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Meyer-Reumann & Partners
P.O. Box 9353
Dubai, U.A.E.
Tel: 00971-4-331 7110
Fax: 00971-4-331 3832
dubai@meyer-reumann.com
www.meyer-reumann.com

With offices in
Dubai + Alexandria + Erbil + Muscat + Riyadh

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M&P welcomes Mrs. Mariem Al-Ssayrafi

We are please to announce that Mrs Mariem Al-Ssayrafi joined our team in our Dubai office. Today we use this opportunity to give her a chance to introduce herself to the readers of Lex Arabiae:

“The wish to become a lawyer arose early, already in my childhood, and I am happy to be able to fulfill this dream now at Meyer- Reumann & Partners in their Dubai office.

Raised in Nuremberg, I graduated from the Heinrich- Schliemann- Gymnasium in 2010 and started my law studies in the same year at the Friedrich- Alexander-University in Erlangen. From the beginning of my studies I worked on the side in a medium sized lawyers office in Nuremberg, to get in touch with the daily work of a lawyer as soon as possible.

After my graduation from university I started my mandatory Legal Traineeship at the Nuremberg Regional Court and passed my further stations at the Public Prosecution Nuremberg and the Government of Midfranconia. As I already noticed my interest for economic processes and correlations during the time of my side work at the lawyers office, I decided to spend the mandatory lawyer station at Beisse & Rath. They are focused on advising small- and medium-sized enterprises on all legal and tax matters concerning their clients' corporate and asset management activities.

In order to complete the picture of an entirely legal education the last step to be made was a stay abroad. For my electoral station, I spend three months at the office of Meyer-Reumann & Partners in Dubai. The international work environment, the variety and diversity of clients and cases led me back after my admission the bar in Nuremberg and I am looking forward to a new chapter here in Dubai.”

Mariem Al-Ssayrafi,
Meyer-Reumann & Partners,
Dubai Office

United Arab Emirates

VAT in the UAE - Questions answered

Guiding Principle

On 1 January, 2018, value added taxes ("VAT") have been introduced in the UAE. As could be expected, quite many people remain confused about what effect the introduction of VAT will actually have on them and how they are supposed to deal with it. While answers to many questions will only develop over time once a certain practice of the Federal Tax Authority ("FTA") has been established, some essential questions can be answered already. Federal Decree Law No. 8 of 2017 (VAT-Law) and its Executive Regulations, Cabinet Decision No. 52 of 2017 ("ExReg") form the main legal basis for VAT in the UAE. This article aims to answer some of the most essential VAT related questions based on the provisions of both, the VAT-Law

and the ExReg.

A. What are "Value Added Taxes"?

In a nutshell, VAT is a tax that is paid by end-consumers. Any person further up the supply chain will have to pay VAT also, but will be able to deduct all VAT paid (usually called "**Input Tax**") from the VAT it has to pay to the FTA (usually called "**Output Tax**"). Such person's customer, in turn, pays the Output Tax. So for any person in the supply chain other than the end-consumer, VAT is nothing but a self-balancing item, which will be paid, but also be recovered.

B. Who does or does not need to register for VAT?

The VAT-Law distinguishes between three different scenarios:

- those who are obliged to register;
- those who can register voluntarily; and
- those who are not allowed to register.

I. Mandatory Registration

Traders (which, in principle, can be both, individuals and commercial entities) who have "exceeded the Mandatory Registration Threshold over the previous 12-month period"[1] are obliged to register with the FTA. The "Mandatory Registration Threshold" is AED 375,000[2]. Unfortunately, however, the calculation of the "Mandatory Registration Threshold" is not entirely clear, but we assume that the VAT-Law[3] refers to the total turnover that has been made in the 12-month period prior to registration.

II. Voluntary Registration

Traders whose turnover in the 12-month period prior to registration exceeded the "Voluntary Registration Threshold" (AED 187,500[4]), but not the "Mandatory Registration Threshold" can opt to register with the FTA[5], but are not obliged to do so.

III. No Registration

Traders whose turnover in the last 12 months did not exceed the "Voluntary Registration Threshold" of AED 187,500 are neither obliged, nor even allowed to register.

C. Are Companies in Free Zones obliged to register?

Generally, yes. The VAT-Law is a federal law and applies throughout the UAE. Only "Designated Zones" will "be treated as being outside the [UAE]"[6]. "Designated Zones" within the meaning of the VAT-Law have just recently been defined and include mostly free zones which have their own customs department, such as the Jebel Ali Free Zone, KIZAD, Dubai Airport Free Zone and Hamriyah Free Zone. It also includes free zones, the existence of which was not yet known, such as free zone areas in Al Quoz and Al Qusais in Dubai.

