221 8500 mohammed.desin@sa.ey.com
- Rolf Winand +966 12 221 8501 rolf.winand@sa.ey.com

**Ernst & Young Middle East, Dubai Branch, UAE**
- Michael Hendroff +971 4 332 4000 michael.hendroff@ae.ey.com

**Ernst & Young, VAT Implementation Regional Team**
- Finbarr Sexton +974 4457 4200 finbarr.sexton@qa.ey.com
- David Stevens +971 4 332 4000 david.stevens@ae.ey.com
- Jennifer O’Sullivan +974 4457 4116 jennifer.osullivan@qa.ey.com
- Filip Van Driessche +974 4457 4271 filip.vandriessche@qa.ey.com

**Ernst & Young LLP, Middle East Tax Desk, Houston**
- Gareth Lewis +1 713 750 1163 gareth.lewis1@ey.com
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