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UAE March 2026 Crisis

Client Alert

Frustration, Force Majeure, and Hardship in the UAE

The current situation in the UAE raises many questions and concerns. After the initial shock, there is inevitably a need to deal with reality. When it comes to legal issues, the first question arises: How current troubling events may affect existing contractual relationships. The seemingly obvious impulse to invoke force majeure can lead to questionable decisions.

The PGP Tax&Legal team has prepared a detailed Alert in which we outline the legal framework governing force majeure, hardship and contract frustration in the UAE. We also separately address key tax issues that should be considered in light of the ongoing conflict. We hope you find our Alert useful.

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SUMMARY

The UAE is home to three distinct legal regimes, each with its own rules on what happens when a contract becomes impossible or impracticable to perform. This matters because the answer to “can I get out of my contract?” or “what can I do if my counterparty stops performing?” depends entirely on which set of rules governs the contract in question.

Under UAE federal law, force majeure requires genuine impossibility of performance (not merely increased cost or inconvenience), and the courts have been strict about this. But the law also offers a separate tool for situations where performance is still possible but has become ruinously expensive: the hardship doctrine under Article 249, which empowers courts to adjust obligations to a fair level. Crucially, this is a mandatory rule that cannot be contracted out.

In the DIFC, force majeure is a statutory implied term: Article 82 of the DIFC Contract Law excuses non-performance caused by an impediment beyond a party’s control, provided it was unforeseeable and unavoidable. However, it does not excuse the obligation to pay money, and temporary impediments suspend rather than extinguish obligations. There is no statutory hardship doctrine in the DIFC — if performance is possible but expensive, there is no judicial safety net.

In the ADGM, English common law applies directly. Force majeure has no independent legal meaning; it is only as good as the clause in the contract. Without a clause, the only fallback is the doctrine of frustration — a high-threshold, all-or-nothing mechanism that discharges the contract entirely. There is no hardship doctrine in English law.

A recurring theme across all three regimes is that invoking force majeure is not a self-help remedy. It requires specificity (naming the precise impediment, not just “the war”), causation (proving the link between that impediment and the specific obligation), timeliness (notifying the counterparty promptly), and good faith (taking reasonable steps to mitigate). The alert also draws attention to a question that many force majeure clauses fail to address: what counts as “war” in the first place.

1. From Paradine to Guaranteed Returns

Many force majeure clauses list "war" as a trigger event. The word seems self-evident, but it is not. Under international law, "war" is a defined concept. Common Article 2 of the Geneva Conventions of 1949 applies to "all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties."[1]

In practice, however, States rarely declare war. The United States has not formally declared war since 1942. The operations in Iraq (2003), Libya (2011), and Syria (2014 onwards) were all conducted without a declaration of war. Israel's military operations have historically been characterised as acts of self-defence rather than wars. The Russia-Ukraine conflict is a special military operation or a crisis.

The current U.S.-Israel-Iran operations have been described variously as "strikes," "military operations," "retaliatory actions," and "kinetic operations." None of the States involved has formally declared war. The question, then, is whether a force majeure clause that lists only "war" (without broader language such as "armed conflict," "military action," "hostilities," or "government-imposed restrictions") actually captures the current events.

English case law takes a pragmatic approach. Whether a "war" exists is a question of fact determined by common sense, not by reference to formal declarations or international law classifications. The Falklands conflict and the Gulf operations were treated as wars for commercial law purposes regardless of their formal legal characterisation. In the UAE federal law, courts have similarly looked at the substance of the disruption rather than its label.

But even where the events do amount to "war" for the purposes of a force majeure clause, that is only the beginning of the analysis. A Dubai Court of Appeal judgment (Case No. 406/2023) offers a sharp reminder of the limits. In that case, an informal digital currency broker invoked force majeure, arguing that the extreme market volatility caused by the Russia-Ukraine war rendered performance impossible. The court refused the defence. The reason was simple: the broker had explicitly guaranteed the return of the investor's principal "at any time" and described the investment as "100% guaranteed." By making those representations, the broker had contractually assumed the risk of market volatility, including volatility caused by armed conflict. The existence of a war did not override the broker's own promises.