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[1] Art. 13 1. a. VAT-Law

[2] Art. 7 1. ExReg

[3] Art. 19 VAT-Law

[4] Art. 8. 1. ExReg

[5] Art. 17 VAT-Law

[6] Art. 50 VAT-Law

Even if a company is based in such "Designated Zone", however, it does not necessarily mean that such company is not required to register with the FTA. This depends on whether or not the entity in question is conducting business with customers inside of the UAE. If such business is being conducted and the customer is not obliged to pay VAT, the company is obliged to register even if it is based in a "Designated Zone"[7].

Given that VAT will be applied on the vast majority of all imported goods[8] and that the person importing such goods will be responsible for paying the corresponding VAT[9], we believe that most companies based in a "Designated Zone" will, in fact, not be obliged to register for VAT, because they will be falling outside of the scope of Art. 13 2. VAT-Law.

D. Will VAT be applied to all Goods and Services?

Generally, the answer is yes, but there is a range of exceptions.

I. Business conducted on a Private Level

Probably the most important exception in everyday life is that transactions between individuals are usually not subject to VAT. According to Art. 2 1. VAT-Law VAT is imposed only on supplies of goods and/or services done by "Taxable Persons". A "Taxable Person" is only such that is either registered or obliged to register[10]. Hence, transactions done by persons (in theory even companies) that are either not eligible for VAT registration or which choose not to register (only possible if their turnover does not exceed AED 375,000) are not subject to VAT. However, this applies only if the "supplier" of the goods and/or services in question is not a "Taxable Person". If the supplier is a "Taxable Person" and the recipient of the goods or services is not, VAT (obviously) still applies. Hence, if a private individual (and generally persons or companies that are not obliged to register for VAT) sells something to a VAT registered company, no VAT will apply, but if the same VAT registered company sells the same item to the private individual, VAT will, in fact, apply.

II. Government Services

Services provided by government entities, as long as such entities are acting in a sovereign capacity, will also be exempt from VAT[11]. The Cabinet will decide which services are to be considered performed in a sovereign capacity in due course, however[12].

Judging by experiences in other countries that do have a VAT system in place, we would expect that services provided by the courts, traffic fines, governmental permits, etc. will be exempt from VAT. Other services, which are provided by (semi-) government entities, but could in theory

[7] Art. 13 2. VAT-Law

[8] Art. 2 2. VAT-Law

[9] Art. 4 2. VAT-Law

[10] Definition of "Taxable Person" in the VAT-Law

[11] Art. 10 1. VAT-Law

[12] Art. 10 2. VAT-Law

also be provided by private parties, such as the provision of electricity and water, are more likely to be subject to VAT, however.

III. Zero Rated Supplies

Technically speaking, this is not an exemption, because VAT is still being applied albeit at "0%". Art. 45 VAT-Law lists a range of goods and services, which will be "zero rated". Most notably, the list includes the export of products[13], supply and import of precious metals[14] (which Art. 36 ExReg defines as gold, silver and platinum of not less than 99% purity), the "first supply of residential buildings within (3) years of its completion"[15], the "supply of educational services"[16] and the "supply of preventive and basic healthcare Services"[17].

IV. Exempt Supplies

According to Art. 46 VAT-Law certain "supplies" are exempt from VAT. This applies, primarily, to "financial services", which Art. 42 2. ExReg defines as "services connected to dealings in money (or its equivalent) and the provision of credit [...]".

Exempt from VAT is also the lease of residential buildings[18], which presumably does not only apply to entire buildings as such, but also to apartments.

[13] Art. 45 1. VAT-Law. "Exports" from the UAE into one of the "Designated Zones" are not considered exports for VAT purposes though (see Art. 30 3. ExReg)

[14] Art. 45 8. VAT-Law

[15] Art. 45 9. VAT-Law

[16] Art. 45 13. VAT-Law

[17] Art. 45 14. VAT-Law

[18] Art. 46 2. VAT-Law

The exemption applies only to leases of more than six months, however, and to situations where the tenant is a UAE resident or citizen.

Exempt from VAT are further transactions involving bare land and the provision of local passenger transport services, which presumably refers to taxi and metro services.

E. How is VAT calculated?

The basis for the calculation of VAT is the "value of the supply"[19], which is usually the agreed amount payable for the goods and/or services provided. Hence, if a person is selling a product for AED 100, such AED 100 are the basis for VAT calculation. With VAT currently set at 5%[20] the total price payable by the customer will be AED 100 plus AED 5 for VAT, so a total of AED 105.

F. How do I calculate the VAT amount payable to the FTA?

The response to this question is simple in theory, but often one of the trickiest questions in practice.

