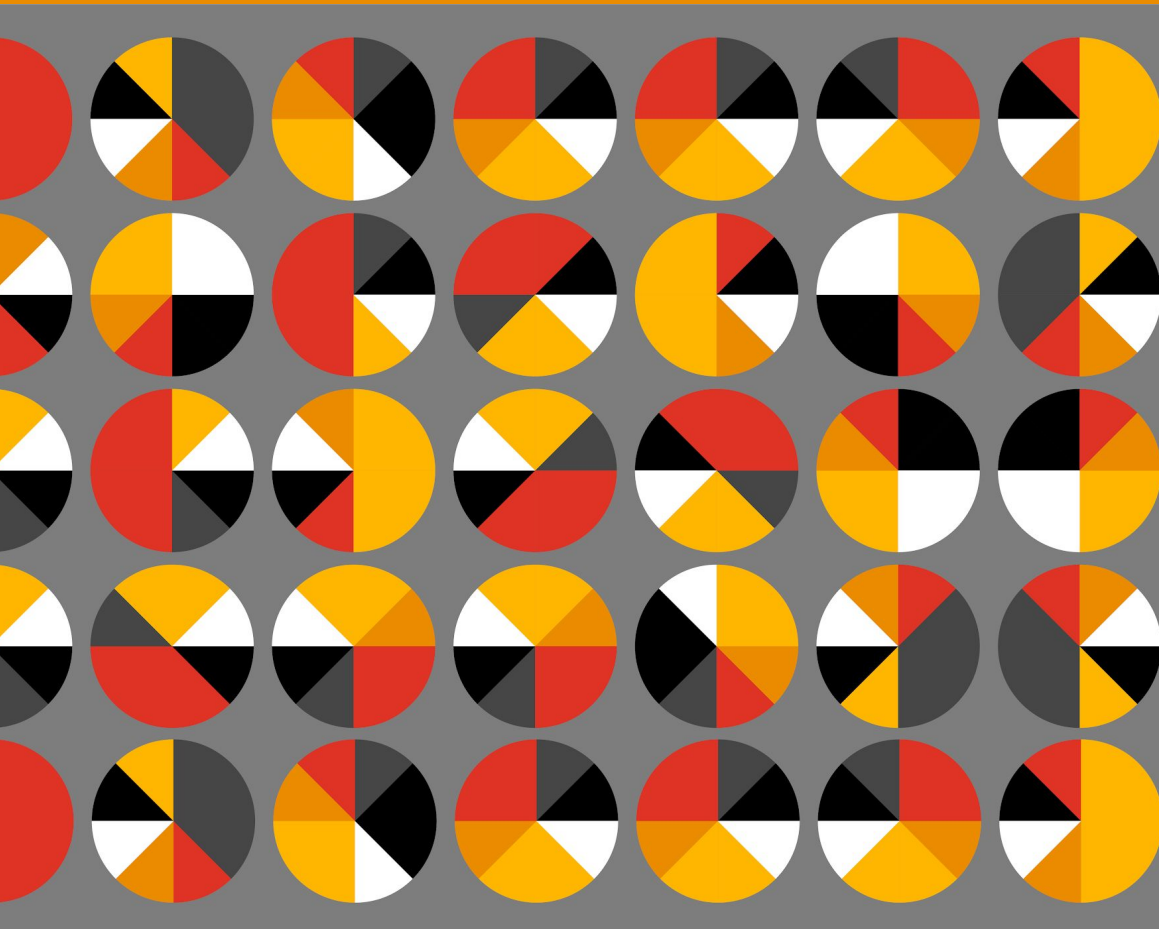


Saudi Arabia: Real Estate Transaction Tax - A new tax introduced as of 4 October 2020

October 2020



In brief

In accordance with the directions stipulated in Royal Order Number A/84 regarding imposition of a new 'transaction tax' on Real Estate disposal transactions, the Minister of Finance, also the Chairman of Board of Directors for the General Authority of Zakat and Tax ("GAZT"), issued a Ministerial Resolution Number 712 dated 15/2/1441 H (corresponding to 2 October 2020) approving the Implementing Regulations related to the newly imposed transaction tax on real estate disposal transactions.

This decision has entered into force as of Sunday 4 October 2020. The official announcement can be accessed through the following link:

<https://www.uqn.gov.sa/lang/ar/pdf/viewer/1601651405964711300/1601651405000>

In detail

Transaction tax on disposal of Real Estate:

In accordance with the provisions of the Implementing Regulations ('Regulations') of the transaction tax on real estate, a tax is imposed at a rate of 5% of the total real estate disposal value regardless of its condition, shape, or use at the time of the disposal.

This includes the land and what is being constructed or built on it, whether the disposal occurred on this land at its current state or after an establishment was built on it, irrespective of whether the entire property was disposed of or only a part of it such as a detachment, a communal, a residential unit, or any other types of real estate, and whether the disposal was authenticated or not.

What constitutes a disposal of real estate?

Any legal action that results in transferring the ownership or the possession of a real estate property for the purpose of owning it or keeping its benefits.

This includes, with no limitation, contracts that consist of transferring the beneficial rights or long term lease rights such as: sale, compensation, donation, will, barter, leasing, financial lease, and transfer of shares in real estate companies, or an usufruct right determination for a period of more than 50 years.

What is an authentication?

A set of procedures that evidence the right in a manner that can lodge a complaint against that right in accordance with the provisions of the authentication law and its Regulations.