In Paradine[2], a tenant dispossessed by an army still owed rent. In Case 406/2023, a broker who promised guaranteed returns still owed the money back, even when a war crashed the market. The arc from Paradine to Case 406/2023 is longer than it might appear. Both cases stand for the same uncomfortable principle: the law holds people to their bargains. Force majeure is not a magic wand. It does not erase the obligations you chose to assume. It only relieves those obligations that have genuinely become impossible through no fault of your own. And even then, only if you can prove it.

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[1] Geneva Conventions (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 31, 85, 135, 287, common art 2

[2] Paradine v Jane (1647) Aleyn 26; 82 ER 897

For parties reviewing their contracts now, the practical takeaway is this: check not only whether "war" is listed in the force majeure clause, but whether the clause also covers "armed conflict," "military operations," "hostilities," "government restrictions," and "sanctions." If it lists only "war," consider whether a catch-all provision ("any event beyond the parties' reasonable control") fills the gap. And if you are the party who made the promise, ask yourself honestly: did you assume the risk of this happening when you gave that guarantee?

2. THE UAE – One Country, Three Legal Systems

The United Arab Emirates is a Federation with a unique legal system. It is a predominantly civil law country with significant influence from Shariah Law. However, there are two common law enclaves: Dubai International Financial Centre (the "DIFC") and the Abu Dhabi Global Market (the "ADGM"). The DIFC is a common law jurisdiction with its own statutory and case law. Despite being commonly referred to as an English law-free zone, DIFC is not. The laws in DIFC often echo English statutes and judgments, but to apply English law or a precedent, the court would need to apply a complex multi-step test. And as we will see later, some of the regulations in the DIFC are civil in their nature. Now, ADGM is an English law jurisdiction by virtue of a special law that incorporates circa 40 English statutes into ADGM's legal system, and the application of English law and precedent is simpler than in DIFC. One important aspect must be mentioned here: both DIFC and ADGM are exempt from the application of the UAE federal civil and commercial laws.

2.1 Force Majeure

The contractual relationships in the UAE are governed by the Civil Code[3]. Article 273(1) of the Code provides that, in bilateral contracts, if a force majeure event renders performance of the obligation impossible, the corresponding obligation is extinguished and the contract is automatically rescinded. Article 273(2) extends this to partial impossibility (where consideration for the impossible part is extinguished) and to temporary impossibility in continuous contracts. In both partial and temporary cases, the creditor retains the right to rescind the contract.

Federal Law No. 5/1985 On the Civil Transactions Law of the United Arab Emirates State, Civil Code.

[3] Federal Law No. 5/1985 On the Civil Transactions Law of the United Arab Emirates State, Civil Code.

The UAE courts have established the three cumulative requirements:

1. **Unforeseeability.** The event must not have been foreseeable at the time of contract formation. An event that the parties could have anticipated when entering into the contract cannot constitute force majeure.
2. **Unavoidability.** The event and its consequences must be impossible to avoid or overcome through reasonable measures.
3. **Impossibility of Performance (not mere difficulty):** UAE courts consistently distinguish between impossibility (Article 273) and onerousness or hardship (Article 249). Increased cost, delayed or cancelled flight, logistical difficulty, or commercial inconvenience – none of these constitutes a force majeure under the UAE Civil Code.

2.2 Hardship

Where performance is not impossible but has become excessively onerous due to exceptional events of a public nature that were unforeseeable, Article 249 of the UAE Civil Code empowers the court or arbitral tribunal to reduce the obligation to a reasonable level. That rule is mandatory and cannot be contracted out; courts have consistently applied it over the years. The distinction with force majeure (as defined in Article 273) is that the circumstances do not render the performance of an obligation impossible, but make it excessively onerous in such a way as to threaten the debtor with exorbitant loss.