The basic principle is that the trader must pay all VAT invoiced to its customers during a certain "Tax Period" (which we will deal with in G. below) to the FTA, regardless of whether or not such VAT has actually been paid to the trader by the customer. Hence, payable is the invoiced, not the paid VAT. From this Output Tax the trader can deduct all "Recoverable" Input Tax, so in principle, the amount payable to the FTA is the

[19] Art. 3 VAT-Law

[20] Art. 3 VAT-Law

total Output Tax invoiced during a "Tax Period" less all "Recoverable" Input Tax paid during such "Tax Period"[21].

The tricky part is determining what the "Recoverable" Input Tax is. Art. 54 VAT-Law states that "[t]he Input Tax that is recoverable by a Taxable Person for any Tax Period is the total Input Tax paid for Goods and Services which are used or intended to be used for [...] Taxable Supplies[22]". In simplified language, that means that all VAT a trader has spent in order to run his business can be deducted from such trader's Output Tax prior to making any VAT payment to the FTA. The question remains, however, which amounts have been spent in order to run the trader's business and which ones have to be seen as personal expenses? How about, for example, the new computer, which may be used for business purposes, but is also used for personal needs? How about expenses for mobile phone bills where most calls are business related, but the same phone is also used to make personal calls?

These are questions, which can only be answered once the FTA has developed a certain routine as to how such things are to be treated. Even then, however, these questions are likely to remain a source of constant dispute as experiences in other countries show.

The ExReg provide some further, non-exhaustive guidance on what qualifies as "recoverable" Input Tax. "Entertainment" expenses, for example, that have been incurred for business development purposes cannot be offset of a trader's tax burden[23]. The same applies to expenses for vehicles (rented, leased or purchased), which can be used for both, business and personal needs[24] or items that a trader purchases for his employees, for his employees' personal benefit[25].

These definitions, by necessity, leave quite a large grey area, which needs to be defined over time, but as we mentioned above, this will only happen over time once the FTA has developed a certain practice in dealing with such matters.

G. When does VAT need to be paid to the FTA? What is a "Tax Period"?

All amounts due to the FTA must be paid within 28 days following the end of a given "Tax Period"[26]. The regular "Tax Period" is three calendar months[27], ending "on a date that the Authority determines". We assume that this will be calendar quarters; so payments would be due latest on 28 January (for the period of 1 October to 31 December of the previous calendar year), 28 April (for the period of 1 January to 31 March), 28 July (for the period of 1 April to 30 June) and 28 October (for the period of 1 July to 30 September) of each calendar year.

The FTA is authorized to assign different Tax Periods to different

[21] Art. 53 VAT-Law

[22] Art. 54 1. a. VAT-Law

[23] Art. 53 1. a. ExReg

[24] Art. 53 1. b. ExReg

[25] Art. 53 1. c. ExReg

[26] Art. 64 3. / 1. ExReg

[27] Art. 62 1. ExReg

persons or groups of persons, however[28], and it has been mentioned that traders with a very high turnover are likely to have their "Tax Periods" reduced to individual calendar months.

H. How about Output Tax that has not been paid by Customers?

As explained in F. above, Output Tax are all VAT amounts invoiced to customers, not paid by customers, during a certain "Tax Period". Hence, it is quite possible that a trader will pay VAT to the FTA, which it will not be able to recover later, simply because the customer did not pay the invoice (and thus, the applicable VAT).

According to Art. 64 VAT-Law, VAT already paid on such "bad debts" can be deducted from the trader's tax burden during a later "Tax Period" if certain conditions are met. These conditions are that the trader must have properly invoiced the VAT amount due and paid such amount to the FTA. Also that the trader has written off such "bad debt" in his accounts, that more than six months have passed since the goods or services in question have been supplied, and, quite interestingly, that the trader has informed the customer whose invoice was not paid that he (the trader) has written off the customer's debt.

The last condition in particular raises the question of how often this will actually happen in practice, because it essentially means informing the customer that the trader is no longer pursuing his claim. Hence, in our opinion, not many traders will be willing to overcome the hurdles set out in Art. 64 VAT-Law just in order to reclaim the 5% VAT already paid to the FTA and will aim to recover the full "bad debt" instead.

[28] Art. 62 2. ExReg

I. Penalties

Art. 76 VAT-Law deals with the penalties and lists various matters, which will be penalized. These matters include, for example, the following (in slightly simplified language):

- not displaying the prices of a trader's goods and/or services inclusive of the VAT due for such goods and/or services[29]; and
- not issuing proper tax invoices to customers[30].

