هيئة الزكاة والضريبة والجمارك
Zakat, Tax and Customs Authority

Tax Circular

Implementation of Withholding Tax (WHT) Under the Double Taxation Agreement

Version 1 | January 2025

Note: The English version is for guidance purposes only. In case of any discrepancy between the Arabic and English versions, the Arabic version shall prevail

The Zakat, Tax and Customs Authority ("ZATCA" or «Authority") has issued this Tax Circular for the purpose of clarifying certain treatments concerning the implementation of the statutory provisions in force as of the Circular's issue date. The content of this Circular shall not be considered as an amendment to any of the provisions of the laws and regulations applicable in the Kingdom of Saudi Arabia ("KSA").

Furthermore, the Authority would like to highlight that the clarifications and indicative tax treatments prescribed in this Circular, where applicable, shall be implemented by the Authority in light of the relevant statutory texts. Where any clarification, interpretation or content provided in this Circular is modified -in relation to unchanged statutory text- the updated indicative tax treatment shall then be applicable prospectively, in respect of transactions made after the publication date of the updated version of the Circular on the Authority's website.

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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 Permanent Establishment ("PE") in KSA.

1.2 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 PE in KSA is paying for services provided by a non-resident 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 resident or PE in KSA to another resident or PE in KSA) as The WHT provisions pertain essentially to payments made by residents or a PE in KSA to non-residents which are covered in this Circular.

2.3 This circular aims to providing clarity on the conditions and procedures to be followed for the application of the types of income covered in the DTA, as well the general taxing right allocation rules.

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

3.1 Application of WHT under KSA Domestic tax Law

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.

3.1.3 For the purpose of WHT, a resident person may include:

- A corporate or a natural person (only in the context of its business activity) that satisfies the KSA residency conditions set out in the Law[(1)] ,
- Any governmental department, ministry or public entity;
- Any other corporate person or entity formed in the Kingdom;

3.1.4 In order to determine whether there is an obligation to withhold tax, the following elements should be duly considered;

1. **Who must withhold the tax?**

   The resident person making the payment or the PE (i.e., the withhold person or PE) and responsible for withholding the tax.

2. **the types of 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.

3. **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

3.1.5 The following are examples of types of income of non-resident that can be from sources in the Kingdom and be subject to WHT:

Type of income
Based on Article 68 the law and Article 63 by law
Management or directors' fees
Dividends mean any distribution by a resident company to a non-resident shareholder, and any profits transferred by PE to related parties.
Rental income, operational or financial, including: • Lease of immovable property • Lease of moveable properties located in the KSA Rent payment often don't include an income from debt-claims element that falls within the WHT scope.
Sale or license of industrial or intellectual properties in the KSA. Or what is referred to as Royalties. (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
Services performed in whole or in part in the KSA
Payments arising from commercial activities conducted for the purpose of profit in the Kingdom

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[2] .

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%	
Loan returns	5%	
Technical & consulting services [2]	5%	
Airline tickets/air or sea freight	5%	
International telecommunication services	5%	
Any other services from sources in KSA	15%	

[2] 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 (56) 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 that may be relevant in the context of WHT.

3.2.5 Business profits:

This article represents a rule to determine if a service or a payment. is subject to tax in KSA.

Business profits (generally Article 7 in DTAs) this provision in KSA DTA gives the taxing right to the Resident state. However, if the non-resident that provided the services or received the payment has PE in KSA in this case the business profits may be taxed in KSA but only so much of them as is attributable to that PE.

Example:

Company A, is Resident of State R which has a DTA with KSA, company A provides online consultancy services to a resident or PE in KSA. the services provided by company A don't constitute PE.

Based on the example above the provision of the DTA the Resident state has the taxing right. unless Company A had established a PE in KSA, in that case the Company may be taxed in KSA.

3.2.6 Income from immoveable property:

- This article represents how income from immovable property can be taxed by the state other than the resident State of the recipient of the income.
- Income from immoveable property (generally Article 6 in DTAs), gives the state, where the property generating income is located, the right to Tax. However, payments of this income type (e.g., rent or lease payments) made by a resident of KSA to a non-resident from a source within KSA will not by restricted by this article.

Example:

A resident from State R owns an immovable property in KSA, the resident of state R lease the property to a resident of KSA. The payments given to the resident of state R by the resident of KSA will Be taxed in state R. However the payment can be taxed also in KSA given the property is located in KSA.

3.2.7 International shipping and air transport:

- This Article represents how income derived by an enterprise from the operation of ships or aircraft in international traffic can be taxed. Based on intentional shipping and air transport Article (generally article 8 in DTAs), the income from intentional shipping or air transport shall be taxable only in the state where the enterprise is resident or where the place of effective management is situated, the allocating rule will depend on the provision in each DTA.
- Although, the income of leasing international transportation can be taxed by the Source state, due to certain cases based on each DTA terms.
- In some taxable agreement in the kingdom, Derived profits from leasing international transportation is taxable in the Source State, if the transportation method is leased by a non-resident person in the Kingdom and the following terms were met:

1. The rental is for the means of transport itself and does not include operating essentials such as crew wages and fuel for operation.
2. The rental is not considered a taxable activity for the lessor.

