



# Tax Circular

## Application of WHT under the Double Taxation Agreement

Issued on December 2022

## Circular

This Circular is issued by the Zakat, Tax and Customs Authority ("ZATCA") to provide its interpretation of the tax laws and the provisions of the tax agreements in force at the time of issuance and their application in specific circumstances. The opinions and interpretations provided in this circular are consistent with opinions provided by ZATCA through tax rulings and legal clarifications related to the subject of this Circular. This Circular is issued for clarification purposes only and its content does not constitute any amendment or any change to the tax laws and applicable tax bylaws in force in the Kingdom.



## 1. Introduction

1.1. This circular provides information and guidance about the application of the Double Taxation Agreements that the Kingdom of Saudi Arabia is a party of ("DTA") signed with foreign countries with respect to Withholding Tax ("WHT") applicable to non-residents receiving payments from a source in the Kingdom of Saudi Arabia ("KSA") and made by KSA resident taxpayers or a PE in KSA.

This circular is based on the Income Tax Law issued by Royal Decree No. (M/1) dated 15/1/1425H, and amendments related (the "Law") and its regulations issued by the ministerial decision No. (1535) dated 11/6/1425H, and amendments related (the "Regulations") as well as the provisions of the applicable DTAs .

## 2. Situational Context

2.1. This Circular provides guidance in the context of cross border transactions where a KSA resident taxpayer or a PE in KSA is paying for services provided by KSA non-residents or remitting other overseas type of income such as dividends, royalties and income from debt-claims.

2.2. As a general note, KSA does not impose WHT on domestic payments (i.e., payment from a KSA resident to another KSA resident) as The WHT provisions pertain essentially to payments made by residents in the Kingdom or a PE in KSA to non-residents which are covered in this circular.

**2.3. This circular aims at providing clarity for the application of DTA in the following contexts:**

2.3.1. The types of income covered in the DTA, as well as the general taxing right allocation rules.

2.3.2. The conditions and procedures to be followed for the proper application of DTA provisions.



## 3. Withholding tax scope in KSA under the domestic tax law and Double Taxation Agreement

### 3.1. Key categories of income subject to WHT

**3.1.1.** WHT is an income tax imposed on non-residents who generates income from a source in the Kingdom.

**3.1.2.** WHT is essentially imposed on payments from a source in the Kingdom made by a resident person or a PE in the Kingdom to a non-resident person. For the purpose of WHT, a resident person may include:

A company or a natural person (only in the context of its business activity) that satisfies the KSA residency conditions set out in the Law<sup>1</sup>,

- Any governmental department, ministry or public entity;
- Any other corporate person or entity formed in the Kingdom;

**3.1.3.** In order to determine whether there is an obligation to withhold tax, the following key three elements should be duly considered:

**Who must withhold the tax:** The resident person making the payment or the PE (i.e., the Withholding Person)

**What are the payments that require a withholding of tax:** The payment to a non-resident (i.e., the object of taxation) which have been mentioned in Article 68 of the Law or Article 63 of the Bylaw, for example, dividends, income from debt-claims, royalties, technical services, and management fees.

**What is the source of the payment subject to WHT:** Any payment that is made from a source in KSA.

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1. Article (3) of the Law



3.1.4. The following are examples of types of income of nonresident that can be from sources in the Kingdom and be subject to WHT:

Type of income
Based on Article 5 of the Law and by Law
Dividends, or management or directors' fees
Services performed in whole or in part in the KSA
Payment from business activities, carried out for the purpose of making profit in the KSA
Rental income, operational or financial, including: <ul style="list-style-type: none"><li>• Lease of immovable property</li><li>• Lease of moveable properties located in the KSA</li></ul> Rent payment often include an income from debt-claims element that falls within the WHT scope.
Sale or license of industrial or intellectual properties in the KSA otherwise referred to as royalty (excluding sale of full ownership of license of industrial or intellectual properties)
Loan charge (proceeds/income from debt-claims)
Insurance/reinsurance premiums
Technical or consulting services, even when they are entirely performed abroad

3.1.5. Furthermore, in accordance with Article 68 of the Law and Article 63 of the Regulations, the WHT rates - as shown in the table below - apply depending on the type of income. Furthermore, the relation between the parties (recipient / payer) is important to understand in order to determine the appropriate domestic rate of WHT to be levied.<sup>2</sup>

2. For more general guidance on the application of WHT provisions, please refer to the ZATCA Withholding Tax Guideline published in the following link : <https://zatca.gov.sa/en/HelpCenter/guidelines/Documents/WHT%20Guideline.pdf>



Type of service provided	By non-resident third party (%)	By non-resident related party (%)
Management fees	20%	
Royalties	15%	
Dividends	5%	
Rent	5%	
Insurance/reinsurance	5%	
Technical & consulting services <sup>3</sup>	5%	15%
Airline tickets/air or sea freight	5%	
International telecommunication services	5%	15%
In-Kingdom land transportation	15%	
Any other services from sources in KSA	15%	

3. Payments towards technical and consulting services in nature would be subject to WHT regardless of the place of performance of such services.