Art. 76 VAT-Law specifically refers to the penalty provisions of Federal Law No. 7 of 2017 on Tax Procedures ("TaxLaw"), however, which includes a more detailed list of sanctioned actions. We will not list all of the matters sanctioned by Art. 25 of the TaxLaw, but the following should be noted in particular:

Not maintaining proper accounting books is a sanctioned action[31], as is the failure to submit tax returns in Arabic[32]. Quite surprisingly, however, the accountability of company managers has been increased also. For example, in events where the manager fails to notify the FTA of his appointment within 20

[29] Art. 76 1. VAT-Law

[30] Art. 76 4. VAT-Law

[31] Art. 25 1. a. TaxLaw

[32] Art. 25 1. b. TaxLaw

business days of his appointment[33], the manager himself (as opposed to the company he represents) will be subject to fines[34]. Similarly, if the trader company's tax return is not filed on time, the company's manager will be fined personally[35].

Penalties range from not less than AED 500 to "three times the amount of Tax in respect of which the [fine] was levied"[36].

J. How do I object to Decisions made by the FTA?

All of the FTA's decisions can be objected to within 20 business days following the day on which the relevant decision has been issued[37]. The FTA will decide upon all such objections within another 20 business days following receipt of the objection[38]. In addition, the FTA will form a "Tax Disputes Resolution Committee"[39], the task of which will be to act as "appeal instance" where the FTA as such did not resolve the objection satisfactorily.

The "Tax Disputes Resolution Committee" will not act unless the disputed tax amount or the penalty have already been paid, however[40], which forces traders to comply with the FTA's decisions first and to hope for a favorable outcome later.

The Committee's decision will be final in all events where the disputed amount in question does not exceed AED 100,000[41]. In events where the disputed amount is higher, the Committee's decisions can be challenged in court within yet another 20 business days following the Committee's decision[42].

K. Conclusion

While the reasons for the introduction of VAT to the UAE are evident, the precise processes and procedures remain, largely, unclear. This had to be expected, given that the introduction of VAT to any jurisdiction is a complex process, which will take several years to properly "settle in". We hope that the FTA will consider this factor when issuing fines to individual traders. At present, there is a lot of uncertainty as to how exactly to comply with the new rules and regulations and we hope that traders will not be fined for non-compliance with rules that, by necessity, are not yet sufficiently clear.

Dr. Michael Krämer,
Meyer-Reumann & Partners,
Dubai Office

[33] Art. 7 TaxLaw
[34] Art. 25 1. f. TaxLaw
[35] Art. 25 1. g. TaxLaw
[36] Art. 25 3. TaxLaw
[37] Art. 27 1. TaxLaw
[38] Art. 27 2. TaxLaw
[39] Art. 28 TaxLaw
[40] Art. 30 2. b. TaxLaw
[41] Art. 31 4. TaxLaw
[42] Art. 32 TaxLaw

United Arab Emirates

Public Private Partnerships in the UAE

New Procedure and Brief Reflections Concerning the Applicable Law

Guiding Principle

The demand for Public Private Partnerships (PPPs) has seen a recent increase in the Gulf Region. Several GCC Countries have reacted to this by elaborating their PPP regulations. This article intends to present a short overview over these developments. It focuses further on the particular legal situation of the UAE.

A. Introduction

The UAE have taken an impressive and speedy development throughout its whole history. They have become the home of many landmark projects and set new standards in the entire region. Different from other parts of the world, the state has been a driving force behind this steady process. Over time, a dynamic private sector in the UAE was created. It seems only consequent, that Governments on Federal and Emirates' level in the UAE would like to incorporate features of this dynamic into the future development of their projects.

Therefore, the instruments of Public Private Partnerships (PPPs) have been subject to regulation and standardization in different forms and approaches throughout the country.

B. General Overview of Public Partnership Agreements

When looking at PPPs, we are not talking about a single kind of contract or entity (such as a specific type of company). The term rather describes a whole bundle of cooperative partnership models between the public and the private sector. Usually subject to a specific agreement or agreements, the legal means to undertake such a cooperation can be as differentiated as the underlying project itself. The common denominator overall is to create a win-win situation for private and public partners in a PPP constellation. Private investors can profit from values embodied by a public institution such as continuous solvency, liquidity, reliability and stability for their envisaged profits, vis a vis public institutions exploiting the dynamic flexibility, creativity and cost effectiveness of private enterprises for their pursuit of common interest. In turn, PPPs take their shapes in accordance with the parties, their capabilities and the project and its perspectives.

Amongst the most common structures are agreements where the public and the private sectors collaborate to deliver public infrastructure projects and operate them (i.e. roads, railways, hospitals). These typically have a number of common features such as

- a long-term contract structure between a public procuring authority;
- a private sector company based on the procurement of services;
- the transfer of certain project risks to the private sector, notably with regard to

designing, building, operating and/or financing the project;

- a focus on the specification of project outputs rather than project input,
- taking account of the whole life cycle implications for the project;
- the application of private financing to underpin the risks transferred to the private sector and payment to the private sector which reflects the services delivered.

