Withholding Tax Guideline
Guideline to the application of the withholding tax provisions of the Income Tax Law
Issued on 6/7/2021

Version 1.0
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<tr>
<td>“The Kingdom” or “KSA”</td>
<td>The Kingdom of Saudi Arabia.</td>
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<td>“The Authority” or “ZATCA”</td>
<td>Zakat, Tax and Customs Authority.</td>
</tr>
<tr>
<td>“The Law”</td>
<td>Income Tax Law issued by Royal Decree No. (M/1) dated 15/1/1425H and the amendments thereto.</td>
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<tr>
<td>“Tax”</td>
<td>Income Tax imposed by the Law and Regulation.</td>
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<tr>
<td>“Person”</td>
<td>Any natural or legal person&lt;sup&gt;1&lt;/sup&gt;.</td>
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<tr>
<td>“Taxpayer”</td>
<td>A Person subject to tax per the Law&lt;sup&gt;2&lt;/sup&gt;.</td>
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<tr>
<td>“Resident”</td>
<td>For the purpose of this guideline, the resident is a natural or a legal Person, that satisfies the residency conditions in the kingdom, stipulated in Article 3 of the Law, And it includes any governmental department or ministry, or public entity, or any other legal person or entity formed in the Kingdom&lt;sup&gt;3&lt;/sup&gt;.</td>
</tr>
<tr>
<td>“Nonresident”</td>
<td>Any Person who does not satisfy the requirements of the status of a Resident stipulated in Article 3 of the Law&lt;sup&gt;4&lt;/sup&gt;.</td>
</tr>
</tbody>
</table>

<sup>1</sup>Article 1 of the Law.  
<sup>2</sup>Article 1 of the Law.  
<sup>3</sup>Article 1 of the Law.  
<sup>4</sup>Article 1 of the Law.
### “Activity”
A commercial activity in all its forms or any vocational, professional or other similar activity for profit. This includes the use of movable and immovable property.\(^5\)

### “Payment for Airline Tickets/, Air or Sea Freight”
Any payment for air tickets, or costs for air freight or maritime freight paid in the Kingdom to air and maritime transport companies, their agents or representatives in the Kingdom, excluding payments for freight of goods from outside to the Kingdom’s ports.\(^6\)

### “Dividend”
Any distribution by a Resident company to a Nonresident shareholder, and any profits transferred by a permanent establishment to related parties. The following should be considered:

(a) Dividends by companies engaged in natural gas investment, oil and hydrocarbons are not subject to withholding tax.

(b) Partial or full liquidation of a company is deemed to be Dividends for payments in excess of paid-in capital.

(c) Imposition of a distributing company to income tax shall not preclude imposition of withholding tax on its Dividends.\(^7\)

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\(^5\) Article 1 of the Law.
\(^6\) Article 63(4) of the Regulation.
\(^7\) Article 63(6) of the Regulation.
“Returns on Loans“

Any amount gained for the use of money. This includes income realized from loan transactions of any type, whether secured by guarantees or not, or by giving rights to participate in the Borrower’s profits or not, including income realized from governmental and non-governmental bonds, excluding loan fee resulting from interbank deposits if the deposits remained with the borrowing Resident bank for a maximum period of 90 days, provided the borrowing bank submits an annual statement attested from the Saudi Central Bank listing the names and addresses of the lending banks, period of loan and the loan fee amounts paid.8

“Payment for International Telecommunication Services“

Any amounts paid to a Nonresident party in return for services related to provision of international telecommunications services from the Kingdom.9

International Telecommunication Services include for example payments made to:

- International phone services, telex, and intermediary services which result from the use of international telecommunications companies’ networks by the local telecommunications company to pass, transfer or deliver calls made by the participant residing in the Kingdom when requesting any international call.

- International organizations that own satellites against the use of satellite bandwidth or international circuits in such satellites for the purpose of providing the local telecommunication company subscribers with international telecommunication services.

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8 Article 5(1) of the Regulation.
9 Article 63(5) of the Regulation.
Nonresident companies in respect of leasing capacities in international cables and internet for the purpose of using such capacities in various communication services.

Nonresident companies for Interconnection Services and it includes services provided between service providers for the interconnection of their telecommunications networks and/or other forms of access allowing their Users to access particular Users or services.

“Management Fees”
Payments for Management Services and activities by which the service provider operates or directs the ordinary daily business of another person or conducts any function in a manner that is ordinarily carried out by the management or employees of another company, and it includes payments for management services contract, hotel management contracts, ship management contracts, etc.

“Royalty” or “Royalties”
Payment or payments received for the use of or the right to use intellectual rights, including, but not limited to, copyright, patents, designs, industrial secrets, trademarks and trade names, know-how, trade and business secrets, goodwill, and payments received against the use of information related to industrial, commercial or scientific expertise, or against granting the right to exploit natural and mineral resources.

“Technical Services”
Any type of technical, technological and scientific services, including studies and research on different fields, surveying work of scientific, geological and industrial nature, or any type of engineering services including relevant designs. Technical Services involve the application of specialized knowledge, skill or expertise with respect to a particular art, science, profession or occupation.
### “Consulting Services”

Any type of services which involve the provision of expertise or strategic advice of a specialized nature and which is presented for consideration and decision-making.

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### “Withholding Agent”

Any resident Person in the Kingdom, whether considered a Taxpayer or not, and any permanent establishment of a Nonresident, which pays an amount to a Nonresident from a source in the Kingdom as per the Law and its Regulation.\(^\text{14}\)

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### “Transfer Pricing Guidelines”

The transfer pricing Guidelines published by ZATCA to setting forth all information and details related to the transfer pricing regulation, including, without limitations, the interpretation, implementation, enforcement and application thereof.

\(^\text{14}\)Article 68 of the law.
1. Introduction

This Guideline - published by Zakat, Tax and Customs Authority - serves to provide insights and guidance on the application of the withholding tax ("WHT") provisions included in the Law and its Regulation. This Guideline solely serves as guidance material to minimize any ambiguities for any person involved in transactions that are within the scope of WHT. It also represents ZATCA's views on the application and fair treatment of the Law and its Regulation. This Guideline is intended for informational purposes only and does not include or purport to include information about all provisions of the Law nor all WHT issues. While the Guideline is not a binding document, it nonetheless provides information about ZATCA's possible approach to certain WHT issues on a practical level. This Guideline is not binding on ZATCA or on any Person in respect of any transaction carried out and it cannot be relied upon in any way.

The intention for ZATCA to cooperate with persons does not eliminate the possibility of disagreements between persons and ZATCA. Nor does it affect ZATCA's ability to conduct audits or impose fines if ZATCA is of the view that the Person did not comply with the WHT provisions of the Law and its Regulation.

In case more information is required about the application of the Law and its Regulation in respect of WHT to a particular situation, a Person can approach ZATCA through the proper channels to request a ruling. ZATCA will endeavor to provide such Person with information on the application of the WHT provisions for that specific situation.

1.1. What is Withholding Tax?

1.1.1 Interaction between income tax and WHT

Income tax is a direct tax imposed on Taxpayers as per the second article of the Law. Taxpayers include Nonresidents deriving income from sources within the Kingdom, therefore sub 2 of Article 1 in the regulation cleared the mechanisms of imposing tax on these taxpayers:

a. If the income is one of the specified types of income in article 68 of the Law, Tax should be levied based on the rules specified in the aforementioned article. (e.g. through the withholding tax mechanism).

b. If the income represents capital gains from the disposal of fixed or traded assets or the income represents capital gains from the disposal of shares in a resident company; tax should be levied based on the general principals of the Law.\(^{16}\)

This Guideline will clarify ZATCA interpretation regarding WTH mechanism only. In KSA, WHT is connected with the income tax provisions and is an extension of such provisions. The WHT provisions make use of the conceptual framework of the Law and should therefore be interpreted in conjunction with the income tax itself.