Example:

Enterprise of state X operates in international transport in KSA the income derived from the operation shall be taxable only is state X

3.2.8 Dividends

- This article represents how dividend income is taxed (generally Article 10 in DTAs), the source State generally reserves the right to tax dividend income, even if it's directly paid to a resident of another State with which the source State has a DTA. However, if the recipient of the dividends is classified as the beneficial owner, the source State may grant tax relief based on the rate specified 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.
- Although the term "beneficial owner" is not explicitly defined in the DTA, it generally refers to the (individual or enterprise) that benefits from the right to use and enjoy dividends without any contractual or legal obligation to pass on the payment received to another individual or enterprise.
- Qualifying as the beneficial owner is a crucial requirement for the source state to grant tax relief based on the rates outlined in the DTA. This is particularly relevant for conduit companies that solely pass on dividends to the actual beneficial owner.

Example:

An enterprise is resident of State X is receiving dividends from an enterprise in KSA.

If the enterprise of State X is the beneficial owner of the dividends received form the enterprise in KSA. In this case, if the recipient of the dividends is classified as the beneficial owner, KSA may grant tax relief based on the rate specified in the DTA.

In cases where an enterprise claims beneficial ownership solely to be granted the relief provided in the DTA, such as an enterprise in State X which has a DTA with KSA seeking DTA benefits but merely passes dividends to the actual beneficial owner in State Y, which lacks a DTA with KSA, KSA can fully tax such income in accordance with the domestic law rates.

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, based on certain conditions 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 non-resident shall not be subject to WHT in the KSA, However, if the payment is effectively connected with a Permanent Establishment (PE) in the source state, the source state has the right to tax the payment.

Example:

A resident of State X is receiving payments classified as Dept-claims from a resident of KSA. If the resident of State X doesn't have PE in KSA, and if the DTA between States permit taxation based on the resident State if the receiver of the dept-claims is the beneficial owner, then, as per the DTA terms, the income from these claims will be taxed solely in State X if the resident qualifies as the beneficial owner.

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.

Example:

A royalty payment made by a resident of KSA to a resident of state X from a source in KSA is subject to tax in KSA. However, generally, under Article 12(1) of DTAs, royalties would be subject to tax in the resident state. Moreover, under Article 12(2) of the DTA, such royalty may also be subject to tax in the source state, and in this case, the tax imposed in the source state must not exceed the tax rate specified in the DTA if beneficial owner is a resident in the other state.

3.2.11 Fees for technical services

- Based on this article (generally Article 12A in DTAs Models), fees for technical services arising in a Contracting State and paid to a resident of another Contracting State are in principle subject to tax in the State where the person receiving the payment is a resident or a PE.
- However, fees for technical services can also be taxed in the Source state -whether such payments are from a resident or a permanent establishment-in that source state. And in the case where the beneficial owner of the fees paid is a resident of the other state, the source state taxation must not exceed the tax rate specified in the DTA.

Example:

A payment made by a resident of KSA to a resident of state Y from a source in KSA, for technical services provided by the resident of State Y, is subject to tax in state Y usually under Article 7. However, in some DTAs the technical services are subject to WHT according to a special Article (Article 12A), Generally, in such a case, the payments for technical services may also be subject to tax in the source state but if the beneficial owner is a resident in the other state. The determination of a maximum rate will be made as per 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 his 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 non-resident has a fixed base regularly available to him in the KSA; or
2. If his stay in KSA is for a period or periods amounting to or exceeding in the aggregate 183 days in any twelve-month period.

- Taxes related to income earned from independent personal activities are considered exclusive tax rights of the resident state, unless one of the specified conditions is met. In that case, the taxation rights are shared between the two states (the resident state and the source state), and the resident state must avoid or eliminate double taxation.

Example:

A resident of State X provided professional services to a resident of KSA. If the service provider operated from a fixed base in KSA or stayed in KSA for 183 days or more within a twelve-month period in KSA, then KSA has the right to tax the income at its domestic rates. However, if the services were performed remotely with no physical presence established in KSA, then State X retains the exclusive taxing right to tax that income.

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.

Example:

A resident of State A Receives income for being a member of the board of directors in company resident in KSA. The Directors' fees may be subject to tax in KSA for being the source state.