The PPP's private party may be paid either by users through user charges (e.g. motorways toll), by the Authority (e.g. availability payments, shadow tolls) or by a combination of both (e.g. low user charges together with public operating subsidies).

In comparison to traditional procurement structures, PPPs integrate the private part not only in providing the objects of a project but moreover running the project itself on a partnership base operationally and financially.

The rationale behind using PPPs is frequently optimal risk sharing with the private partner and to deliver higher "value for money" to the public sector and ultimately the end user.

C. Overview over PPPs in the Region

In the GCC region Kuwait has historically pioneered PPPs. The country has developed a far ranging legislation in this field. The country drafted several new legislations on this topic over time. It also established an intuitional framework for PPPs in order to coordinate between the concerned Ministries. The Kuwait Authority for Partnership Projects announced to launch three PPP projects this year: the Labour City, Kabd Municipal Solid Waste, and Umm Al-Hayman Wastewater projects.[43] Kuwait's entire history of PPPs covers well over two dozen projects in all different stages of completion.

In Saudi-Arabia PPPs seem to be a very recent development as they have only been prominently reflected in the recent Vision 2030, the ambitious reform and development plan, the Kingdom has given itself as an agenda for the coming years. In the framework of this plan, the Kingdom has set up the National Center For Privatization & PPP (NCP) through the Council of Ministers Resolution 355 on 6/7/1438H corresponding to 3/4/2017 under the Council for Economic and Developmental Affairs (CEDA). However, in recent years Saudi-Arabia has followed the way of traditional government procurement as opposed to PPP. A number of PPP projects in Saudi-Arabia are planned, in tender or, as Prince Mohammad Bin Abdulaziz International Airport in Medina in a Build-Operate-Transfer structure in operation. [44]

As well, Oman has 11 PPP projects in planning or execution in different stages.[45] A PPP Law has been announces in April;[46] however it does not seem apparent that the announced law has

[43] https://goo.gl/XD7tpz

[44] https://goo.gl/xoH8eP

[45] https://goo.gl/oPPTkp

[46] https://goo.gl/vqayq4

been enacted up today.

Finally, a number of PPPs in Bahrain are reported to have been enacted.

D. Public Private Partnerships Law in the UAE

Since PPPs not only offer a number of advantages for the involved parties including the public sector, it also might conflict with certain principles; particularly the latter one is bound to. The most obvious of these issues is the interference of the public sector in fair competition between private enterprises by awarding a PPP to one of them.

No surprise that UAE legislators have made recent attempts to regulate this matter at a more in-depth level.

A very special situation in the UAE in comparison to all other GCC countries is its Federal structure. As PPPs as such are enacted in different areas and fields, they might be subject to federal as well as to Emirates legislation and executing institutions. No less surprising is that different concerned entities have taken different approaches of tackling PPP as a matter of legislation.

On the Federal level, the core piece of legislation is the recently enacted Cabinet Resolution (1/1) of 2017, which in turn is legally based on another Cabinet Resolution No. (32) of 2014 on Procurement Regulation and Storehouse Management in Federal Government (CR-32/2014). In general, this regulation sets out the overall rules for procurement procedures, supply contracts, service provisions and undertaking work for government entities. It sets the powers of the Minister, Under Secretary and CEO in regard with the procedures for approving purchase orders, assignments, supply contracts, services and undertaking work in tenders and auctions.[47]

Art. 48 of CR-32/2014 is specially dedicated to PPPs. Letter A [أ] of Art. 48 of CR-32/2014 provides for PPPs to provide for government services by way of formation of an alliance [i'tilāf] that is being financed and operated through a partnership [sharāka] between a Federal Government Entity and one or more enterprises from the private sector.

Letter B [ب]provides for the Ministry of Finance to be generally in charge of PPPs and their enactment from the side of the Federal Government and to set the general rules. These however, Cabinet has to endorse. This part of CR-32/2014 provides the legal bases for empowering Cabinet to issue the recent Cabinet Resolution (1/1) of 2017 on PPP.

As per letter C [ج] of Art. 48 CR-32/2014 a Federal Government entity is entitled to resort to PPP under the following circumstances:

- Insufficient financial resources from the concerned Government side,
- The private partner can provide a better service quality than a Government entity,
- The private sector can provide a faster implementation of the service or project then a Government entity,
- Receivers of the service demand for an integration of the private sector,
- Stimulation of competition for

[47] https://goo.gl/osktSN

lower prices to save Government budget,

- No legal objection for an integration of the private sector in providing the service or project,
- Possibility to compare [qīyas] and price [tasʿīr] the service easily,
- Possibility to retrieve the costs from the users of the service in a relatively short period of time
- Satisfying experience of the Government entity in long term partnerships with a partner of the private sector,
- A chance of stimulating economic growth.