KSA does not impose WHT on domestic payments (i.e. payment from a KSA Resident to another KSA Resident)

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\(^{16}\) Article 1 sub 2 of the Regulation.
as these payments does not constitute an income for a Nonresident. The WHT provisions pertain to payments from sources in the Kingdom paid by Residents or a permanent establishments in the Kingdom to Nonresidents. And the place of payment of the income should not be taken into account in determining its source.

Income Tax is imposed on income from a source in the Kingdom on:

- A Resident Taxpayer
- A Permanent Establishment of a Nonresident in the Kingdom
- A Nonresident Taxpayer

Standard income tax based on tax base and tax rate

WHT mechanism
1.1.2 WHT

Withholding Tax ("WHT") is an income tax assessed on Nonresidents who generates income from a source in the Kingdom. However, it differs from ordinary taxation that the Resident person or the permanent establishment in KSA making a payment to Nonresidents is required to withhold a part of that payment corresponding to tax and remit it to ZATCA. The WHT base is determined according to the total payments made not the profit.

This is illustrated in the example below:
2. Scope of application of the WHT provisions

Based on the Law and its Regulation, WHT provisions are applicable based on the following:¹⁷

1. **The Withholding Agent**
   The Resident person – whether a Taxpayer or not - or the permanent establishment of a Nonresident which makes payments from a source within KSA to a Nonresident. Such Person is responsible for withholding and remitting the amount of tax to the Authority.

2. **The Nonresident who derives income from a source in the Kingdom**
   The WHT is imposed on the Nonresident who does not have a permanent establishment in the Kingdom every time such Person derives an income from a source in the Kingdom.

3. **Payment subject to WHT**
   Any payment that is made from a Resident in KSA to a Nonresident from a source in KSA is subject to WHT if it was a consideration for one of the incomes specified in article 68 of the law and article 63 of the regulation. It includes all payments as a consideration for any kind of services, Where the law defined services as: Any work for a consideration except buying and selling goods or any other properties. A Payment means any consideration in kind or in cash paid, including settlements, set-offs, book adjustments and liabilities.

More guidance on these key elements is provided in the below paragraphs.

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¹⁷ Article 68 of the Law.
2.1. The Withholding Agent

WHT provisions are only applicable if the payment is made by a Resident in the Kingdom according to residency conditions specified in the law or if the payment is made by a permanent establishment of a Nonresident in the Kingdom. If the Resident is a legal person or a permanent establishment of a Nonresident, such person or P.E will be a Withholding Agent for every payment made to Nonresidents from sources within the Kingdom.

If the Resident is a natural Person such person will be required to withhold tax -become a Withholding Agent- only in cases where the payments to Nonresidents are made in the context of a business activity such natural person has. Therefore, payments made to Nonresidents by natural Persons that are not related to their activities are not within the scope of WHT.

2.1.1. Who are Resident legal or natural Persons?

To determine whether WHT is applicable, one must ascertain that the payment was made by either a legal or a natural Person who is a Resident in KSA.

Under the Law and its Regulation, a Resident can be any of the following:

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18Article 68 of the Law.
19Article 68 of the Law “In the case of amounts paid by a natural person, the conditions for withholding stipulated under this Article [68] shall apply to the payments pertaining to his Activity.”
20Article 1 of the Law.
A natural Person (conducting business in the Kingdom)
A legal person.
Any governmental department, ministry or public entity; and
Any other legal Person or entity formed in the Kingdom.

In addition, a permanent establishment is treated the same way as a Resident for WHT purposes (see paragraph 2.1.2).21

Residency of a natural Person

Under the Law and its Regulation22, a natural Person is considered a Resident in the Kingdom for a taxable year if he or she meets any of the two following conditions:

1. He/she has a regular place of residence in the Kingdom and resides in the Kingdom for a total period of not less than thirty (30) days in the taxable year.

2. He/she resides in the Kingdom for a period of not less than one hundred eighty-three (183) days in the taxable year.

A Resident natural person does not have to be a Taxpayer to have WHT obligations. Therefore, natural Persons that are subject to Zakat in respect of a business Activity conducted in KSA are also subject to WHT provisions irrespective of the fact that they are not considered as a “Taxpayer” in accordance with the provisions of the Law and its Regulation23.

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21Under Article 5, paragraph c of the Law: payments made by a permanent establishment of a Nonresident in the Kingdom are considered as if they were paid by a Resident company.
22Article 3 of the Law.
23Article 68 of the Law: “Every resident, whether or not a Taxpayer according to this Law, and a permanent establishment of a Nonresident in the Kingdom which pays an amount to a Non-resident from a source in the Kingdom shall withhold tax from the paid amount...”
A company is considered a Resident in KSA for a taxable year if it meets any of the two following conditions:

1. It is formed in accordance with the Saudi Companies Law.
2. Its central management is located in KSA.

In case a legal Person is formed in accordance with the Saudi Companies Law, a company has a KSA legal form and therefore, automatically qualifies as a Resident for tax purposes.

The second situation in which a legal Person is considered Resident in KSA is when its central management is located in KSA.

When determining where the central management is located, ZATCA will consider all the facts and circumstances relevant for this purpose based on the Ministerial Resolution no. 2194, dated 1432/7/12 H. which states that the central or effective management is generally the place where higher policies, and key management and commercial decisions that are necessary to conduct the entity's business are in substance made. The Kingdom is considered the place of effective management if two of the following conditions are met:

   (1) The Kingdom is the place where ordinary meetings of the Board of Directors regularly take place during which key policies and decisions related to the company's
management and conducting its business are made.  

(2) The Kingdom is the place where high executive decisions about the management of the entity’s functions, such as decisions by the executive manager and his deputies, are made.  

(3) The Kingdom is the place where the entity’s most businesses that generate most of its revenues take place.  

A Resident legal person does not have to be a Taxpayer to be subject to WHT. Therefore, companies that are subject to Zakat in KSA are also subject to WHT provisions in respect of payments made to Nonresidents even though they are not considered as “Taxpayers” in accordance with the provisions of the Law and its Regulation.  

Further, governmental departments, ministries and other public entities are considered “Resident” in the Law but are not “Taxpayers”. These government bodies are also subject to the WHT provisions for payments from sources within KSA made to Nonresidents.

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24Article 68 of the Law: “Every resident, whether or not a Taxpayer according to this Law, and a permanent establishment of a Nonresident in the Kingdom which pays an amount to a Nonresident from a source in the Kingdom shall withhold tax from the paid amount…”
2.1.2. Permanent establishment

The WHT provision also applies to permanent establishment (located in KSA) of a Nonresident. As previously mentioned, payments made by a permanent establishment of a Nonresident in the Kingdom are considered as if they were paid by a Resident Person. Therefore, this provision effectively results in a permanent establishment being treated as a Resident for WHT purposes.

A permanent establishment of a Nonresident in the Kingdom, unless otherwise stated in Article 4 of the Law, consists of the permanent place of the Nonresident’s Activity through which it carries out business, in full or in part, including business carried out through its agent.

This is illustrated in the example below:

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25 Article 4 of the Law.
26 Article 5, Paragraph c of the Law.
Under the Law and its Regulation, a permanent establishment is any of the following:

a. Construction sites, assembly facilities, and the exercise of supervisory activities connected therewith.
b. Installations, sites used for surveying natural resources, drilling equipment, ships used for surveying for natural resources as well as the exercise of supervisory activities connected therewith.
c. A fixed base where a Nonresident natural person carries out business.
d. A branch of a Nonresident company licensed to carry out business in the Kingdom.

Furthermore, a place is not considered a permanent establishment of a Nonresident in the Kingdom if used in the Kingdom only for the following purposes:

1. Storing, displaying or delivering goods or products belonging to the Nonresident.
2. Keeping a stock of goods or products belonging to the Nonresident for the purpose of processing by another person.
3. Purchasing goods or products for the sole purpose of collection of information for the Nonresident.
4. Carrying out other activities of preparatory or auxiliary nature for the interests of the Nonresident.
5. Drafting contracts for signature in connection with loans, delivery of goods or activities of Technical Services.
6. Performing any series of activities stated in (1) to (5).