2.3 Other provisions to consider

Apart from the general force majeure and hardship provisions, rules on good faith and extraneous causes shall be considered. Under Article 246, the parties to a civil transaction are expected to act in good faith. That doesn't oblige parties to mitigate; however, should the case reach the court, the judge will expect the parties to refrain from compounding their losses. One cannot claim force majeure if they had participated in or contributed to the damage or default. This echoes a standard force majeure compliance best practice – a timely notice by the affected party of relevant impediments. Article 287 sets out the rules for damages and liability defence: if the breach or damage is a result of causes beyond one's control, such as an Act of God, a sudden foreign cause, force majeure, the fault of others or of the affected party.

2.4 The New Civil Code

On 1 October 2025, a Federal Decree-Law No. 25/2025 introduced the new Civil Transactions Law (the **"New Civil Code"),** which will come into force on 1 June 2026. Article 4(1) provides that it shall not apply to facts and transactions preceding it, unless otherwise stipulated by the law.

The force majeure provisions have largely remained the same. For reciprocal obligations, however, Article 236(1) sets the new rule – if a force majeure event makes the performance of an obligation impossible, the obligations shall lapse, and the contract shall be dissolved ipso jure. For partial non-performance caused by force majeure events, the parties may insist on the lapse of respective (corresponding) obligations or their parts, or the rescission of the contract (Article 236(2)). Lastly, when the impossibility to perform obligations is temporary in continuous (successive) contracts, each party to such a contract can claim the lapsing of the corresponding part of their obligations, seek modification of the contract, or petition the court for its rescission.

Hardship regulations have also been modified, and reflect the UAE courts' approach formed over the last decade. The general hardship rule is set up in Article 224, which repeats the rule of the currently in-force Civil Code's Article 249 with one significant addition – the court may order the rescission of a contract if it concludes it to be the only sensible solution. Additionally, Article 311(2) gives the courts the authority to grant the debtors affected by hardship circumstances grace periods or instalments to perform their obligations, provided that such a decision causes no serious harm to the creditor. Finally, Article 829 provides specific regulations for work contracts affected by hardship circumstances: the courts are expressly empowered to restore contractual equilibrium when exceptional circumstances beyond the parties' control create a significant imbalance. The courts may extend the performance period, increase or decrease remuneration or order the rescission of the contract.

3. DIFC

Unlike UAE Federal law and unlike English common law, the DIFC has a statutory force majeure provision that is implied into all DIFC-governed contracts by default. Article 82 of the DIFC Contract Law [4] is modelled on Article 79 of the CISG [5] and Article 7.1.7 of the UNIDROIT Principles [6]. It is closer to the French concept of force majeure than to English frustration of contract.

The elements of this force majeure are:

- ✓ Non-performance due to an impediment,
- ✓ Such an impediment is beyond the party's control, and
- ✓ The party could not reasonably be expected to have taken the impediment into account at the time of the conclusion of the contract or to have avoided or overcome it or its consequences.

[4] DIFC Contract Law DIFC Law No. 6 of 2004 (as amended).

[5] UN Convention on Contracts for the International Sale of Goods (adopted 11 April 1980, entered into force 1 January 1988) 1489 UNTS 3 (CISG).

[6] UNIDROIT, UNIDROIT Principles of International Commercial Contracts 2016 (4th edn, UNIDROIT 2016).

The differences between how a force majeure is regulated in DIFC and its UAE federal counterpart are:

✓ An obligation to pay money is not covered with force majeure exclusion, and

✓ The parties are not expected to foresee the impediment and its consequences.

The latter is important – there aren't too many events that can't be seen as taking place. Before the current crisis began, it was the subject of many discussions, and there is no shortage of expert opinions online. Hence, should one try to invoke the force majeure regulation under the federal UAE rules, they may face a solid counter-argument on the foreseeability of the impediment.

Force majeure under DIFC rules has a suspensory element to it – under Article 82(2) of DIFC Contract Law, for a temporary impediment, an excuse will have effect for a reasonable period, taking the affected obligation into account.

In order to be exempt from damages, the affected party must notify the other party within a reasonable time. A failure to do so will deprive the failed party of a force majeure defence against damages. And lastly, even when one party's non-performance is excused under force majeure, the other party can still terminate the agreement, withhold performance or request interest on money due.