## **3.2. Application of WHT under KSA DTAs:**

**3.2.1.** KSA has concluded more than 55 DTAs to eliminate double taxation. In the context of cross border transactions, it is important to consider the application of any relevant DTA in addition to the domestic law in order to determine the tax treatment of the eligible type of income.

**3.2.2.** DTAs take precedence over the domestic law and taxpayers may benefit from relevant WHT relief available under an applicable DTA.

**3.2.3.** A DTA may in specific situations offer relief to taxpayers in relation to payments that are within the scope of domestic WHT provisions. While this circular aims at providing clarity on the application of such WHT provisions in DTAs, the eligibility to the benefits of an enforceable DTA must be assessed on a case by case basis.

**3.2.4.** Below is an outline of the general interpretation and approach followed by ZATCA in relation to the allocation of taxing rights under DTAs that may be relevant in the context of WHT.

### **3.2.5. Business profits:**

The Article on Business Profits represents a rule to determine if a service or a payment, other than services or payments covered by special articles in the agreement, is subject to tax in the Kingdom.

Generally, the taxing rights of business profits derived by a non-resident person would fall with his resident State, unless such non-resident person has a Permanent Establishment "PE" in KSA, in that case the business profits may be taxed in KSA but only so much of them as is attributable to that PE.



### 3.2.6. Income from immovable property:

- Under the immovable property article (generally Article 6 in DTAs), income derived from an immovable property is subject to tax where such property is located.
- Based on the aforementioned, it is important to note that the payments of this category of income (such as rent or lease payments) from a resident of the Kingdom to a non-resident from a source in KSA, will not be restricted by Article 6 of a DTA. i.e. the place where the immovable property is located.

### 3.2.7. International shipping and air transport:

- Based on this article (generally Article 8 in DTAs), income derived by an enterprise from the operation of ships or aircraft in international traffic shall be taxable only in the State where the enterprise is a resident or where the place of effective management is situated, it depends on the provisions of the treaty.
- Where WHT applies in KSA on ship lease payments, and if the lessor is not a resident in the Kingdom, it is noted that the income may be subject to tax under this article provision depending on the residency of the enterprise or under article 12 as it depends on the type of leasing.
- For example, if a ship is owned by or works for a Saudi Resident company, the Saudi Resident company must report realized income in its annual return; but if the ship leased by a non-resident in KSA, the resident company must withhold and pay tax on ship lease payments.





### 3.2.8. Dividends

- Under this article of a DTA (generally Article 10 in DTAs), usually the source State can tax dividend income even if that income was paid directly to a resident of a State with which the source State had concluded a DTA. - Where the recipient of the Dividends is qualified as the beneficial owner the source State may provide tax relief according to the rate mentioned in the DTA.
- Where the direct recipient of the income however does not qualify as the beneficial owner, this is for example the case for conduit company which merely pass on the dividend to the actual beneficial owner, the source State can fully tax such income in accordance with the domestic law rates.
- The Term “beneficial owner” is not defined in the DTA, however in general the beneficial owner is the person (individual or enterprise) that benefits from the right to use and enjoy the dividends without contractual or legal constraint or obligation to pass on the payment received to another person.

### 3.2.9. Income from Debt-Claims

- It is important to assess first the qualification of income to determine whether the income will fall under the Income from Debt-Claims article (generally Article 11 in DTAs), or the business profits article (generally Article 7 in DTAs).
- Income from Debt-Claims Generally includes income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in profits. Therefore, to qualify as Income from Debt-Claims, a non resident should derive remuneration from money on-lent. If this not the case, it should generally not fall within the qualification of Income from Debt-Claims. Income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures are also considered to fall within the definition of Income from Debt-Claims.



