Capital Gains Tax Issues in Qatar

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April 2016

These developments may affect the settlement of capital gains tax in respect of the sale of shares by a non-resident shareholder in a private company, which in resident in Qatar.

The sale of shares in a limited liability company giving rise to a capital gain was clarified in Qatar in 2011 when the Minister of Finance introduced the Executive Regulations of the Income Tax Law No.10 (the Executive Regulations). Article 7 of the Executive Regulations provides that:

In determining gross income, all revenues arising from transactions carried out by a taxpayer, including the disposal of assets and sporadic transactions, shall be taken into account unless subject to an exemption.

While the definition of taxpayer as a ''natural or legal person subject to tax under the provisions of this law'' in Article 1 of the Income Tax Law No.21 of 2009 (the Income Tax Law) is rather circular, it is clear that any gain made by a foreign company selling shares it owns in subsidiaries in Qatar would necessarily be construed as taxable income. The current applicable tax rate is 10%. However, there are no provisions under the Income Tax Law or the Executive Regulations that set out how the computation of capital gains or capital losses must be determined in Qatar.

Notwithstanding the taxable nature of any sell out of a subsidiary in Qatar in terms of a capital gain, until recently there was the situation that, while taxes on such capital gains were payable in Qatar, these taxes were not being imposed on non-residents. This was not because of any policy decision but rather because after the introduction of the tax card registration system, the Public Revenue and Tax Department of the Ministry of Finance (the PRTD) had not put into place any mechanism for non-resident taxpayers to lodge a return without a tax card.

However, the PRTD has recently announced that tax returns can be lodged without holding a tax card or commercial registration in Qatar. This means that in the future it is possible that non-residents will be expected to lodge a return in respect of gains made from disposals of their interest in subsidiary companies.

The PRTD already examines every transfer of shares in a limited liability company in Qatar where a foreign party is a transferee or transferor. The PRTD must give its consent by way of an official stamp on the instrument recording the transfer, failing which the Ministry of Justice will not authenticate such instrument. This authentication is a pre-requisite to registering a share transfer on the Commercial Register with the Ministry of Economy and Commerce.

The current practice when seeking a request for tax clearance/consent to a sale of shares where a foreigner is a participant in the company is that generally the PRTD will seek confirmation that the taxpayer has filed all the tax returns until the last accounting period, together with confirmation from the auditors that the taxpayer will file a tax return for the next accounting period. In some instances the PRTD seeks to obtain audited financial statements up to the date of sale, notwithstanding that there is no requirement to submit audited financial statements up to that date.

The result of these recent developments may be that the PRTD will now be looking to a non-resident entity to file a tax return and settle tax due on capital gains arising on the disposal of shares, before it will issue a tax clearance and/or stamp the Share Transfer. Certainly it would appear from recent practice that the PRTD is, looking to consider capital gains issues upon receiving a request for tax clearance to a share transfer.

At this stage the PRTD seems to be accepting the sale price set out in the transfer instrument itself as a legitimate valuation of shares being disposed. However, one would expect that as the process becomes more standardised, the PRTD may be looking beyond the sale price specified in the transfer instrumentto reach a valuation for capital gains tax purposes. As yet, the Qatar tax authorities have not made any formal announcement of this new approach, or provided any guidance as to how this approach may be implemented, including the basis it may adopt for calculating any such gain. This article was first published in the February 2016 issue of IFLR Magazine