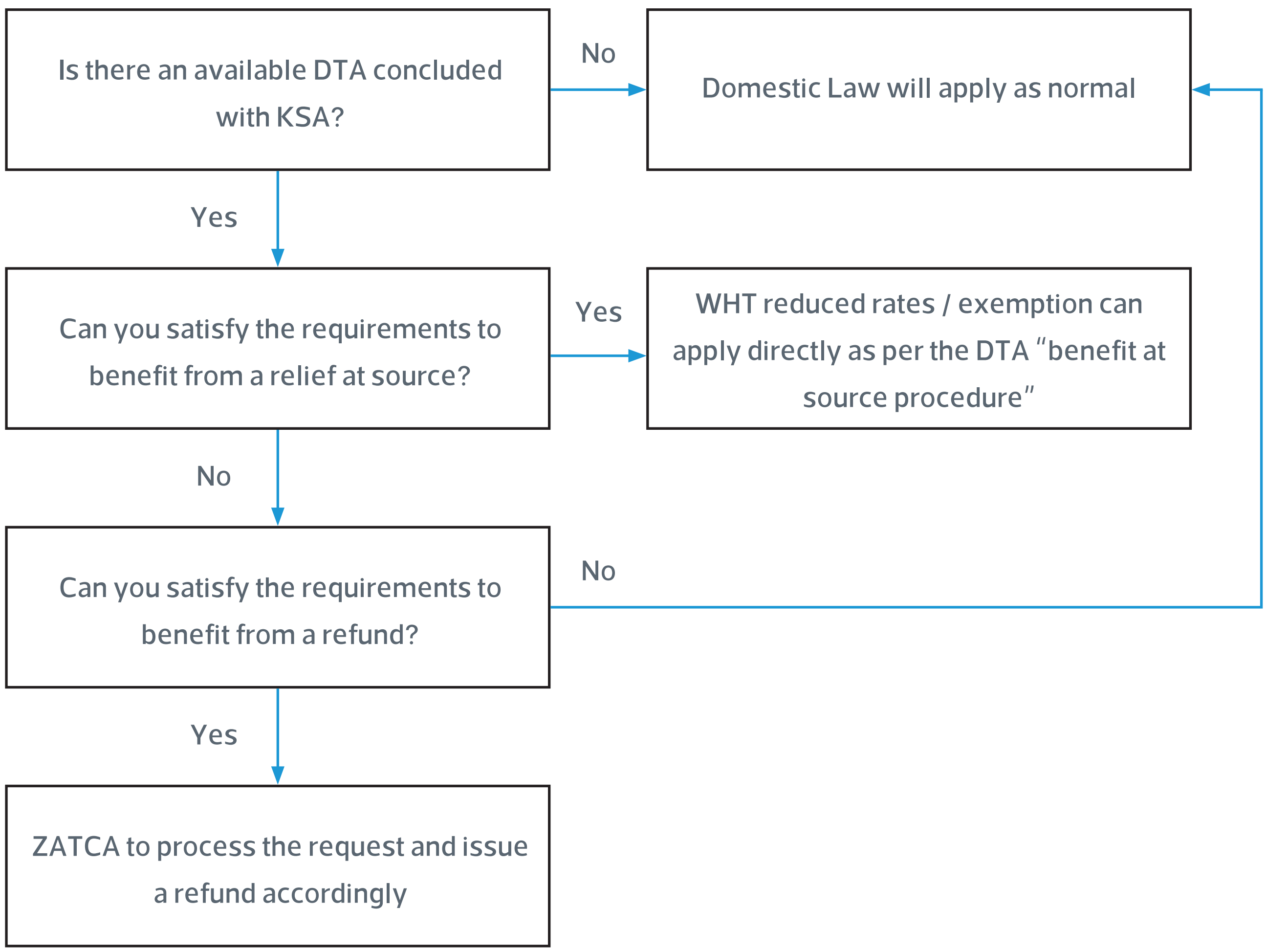
4. Procedures for the application of Double Taxation Agreement provisions pertaining to WHT

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



4.1.4 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

4.1.1 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".

4.1.2 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 [3] . While filing the request, it is required to upload the following documents:

- Tax Residency Certificate "TRC [4] " from the foreign tax authority.
- Submitting a request for the application of an effective tax treaty in accordance with the approved forms of the authority.
- The documents required above should be authenticated by the Saudi Embassy in the non-resident's state; or, an Apostille [5] certificate issued by the foreign authority can be provided instead.
- 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)

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[3] https://ZATCA.gov.sa/en/eServices

[4] 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,

[5] Apostille certificate authenticates the document originates and is issued by the foreign 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 [6].

4.2.2 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 from the foreign tax authority;

b. A letter of authorization from the non-resident beneficiary to the resident taxpayer to receive the amount of refund on behalf of the beneficiary;

c. Submitting a request for the application of an effective tax treaty in accordance with the approved forms of the authority.

- The documents required above should be authenticated by the Saudi Embassy in the non-resident's state; or, an Apostille certificate issued by the foreign authority can be provided instead.
- A copy of the withholding tax return relating to the tax paid to the Authority and a receipt evidencing remittance of the tax to the Authority.
- 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.

[6] Article (66) of the bylaw

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