What in fact encourages for further regulation is the formulation of this provision in the CR-32/2014 itself. As per the exact wording of it “in any of the above mentioned circumstances [fī ayī min al-aḥwāl]” indicates that it might simply be sufficient, that there is some kind of not further defined demand or no legal objections for establishing a PPP. This in fact demands further regulation as has happened by virtue of Cabinet Resolution (1/1) of 2017 on PPP.

Finally, Letter D[د] of Art. 48 CR-32/2014 outlines the forms of contracts a PPP on Federal Emirates Level is supposed to take:

- Operation and maintenance;
- Design, construction, finance and operation;
- Construction, holding/ownership [tamalluk] and operation;
- Construction, holding/ownership, operation and transfer of ownership;
- Purchase, construction and operation;
- Administrative licensing and operation;
- Financing.

In general, CR-32/2014 per understanding of the Ministry of Finance aims to prohibit piecemeal purchases that aim to override powers and binds Federal entities to the following principles:

- Maintain professional integrity, follow open competitiveness procedures, and treat competitors fairly and equally.
- Take into account the ongoing development and changing needs, and attract the best-qualified suppliers.
- Preserve impartiality and autonomy.
- Announce purchases and tenders.
- Avoid conflict of interest and acceptance of gifts or monetary and in-kind donations.[48]

The system aims to achieve the best value for money. It also requires not relying only on the price factor when evaluating tenders and awarding contracts to bidders who offer the lowest price. Thus encouraging the best economic potentials based on the actual needs for supplies, work and services required, as well as the availability of necessary appropriations.[49]

- To satisfy all the outlined issues further the Cabinet has issued

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[48] Cf. https://goo.gl/dka1if

[49] https://goo.gl/4vUtLe

Resolution (1/1) of 2017 on PPP. This Resolution takes the shape of a procedure manual for PPPs between federal entities and the private sectors.

- The commitment of the Ministry of Finance was to develop policies and procedures system dedicated to federal entities operations and activities, and managing it according to the best international practices. The manual was prepared for the purpose to enhance investment opportunities and raise the efficiency and effectiveness of governance and risk management. This in turn contributes to diversifying the mechanisms for developing the strategic infrastructure projects, and improve quality of services; by concluding partnership contracts with private sector. The manual provides a general framework for project lifecycle of partnerships with private sectors.

On Emirates' Level Dubai has pioneered in issuing a PPP Law as Dubai Law No. 22 of 2015.

The PPP law applies to all PPP contracts with government agencies – including the Free Zone Authorities - but expressly excludes from its scope projects related to the production and supply of water and electricity. PPP law does not apply the Procurement Law (no. 6 of 1997) which contains a number of requirements concerning tender conditions, timescales and contract terms not easily satisfied by a PPP Law deals or contract. Under such law private sector companies can make PPP proposals to the relevant government agency, so the process does not have to be initiated by the public sector.

The process of selecting a project partner will be subject to the principles of openness, transparency, fair competition, equal opportunity, equality, announcement of competition, and achieving the public interest.

The private sector partner must establish a project company to execute the project unless the government entity is satisfied with the financial and technical characteristics of the bidder. The project company must be a sole proprietorship or foreign company licensed to operate in the Emirate.

The government agency and the successful bidder must enter into a partnership contract; the partnership contract must contain the fundamental provisions governing the partnership and the mutual obligations between the parties.

The Government entity will agree upon the term of a partnership contract and the project company and it cannot exceed thirty years commencing on the date on which the contract is executed or any other date determined by the Partnership Committee.

E. UAE Projects Realized Under PPP Agreements

PPPs require detailed project preparation and planning, proper management of the procurement phase to incentivize competition among bidders. They also required careful contract design to set service standards, allocate risks and reach an acceptable balance between commercial risk and returns.

From a data analysis point of view is very interesting having a look at the current UAE projects realized under PPP agreements.

There are many current ongoing projects and it could be useful to divide them in projects in planning where the tender is closed, projects where the tender is still open and projects with the tender assigned.

In the first group, one should mention Mohammed bin Rashid Stadium Project, Dubai Mega Waste-to-Energy Plant, Dubai's Route 2020 Metro Project, Sharjah International Airport Expansion Project.

Amongst the projects with open tenders, there are Abu Dhabi Street Lightning Project, Ras Al Khaimah International Airport Project, University of Birmingham's Dubai Campus, Desalination Water and Power Project in the Emirate of Umm Al Quwain, Umm Al Quwain Waste Management Facility, Union Oasis Mixed-Use Project, Ghantoot Highway Rest Area BOT Project, Abu Dhabi BOT Community Centres.