- Penalty charges for late payment however shall not be regarded as Income from Debt-Claims for the purpose of this Article.
- Some DTAs under the Income from Debt-Claims article, the taxing right is exclusively granted to the resident State. In such a case, Income from Debt-Claims payment made by a KSA resident to a KSA non-resident shall not be subject to WHT in the KSA, except if this payment is effectively connected with a PE in such a case the taxing right of the source State would not be limited.

### 3.2.10. Royalties

- It is important to assess in the first instance the nature of the payment and whether it falls within the scope of royalties (generally Article 12 in DTAs), or may be viewed as a business profit (generally Article 7 in DTAs).
- Generally, DTAs concluded with KSA provide for the definition of royalty income. Royalties may be defined as rights to or property constituting the different forms of any copyright of literary, artistic or scientific work, the elements of intellectual property specified in a DTA and information concerning industrial, commercial or scientific experience (know-how), whether or not they have been, or are required to be, registered in a public register.
- The definition of royalties may have a broader scope and may include :  
“payment for the use of, or the right to use, industrial, commercial or scientific equipment.”
- The scope of royalty might be further broaden to include other types of payment, for example, the use of software, the leasing of equipment, the shipping container rentals, and the live sports broadcasts.
- Generally, when the payment is not made in consideration “for the use of, or the right to use” that property and as such cannot be qualified as a royalty but rather a business profit.



- Payments for the use of, or the right to use, including those involving the transfer of know-how, would generally fall under the scope of royalty.<sup>4</sup>
- Based on the KSA Law, a royalty payment made by a KSA resident to a non-resident from a source in KSA is subject to WHT. Generally, under Article 12(1) in DTAs, royalties would be subject to tax in the resident State. And under Article 12(2) of the DTA, such Royalty may also be subject to tax in the source State. However, where royalties are subject to tax in the source and the beneficial owner is a resident in the other State, a maximum rate will be determined as per the DTA.

#### 3.2.11. Fees for technical services

- Based on this article (generally Article 12A in DTAs), fees for technical services arising in a State and paid to a resident or PE of another Contracting State are in principle subject to tax in the State where the person receiving the payment is resident.
- However, fees for technical services may also be taxed in the source State where the person making the payment is a resident provided that they arise in that State. In the case where the beneficial owner of the fees is a resident of the other Contracting State, the tax charged by the source State would however be limited by the percentage agreed in the DTA.

#### 3.2.12. Independent personal services

- Based on this article (generally Article 14 in DTAs), income derived in respect of professional services by a non-resident shall be taxable in its State of residency. However, this income would also be subject to tax in the source state (the Kingdom) if any of the following conditions is met:
  1. If a KSA non-resident has a fixed base regularly available to him in the KSA; or
  2. If his stay in the KSA is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve-month period.



- The taxes related to the income derived from the independent personal activities performed is considered a shared taxing right between the resident State and the source State, the source State has the right to tax that income only if either of the above two conditions is met, and in this case the resident state has the obligation to avoid or eliminate double taxation.

### 3.2.13. Directors' fees

- Based on this article (generally Article 16 in DTAs), income derived by a resident in a State in respect of directors' fees or other similar payment in relation to a company resident in the other State - i.e., the source State - may be taxed in that other State.
- Based on this article, directors' fees and other similar payments would be subject to WHT in KSA if KSA is the source of such payment.