4. ADGM

The common law of England (including the principles and rules of equity), as it stands from time to time, applies and has legal force in the ADGM, under Article 1(1) of the Application of English Law Regulations 2015. The ADGM Court of Appeal confirmed that English law has direct precedential value in the ADGM courts in AC Network Holding Ltd & Ors v Polymath Ekar SPV & Ors [7].

Force majeure in ADGM has no recognised independent legal meaning. Hence, a party can invoke force majeure if the contract contains a relevant clause, and the relief depends on that clause. In practical terms, that means if a contract has no force majeure provisions, the only available relief is likely the common doctrine of frustration. And if the contract defines what impediments constitute force majeure, the affected party bears the burden of proving that the specific event falls within the clause's scope and that there is a causal connection between the event and the failure to perform.

Frustration. English law starts from the principle that contractual obligations are absolute. Under the rule in Paradine v Jane (1647), a party that has promised to perform must do so or pay damages, regardless of whether supervening events have made performance harder, costlier, or even impossible [8]. This remains the default position: the common law does not, as a general matter, relieve parties of bargains that have turned out badly.

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[7] AC Network Holding Ltd & Ors v Polymath Ekar SPV & Ors, ADGMCA-2023-01.

[8] Paradine v Jane (1647) Aleyn 26.

The doctrine of frustration, first recognised in Taylor v Caldwell (1863), provides an exception to this rule[9]. Where a supervening event—one occurring after contract formation, without the fault of either party—destroys the foundation on which the contract was made, the contract is discharged by operation of law. Neither party chooses this outcome; it follows automatically from the nature of the event.

The test applied today was formulated by Lord Radcliffe in Davis Contractors Ltd v Fareham Urban District Council (1956): frustration occurs where the law recognises that, without default of either party, a contractual obligation has become incapable of being performed because the circumstances in which performance is called for would render it a thing radically different from that which was undertaken by the contract [10]. In this case, the emphasis fell on defining "the radically different." Even a nearly threefold extension of the time for performance does not change the nature of the obligation. The work may become more burdensome, but it's still the same work. And just as increased costs, delays, and commercial hardships, it does not cross the line leading to frustration of the contract.

Three principal grounds for frustration of contract are generally recognised. First, the impossibility: where the subject matter of the contract has been destroyed, or a person essential to performance has died or become incapacitated, the contract is discharged. This was the basis of Taylor v Caldwell, where a music hall burned down before the contracted performances could take place. In a commercial context, impossibility extends to situations where a specific asset, facility, or route on which performance depends has ceased to exist or become physically inaccessible.

Second, the illegality: when a change in the law or a government order renders performance unlawful, the contract is frustrated. In Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbour Ltd (1943), the German occupation of Poland rendered cross-border trade between a British supplier and a Polish buyer illegal; the contract was discharged. [11]

And third, the radical change of obligation. Even where performance is not physically impossible or illegal, a contract may be frustrated if the supervening event has so fundamentally altered the nature of the outstanding obligation that what remains is, in substance, a different bargain. The boundaries of this ground were drawn by the coronation cases of 1903: in Krell v Henry, the hire of a flat for the sole purpose of viewing a coronation procession that was then cancelled was held frustrated. [12]

There are two constraints to consider. First, frustration does not apply merely because performance has become more expensive. In Tsakiroglou & Co Ltd v Noblee Thorl GmbH (1962), the closure of the Suez Canal forced a shipment of goods to be rerouted around Africa at roughly double the cost [13]. The House of Lords held that the contract was not frustrated: the obligation to deliver remained the same, merely more costly to fulfil.

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[9] Taylor v Caldwell (1863) 3 B&S 826.

[10] Davis Contractors Ltd v Fareham Urban District Council [1956] AC 696, per Lord Radcliffe at 729.

[11] Fibrosa Spolka Akcyjna v Fairbairn Lawson Combe Barbour Ltd [1943] AC 32.

[12] Krell v Henry [1903] 2 KB 740.

[13] Tsakiroglou & Co Ltd v Noblee Thorl GmbH [1962] AC 93.