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27 Article 4 of the Law.
Example (1)
A head-office abroad of a Nonresident's permanent establishment in the Kingdom provides Technical Services to the permanent establishment (service from head office to permanent establishment), which in turn provides to its clients in the Kingdom (service from permanent establishment to client). Are the amounts of such services subject to WHT?

If a head-office abroad of a Nonresident's permanent establishment in the Kingdom provides Technical Services to the permanent establishment, the amounts of such services shall be subject to WHT. And it is considered as a deductible expenses, If the conditions of the deductible expenses are met.

Example (2)
Are payments to a Nonresident with a permanent establishment in the Kingdom subject to WHT provisions?

Payments to a Nonresident are not subject to WHT if the payments are connected to the business activities conducted by the permanent establishment in the Kingdom. The permanent establishment is treated the same way as a Resident and as such the ‘connected’ payments are considered as if it is a payment to a Resident. Note that such payments should be reported by the permanent establishment in its return in accordance with Article 68(f) of the Law. Note that the “Force of Attraction” (FoA) rules in KSA may apply even if the payments are not directly connected to the
business of the permanent establishment. This depends on the facts and circumstances of the case, as outlined in the ZATCA Circular Number 2104001 issued in April 2021.

2.2 What are the payments that are subject to WHT?

The scope of the WHT provision is limited to payments made by a Resident to a Nonresident from a source in KSA. The following key elements are essential to consider:

- The payment should be made from a Resident or a Permanent Establishment of a Nonresident to a Nonresident; and
- The payment should be from a source in KSA (subject to the FoA rule applicable in KSA Law and any applicable tax treaties).

2.1.3. Payment to a Nonresident

Based on the Law and its Regulation, a Nonresident is defined as any person who does not satisfy the requirements to be deemed Resident. Hence, any person who does not qualify as a Resident, based on the criteria set out in the previous section (see section 2.1.1), is automatically considered a Nonresident.

In case a permanent establishment in KSA of a Nonresident receives a payment from a Resident, and the payment
is directly connected to the business of this permanent establishment, such payment is considered to be as it is made to a Resident if that permanent establishment is treated the same treatment of a Resident (see also paragraph 2.1.2), the respective payments are not subject to WHT; such payments should be filed as part of the permanent establishment income within its income tax return. Similarly, in case a Saudi Resident has a permanent establishment located outside KSA and the foreign permanent establishment received a payment from the Saudi Resident which is directly connected to the business of this permanent establishment, such payment is considered to be made to a Nonresident and therefore could be subject to WHT. However, the Saudi Resident could potentially be entitled to credit WHT from its payable income tax if such Resident Person is a Taxpayer. An illustration of this case is provided in Example (3) below.

**Example (3)**

A Saudi Resident capital company (the Resident company) has a foreign branch that qualifies as permanent establishment. The Resident company has a contract with another Resident company (its client) for provision of services. The branch abroad has provided the services on behalf of its head office in KSA (the Resident company) and the branch has invoiced its head office (the Resident company) not the

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28 Article 68, Paragraph o of the Law.
recipient company. Is the payment by the head office to its branch abroad for the services subject to WHT, and if yes, could the Resident company deduct the WHT in its return?

The branch or permanent establishment of the Resident company is considered a Nonresident for purpose of the WHT provision. As such the payment from the head office to its foreign branch is considered a payment from a Resident to a Nonresident. This is also the case if the client pays directly to the foreign branch. The first two key criteria of the WHT provision are met, depending on the nature of the services provided the payment may be in scope of the WHT provision. In case the services are considered ‘Technical or Consulting Services’ the Nonresident has a source in KSA. Note that since the foreign branch’s income will be included in the Resident company’s tax base, the latter is entitled to credit the WHT from its payable income tax.

Note that what qualifies as a payment should be interpreted in a broad sense. Payment means any consideration in kind or in cash paid, including settlements, set-offs, book adjustments and liabilities. In this sense, payments in cash and payments in kind that replace a cash payment but result in the same economic effect are regarded as “payments” for WHT purposes. This would also include payments made in a form of credits, accruals netting off receivables and any similar accounting adjustments/arrangements or set-offs.

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29 Article 5, Paragraph 3 of the Regulation.
2.1.4. Payments from a source in KSA

It is essential that a payment is derived from a source in the Kingdom in order for such payment to fall within the scope of WHT.

Article 5 of the Law and Articles 5 and 6 of the Regulation specify cases where an income is considered accrued in KSA. At first, this article outlines a general principle, and it subsequently provides several specific categories of payments, which are further outlined and explained in this Guideline.

The place of payment of the income should not be taken into account in determining its source. In other words, the source is the one of relevance to determine whether a payment by a Resident to a Nonresident is within the scope of the WHT provisions (i.e. the object of WHT) irrespective where the payment takes place.

2.1.4.1. Key categories of source of income under Article 5 of the Law

The table below outlines examples of the cases where an income is considered derived from a source in the Kingdom as well as the position with regard to the applicability of WHT.

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30 Article 5 sub b of the Law.
31 Article 5 sub a of the Law.
Please note that the payments below are within the scope of WHT when they are paid to Nonresidents. If such payments are made between Residents, they should be subject to income tax (only if those Residents are Taxpayers as per the second article of the Law).

<table>
<thead>
<tr>
<th>Income</th>
<th>Within the scope of WHT? Y/N</th>
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<tbody>
<tr>
<td>1</td>
<td>Payment from business activities(^{32}) in KSA</td>
</tr>
<tr>
<td>2</td>
<td>Gains from the sale or disposal of immovable property</td>
</tr>
<tr>
<td>3</td>
<td>Lease of immovable property</td>
</tr>
<tr>
<td>4</td>
<td>Gains from the disposal of shares</td>
</tr>
<tr>
<td>5</td>
<td>Lease of movable properties in KSA</td>
</tr>
<tr>
<td>6</td>
<td>Lease of immovable property</td>
</tr>
<tr>
<td>7</td>
<td>Sale or license of industrial or intellectual properties in KSA</td>
</tr>
<tr>
<td>8</td>
<td>Royalties</td>
</tr>
<tr>
<td>9</td>
<td>Dividends</td>
</tr>
<tr>
<td>10</td>
<td>Management or directors’ fees</td>
</tr>
<tr>
<td>11</td>
<td>Services rendered to a Resident company</td>
</tr>
</tbody>
</table>

\(^{32}\) Business activities that constitute a permanent establishment are covered by the permanent establishment provisions.
<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>8</td>
<td>Services performed in KSA and Technical and Consulting Services provided by a Nonresident to a Resident irrespective of the place where it is performed</td>
<td>Yes</td>
</tr>
<tr>
<td>9</td>
<td>Exploitation of a natural resource</td>
<td>No – as this is covered by income tax</td>
</tr>
<tr>
<td>10</td>
<td>Income attributed to a permanent establishment</td>
<td>No – as such income is subject to income tax</td>
</tr>
</tbody>
</table>

(1) **Payment from business activities in the Kingdom**

Based on the Law and its Regulation, an income is considered accrued in the Kingdom “if it is derived from an Activity which occurs in the Kingdom.”

In general, income derived from an Activity which occurs in the Kingdom qualifies as an income from a source in the Kingdom. An ‘Activity’ is defined as any type of commercial Activity in all its forms, or any vocational, professional or other similar Activity carried out for the purpose of making profits, and includes the use of movable and immovable property. One important aspect to note is that the Activity should be conducted for the purpose of generating profit. As such, non-profit activities, which are conducted based on other motives (e.g. hobbies or charities), do not constitute an ‘Activity’ under the Law and its Regulation.

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33 Article 5 sub a (1) of the Law.
34 Article 1 of the Law.
In general, if an Activity occurring in KSA triggers a permanent establishment in KSA for the respective Nonresident who performs such Activity. The concept of source will also capture the payments made by a permanent establishment to its head office (considered as Nonresident). Therefore, such payments should be subject to WHT.