## 4. Procedures for the application of Double Taxation Agreement provisions pertaining to WHT

### 4.1. Procedures for application of the DTA

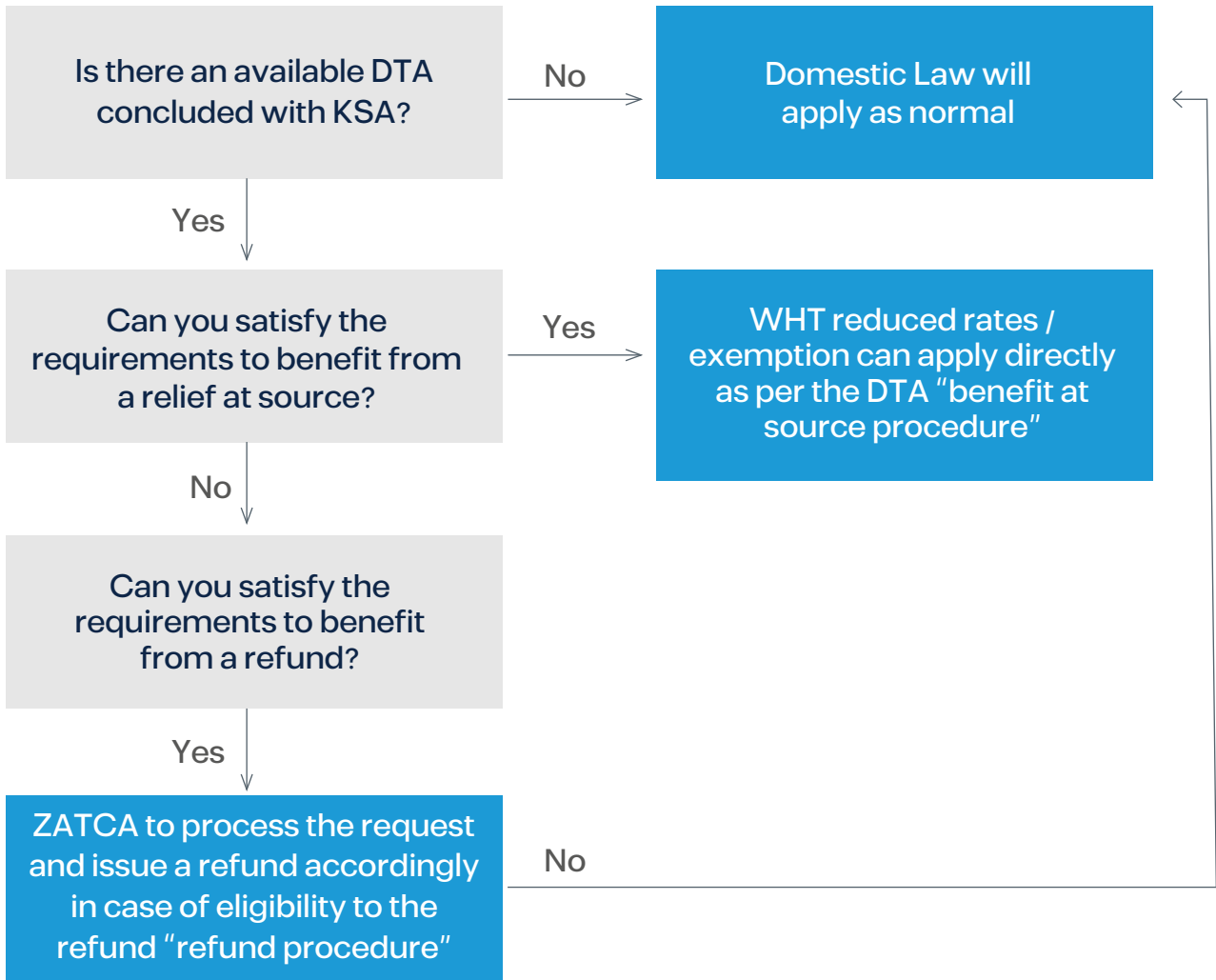
4.1.1. In order to determine whether the conditions and eligibility for the application of a specific DTA provisions are met, taxpayers should first and foremost ensure that they are covered by such DTA as per Articles 1 and 2 of a DTA which defines the persons and taxes covered.

4.1.2. Where a DTA provides for a tax relief or reduced tax rate, the taxpayers should make sure - according to the DTA - whether they are eligible to benefit from such relief at source or for a tax refund.

4.1.3. In general, a tax relief at source is granted except for the Articles 10, 11 and 12 of DTAs relating to Dividends, Income from debt-claims and Royalties for which DTA relief is provide in the form of a refund.



4.1.4. The matter may be approached by applying the following decision tree.



4.1.5. Depending on the result of the above initial assessment, a taxpayer must follow a specific procedure and submit a request to ZATCA in order to claim the DTA provisions. The respective procedures are discussed in the following section.



## 4.2. Method of the application of WHT benefits

4.2.1. Where the taxing rights of KSA are limited by the application of a relevant DTA, taxpayers may follow one of the two approaches below to claim the benefits of the respective DTA provision:

- Apply the benefit at source "benefit at source procedure"; or
- Request a refund of WHT "refund procedure".

### 4.2.2. Benefits at source

4.2.2.1. Under this approach, the "withholding person" who is responsible for withholding the tax can apply for a reduced WHT rate or exemption on payments to non-residents directly under the DTA through ZATCA portal<sup>5</sup>. While filing the request, it is required to upload the following documents:

- Tax Residency Certificate "TRC"<sup>6</sup> from the foreign tax authority.
- Filing an application form (Form Q/7B), the appendix provides a template of this form. Form Q/7B includes two sections, one to be completed by the beneficiary (the non-resident) which includes:
  1. Information on the beneficiary (name, full address, etc.);
  2. Type of the payments made (income from debt-claims, royalties, dividends, etc.);and
  3. Attestation that all the information provided are correct.