Second, frustration is unavailable where the contract itself allocates the risk of the supervening event. If the parties have addressed the possibility of disruption through a force majeure clause, an extension-of-time mechanism, or other express provision, the court will hold them to their bargain. In Canary Wharf (BP4) T1 Ltd v European Medicines Agency (2019), the court declined to find that Brexit frustrated a 25-year lease, in part because the lease's alienation provisions demonstrated that the parties had contemplated the possibility that the tenant might need to leave [14]. The same reasoning applies where a party has assumed a particular risk by choosing not to insist on protective provisions during negotiation.

A frustrated contract is discharged automatically at the moment of the frustrating event. This is not a suspension or adjustment, as it may be the case with force majeure; it is a permanent termination by operation of law. Neither party has an election in the matter.

5. PRACTICAL CONSIDERATIONS

The doctrinal framework described above is only as useful as its application. In practice, the first question is not "what does the law say?" but "which side of the breach am I on?" The steps to take and the risks to manage differ fundamentally depending on whether you are the party unable to perform or the party left waiting for performance.

5.1 UAE Federal Law

If you cannot perform: Notify your counterparty immediately and in writing. Identify the specific impediment: not "the conflict" but the closure of a named port, a specific airspace restriction, or a particular government order. Explain which obligation is affected and why performance is impossible, not merely more expensive. Document your mitigation efforts: what alternatives you explored, why they were not viable, and what steps you are taking to resume performance. If the impediment makes performance onerous rather than impossible, consider whether Article 249 (hardship) is the more honest route — it allows judicial adjustment without requiring you to overstate the impossibility of your position. Check whether you were already in default before the crisis began: under UAE case law, force majeure must be the sole cause of non-performance.

If your counterparty has stopped performing: Do not accept a vague force majeure notice at face value. Request specifics: what impediment, which obligation, and what mitigation steps have been taken. Assess whether performance is truly impossible or merely inconvenient for the counterparty (the distinction between Article 273 and Article 249 matters). If the contract has become partially impossible, consider whether you wish to continue with the remaining obligations or rescind entirely (both options are available under Article 273(2)). Under Article 246, you are also expected to act in good faith; refusing all accommodation when reasonable alternatives exist may weaken your position in any subsequent litigation.

[14] Canary Wharf (BP4) T1 Ltd v European Medicines Agency [2019] EWHC 335 (Ch).

5.2 DIFC

If you cannot perform: Article 82 is your starting point, but remember two things. First, payment obligations are excluded. You cannot rely on force majeure to withhold rent, loan repayments, or instalments of the purchase price. Second, you must give notice within a reasonable time, and the notice must be specific about the impediment and its effect on your ability to perform (Article 82(3)). The DIFC Courts have been demanding on notice quality: in the Daman construction cases, vague notices that failed to identify either the impediment or the extent of the delay were held insufficient [15]. If the impediment is temporary, your obligations are suspended, not extinguished (be prepared to resume performance when the impediment lifts). There is no hardship mechanism in DIFC law, so if performance is possible but at a greatly increased cost, the statutory regime offers no relief. Your options are to perform, negotiate a variation, or refuse and accept the risk of a damages claim.

If your counterparty has stopped performing: Even if the counterparty's non-performance is excused by force majeure, Article 82(4) preserves your right to terminate the contract, withhold your own performance, or claim interest on money due. Force majeure excuses liability for damages, but it does not compel you to wait indefinitely. If the non-performance amounts to a fundamental breach (Article 86), you can terminate immediately without a cure period. If performance is merely delayed, you can set an additional reasonable period under Article 81, and terminate at the end of it if performance is still not forthcoming. Act promptly: under Article 87(2), the right to terminate is lost if notice is not given within a reasonable time.

5.3 ADGM

If you cannot perform: Check the contract first. If there is a force majeure clause, comply with it to the letter: notice requirements, mitigation obligations, time limits. English courts construe force majeure clauses restrictively, and procedural non-compliance can bar relief entirely. If there is no force majeure clause, your only route is frustration, which requires the contract to have become radically different from what was undertaken. Be realistic: Tsakiroglou showed that the availability of an alternative, even a far costlier one, may defeat a frustration argument. There is no hardship doctrine, no judicial power to adjust prices, and no implied force majeure term. If the contract does not protect you, the law probably will not either.

