

Overview

On July 7, 2019, a new Foreign Capital Investment Law was promulgated by Royal Decree 50/2019 (New FCIL) and came into force on January 1, 2020. The New FCIL does not provide for any minimum share capital requirement (this was RO 150,000 under the old FCIL), nor any general limit on foreign ownership of an Omani company (this was previously 70%). Accordingly, this new law has the potential to open up foreign investment in Oman.

Article 14 of the New FCIL states that the Minister of Commerce and Industry will issue a decision stipulating those activities in which foreign investment is prohibited. Article 15 of the New FCIL provides for Executive Regulations, which will set out the conditions and process for issuing approvals, permits and licences for investment projects under the New FCIL.

To date there has been no Ministerial Decision or Executive Regulations issued pursuant to the New FCIL.

In this chapter

- Legal system
- Taxation authorities
- Business vehicles
- Financing a corporate subsidiary
- Corporate income tax
- Cross-border payments
- Payroll taxes
- Indirect taxes

Legal system

The relevant laws governing taxation and customs in Oman are the Income Tax Law (promulgated by Sultani Decree 28/2009, as amended by Sultani Decree 9/2017) (the Income Tax Law), and certain provisions of the Commercial Companies Law, the Social Securities Law (Sultani Decree 72/1991), the Unified Customs Law of the Gulf Cooperation Council Countries (Sultani Decree 67/2003) (UCL).

Oman has entered into double-taxation treaties (DTTs) with more than 30 countries, providing Omani taxpayers relief from certain tax obligations. Despite the fact that most DTTs are based on the Organisation for Economic Co-operation and Development (OECD) standards, each DTT has its own characteristics. A careful analysis of each DTT is required to identify its applicability to each individual taxpayer and the relevant transaction in question. It is also worth noting that there are no DTTs in place with members of the Gulf Cooperation Council (GCC). However,

companies or persons domiciled in GCC countries may avail themselves of certain benefits enshrined in the Economic Agreement of 2001 (EA), which provides for equivalent treatment to citizens of GCC member states to Omanis. By way of an example, given that dividends paid to Omani nationals or companies are not subject to withholding tax (WHT), dividends to GCC nationals or companies are also not subject to WHT.

Taxation authorities

The Tax Authority (TA) is responsible for applying the relevant taxation laws in Oman and is considered a branch of the Council of Ministers.

Business vehicles

Limited liability companies (LLC) are the most common business vehicles utilized to carry on business in Oman. An LLC requires at least two shareholders and a minimum share capitalization of OMR 20,000 if Omani- or GCC-owned or (subject to certain exceptions). Pursuant to the US-Oman Free Trade Agreement, wholly US-owned LLCs may have a minimum share capitalization of OMR 20,000.

A foreign company may also conduct business in Oman through a branch if it is the counterparty to a contract with the government of Oman, or an entity in which the government holds a significant interest.

Financing a corporate subsidiary

Companies may be funded by equity or debt. Income tax is not chargeable on dividends received by sole proprietary commercial establishments, nor on dividends received by companies on shares held in the capital of another company registered in Oman. Dividends distributed by Omani joint stock companies as well as mutual funds to foreign investors are subject to WHT (subject to any double-taxation treaty relief – see below). Profit distributions to foreign shareholders from an LLC are not considered dividends and are not subject to WHT.

Interest paid on the bank borrowing used for business purposes is deductible. Interest paid on loans from partners/ members is allowed on a restricted basis. Any interest paid to foreign shareholders is subject to WHT (subject to any double-taxation treaty relief – see below). Income accrued from bonds and Islamic sukuk will also be subject to WHT unless issued by the Government or banks located in Oman.

Thin capitalization

A company's debt to equity ratio must not exceed 2:1 in the case of related-party debt, otherwise the interest on the excess debt will not be deductible for tax purposes.

Corporate income tax

The principal tax in Oman is a corporate tax on business income.

The following entities are subject to corporate tax:

- i. Companies and enterprises established in Oman
- ii. Branches
- iii. Individual corporations undertaking business in Oman.

Corporate tax is payable by Omani companies and foreign entities that have a permanent establishment in Oman at the rate of 15% of profits. There is also no tax- free threshold. The applicable rate of corporate tax will be 3% if the taxpayer satisfies all of the following conditions:

- i. Is an Omani corporate entity
- ii. Has a share capital of OMR 50,000 or less
- iii. Employs 15 employees or less

- iv. Has an annual revenue of OMR 100,000 or less
- v. Does not partake in activities relating to the business of banking, insurance, financial institutions, public utilities concessions, air and sea transport, or extraction of natural resources, or as otherwise decided by the Council of Ministers.