The second section is to be completed by the Tax Authority of the State of the non-resident once the information provided are verified.

- Provide an undertaking from the resident taxpayer to settle any tax amounts or penalties due on the non-resident beneficiary due to false or wrong information, arithmetic error, misinterpretation of the DTA (Form Q/7C as set out in the Appendix).

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5. <https://ZATCA.gov.sa/en/eServices>

6. TRC is a document to demonstrate that the non-resident entity claiming the DTA benefits is resident for tax purposes in that treaty State, there is no specific format required for the TRC. The TRC is accepted in the same form issued by the foreign authority of the treaty partner, the TRC should be authenticated by the Saudi Embassy that is located in the non-resident's state.



**4.2.2.2.** Once the application is lodged in ZATCA portal, an acknowledgement receipt is sent to the applicant. ZATCA reviews the application and provides its approval once it verifies the claimed benefits under the DTA apply. The statute of limitation to lodge an application or to be audited by ZATCA is five years. A taxpayer can no longer claim the DTA benefits once the statute of limitation period has elapsed.

#### **4.2.3. Refund approach**

**4.2.3.1.** Under this option, it is required to first withhold the WHT in accordance with KSA domestic law and subsequently apply for a refund for the tax or difference of tax paid to ZATCA. Resident withholding persons who are unable to comply with the benefit at source approach above should follow the refund approach.

**4.2.3.2.** To apply for a refund, the following documentation should be submitted to ZATCA:

- a. TRC<sup>7</sup> from the foreign tax authority;
- b. Filing of an application form (Form Q/7B);
- c. A letter of authorization from the non-resident beneficiary to the resident taxpayer to receive the amount of refund on behalf of the beneficiary;
- d. The documents required in paragraphs (a) to (c) above should be authenticated by the Saudi Embassy in the non-resident's state;
- e. A copy of WHT return filed upon payment of the WHT together with the payment receipt;

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7. TRC is a document to demonstrate that the non-resident entity claiming the DTA benefits is resident for tax purposes in that treaty State, there is no specific format required for the TRC. The TRC is accepted in the same form issued by the foreign authority of the treaty partner, the TRC should be authenticated by the Saudi Embassy that is located in the non-resident's state.




- f. Provide an undertaking from the resident taxpayer to settle any tax amounts or penalties due on the non-resident beneficiary due to false or wrong information, arithmetic error, and misinterpretation of the DTA (Form Q/7C as set out in the Appendix); and
- g. Provide a letter from the resident taxpayer, attested by the Chamber of Commerce, stating that the claimed amount has never been refunded, nor transferred to other taxpayer nor settled against any other liability.

4.2.3.3. Once the above is completed, ZATCA will review and audit the request. Upon the approval of the request, ZATCA will transfer the refund amount to the International Bank Account Number (IBAN) of the resident withholding taxpayer.