Any contract, agreement or assignment made pursuant to the conclusion of the disposal is considered to be equivalent to an authentication for tax purposes when the formal authentication procedure is not pursued.

Due date of the tax:

- The tax is due on the date of disposal on the basis of the value agreed upon between the parties or the value of the property provided that it is not less than the fair market value on the date of disposal.
- The value of the property for the purposes of calculating the tax does not include the implicit profit margin in the financing arrangement by a statutory licensed party.
- The tax is imposed on real estate disposal, including real estate that has been completed, that is still under construction, or that is on land.

Payment of tax due

The date of payment of the tax due shall be on or before the:

- Date of authenticating the disposal
- The date of signature of a surrenderer (in case an official authentication is not pursued)
- The date of signature of the contract or sale agreement (in case an official authentication is not pursued)

The tax should be settled within 30 calendar days from the date of the:

- Contract
- The final agreement concluding the disposal in cases where official authentication with a mandated authority or an approved authenticator is not required
- Disposals evidenced with non-official documentation

A penalty is imposed for late payment and the disposal date may be demonstrated using any means or evidence available.

From whom will the tax be collected?

The tax is collected in real estate disposals transactions from the disposer who commits to its remittance along with any other obligations that can result from it.

The disposer and purchaser have a joint liability over any obligations due under these Regulations. GAZT has the right to assess them jointly or individually.

Collection of tax - administrative provisions:

For the purpose of collecting the transaction tax, GAZT will follow the following procedure:

- If the amounts due are not settled completely under the provision of the Regulations, GAZT may inform the debtor of his/her mandate to settle it within 30 working days from the date of the notice whether an electronic system is used or any other statutory means. If the debtor does not settle these dues he/she would be issued a final warning to settle within 15 working days. If this time limit elapses and he/she does not settle what is due, seizing procedures on the funds would be triggered in the limitation of the amounts due and through submission to the competent judicial authority.
- The Saudi Arabia Monetary Authority would receive a copy of the seizure notification and the seizure would be applied by reaching out to all government authorities and parties as GAZT sees fit for the purpose of seizing any person's assets, and movable and immovable funds if that person is subject to this procedure. GAZT may accept at its discretion the sale of seized assets to settle the amounts owed.
- Any person, including banks and financial institutions, have to disallow any withdrawals or payments from the seized person's account after receiving the notification of seizure on the debtor from GAZT. This excludes personal and necessary expenses according to prevailing laws.

Penalties:

Without prejudice to any higher penalty applicable under another law, the following penalties apply when non-compliant with the provisions of these Regulations:

- Any person that commits infringements, that are considered an evasion from the Transaction Tax of Real Estate Disposal, will get a financial penalty imposed that isn't less than the tax due and doesn't exceed three times the tax due.
- Any person who does not comply with any provision of the Regulations will be subject to a penalty of at least SAR 10,000 and not exceeding the tax due.
- Any person who does not remit the tax within the prescribed time limit would be subject to a penalty equal to 5% of the tax due that remains unpaid for every month or part thereof for which the tax remains unpaid. The Minister may reduce or waive this penalty under certain conditions identified by him.

Exclusions:

The following transactions have been excluded (partially or in full) from the scope of taxation:

- Disposal of real estate in cases of inheritance allocation or distribution
- Disposal of real estate with no consideration to an offspring civil endowment (Waqaf), to a charitable endowment or to a charitable licensed organisation. This is on providing evidence of endowment (Waqaf) and does not include disposals for the purpose of managing the endowment
- Disposal of real estate to a government authority, public legal persons, parties or projects with public benefits. Public benefit is considered for the purpose of applying this paragraph as parties or institutions that are classified as such in the civil associations and institutions law
- Disposal of real estate by a government authority in its capacity as a public authority and not as part of an economic, investment or commercial activity
- Forcible disposal in cases of expropriation for public benefits or temporary seizure of the property
- Disposal of the property as an authenticated gift to the spouse or a relative up to the second degree or through a legitimate will statutorily authenticated
- Disposal of the property on a temporary basis for the purpose of using it as collateral for financing or credit unless an execution is carried out on that property to permanently transfer it to the financier or others
- Disposal of real estate prior to the date this Regulations enters into force in execution of lease contracts with ownership intent and finance lease contracts
- Disposal of the property temporarily for the purpose of transferring it between a fund and a custodian or vice versa or between custodians of the same fund in accordance with the capital market authorities law, Regulations and guidance
- Supplying the property as an in-kind contribution by any person as the capital of the joint stock companies, provided that the corresponding shares are not disposed of for a period of five years
- Disposal of the property if one of the parties of the transaction is a foreign government, an international organization, an authority, a diplomatic mission, a military mission, or a member of the diplomatic, consular or military corps accredited to the Kingdom, on condition of reciprocity
- Supply of real estate that was subject to VAT before its authentication in case it was authenticated after the tax comes into force provided that no changes have occurred to the parties of the transaction, the transaction value and the terms of the contract that is subject to VAT
- Any other cases based on the Minister's decision

Appeals

Any decision made by GAZT may be appealed in front of tax committees for the resolution of tax violations and disputes.

Key takeaway

The new transaction tax of real estate disposal includes various provisions that should be carefully considered by taxpayers (individuals or legal persons) to comply with the requirements of this new tax.

GAZT has issued an additional guidance on the application of the tax including Q&A and comparisons with VAT. Taxpayers are invited to carefully review the guidance and assess the changes required to their business processes, systems and procedures.

Let's Talk

For a deeper discussion of how this issue might affect your business, please contact:

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