Entities whose main activity is in the industrial sector may be granted a tax exemption. Income derived from the sale of oil and gas originating in Oman is taxed at a rate of 55%. However, the petroleum company that realizes such profits, although still considered a taxpayer in Oman, would typically have its tax obligations discharged by the government of Oman under the terms of its Exploration and Production Sharing Agreement.

Foreign tax credit

An Omani taxpayer that incurs foreign tax on income that is also taxed in Oman may file an application to the TA requesting a tax credit for any foreign taxes paid, irrespective of whether Oman has a DTT in place with that foreign country. The credit amount is limited to the amount of tax incurred in Oman.

Income tax reporting

Consolidated tax returns are not permitted. Each company must file its own provisional tax return within three months of the end of the financial year and make a payment of the estimated tax. An annual tax return must then be filed within six months of the end of the financial year, accompanied by audited financial statements, with any tax due also paid at the same time. Failure to submit tax returns by the prescribed due date may result in a maximum penalty of OMR 2,000.

It is also mandatory that accounting records are maintained for a period of 10 years. Small taxpayers that are subject to the 3% corporate income tax rate are only expected to provide a simplified manual tax declaration within three months of the end of the financial year.

Cross-border payments

Transfer pricing

There are no rules concerning transfer pricing in Oman, but Article 125 of the Income Tax Law relates to the avoidance of tax between related parties. The tax authorities are empowered to use relevant anti-avoidance provisions. Article 18(5) of the Implementing Regulations of the Income Tax Law (Ministerial Decision 30/2012 as amended) requires that the cost of services provided must be reasonable in relation to the value of the services rendered.

Withholding tax (WHT)

WHT applies to the payment of royalties, consideration for conducting research and development, consideration for the use of or right to use computer software, fees for management, dividend payments, interest and fees for services. Foreign persons with no permanent establishment in Oman are subject to WHT at a rate of 10% on gross amounts paid to them. WHT is generally withheld at the source by the Omani company making payment to the foreign person.

Only dividends distributed to foreign shareholders by Omani joint stock companies are currently subject to WHT; profit distributions from Omani limited liability companies to foreign partners are not. Service fees are subject to WHT, irrespective of the place of performance of the services. It is also irrelevant whether the recipient is a GCC resident or not.

Disclosure obligations

The TA is empowered to use relevant anti-avoidance provisions. Pricing between related entities must be on an arm's length basis and must be disclosed in tax returns. There is, however, no specific guidance on acceptable methods for determining an arm's length price. If the TA determines that an adjustment to tax payable by a taxpayer is applicable, the due date for payment of any additional tax will be specified on the TA's Assessment Order. Where an adjustment is made as a result of an assessment, the TA will specify a time within which any additional tax must be paid.

Payroll taxes

Social Security Fund payments

Employers contribute 11.5% and Omani-national employees contribute 7% of their monthly salaries to the Social Security Fund for social security purposes (i.e., old age, disability and death). Expatriate employees are exempt.

Indirect taxes

Value-added tax (VAT)

The government of Oman does not currently levy VAT. However, VAT is expected to be implemented in 2021 in line with the principles set out in the Unified VAT Agreement for the GCC States. The VAT rate is expected to be 5%. Businesses will be required to register as VAT vendors if the value of their annual supplies exceeds the mandatory registration threshold of OMR 38,500.

Excise tax

An Excise Law was issued on 13 March 2019 and promulgated by Royal Decree 23/2019. The Excise Law levies tax on selected goods which include: tobacco and its derivatives; energy drinks; carbonated drinks; alcoholic beverages; and pork and its derivative products.

Custom duties

Import into and export out of Oman is governed by the UCL, and implemented by the Royal Oman Police through the Directorate General of Customs. The UCL and the unified customs system provides for a single point of entry and exit to the GCC, allowing the free movement of GCC-manufactured goods without a levy of customs tariff and subjecting most foreign imports to a one-time External Common Custom Tariff at the rate of 5%.

Transfer duty

Oman does not levy income tax on individuals. However, transfer duty is applicable on the transfer of real property at the rate of 5% of the value of the property.

Your Key Contacts

Global



Nick Simpson

Office Managing Partner,
Jeddah

D+966 11 200 8678 ext. 202

nick.simpson@dentons.com