Regarding the projects with tender assigned worth mentioning are Mirfa Independent Water and Power Project, Expansion of Fujairah Destination Plant, Abu Dhabi Airport Midfiled Terminal and Dubai Supreme Court Car Park.

F. Conclusion

PPPs are a relatively new appearance in the Gulf area. However, they seem to be a perspective for future Government projects. They can be very different in shape size and complex in nature. As most of them are as individual in their legal nature as they are in their economic and practical aspects. No one size fits all approach should be pursued. Meyer-Reumann & Partners would be very happy to assist you with your queries regarding PPPs.

Dr. Sara Corradi,
& Heinrich Köllisch,
Meyer-Reumann & Partners,
Dubai Office

Egypt

Executive Regulations of the Investment Law Number 72 of 2017 in Egypt

Guiding Principle

After several months of controversy, the Egyptian Cabinet finally approved on 25th October 2017 the executive regulations of the new Investment Law number 72 of 2017. The new law provides a range of incentives including for example tax breaks and rebates on projects established in underdeveloped areas.

On 1st of June 2017, President Abdel Fattah Al-Sisi ratified the long-delayed Investment Law number 72 of 2017, which aims to facilitate business procedures and accelerate arbitration of business disputes to offer incentives. The new Investment Law seeks to incentivize investments in underdeveloped areas and labor-intensive sectors by offering tax breaks and rebates, according to Reuters. The new law is part of the country's efforts to revise its regulations to create a positive investment climate for local and international investors. The Investment Law aims to make business easier and create incentives to attract investors after years of turmoil, as a part of the ongoing efforts aiming at bringing back more Foreign Direct Investments to the country. However, it seems investors are still waiting for more details before rushing back in. Nevertheless, the new law is expected to boost much needed investment by cutting bureaucracy, especially for startups, and by providing more incentives to those looking to pump investments in Egypt.

The government's issuance of the executive regulations indeed enhances its credibility in front of the business community. At the same time, the financial and business community welcomed the approval of the new law's executive regulations, stressing that it is a clear message for foreign investors that developing the investment climate tops the government's priorities in Egypt.

The Egyptian Cabinet declared in a statement that the executive regulations were studied carefully taking into consideration all opinions and observations of associated ministries and authorities.

The activities governed by the investment law, include industry, trade, agriculture, education, health, transportation, river and coastal transport, housing and construction, water, health, tourism, oil, electricity, sports, natural wealth and the ICT sectors. The executive regulations include the rules and conditions for each of these sectors in order to facilitate the business environment and are divided into five sections, governing incentives and guarantees, the investment environment, investor services, and monitoring. They also address the nature of investment and free zones.

Overall, the regulations have set the circumstances that govern both the Egyptian and foreign investors, as well as the incentives given to facilitate the business climate.

The second chapter of the executive regulations of the investment law is the social responsibility for any business, and the commitments for avoiding environmental hazards, and offering job opportunities to the different society segments, as well as developmental projects.

The regulations also show in article 18 the rules required for establishing a ministry-licensed office for issuing credits and the legal documents for establishing a business. The costs of establishing or renewing license of an office is at an average of EGP 10,000 to EGP 20,000.

The executive regulations will for the first time stipulate a specific number of days that the government will have to approve new licenses and clearances, reducing the waiting time for starting new businesses. The regulations include the special conditions of issuing general, special or additional incentives based on the Investment Law, as well as the procedures of obtaining project approvals. The regulations explain also cases of granting residency to foreign investors, the conditions for recruiting foreign employment and exiting measures from projects. Additionally, the regulations explain the procedures of electronic establishment of companies;

controls and forms of allocating lands for projects; and the organization of work in investment, free, and technological zones. And the new Investment Law includes more incentives, such as a 50% tax discount on investments made in underdeveloped areas and government support for the cost of connecting utilities to new projects.

Tarek Jairwdeh,
Meyer-Reumann & Partners,
Dubai Office

Saudi Arabia

Ongoing Drastic Social Reforms in Saudi Arabia and its Economic Impacts

Guiding Principle

The ongoing drastic reforms taking place in Saudi Arabia in line with the country vision for the year 2030 are having several planned impacts on the life in the Kingdom. The impacts include gradually changing the social environment of a country considered one of the most conservative communities in the world into an open society that empowers citizens and lures investors. Lifting the ban on women driving cars as well as allowing them to attend events in the stadiums and similar facilities; announcing a huge tourism project for building co-resort across a lagoon of 50 virgin islands in front of the Saudi Red Sea coastline and granting tourist visas to the country for the first time; establishing the General Authority for Entertainment that already organized dozens of entertainment events never been allowed inside the country before, and last but not lease granting licenses to cinemas are all examples of the frequent major social reforms taken by the Saudi government for that target. Yet more reforms are planned. These reforms together with the recent amendments of the local investments regulations making the Saudi market more liberal for foreign investment should cause major expansion of the Saudi economy replacing the decline at oil prices being the main source of income to the Kingdom. Brand new fields for investment in the Saudi market in particular at the entertainment and recreational fields are emerging with huge opportunities. Several multinational corporations have already taken part in the new opportunities.