If your counterparty has stopped performing: Scrutinise any force majeure notice against the exact wording of the clause. Does the event actually fall within the defined triggers? Has the counterparty complied with the procedural requirements? Has it demonstrated that the event (and not some other factor) caused the non-performance? The party must show it was ready, willing and able to perform but for the force majeure event. If the contract has been frustrated (rather than merely delayed), it is discharged automatically — you do not have a choice in the matter.

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[15] Daman Construction Cases (DIFC CA 005 & CA 006,2013) <https://www.difccourts.ae/rules-decisions/judgments-orders/court-appeal/1-kenneth-david-rohan-2-andrew-james-mostyn-pugh-3-michelle-gemma-mostyn-pugh-4-stuart-james-cox-v-daman-real-estate-capital-par> accessed 10 March 2026.

6. Navigating UAE Tax Obligations amid the 2026 U.S.-Israel-Iran Conflict

The 2026 U.S.-Israel-Iran conflict has sent shockwaves through the Middle East and beyond. After the initial shock, the need to deal with reality inevitably sets in. For finance and tax teams, the first question is how these unsettling events may affect their UAE tax obligations – VAT and Customs matters, potential impact on the Corporate Tax position, penalties for the possible delays.

Below we outline tax considerations that should be taken into account amid this ongoing conflict.

We will continue to monitor the situation closely and provide timely updates on any new developments, including official guidance, legislative changes, or procedural relief measures.

Dubai Customs Issues Temporary Facilitation for Cargo via Khorfakkan and Fujairah Ports

Due to the de facto blockage of the Strait of Hormuz and difficulties reaching Jebel Ali Port and other ports located in designated free zone, Dubai Customs has issued Notice No. (03/2026), introducing a temporary customs facilitation measure allowing cargo destined for Jebel Ali Port and Free Zones in the Emirate of Dubai to be discharged at Khorfakkan Port and Fujairah Port, and then transported by road directly to Dubai without undergoing regular customs clearance at the port of arrival.

This measure is effective from March 8, 2026, and will remain in place during the current exceptional circumstances affecting regional port operations. Dubai Customs reserves the right to amend, suspend, or withdraw this facilitation at any time.

Key Provisions

1. Containers may be discharged at Khorfakkan or Fujairah and immediately loaded onto trucks for direct overland transport to Jebel Ali Port or Dubai Free Zones, bypassing standard customs procedures at the discharge port.
2. Upon arrival at Jebel Ali or Dubai Free Zones, containers will be held in designated areas under customs transit with guarantee until final clearance is completed.
3. Responsibilities:
   - DP World is responsible for coordinating the bonded transport of containers to Dubai.
   - Shipping lines or their agents must submit the cargo manifest and issue Delivery Orders (DOs) via the Dubai Trade platform.

- Consignees or their representatives must complete the customs declaration and clearance procedures before cargo release.
- DP World must ensure manifest data is integrated with Dubai Customs' electronic systems.

For Free Zone companies engaged in the distribution of goods with the import of goods into the designated zone, the Dubai Customs Notice is not merely a logistical workaround - it is a solution for preserving access to the 0% Corporate Tax rate. By allowing cargo to be discharged at Khorfakkan or Fujairah and then transported under customs transit with guarantee directly to Jebel Ali Port, the Notice ensures that the final point of entry into the UAE customs territory for clearance purposes remains a designated zone.

Stakeholders, including shipping lines, agents, consignees, and logistics providers, are advised to coordinate with DP World and Dubai Customs to ensure compliance with the outlined procedures.

No Extensions on the Tax Filings

At the time of writing, none of the GCC tax authorities have announced tax filing extensions, payment deferrals, or other relief measures in response to the ongoing conflict. Taxpayers should therefore continue to comply with their existing filing and payment obligations unless specific relief is formally introduced by the relevant authority.