(2) Income from the sale or disposal of immovable property

Based on the Law and its Regulation, an income is considered accrued in the Kingdom “if it is derived from immovable property located in the Kingdom, including gains from the disposal of a share in such immovable properties and from the disposal of shares, stocks or partnership in a company the property of which consists mainly, directly or indirectly of shares in immovable properties in the Kingdom.”

Capital gains are not of relevance for the application of the WHT given that these will be reported as part of the ordinary income subject to income tax. However, rental income derived from an immovable property located in KSA and paid to a Nonresident by a Resident should be within the scope of WHT.

(3) Gains from the disposal of shares

Based on the Law and its Regulation, an income is considered accrued in the Kingdom “if it is derived from the disposal of shares or a partnership in a Resident company.”

This category of income is not of relevance for the application of the WHT given that capital gains are treated as an ordinary income and are subject to income tax.

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35 Article 5 sub a (2) of the Law.
36 Article 5 sub a (3) of the Law.
(4) **Lease of movable properties in the Kingdom**

Based on the Law and its Regulation, an income is considered accrued in the Kingdom “if it is derived from lease of movable properties used in the Kingdom.\(^{37}\)

Lease can be defined as any payment made by the lessee for the use of, or the right to use a tangible or intangible asset situated in the Kingdom. Lease does not include a natural resource payment and a Royalty.

The term lease has a broad interpretation which means that any payment for the use of movable property, whether it is operational lease, financial lease or another form of lease, should fall under this definition of lease.

Lease payment made to a Nonresident is subject to WHT.

(5) **Sale or license of industrial or intellectual properties in the Kingdom**

Based on the Law and its Regulation, an income is considered accrued in the Kingdom “if it is derived from the sale or license for use of industrial or intellectual properties used in the Kingdom. \(^{38}\)

(5.1) **Definition of intellectual property and Royalty**

**Intellectual property**

The concepts of industrial and intellectual property are not specifically defined by the Law and its Regulation, however they are understood as follows:

- Intellectual property (IP) rights are defined as the rights given to persons over the creations of their minds. They usually give the creator an exclusive right over the use of his/her cre-

\(^{37}\) Article 5 sub a (4) of the Law.

\(^{38}\) Article 5 sub a (5) of the Law.
ation for a certain period of time. IP could include inventions, literary and artistic works, designs, and symbols, names and images used in commerce. There are multiple types of IP, such as copyright and industrial property.

- Copyright is the legal term used to describe the rights that creators have over their literary and artistic works. Works covered by copyright range from books, music, paintings, sculpture and films, to computer programs, databases, advertisements, maps and technical drawings.

- Industrial property is part of the wider definition of IP and includes patents, trademarks, industrial designs, utility models, service marks, trade names, and geographical indications.

Royalties

The Law defines the term Royalty\(^{39}\) as any payment received for use of or the right to use IP, including, but not limited to, copyright, patents, designs, industrial secrets, trademarks and trade names, know-how, trade and business secrets, goodwill, and payments received against the use of information related to industrial, commercial or scientific expertise, or against granting the right to exploit natural and mineral resources.

The Law does not restrict the definition of a Royalty to the periodicity of the payments, and it is commonly understood within ZATCA that Royalty payments may be periodic, irregular or one-off payments or any other type of payment.

Examples

Compensation for the use of or the right to use an industrial or intellectual property, scientific, artistic or literary work protected by Copyright Law patented inventions, or natural re-

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39 Article 1 of the Law.
sources, expressed as a percentage of receipts from using the property or as a payment for each unit produced are considered Royalties. For example, if a company in KSA makes a payment to a Nonresident for the right to use the brand, this Royalty payment is covered by the WHT provision.

When a person creates a book, song, play, or painting, the work is considered intellectual property. Similarly, when an inventor receives a patent on his invention, the inventor has intellectual property rights in the work created. Typically, authors, songwriters, composers, playwrights, and inventors do not have the financial ability to fully exploit the commercial use of their creations. They must turn to businesses that specialize in the marketing of intellectual property. When a business obtains the right to market the creation, the creator usually receives compensation in the form of a Royalty. A Royalty agreement is part of the contract that the creator of the work negotiates with the business that seeks to exploit the creation.

A Royalty can be as simple as a fixed amount of money for each copy of a book or compact disc sold by the business. For example, a novelist agrees to let a publisher publish her new book. A playwright’s Royalty may be based on a percentage of the box office receipts from each performance of the play. An inventor’s Royalty might be an amount per unit sold or a percentage of the profits generated by the invention. In some cases it might be both. Because a Royalty is one of the terms negotiated in a contract, the type and amount will be subject to negotiation by the relevant parties. Royalty agreements are also used in the mineral and gas industries. These agreements have much in common with the origin of the term.
ZATCA recognizes that there are several discussions on the scope of the term Royalty as for some type of payments the qualification could also be different. For instance, it may be challenging to distinguish payments for the transfer of know-how from payments for the provision of services.

The concept of know-how is not defined but generally refers to practical knowledge on how to accomplish a specific task. Know-how is intangible in nature and may be represented through drawings, designs, formulas, etc. In the context of IP, know-how is generally considered as a component in the transfer of technology, co-existing with or separate from other IP rights such as patents, trademarks and copyright and is an economic asset.

Know-how can also be considered to be all the information concerning industrial, commercial, or scientific experience, whether capable of being patented or not, that is necessary for the industrial reproduction of a product or process. In other words, know-how represents what a manufacturer, for example, would not be able to know from mere examination of the product or the mere knowledge of the technique. Consideration received in exchange of information concerning industrial, commercial, scientific experience refers to the concept of know-how. To the extent that there is
an element of transmitting/transferring know-how to another person, so that the person can use or benefit from the right to use such know-how that should fall within the scope of Royalty.

A transaction will generally be treated as the provision of know-how if it (i) involves information that relates to computer programming techniques and is furnished under conditions preventing unauthorized disclosure, (ii) is specifically contracted for between the parties, and (iii) is considered property subject to trade secret protection. In practice, a transaction will be characterized as the provision of know-how only when it is limited to the transmission of proprietary computer programming skills or techniques.

Conversely, teaching a class or selling a book on computer programming techniques available to the public does not result in the provision of know-how because the information is not furnished under conditions preventing unauthorized disclosure.

However, a payment made in the context of a supplier performing a service which requires a special skill or knowledge should not be considered as transfer of know-how and therefore not be considered as a Royalty payment if it does not include the transfer of knowledge.

Furthermore, in the context of service payments, it is important to understand the nature of the services and the intrinsic connection with the IP or know-how transferred. Generally, the services rendered in relation to an IP which could not be used without the provision of these services is
deemed to be intrinsically connected to the IP and should therefore be regarded as a Royalty. Conversely, a service rendered in supplement and in a separate manner – i.e. support, maintenance, up-grade, training, etc. – but which is not necessary for the normal use of the IP should not fall within the scope of Royalty.

The distinction between know-how and the provision of services could be seen in the fact that know-how concerns pre-existing information and that the contracts involved contain confidentiality provisions and generally involve little more than the supply of the information. On the other hand, contracts for the provision of services generally involve a greater level of expenditure (e.g. on wages for research, design, testing, etc.) and may be characterized by the use of special knowledge and expertise but not the transfer of it.

