

Guide on Doing Business in the Kingdom of Saudi Arabia - Part II

2020-2021



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Tax

XII. What contributions are made towards social security by the employee and the employer during the employment relationship? Is there an Income Tax regulation in the KSA?

There are no income taxes impositions for the employees; however, the Saudi employees must pay 10 percent of their wages as a contribution towards social security to the General Organization of Social Insurance while the Non-Saudi employees are not required to make such a contribution from their income. The employers must make contributions for the benefit of their employees, being 12 percent for the Saudi employees and 2 percent for the Non-Saudi employees.

ZAKAT

Ministerial Resolution Number 2216, dated 7/7/1440H, the **Implementing Regulation for Zakat** is applicable to the fiscal year commencing 1 January 2019 onwards for Zakat payers who are filing their Zakat returns based on accounting records. It specifically focusses on the Zakat collection regulations in the commercial activities apart from other Zakatable funds together with the requirements for filling Zakat declaration, the procedures of assessment, examination and payment, and their time periods. The Zakat collected by the **GAZT** shall be deposited in the Social Security Account, which shall be further distributed to the poor and needy in accordance with *Royal Decree Number 161/5 dated 51383/1/H (28 May 1963)*.

The Zakat is a form of tithe and is paid by the Saudi individuals and companies annually, within the provisions of Islamic law as laid down by *Royal Decree Number 17/2/28/8634 dated 29/6/1370 H (1950)*.

The overview of the Zakat By-Law:

The Listed companies are subject to Zakat if the founders or those considered as founders are Saudis or GCC nationals. The permanent establishment of the non-resident Saudis or those who are subject to the same treatment as Saudis is subject to Zakat, provided that specific criteria are met, noting that, the By-Law is not stating a definition of the Permanent establishment. Zakat shall be levied at 2.5 percent of Zakat-base for the respective Hijri year. Where Zakat-payer's fiscal period does not match Hijri year, Zakat shall be calculated on a daily basis (i.e., the daily rate is 0.00007 percent); therefore, Zakat rate for the Gregorian year (i.e., 365 days) will be 2.578 percent, unless the Zakat base is the net adjusted profit, Zakat rate is 2.5 percent regardless the fiscal period's duration. In case of the first fiscal period or transfer of ownership, Zakat rate is prorated to the number of days, noting that Zakat is not applicable to the last fiscal period if it's less than 354 days.



Taxes on Corporate Income

Royal Decree Number M/70 dated 11/7/1439H (28 March 2018) had been issued to amend the KSA tax legislation to repeal the Natural Gas Investment Tax provisions. Effective from 1 January 2018, natural gas investments are now taxed under the general provisions of the income tax legislation including, among other provisions, is subject to the general income tax rate of 20 percent instead of the previous rate of 30 percent.

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*"Business opportunities are like buses,
there's always another one coming."*

– Richard Branson

Only non-Saudi investors will be liable for income tax in Saudi Arabia. Where a company is owned by both Saudi and non-Saudi interests, the portion of taxable income attributable to the non-Saudi interest is subject to income tax, and the Saudi share goes into the basis on which Zakat is assessed.

As per the income tax law, the following persons are subjected to income tax:

- I. Resident non-Saudi natural person carrying on activities in Saudi Arabia.
- II. Non-resident person carrying out activities in Saudi Arabia through a Permanent Establishment.
- III. Resident capital companies concerning the shares of non-Saudi partners, resident or non-resident, natural or legal persons. Shares of non-Saudi partners do not include shares held for speculation purposes through trading shares of a joint-stock company in the Saudi Stock Exchange. The shares of non-Saudis in mixed companies, being partners in resident capital companies, are not considered as Saudi shares for the purposes of this Law.
- IV. Non-resident person having other income subject to tax from sources within Saudi Arabia without having a Permanent Establishment.
- V. Person engaged in oil or other hydrocarbon production.
- VI. Person engaged in natural gas investment fields. Income tax is at 20 percent of the net adjusted profits. However, income from oil and hydrocarbon production is subject to tax at a rate ranging from 50 percent to 85 percent, and the tax base of a person engaged in the natural gas investment shall be independent of the tax base relating to the same person's other activities.

For VAT check the answer to Question III.

Dividends paid and received: If the foreign corporate shareholders transfer the dividends received to their overseas accounts, then such amounts are taxed at 5 percent as withholding tax. Dividends received into the KSA from foreign investments are not taxable.

Interest and IP royalties paid: Interest paid to foreign corporate shareholders is taxed at 5 percent as withholding tax, and the IP royalties paid to foreign corporate shareholders are taxed at 15 percent as withholding tax.

Custom Duties: Exports are not taxed. However, the Saudi Arabia Council of Ministers announced an increase to the rates of customs duties, effective 20 June 2020 reaching 10 percent, 15 percent and 20 percent for businesses importing goods in the KSA.

Competition

XIII. What is the name of the main regulator/ regulators governing the competition law in this jurisdiction?

- I. The Board of the General Authority for Competition (the "Board").
- II. The General Authority for Competition (the "GAC").
- III. The Committee for Adjudication of Competition Law Violations (the "Committee").