Neither of the GCC countries have introduced any extensions or remedial measures from a tax perspective in response to the current crisis. Therefore, where tax filing obligations arise, taxpayers should fulfill them in accordance with the applicable deadlines and procedures. Taxpayers should not assume that force majeure conditions automatically extend filing deadlines. The machinery of tax administration continues to operate, and late filings may attract penalties unless specific relief is formally announced by the relevant tax authority.

Place of Effective Management (PoEM) and Tax Residency Considerations of UAE Companies

In circumstances where key managers and directors may temporarily leave the UAE and make decisions remotely from abroad - or are unable to return to the UAE - a risk arises regarding the potential shift of corporate tax residency for Emirati companies.

Under UAE Corporate Tax Law, a company is considered a tax resident if it is either:

1. Incorporated in the UAE; or
2. Its Place of Effective Management (PoEM) is located in the UAE.

If, during the crisis, the board of directors or senior managers begin holding meetings and making key decisions from outside the UAE on a regular or systematic basis, the PoEM could be deemed to have shifted to the jurisdiction where those individuals are physically located. This could create dual-residency complexities and potentially expose the company to tax obligations in multiple jurisdictions.

The FTA in its Guide on Tax Residency provides that PoEM is not created where: *"The presence of the Person (or Persons) making the key management and commercial decisions in the UAE is as a result of temporary and exceptional circumstances."* The non-exhaustive list of qualifying exceptional circumstances: acts of war and travel restrictions imposed by competent authorities.

The current conflict should fall within this definition of temporary and exceptional circumstances. Therefore, where management is outside the UAE - or unable to enter the UAE - due to the ongoing acts of war, cancelled flights, closed airspace, or security concerns, such absence could be argued to be treated as arising from "temporary and exceptional circumstances" and should not trigger a shift in PoEM.

Despite the above, to mitigate the POEM risks, it could be advised for the Emirati companies as follows:

1. Document the causation: create a board resolution or internal stating that due to the acts of war and the closure of airspace / security concerns, the senior management team is temporarily operating from [Country X] until it is safe to return.
2. Maintaining connection with the UAE: the "center of management" should be preserved in the UAE. If a decision-maker is temporarily abroad, this should be the exception, not the rule, and properly documented.
3. Keep detailed records: maintain minutes of board meetings and strategic discussions, clearly recording: (i) the physical location of each participant; (ii) the temporary nature of their absence; and (iii) that decisions are being made remotely as a direct result of the conflict.

The Risk of a Permanent Establishment as a Result of the Remote Work

Another important cross-border tax risk arising from the current disruption is the potential creation of a permanent establishment (PE) outside the UAE where employees or executives of a UAE company are stranded abroad and continue working from that foreign jurisdiction for a prolonged period.

In broad terms, a PE risk may arise in two principal ways. First, a fixed place PE could be argued where an employee's home office or other location abroad effectively becomes a place through which the business of the UAE company is carried on. This risk becomes stronger where the arrangement is not merely incidental or short-term, but has a degree of continuity and is used for carrying on core business activities.

Second, an agency PE risk may arise where an employee or representative located abroad habitually concludes contracts, or habitually plays the principal role leading to the conclusion of contracts that are routinely finalized by the UAE company without material modification. This is particularly relevant for senior management, sales personnel, procurement personnel, or other employees who continue negotiating and binding the business while outside the UAE.

If a PE is found to exist in the foreign country, that jurisdiction may seek to tax the profits attributable to the activities performed there. This may create local obligations for corporate tax registration, filing, transfer pricing support, payroll withholding, and broader compliance.

At the same time, the existence of a PE should not be assumed automatically merely because an employee is temporarily working abroad due to war, airspace closures, cancelled flights, or related security concerns. In many cases, the strongest defense will be that the foreign presence is temporary, involuntary, and exceptional, rather than a deliberate business decision to establish an operating commercial footprint in that jurisdiction.

The OECD's April 2020 guidance on the impact of the Covid-19 crisis confirms that temporary, crisis-driven remote work should not create a PE.