## Appendix 1: Form Q/7B

 المملكة العربية السعودية Kingdom of Saudi Arabia	
نموذج رقم ( Q/7B ) Form No. (Q/7B)	
طلب تطبيق الاتفاقية الضريبية النافذة بين حكومة المملكة العربية السعودية وحكومة .....	
Application for Implementation of the Effective Tax Treaty between the Kingdom of Saudi Arabia and .....	
يتم تعبئته من قبل المستفيد من الدخل: To be filled out by the beneficiary:	
<p>Beneficiary Name: Full address in the Country of Residence</p> <p>Tax Identification Number in his Country:</p> <p>Legal Form:</p> <p>Types of Income: Dividends <input type="checkbox"/> Interest <input type="checkbox"/> Royalties <input type="checkbox"/> Others, specify <input type="checkbox"/></p>	<p>اسم المستفيد: عنوان المستفيد كاملاً في بلد الإقامة</p> <p>الرقم الضريبي للمستفيد في بلده: التصنيف القانوني:</p> <p>نوع الدخل: <input type="checkbox"/> توزيع أرباح <input type="checkbox"/> حقة <input type="checkbox"/> إئتمنة <input type="checkbox"/> أخرى (حدد)</p>
<p>I, the above-mentioned beneficiary, declare that:</p> <ul style="list-style-type: none"><li>I am the beneficial owner of the income on which I request the implementation of the tax treaty.</li><li>I am a resident of ..... under the treaty relevant provisions.</li><li>I have no permanent establishment or fixed base in the Kingdom of Saudi Arabia to which this income is attributed.</li><li>The work performed in the Kingdom of Saudi Arabia during the year ..... does not constitute a permanent establishment or a fixed base according to the provisions of the treaty.</li><li>This income has been or (will be) reported to the tax authorities in my country of residence.</li></ul>	
<p>أقر أنا المستفيد أعلاه بالآتي:</p> <ul style="list-style-type: none"><li>أنا المستفيد النهائي من الدخل الذي اطلب تطبيق أحكام الاتفاقية عليه.</li><li>مقيم في دولة ..... وفقاً لأحكام الاتفاقية.</li><li>لا يوجد لدي في المملكة العربية السعودية أي منشأة دائمة أو قاعدة ثابتة مرتبطة بها هذا الدخل.</li><li>أن الأعمال التي تم تنفيذها في المملكة العربية السعودية خلال عام (.....) لا تشكل منشأة دائمة أو قاعدة ثابتة حسب أحكام الاتفاقية.</li><li>تم أو (سيتم) التصريح عن هذا الدخل إلى السلطة الضريبية في بلد إقامتي.</li></ul>	
<p>Signature of beneficiary or his/her legal representative Date: / / Place:</p>	
<p>توقيع المستفيد أو ممثله المفوض التاريخ: / / المكان:</p>	
يتم تعبئته من قبل سلطة الضرائب الأجنبية To be filled out by the foreign tax authority:	
<p>The tax authority of ..... certifies that:</p> <ol style="list-style-type: none"><li>The information provided by the above taxpayer to the best of our knowledge is correct.</li><li>The above-named taxpayer is a resident of ..... during the year ..... within the meaning of the provisions of Article (4) of the above-mentioned treaty where he is subject to tax.</li></ol>	<p>تشهد السلطة الضريبية في ..... بالآتي:</p> <ol style="list-style-type: none"><li>أن البيانات التي صرح عنها المكلف أعلاه حسب معلوماتنا صحيحة.</li><li>أن المكلف الموضح إسمه أعلاه مقيم في ..... خلال عام (.....) وفقاً لأحكام المادة الرابعة من الاتفاقية الضريبية النافذة المشار إليها أعلاه، وخاضع للضريبة فيها.</li></ol>
<p>Name: Official Seal</p> <p>Position:</p> <p>Signature: Date</p>	<p>الإسم: الختم الرسمي</p> <p>الوظيفة:</p> <p>التوقيع: التاريخ</p>
<p>المملكة العربية السعودية Kingdom of Saudi Arabia</p> <p>T +966 11 434 9999 هـ F +966 11 434 9787 فـ</p> <p>ص.ب. 6898 الرياض 11187 Riyadh</p>	



## Appendix 2: Form Q/7C

نموذج رقم ( ق/7ج )	 الهيئة العامة للزكاة والدخل General Authority of Z&T Tax	المملكة العربية السعودية Kingdom of Saudi Arabia
<b>إقرار والتزام</b>		
<p>نحن الموقعين أدناه نؤكد بأن المستفيد / ..... يقيم في ..... ويتمتع بالمزايا الضريبية الواردة في الاتفاقية المبرمة بين حكومة المملكة مع حكومة دولة ..... كما أن جميع المبالغ المصرح عنها في نموذج الاستقطاع عن شهر ..... لعام ..... صحيحة وتعكس الضريبة المستحقة على المستفيد عن المبالغ المدفوعة خلال شهر ( ) حسب احكام المادة ( ) من الاتفاقية الضريبية المذكورة أعلاه.</p> <p>كما نلتزم بسداد أي ضرائب مستحقة أو غرامات قد تنشأ على المبالغ المدفوعة للمستفيد نتيجة عدم صحة المعلومات المقدمة أو انصح أن الأعمال التي استحققت عنها هذه المبالغ تشكل منشأة دائمة في المملكة أو سوء فهم في تفسير أحكام اتفاقية تجلب الازدواج الضريبي بين الدولتين.</p>		
اسم المكلّف المستقطع:		
التوقيع: الختم		
التاريخ:		
<p>المملكة العربية السعودية Kingdom of Saudi Arabia</p> <p>هاتف +966 11 434 9999 T ف. 966 11 434 9787 F</p> <p>ص. ب. 6898 P.O. Box الرياض 11187 Riyadh</p>		

## External document

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