In order to determine whether a payment is qualified as a Royalty income, ZATCA will review all facts and circumstances associated with such payment. However, by way of guidance, some examples of payments together with their classification (i.e. whether qualified as a Royalty payment) are provided below.
<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Payment for the use of, or the right to use, patents, trademarks,</td>
<td>Royalty</td>
</tr>
<tr>
<td>secret processes and formulas, goodwill, franchises, “know-how”,</td>
<td></td>
</tr>
<tr>
<td>and similar rights</td>
<td></td>
</tr>
<tr>
<td>Payment for leasing of industrial, commercial or scientific</td>
<td>Not a Royalty⁴⁰</td>
</tr>
<tr>
<td>equipment</td>
<td></td>
</tr>
<tr>
<td>Roaming payments</td>
<td>Not a Royalty</td>
</tr>
<tr>
<td>Payment for obtaining the exclusive distribution rights of a product</td>
<td>Not a Royalty</td>
</tr>
<tr>
<td>or service in a given territory</td>
<td></td>
</tr>
<tr>
<td>Payment for the development of a design</td>
<td>Not a Royalty</td>
</tr>
<tr>
<td>Monthly payments for maintenance</td>
<td>Not a Royalty</td>
</tr>
<tr>
<td>Payments for Consulting Services involving know how and expertise</td>
<td>Not a Royalty</td>
</tr>
<tr>
<td>Payment for the right to exploit natural and mineral resources</td>
<td>Royalty</td>
</tr>
<tr>
<td>Payment for motion picture or television copyright</td>
<td>Royalty</td>
</tr>
<tr>
<td>Payment for purchase of an advertising space</td>
<td>Not a Royalty</td>
</tr>
<tr>
<td>Payment for the right to use a database in its own business to</td>
<td>Royalty</td>
</tr>
<tr>
<td>resell it as part of its own product</td>
<td></td>
</tr>
<tr>
<td>Lump sum payment for the purchase of the right to reproduce a song</td>
<td>Royalty</td>
</tr>
<tr>
<td>Payment by a branch to its parent company for the use of intellectual property rights</td>
<td>Royalty</td>
</tr>
</tbody>
</table>

⁴⁰Payment for leasing of industrial, commercial, or scientific equipment is not categorized as a Royalty payment.
<table>
<thead>
<tr>
<th>Description</th>
<th>Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>Customizable software which requires exploitation rights to be transferred, such as modification rights, rights to an open source etc.</td>
<td>Royalty</td>
</tr>
<tr>
<td>Subscription fees paid to access technical and scientific information or database</td>
<td>Royalty</td>
</tr>
<tr>
<td>Subscription fees paid to access a magazine, newspaper</td>
<td>Not a Royalty</td>
</tr>
</tbody>
</table>
(6) Dividends, Management or Directors’ Fees

ZATCA recognizes that there are several discussions on the Based on the Law and its Regulation, an income is considered accrued in the Kingdom “Dividends, management or directors’ fees if it is paid by a Resident company.”\(^{41}\) Regular income derived from shares (i.e. dividend income) could be subject to WHT based on the Law and its Regulation. The Dividend paid by the Saudi company is subject to WHT as the company is Resident in the Kingdom and makes a payment to a Nonresident from a source in the Kingdom.

a- Dividends

The term “Dividends” means any distribution by a Resident company to a Nonresident shareholder, and any profits transferred by a permanent establishment to related parties;\(^ {42}\) the following should be considered:

i. Dividends by companies engaged in natural gas investment, oil and hydrocarbons are not subject to WHT.

ii. Partial or full liquidation of a company is deemed to be Dividends for payments in excess of paid-in capital.

iii. Imposition of a distributing company to income tax shall not preclude imposition of WHT on its Dividends.

Dividends also include Dividends in kind and deemed Dividends if these are intended to be a distribution of profits to a shareholder such as Dividends from the use of bonds and other securities.

\(^{41}\)Article 5 sub a (6) of the Law.

\(^{42}\)Article 63 sub 6 of the Regulation.
b- Management Fees
Management Fees paid by a Resident company to a Nonresident company should be subject to WHT.

Management Fees are defined as payments for management service contracts, such as hotel management contracts, ship management contracts, etc.\(^43\)

Management Fees must be paid for specific services performed and should add a commercial value to the business. Typically, the specific services can be identified in a management fee agreement between the parties involved. This agreement describes the Management Services to be provided, the fee to be charged and the responsibilities of each party. Example of Management Fees can include:

- Operating and managing a hotel for the account and benefit of its owner
- Managing a facility and the business conducted at a facility.
- IT Systems & HR Management Services
- Housing Management Services
- Building and property Management Services
- Ship Management Services

The payment by a Saudi Resident of the management fee to a Nonresident is subject to WHT under the Law and its Regulation.\(^44\)

\(^{43}\)Article 63 sub 2 of the Regulation.
\(^{44}\)Article 68 of the Law.
Example (5)
A company in the Kingdom pays a management fee to one of its Nonresident directors. Is this payment covered by the WHT provision?

Yes, the payment by the Saudi company of the management fee is subject to WHT under Article 68 of the Law, as the company is a KSA Resident making a payment to a Nonresident from a source in the Kingdom (management fee paid by a Resident company).

c-Directors fee
The Law and its Regulation does not contain a definition of directors fees. These generally means the fees paid by the company, including retainer fees, meetings fees, etc. as compensation for services performed by them as members of the Board.
If a company pays directors fee to one of its directors living abroad, this payment is covered by the WHT provision.
(7) Services rendered to a Resident company

Based on the Law and its Regulation, an income is considered accrued in the Kingdom if “amounts paid by a Resident company against services rendered by the company’s head office or to an affiliated company.”

This category of income falls within the scope of the application of the WHT irrespective of the location where the services are provided.

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45 Article 5 sub a (7) of the Law.
(8) Services performed in the Kingdom

Based on the Law and its Regulation, an income is considered accrued in the Kingdom if “amount paid by a Resident against services performed in whole or in part in the Kingdom.”

The income derived from the services performed in whole or in part in the Kingdom, is within the scope WHT. Services are considered performed in KSA in any of the following:

a. Work required for a service is carried out in full or in part in KSA even though the service is remotely executed (performed). The physical presence of a service provider is not required.

b. Work performed on board of an airplane or ship that works for a person carrying out an Activity in the Kingdom.

Example (6)
Are payments to visiting individuals, doctors and others, who perform temporary work in the Kingdom subject to WHT?

In absence of an employment relationship, payments received by visiting individuals – other than from natural person for personal interest - (doctors or others) who perform temporary work in the Kingdom (and are not considered Resident and as such remain Nonresident) are subject to WHT at 15%.

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46 Article 5 sub a (8) of the Law.
47 Article 6 of the Regulation.
Where the transaction of the Nonresident requires solely the delivery of goods to KSA then the transaction will not be subject to WHT in KSA on the basis that it is a pure supply of goods, and no additional services are provided. However, where the Nonresident provides services such as installation, maintenance or Technical Services or any other service to its Resident customer in KSA associated with the goods supplied to its customer, it is important to ensure that the contract clearly specifies the consideration attributable to each of the supply of goods and provision of services.

Gross income derived from contracts carried out wholly or partly in KSA is subject to tax in KSA. This should include particularly services contracts performed wholly or partly in KSA.

In any event, services, which are of a technical nature or require special skills to be delivered (e.g. Technical or Consulting Services) are at all times subject to WHT in KSA irrespective of the place of their performance (i.e. within or outside KSA) provided that the service is performed for a Resident in KSA or related to a business in KSA. The WHT treatment for a project contract that contains a portion for supply of good and a portion for provision of services is depicted in the diagram below.
When a project contract includes a portion of the payment related to sale of goods and a portion that relates to service payment, it must be ensured that the respective amounts related to supply of goods and provision of services are specified.
Example (7)
A Resident advertisement company advertises for foreign companies and products in Saudi media of press, radio and television. This company has an agent outside the Kingdom to do marketing among foreign producers and companies for a percentage of income from these ads. Are these payments by the Resident advertisement company to its agent outside the Kingdom subject to WHT?

If the outside agent’s work is solely marketing of advertisements for foreign products and companies and has no role in the design of the advertisement plan or in related studies, payments to such agent for such work is not subject to WHT under Article 5(a) (8) of the Law as these payments are considered to result from services fully performed outside the Kingdom. If, in addition to marketing, the agent plays a role in the above-mentioned work (the design of the advertisement plan or related studies), the agent’s work is then considered Technical Services and it is subject to WHT at 5% or 15% (if it is an associated company) notwithstanding the place of performance of such services as stipulated by Article 63 (1,3 of the Implementing Regulation of the Law).
(9) **Exploitation of a natural resource**

Based on the Law and its Regulation, an income is considered accrued in the Kingdom if “amounts for exploitation of a natural resource in the Kingdom.”