However, the more clearly the company can evidence that the overseas work arrangement arose solely because personnel were unable to return safely to the UAE, the stronger its position will generally be. To mitigate PE exposure, UAE companies should consider the following practical steps:

- document why the employee or executive is working abroad, including flight cancellations, travel restrictions, security concerns, or official advisories;
- limit, where possible, the authority of employees located abroad to negotiate or conclude contracts on behalf of the company;
- ensure that strategic management, contract approval, and key commercial decisions remain with personnel located in the UAE to the greatest extent possible;
- maintain records showing that the overseas working arrangement is temporary and will cease once travel and security conditions normalize; and
- assess the PE position on a country-by-country basis, especially where employees are located in jurisdictions known for stricter domestic PE rules or more aggressive tax enforcement practice.

Maintaining Adequate Presence in Free Zones for QFZP Status

UAE free zone companies that qualify as Qualifying Free Zone Persons (QFZPs) may benefit from a 0% Corporate Tax rate on their Qualifying Income.

However, this preferential treatment is conditional on maintaining "adequate substance" within the free zone, meaning that Core Income-Generating Activities (CIGAs) must genuinely be performed there, supported by qualified personnel, physical presence, and operational expenditure. Failure to meet these conditions results in the entity ceasing to qualify as a QFZP from the beginning of the relevant tax period. In addition, the entity may not elect to become a QFZP again for the following four tax periods, meaning that its income would be subject to the standard 9% Corporate Tax rate during that period.

The ongoing conflict presents a direct challenge to substance maintenance. Key personnel may have evacuated the UAE or be unable to return, board meetings may be held remotely from abroad, and free zone offices may be operating below normal capacity, all factors that could, in principle, call into question whether adequate substance is being maintained. The FTA has not issued specific guidance on this point, and businesses should not assume that temporary disruption will automatically be disregarded.

In these circumstances, to mitigate potential questions from the FTA on this period QFZPs should take the following steps:

1. Document the operational impact: maintain contemporaneous records of how the conflict has affected staffing levels and physical presence in the free zone (e.g., office closure notices, travel restriction orders, security advisories).
2. Preserve as much substance as possible: where employees can safely remain in or return to the UAE, they should do so. Where remote work is unavoidable, ensure that decision-making oversight remains anchored in the UAE to the greatest extent possible.
3. Engage proactively with the FTA: given the unprecedented nature of the situation, companies facing significant substance disruption may wish to seek guidance from the FTA directly.
4. Plan for return: begin planning the operational steps needed to restore full substance in the free zone as soon as the security situation allows. The sooner normal operations resume, the stronger the argument that any interruption was genuinely temporary.

VAT Treatment of Cancelled or Disrupted Contracts

The ongoing conflict may result in contract cancellations, suspended performance, or delayed payments. Businesses should carefully assess the VAT consequences of these situations, as incorrect adjustments may lead to under- or over-reported VAT and potential penalties.

Where a supply is cancelled after a tax invoice has already been issued, the supplier must issue a tax credit note under the UAE VAT Law.

The credit note reduces the supplier's output VAT liability, while the customer must correspondingly adjust any input VAT previously recovered. These adjustments must be reflected in the VAT return for the period in which the credit note is issued, rather than the period of the original invoice.

Where a contract is only partially performed (for example, where goods are delivered but associated services cannot be completed due to operational disruptions), the VAT treatment should reflect the portion of the supply that has actually been made. In such cases, businesses may need to apportion the contract value and issue a credit note for the unperformed part of the supply.

Where customers are unable to settle invoices due to financial distress arising from the conflict, suppliers may be able to claim bad debt relief under the VAT Law once the debt has remained unpaid for more than six months and has been written off in the supplier's accounts. In such cases, the supplier may reduce its output VAT, while the customer must adjust any previously claimed input VAT.

Businesses affected by contract disruptions should

1. review affected contracts to determine whether supplies have been cancelled or partially performed;
2. issue credit notes promptly to ensure VAT adjustments are reported in the correct period;
3. monitor unpaid invoices to determine whether bad debt relief may be available; and
4. maintain supporting documentation evidencing the contract disruption and the VAT adjustments made.

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Best regards,

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