XIV. How would a dominant market position be derived?

Dominance in the relevant market is achieved by meeting one or both of the following criteria:

- I. A market share of 40 percent or more of the relevant market; whether it is the share of a single firm or a group of firms, whenever that group acts with a common will in committing the violation or causing the effect.

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*"There's no shortage of remarkable ideas,
what's missing is the will to execute them."*

– Seth Godin



- II. Ability to influence a relevant market such as controlling prices, production, or demand; whether it is the ability of a single firm or a group of firms, whenever that group acts with a common will in committing the violation or causing the effect.

As per **Article 6** of the Competition Law, establishments with a dominant position in the market must not abuse that position to prejudice or control competition and in particular, cannot do the following acts:

- I. Sell goods or services at a price lesser than the total cost, solely to exclude entities from or obstruct the entry of potential entities into the market or to expose the entities to gross losses.
- II. Determine or impose the sale price or terms of resale of goods or services.
- III. Decrease or increase the availability of the good in order to control the price or to create a relative shortage or excess in the market.
- IV. Discriminate between Establishments of a similar nature with respect to the price of goods or services or the terms of sale or purchase.
- V. Refrain from dealing with another Establishment without an objective reason, in order to prevent it from entering the market.
- VI. Prohibit an Establishment from dealing with another Establishment.
- VII. Require that the sale of goods or services be conditional upon assuming an obligation or accepting a good or service that is, by the nature or commercial application, unrelated to the first-mentioned good or service.

XV. What penalties apply for failure to follow competition law in a merger or acquisition?

- I. Whoever violates by entering into the prohibited agreements or contracts with the purpose or effect thereof to prejudice competition or where an entity having a dominant position in the market exploits this position to undermine or limit competition or entities seeking to participate in an economic concentration transaction have not informed GAC as per the Competition Law shall be punished by a fine of maximum 10 percent of the total annual sales value (the subject of the violation). Where it is impossible to estimate the annual sales, the fine shall not exceed SAR ten million. The Committee may, on its discretion, impose a fine of maximum three times the gains made by the violator resulting from the violation.
- II. An entity which prevents the law enforcement officer or investigator from performing a task assigned to him as per the Competition Law shall be punished by a fine not exceeding 5 percent of the annual sales value. Where it is impossible to estimate the annual sales, the fine shall not exceed SAR five million.
- III. If the violator repeats the violation, the Committee may double the fine awarded in the first instance. The violator shall be deemed a recidivist if the same violation is committed within three years from the date of the resolution of the first violation.
- IV. Whoever violates any other provision of the Competition Law shall be punished by a fine not exceeding SAR two million.

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*"The best investment is in the tools of one's own trade."
- Benjamin Franklin*

Intellectual property

XVI. What are the main IP rights?

I. Patents

A patent is a unique idea, not previously registered, developed by an inventor resulting in a solution of a specific problem concerning the field of technology.

Patents are registered online with the King Abdulaziz City for Science and Technology (KACST). The protection period of patents is 20 years. Patent infringement is punishable with monetary fines of maximum SAR 100,000 or imprisonment, or both.

II. Trademarks

Trademarks are unique marks, symbols and logos containing unique words or images, and not contain any elements that are against Islam or public policy. The protection period of trademarks is ten years renewable for additional terms. Trademark infringement is punishable with monetary fines of maximum SAR 1 million or imprisonment of up to one year, or both.

III. Registered Designs

A unique design of a product, composed of two-dimensional lines or any three-dimensional shape.

Designs can be registered with KACST by submitting an application along with the design details. Patent infringement is punishable with monetary fines of maximum SAR 100,000 or imprisonment, or both.

The protection period of registered designs is ten years and is not renewable. Unregistered designs, mostly not protected by law, can be protected as unregistered copyright.

IV. Copyright

The Copyright Law issued by *Royal Decree Number M/41 dated 2/7/1424H* provides for a broad definition of protected works (including computer software), which includes works that are published, produced, performed or displayed for the first time in the KSA.

Registration is not required to ensure protection. Publishing the material grants immediate protection to the author. Protection is not limited to content published in the KSA; it also includes copyrighted works under international agreements or treaties on the protection of copyright to which the KSA is a party. Any infringement to copyrights can be punished by fines exceeding SAR 100,000, cancellation of licences, or imprisonment for a maximum period of six months. Copyrighted material is protected for a period of fifty years from the date of publication.

XVII. What laws regulate the agency, distribution and franchise agreements?

Agency, distribution and franchise agreements are regulated by the Commercial Agencies Law issued by *Royal Decree Number 11 dated 20/2/1382H*. Commercial agents, distributors, or franchisees must be registered with the Ministry of Commerce and Investment. Some authorities may require that agents and distributors are also registered with the relevant authorities.

XVIII. What laws govern E-commerce transactions?

E-commerce transactions are currently governed by the Electronic Transactions Law issued by *Royal Decree Number M/18 dated 8/3/1428H*. These laws regulate electronic signatures and electronic transactions and cover electronic agreements made via exchanging of e-mails or filling in online forms and applications.

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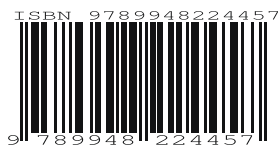
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