This can include Royalty income which, if paid to a Nonresident, should technically fall within the scope of WHT. Dividends in companies operating in the field of natural gas, oil or hydrocarbon investment are not subject to WHT.

(10) **Income attributed to a Permanent Establishment**

Based on the Law and its Regulation, an income is considered accrued in the Kingdom “if the income is attributable to a permanent establishment of a Nonresident located in the Kingdom, including income from sales in the Kingdom of goods of the same or similar kind as those sold through such a permanent establishment, and income from rendering services or carrying out another Activity in the Kingdom of the same or similar nature as an Activity performed by a Nonresident through a permanent establishment.”

This category of income is not of relevance for the application of the WHT since if a permanent establishment (of a Nonresident) receives a payment, this is not considered to be

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48 Article 5 sub a (9) of the Regulation.

49 Article 5 sub a (10) of the Regulation.
in scope of the WHT. Payments to permanent establishments are – in the context of WHT – similar to payments to Residents in KSA. Therefore, in the absence of a payment to a Nonresident, these payments are not covered by the WHT provision.

2.1.4.2. Key categories of source of income under Article 5 of the Regulation

In addition to the Article 5 of the Law, Article 5 of the Regulation specifies several other categories of income which qualify as derived from a source in the Kingdom. As this list is in principle introduced to establish a source for income tax purposes, some of the examples will not be of relevance for the WHT provisions.

(1) Returns on Loans

Based on the Law and its Regulation Returns on Loans paid to a Nonresident will be considered derived from a source in the Kingdom in any of the following cases:

a. the loan is secured by movable or immovable property located in the Kingdom;

b. the borrower is a Resident of the Kingdom;

c. the loan is related to an Activity carried out in the Kingdom.\(^{50}\)

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\(^{50}\) Article 5 sub (1) of the Regulation.
Every Resident, and a permanent establishment of a Nonresident in the Kingdom, which pays an amount of income from loans to a Nonresident shall withhold tax from the paid amount under Article 68 of the Law. Article 5, paragraph 1, Regulation define further what is to be considered as a Return on Loan. As an example, reference is made to proceeds and/or income from loans, but it will include all amounts paid for the use of money. This includes income realized from loan transactions of any type, whether secured by guarantees or not, or by giving rights to participate in the profits of the debited person or not; it also includes income realized from governmental and non-governmental bonds, exempting returns on loans resulting from interbank deposits if the deposits remained with the local bank (borrower bank) for a maximum period of 90 days, in the condition that “borrower bank” submits an annual statements attested from the Saudi Arabian Monetary Agency listing the names of the lending banks, their address, period of lending, and amount of returns on loans paid.
Example (8)

A Resident pays a return on a loan provided by a group of Resident and Nonresident banks, and the loan-manager bank, Resident or Nonresident, collects payments in relation to return on loan from the Resident party to distribute among all loan-participating banks. Are all payments in relation to Returns on Loans to the managing bank and due to all participating banks or only those amounts due to Nonresident banks subject to WHT?

Returns on Loans paid to a Resident loan-manager bank are not subject to WHT and the manager bank, in this case, has to report all these payments as income and they will be subject to tax or zakat as the case may be. When the Resident loan-manager bank makes an income from Returns on Loans payments to Nonresident banks, it has to withhold the WHT at a rate of 5% on these payments. If the loan-manager bank is a Nonresident bank, Returns on Loans paid to the manager bank and due to all loan-participating banks are subject to WHT at a rate of 5%.
(2) **Insurance/reinsurance premiums**

Based on the Law and its Regulation “insurance/reinsurance premiums will be considered derived from a source in the Kingdom in any of the following:

a. insured asset is located in the Kingdom;

b. the insurer is a Resident of the Kingdom;

c. insurance of activities or risks related to activities carried out in the Kingdom.”

For example, an insurance company has entered into life insurance policies with non-Saudi Residents (policy holders). If some of these life insurance policy holders leave the country for good and want to transfer their policies to their home countries, and per their requests their premiums are transferred to other insurance companies in their home countries, these premiums shall be subject to WHT upon transfer abroad. Such transferred premiums are considered as premiums paid to Nonresidents and are therefore subject to WHT.

Furthermore, note that the reinsurance premiums’ gross amount (and not the net amount) is subject to WHT. WHT is computed on total amounts paid.

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51 Article 5 sub (2) of the Regulation.
Example (9)

If a head-office of a multinational group (Nonresident) purchases an insurance policy covering all its subsidiaries worldwide and allocates it in a fair manner among these subsidiaries via an inter-company charge. Will the share of the Saudi subsidiary in the acquired consolidated insurance policy paid to the head office be subject to WHT at 5 percent being insurance premium?

Yes, the Saudi subsidiary’s share in the consolidated insurance policy paid to the head-office abroad is subject to WHT at a rate of 5% (being insurance premium) provided it has no profit element.
(3) Technical or Consulting services

Based on the Law and its Regulation “income derived from Technical or Consulting Services will be considered derived from an Activity occurring in the Kingdom in any of the following:

a. the service is given to a person Resident in the Kingdom;

b. the service is related to an Activity carried out in the Kingdom.”

Income derived by a Nonresident from Technical or Consulting Services rendered to either a Resident of KSA or an Activity in KSA (i.e. a permanent establishment) a source in KSA. Therefore, the payment for rendering of such a service is subject to WHT notwithstanding the place of performance of the service.

Technical and Consulting Services are defined under the Law and its Regulation as any type of technical, technological and scientific services, including studies and research on different fields, surveying work of scientific, geological and industrial nature, consulting or supervisory services, or any type of engineering services including relevant designs.

It is crucial to determine the nature of the service whether it is technical or not (particularly given that there is a difference in the applicable rates to technical and non-technical services).

Services are of technical nature when special skills or knowledge related to a technical field are required for the provision of such services (e.g. engineering services, craftsmanship, etc.).

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52 Article 5 sub (3) of the Regulation.
53 Article 63 sub (3) of the Regulation.
In certain instances, in order to deliver a service, the company has to use advanced technological means to do so. Note that the fact that technology is used in providing a service is not indicative of whether the service is of a technical nature. Similarly, the delivery of a service via technological means does not solely make the service technical (e.g. offering online game services through the internet).

Furthermore, in the context of software related payments, services may be rendered in relation to the software. The services should fall within the definition of Technical or Consulting Services, rather than a Royalty, to the extent that they are considered as being supplied in supplement to the software and in a separate manner. These services may include support, maintenance, program up-grade, update and training, etc.

However, the fee for the provision of a service will not be a technical fee unless that special skill or knowledge is required when the service is provided to the customer. For example, special skill or knowledge will be required to develop software and data used in a computer game that would subsequently be used in carrying on the business of allowing consumers to play this game on the internet for a service payment. In this example, the relevant special skill or knowledge is not used when providing the service for which the payment is made i.e. allowing the consumer to play the computer game. This is illustrated further in example (10) below.
Example (10)
An advertisement company (Nonresident) outside the Kingdom provided services to a Resident Saudi company in a form of advertisement hours on TV satellite stations to promote the Saudi company’s products outside the Kingdom. Are payments by the Saudi company to the advertisement company for this promotion campaign subject to WHT?

If the advertisement company abroad provides only advertisement services to the local company to promote the latter’s products on satellite channels without any involvement in the design of the promotion film or in related studies, the services are not considered ‘Technical or Consulting Services’ and the payments received by such advertisement company for rendering such services are not considered to arise from a source in the Kingdom and therefore are not subject to WHT. If the promotion services are accompanied by involvement in the design of the promotion film, the service rendered by such Nonresident company is considered ‘Technical or Consulting Services’ and shall to this extent be subject to WHT at a rate of 5%.