A. Reforms in Saudi Arabia and Vision 2030

Following the transfer of power in the Kingdom of Saudi Arabia to King Salman Abdul-Aziz and Crown Prince Mohamed bin Salman starting from 2015, the new leadership has prepared a strategy for the Kingdom under the title of "Saudi Vision 2030"[50], which includes plans to address the many challenges that the Kingdom is facing. Most importantly is the decline in oil prices, the Kingdom's main source of income.

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[50] For more information, please revert to the vision, website: http://vision2030.gov.sa

The new vision is a plan to reduce Saudi Arabia's dependence on oil, diversify its economy, and develop public service sectors such as health, education, infrastructure, recreation, and tourism. Goals include reinforcing economic and investment activities, increasing non-oil industry trade between countries through goods and consumer products, and increasing government spending on the military, manufacturing equipment and ammunition.

B. Major Social Changes in Saudi Arabia

Saudi Arabia has been adopting a strict interpretation of the Islamic teachings including the separation of men and women. Women should wear veils to cover themselves. It is also the law in Saudi Arabia that every woman must have a male guardian. This is often a relative or the woman's husband.

The former king, King Abdullah Abdul-Aziz was already working from 2011 to ease some of these strict laws. While Crown Prince, Mohammed bin Salman, has intensified efforts in that direction by vowing to return the country to “moderate Islam” and to transform the conservative country into an open society that empowers citizens and lures investors. Such vow was already reflected in many major changes occurred in the social environment in the Kingdom.

I. Lifting the Ban on Women Driving Cars

Though no legal base exists in Saudi Arabia for banning women from driving, still, women who drove in public risked being arrested and fined. This was the case before King Salman issued a decree granting women permission to get driving licenses starting from June 2018.

As a direct result of this decree, it is expected that the demand for cars in Saudi Arabia will increase to the double. Around 750,000 cars were imported to Saudi Arabia during 2016.

The decree will also indirectly allow Saudi women to be able to engage more with the local business community as moving around would be much easier. This means more workforce and entrepreneurs will enter the Saudi market. Cars services centre will benefit also from a large number of cars expected to be imported.

Uber and Careem - the international and regional transportation technology companies - had already started benefiting from the new reforms by announcing that they are currently recruiting Saudi female drivers.

II. Allowing Women to Attend Events in the Stadiums and Similar Facilities

Friday, January 12th, 2018 was a new turn in the social reforms in Saudi Arabia. Saudi women were allowed to attend a football match at King Abdullah stadium in the coastal city of Jeddah, Saudi Arabia. The Government have removed the ban on women attending similar events.

From an economic aspect, this means more customers to entertainment facilities. All member of the family will be even more willing to attend such events together. This will be reflected in making organizing such events more profitable, now having half of the community eager to attend.

III. Tourism

On August 2017, Saudi Arabia has

announced the launch of a huge touristic project as a part of the Saudi Vision 2030 for diversifying its economy. Saudi Arabia intends to build a resort across a lagoon of 50 islands in front of the Saudi Red Sea coastline.

The project extends over 180 kilometres between the cities of Amlaj and Al-Wajh on the western coast of the Kingdom. The Saudi Public Investment Fund (PIF) will finance the project before opening up to foreign investors. Construction will begin in the third quarter of 2019 in the first phase, during which the airport will be expanded and, hotels and luxury homes will be built. It is expected to be completed in the third quarter of 2022.

The project will contribute to a qualitative leap in the concept of tourism and hospitality and will form together with the other expected touristic projects in the Kingdom a very new field for the investors engaged in this field.

For the first time, Saudi Arabia has announced now it is going to grant touristic visas for tourists desiring to visit the country.

IV. The General Authority for Entertainment

In 2016, King Salman has ordered the establishment of an Authority for Entertainment with a purpose of organizing and supervising entertainment events taking places in Saudi Arabia.

Since then, the Authority has managed to organize and supervise dozens of entertainment events including music concerts and circus performance that were never been allowed in the Kingdom before creating a new field for investment in the Kingdom.

IV. Cinemas

Few days before 2017 ends, the news came about the new reform that Saudi Arabia is taking by granting licenses to build cinemas in the Kingdom. The Saudi government is expecting a huge market to be created from the expected projects in this field. Several multinational and regional corporations active in the field had already expressed their interest to enter the new market.

Hany Kenawi,
Meyer-Reumann & Partners,
Saudi Office