When a project contract includes a portion of the payment related to sale of goods and a portion that relates to Technical Services. Only the portion which relates to the provision of Technical or Consulting Services should be subject to WHT. This is illustrated in example (11) below.
Example (11)

A Nonresident shareholder in a Resident capital company has, as an independent person, a contract with a Resident company to provide technical and engineering services abroad. In this case, is this contract subject to WHT only or should it be reported in the Resident capital company’s return? If the service contract includes delivery of materials, what is the tax treatment of the value of delivered materials?

The contract of the Nonresident shareholder in a Resident capital company is subject to WHT because the Nonresident shareholder has executed the contract and provided the services therein in his independent capacity as a legal entity separate from the Resident capital company. If the service contract abroad includes delivery of materials, the value of delivered materials is exempt (reduced from the value of the contract) under Article 5(7) of the Implementing Regulation of the Law.

(4) Operations and branches

Based on the Law and its Regulation “income derived by a capital company Resident in the Kingdom from its operations and of its branches inside and outside the Kingdom.”

This category is not of relevance for the application of the WHT since the Resident company is expected to receive the payment. In the absence of a payment to a Nonresident, these payments for services rendered by a Resident company are not covered by the WHT provision.

54Article 5 sub (4) of the Regulation.
(5) (Im)movable property

Based on the Law and its Regulation “Income derived from movable or immovable property attributed or related to activities in the Kingdom carried out by a person Resident in the Kingdom.” As previously mentioned, gains from the disposal of immovable property are not of relevance for the application of the WHT since this relates to capital gains which is subject to income tax. However, other income deriving from (im)movable property (such as rent or lease payments) could be subject to WHT. For example, if a Saudi company pays an amount of rent to a Nonresident from a source in the Kingdom, the Saudi company shall withhold tax from the paid amount under Article 68 of the Law.

Example (12)

A Resident company has opened a branch abroad. The branch abroad rented a premise to carry out activities therein. Is the amount transferred by the Resident company to its branch abroad to pay for the rent subject to WHT as it is a payment from a head-office to a branch?

Such payment paid by the head-office to its branch abroad is not a payment for services but a payment to a Nonresident via the branch for the rental of a real estate used for the branch's purposes. Article (5)(a2) of Law does not consider such payment arising from a source in the Kingdom as it arose from immovable property situated outside the Kingdom, therefore such payment is not subject to WHT.

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55 Article 5 sub (5) of the Regulation.
(6) Sale of goods or merchandises
Based on the Law and its Regulation “income derived from sale of goods or merchandises manufactured or produced in the Kingdom.”
This category of income is not of relevance for the application of the WHT. Supply of goods is outside the scope of WHT and is subject to value added tax, excise tax and custom duty when the payment is made to a Nonresident as applicable.

(7) Contract of delivery of goods to the Kingdom
Based on the Law and its Regulation “contracts of delivery of goods to the Kingdom, including the contracts for freight and insurance of these goods, is not considered to be derived from an Activity in the Kingdom unless it includes associated work performed in the Kingdom, such as domestic transportation, installation, training or other similar work. In such case, only associated work is considered to be derived from an Activity in the Kingdom.”

56 Article 5 sub (6) of the Regulation.
57 Article 5 sub (7) of the Regulation.
Example (13)

Are payments to foreign shipping companies for freight of goods from the Kingdom to assembly points outside the Kingdom subject to WHT? Are payments to foreign shipping companies for freight of goods from the assembly points outside the Kingdom to the rest of the world subject to WHT?

Payments to Nonresident companies for freight of goods from the Kingdom to outside are subject to WHT under Article 5(a) (8) of the Law. Payments to Nonresident companies for freight of goods from assembly points outside the Kingdom to final destinations are subject to WHT if the freight company is contracted to deliver the package to final destinations; in this case the transaction (shipping from the Kingdom to final destinations) is one transaction though it is done in parts and by different shippers. But if the freight company obligation ends at the assembly point outside the Kingdom, shipping the freight from such assembly points to final destinations is a separate transaction, and income from such transaction is not considered from an Activity in the Kingdom and therefore is not subject to WHT.
Example (14)

Are commercial ships and oil and gas tankers vessels flying the Saudi or other GCC member States flag exempt from WHT on sea freight payments?

The criterion includes the person who exercises transportation activity. If the ship is owned by or works for a Saudi Resident company, the Saudi Resident company must report realized income in its annual return; and it must withhold and pay tax on ship lease payments if the lessee is not Resident in the Kingdom. If the ship is owned by or works for a Nonresident company, payments for freights from the Kingdom’s ports are subject to WHT.
If a payment is in scope of the WHT provision WHT should be levied. For different categories of payments, different rates apply. It is therefore important to understand and determine the qualification of the income as this determines the rate of WHT to be levied.

<table>
<thead>
<tr>
<th>Type of payment made</th>
<th>By Nonresident unrelated party (%)</th>
<th>By Nonresident related party (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Management fee</td>
<td>20%</td>
<td>20%</td>
</tr>
<tr>
<td>Royalties</td>
<td>15%</td>
<td>15%</td>
</tr>
<tr>
<td>Dividend Distributed</td>
<td>5%</td>
<td>5%</td>
</tr>
<tr>
<td>Rent</td>
<td>5%</td>
<td>5%</td>
</tr>
<tr>
<td>Return on Loans</td>
<td>5%</td>
<td>5%</td>
</tr>
<tr>
<td>Insurance/Reinsurance</td>
<td>5%</td>
<td>5%</td>
</tr>
<tr>
<td>Technical &amp; Consulting Services*</td>
<td>5%</td>
<td>15%</td>
</tr>
<tr>
<td>Airline Tickets/Air or Sea Freight</td>
<td>5%</td>
<td>5%</td>
</tr>
<tr>
<td>International Telecommunication Services</td>
<td>5%</td>
<td>15%</td>
</tr>
</tbody>
</table>
The overview above outlines the different types of payments and the corresponding domestic WHT rates. Note that for payments made in connection to Technical and Consulting Services and International Telecommunication Services it is relevant if the payments are made to a related party. The term related person is defined in article 64 of the Law:

a) A natural Person is considered related to another natural person if the latter is a spouse or an in-law, or a relative up to the fourth degree.

b) A natural Person is considered related to companies of any type in the following circumstances:

1) If he is a partner in a partnership and he, either alone or together with a related person or persons under this Article, controls fifty percent (50%) or more of the rights to its income or capital, either directly or indirectly, through a subsidiary company or companies of any type.

2) If he is a partner in a capital company and he, either alone or together with a related person or persons under this Article, controls fifty percent (50%) or more of the voting rights or its value, either directly or indirectly, through a subsidiary company or companies of any type.

3) As for agencies administering properties endowed for specific purposes, a natural person is deemed related thereto if he benefits or is capable of benefiting from them, either alone or with a related person or persons, in accordance with Article 64 of the ITL.
c) Companies and agencies are deemed under common control if the same person or related persons control fifty percent (50%) or more according to Article 64 of the ITL as follows:

1) With respect to partnerships, control means the ownership of rights to its income or capital, either directly or indirectly, through a subsidiary company or companies of any type.

2) With respect to capital companies, control means ownership of the voting rights therein or its value, either directly or indirectly, through a subsidiary company or companies of any type.

3) With respect to agencies that administrate properties endowed for specific purposes, control means the possession of a beneficial interest in their income or assets.

Reference is also made to the Transfer Pricing Bylaws and guidelines for more guidance about the definition of Common Control. The table below outlines the WHT rates applicable to payments to a non-related third party compared to those where the beneficiary is a related person.

Management Fees
Management Fees are defined as payments for Management Services contracts. As an example, this includes hotel management and ship management contracts. For more information reference is made to paragraph 2.2.2.1 under 6 of this Guidelines.

58 Transfer Pricing Bylaws issued by the General Authority of Zakat and Tax pursuant to Board Resolution NO [19-1-6] dated 1440/05/25H corresponding to 2019/01/31.
Royalties
Royalties are defined in article 1 of the Law as payments received for the use of or the right to use intellectual rights, including, but not limited to, copyright, patents, designs, industrial secrets, trademarks and trade names, know-how, trade and business secrets, goodwill, and payments received against the use of information related to industrial, commercial or scientific expertise, or against granting the right to exploit natural and mineral resources. For more information, reference is made to paragraph 2.2.2.1 under 5 of this Guideline.

Dividend Distributed
Dividend distributed is any distribution by a Resident company to a Nonresident shareholder, and any profits transferred by a permanent establishment to related parties. For more information reference is made to paragraph 2.2.2.1 under 6 of this Guidelines.

Rent
Rent can be defined as any amount paid in exchange for the use of a certain product, common examples include rent for property, land or a car. For more information reference is made to paragraph 2.2.2.1 under 4 and paragraph 2.2.2.2 under 5 of this Guidelines.
Rent is subject to 5% WHT irrespective of whether it is payable to a related party or not.
Returns on Loans

Returns on loans are any amount paid for the use of money. This includes income realized from loan transactions of any type, whether secured by guarantees or not, or by giving rights to participate in the profits of the debited person or not. This includes payments structured as return on loans under Islamic financial instruments.

For more information, reference is made to paragraph 2.2.2.2 under 1 of this Guideline.

Insurance/Reinsurance

Insurance/reinsurance payments are amounts paid for insurance of assets, persons, activities or risks. For more information, reference is made to paragraph 2.2.2.2 under 2 of this Guideline.

Technical & Consulting Services

Technical & Consulting Services are any type of technical, technological and scientific services, including studies and research on different fields, surveying work of scientific, geological and industrial nature, consulting or supervisory services, or any type of engineering services including relevant designs. For more information, reference is made to paragraph 2.2.2.2 under 2 and paragraph 2.2.2.1 under 8 of this Guideline. For the tax rate of this category it is relevant whether the payments are made to a related party or not.
Airline Tickets/Air or Sea Freight
Airline Tickets/Air or Sea Freight are any Payment for Air tickets, or costs for air freight and maritime freight paid in the Kingdom to air and maritime transport companies, their agents or representatives in the Kingdom, excluding payments for freight of goods from outside to the kingdom’s ports. For more information, we refer to paragraph 2.2.2.2 under 7 of this Guideline. Also, payments by Resident agents and representatives to Nonresident transportation companies shall be subject to WHT at a rate of 5%.

International Telecommunication Services
International Telecommunication Services such as international phone services, telex, international roaming services and leasing capacities in international cables and internet are any amounts paid to a Nonresident party in return for services related to provision of International Telecommunications Services from the Kingdom. For more information, reference is made to paragraph 2.2.2.2 under 2 and paragraph 2.2.2.1 under 8 of this Guideline. For the tax rate of this category it is relevant whether the payments are made to a related party or to a third party.

In-Kingdom land transportation
In-Kingdom land transportation is any payment for land transportation (car, bus etc.) within KSA.. For more information, reference is made to paragraph 2.2.2.2 under 2 and paragraph 2.2.2.1 under 8 of this Guideline. For the tax rate of this category it is relevant whether the payments are made to a related party or to a third party.
Any other payments
On other payments for services that are not explicitly mentioned and that are rendered in return for compensation, except those related to the sale and purchase of goods or any other properties, 15% WHT is due. Note that this only concerns payments from a Resident to a Nonresident and the payment is derived from a source in KSA. (Reference is made to chapter 2 on the scope of WHT provision).

4. WHT exemptions and reductions

There is currently a specific tax exemption applicable on Dividends distributed by companies which are engaged in natural gas investment, oil and hydrocarbons. Based on the Law and its Regulation “Dividends by companies engaged in natural gas investment, oil and hydrocarbons are not subject to withholding tax.”

Apart from the above, there are no other exemptions or reduction of WHT tax rates available under the Law and its Regulation. However, WHT relief may be claimed under an applicable Double Taxation Treaty (“DTT”) concluded with KSA.

59 Article 63 paragraph -6a of the Regulation.
5. WHT filing and payment

The filing and payment obligations in relation to the WHT are prescribed in the Law and its Regulation. If a Person makes a payment within the scope of WHT, it should comply with the relevant filing and payment requirements set out in the Law and its Regulation.\textsuperscript{60}

Filing and payment

The Withholding Agent should register with the ZATCA and file a monthly WHT declaration in respect of any payment that was subject to WHT in that respective month. In case there are no payments subject to WHT, then there is no need to file monthly WHT declaration. The Withholding Agent files and pays the amount withheld (if any) within the first ten days from the month following the month of payment to the beneficiary. Consider the following example where a Resident makes a Royalty payment to a Nonresident on the 20th of January. Based on the law and the example, the filing and payment of the WHT should be made by 10th of February. The Withholding Agent will provide the beneficiary with a certificate which states the amount paid to him and the value of the tax that has been withheld.

Besides the monthly filing and payment of the WHT, the Withholding Agent should also perform an annual filing. This should be done no later than 120 days subsequent to the end of the Withholding Agent’s fiscal year. The annual WHT filing can be regarded as a summary of all monthly WHT

\textsuperscript{60} Article 68 paragraph B onwards of the Law and article 63 paragraph 9 of the Regulation.
declarations filed throughout the year and as such, there should not be any additional WHT payable along with filing of the annual WHT declaration. In this respect, it is important to notice that, unlike the monthly declarations, the annual filing of the WHT declaration is obligatory even if the WHT to be filed is nil throughout the fiscal year.

**Interaction with income tax**
As stated in paragraph 1 of this Guidelines, the aim of the WHT provisions is to ensure that Nonresidents deriving income from a source in the Kingdom are taxed properly. As such the WHT is in essence an advance levy for income tax on income derived by Nonresidents from sources in the Kingdom. Based on WHT definition, payments to Residents or permanent establishments in KSA are out of the WHT scope. The reason for that is the fact that these payments are not made to Nonresidents. The only difference is in general that the WHT is levied on the gross amount whilst the income tax is levied on the net amount.

If, however, tax is withheld for an amount paid to a Taxpayer which is included in its tax base, the tax withheld shall be deducted from the tax due on the Taxpayer against the tax base, based on article 64, sub g of the Regulation.

**Maintenance of records**
At the end of the fiscal year, the Withholding Agent will have to provide ZATCA with each beneficiary's name, address and the beneficiary’s registration number. Only if and insofar this information is available to the Withholding Agent. ZATCA could require and request additional information.
The Withholding Agent should maintain records that show not only that he is compliant with the Law, but that also show correctness of the withheld tax. These records at least include the name and address of the recipient/beneficiary, type of payment, amount of payment and the amount withheld. These records should be kept for at least ten years from the moment of the payment which could be extended if the case is under consideration by ZATCA or any other competent committees. If this is the case, the records should be kept until the consideration is resolved.

Fines
Based on article 77, sub a of the Law, the Taxpayer is obliged to pay a delay fine of 1% for every thirty days of delay on unpaid tax. This specifically includes a delay in payment of tax required to be withheld. Article 68, sub e of the Regulation adds to that a 1% fine of underpayment of tax for each 30 days of the delay shall be added in case there is a delay in paying over of tax, required to be withheld, after the first ten days of the month following the month during which payment subject to withholding provisions under Article 68 of the Law. So both not paying on time and underpaying, are sanctioned with a 1% fine.

Besides the late payment sanctions, based on article 69 of the Regulation, the provisions of fraud penalty as stipulated under Article 7, sub b of the Law shall also apply to a Withholding Agent who conceals information or presents incorrect information and who is obligated to make payment of withheld tax.
This could lead to a 25% penalty if the Taxpayer’s or its certified accountant’s provides false information or commits fraud with the intention of tax evasion, and particularly in the following cases:

(1) Submitting false books, records, accounts or documents that do not reflect the true status of the Taxpayer.

(2) Filing a declaration on the basis of unavailability of books or records, and including therein information that contradicts what is shown in the Taxpayer’s books and records.

(3) Filing forged or fictitious invoices or documents, or changing of purchase or sale invoices or other documents with the intention of understating profits or overstating losses.

(4) Not declaring one or more of the taxable activities.

(5) Destroying or hiding books, records or documents prior to ZATCA examination.