Tax Alert- October 2017

The Kingdom of Saudi Arabia (KSA) has issued Royal Decree No. M/131 dated 29-12-1438H (20 September 2017) amending certain articles of the Income Tax Law promulgated in 2004. A snapshot of the amendments is set out below, followed by a summary of key aspects of the changes made.

Articles	Subject
2, 6 and 7	Amendments affecting oil and hydrocarbon producing companies and their investee companies
6	Tax base
7	Tax rates
9 and 17	Group relief in relation to transfer of assets
10	Tax exemptions
20	Contribution to retirement fund
43	Tax losses
61	GAZT right to information

The changes relevant to oil and hydrocarbon producing companies and their investee companies are effective from 1 January 2017. These amendments will therefore have an impact on tax charge as well tax returns for the year 2017 of oil & hydrocarbon producing companies as well as of companies in which oil & hydrocarbon companies own any shares, whether directly or indirectly.

All other amendments are effective from the beginning of the financial year of a taxpayer entity beginning after the publication of the Royal Decree.

The key aspects of the amendments made are summarized below.

Article 2, 6 and 7 – Amendments affecting oil and hydrocarbon producing companies and their investee companies

The following amendments are specific to oil and hydrocarbon producing companies.

— The tax base of a company engaged in the production of oil and hydrocarbons is to be calculated after deducting expenses and allowances in accordance with the tax law.

— The tax rates for companies engaged in the production of oil and hydrocarbons have been rationalized as follows:

Capital invested	Tax rate
► **More than SAR 375b (US$ 100b)**	► 50%
► **SAR 300b (US$ 80b) to SAR 375b (US$ 100b)**	► 65%
► **SAR 225b (US$ 60b) to SAR 300b (US$ 80b)**	► 75%
► **Not more than SAR 225b (US$ 60b)**	► 85%

Explanatory Note: "Total capital investment" *is the aggregate accumulated value of fixed assets from property, plant and equipment, other equipment and intangible assets including prospecting and exploration costs of oil and hydrocarbons and their development and, before deducting depreciation and amortization.*

The following amendments affect companies in which shares are owned by oil and hydrocarbon producing companies.

— The scope of taxable persons has been expanded to include resident capital companies with respect to shares owned directly or indirectly by persons engaged in the production of oil and hydrocarbons.

The above amendment will result in a change in tax profile of companies having shares owned, whether directly or indirectly, by Saudi Arabian oil & hydrocarbon producing companies that were previously subject to Zakat with respect to shareholding attributable to oil & hydrocarbon producing companies. As a result of this change, any income of a Saudi company that is attributable to shares owned, directly or indirectly, by oil & hydrocarbon companies will be subject to corporate income tax (and not to Zakat).

Article 6 – Tax base

The amendment is more of a clarification. It provides that the tax base (taxable income) income of a company is to be calculated independent of the tax base of the shareholders or subsidiaries of the company, regardless of any accounting consolidation in the financial statements of the company.

Articles 9 & 17 – Group relief in relation to transfer of assets

This is a welcome change as it introduces the concept of group relief in relation to transfer of assets between companies that are part of a wholly owned group.

A disposal of asset between wholly-owned-group companies will be disregarded for tax purposes provided the asset remains within the group for at least 2 years subsequent to the transfer. Where this relief is availed of, the transfer is considered as made at book value for tax purposes.

A consequential amendment has been made to Article 17. For the purposes of calculating depreciation, the transfer of assets has to be recognized at book value in both the companies.

Article 10 – Exempt income

This is another welcome amendment as the scope of tax exemption on gains arising from disposal of listed securities has now been expanded to include securities listed on foreign stock exchanges, provided the shares are also listed on the Saudi stock exchange (Tadawul). This would apply on sales made through the stock exchange or outside of the stock exchange.

Another welcome amendment is the introduction of franked investment income relief on local as well as foreign-sourced dividends. Saudi taxable entities will now be able to claim tax exemption on dividend income provided the investor entity owns at least 10% shares in the investee company for at least one year before it receives dividends.

Article 20 – Contribution of retirement fund

Based on the amendment, a non-corporate taxpayer will now be able to avail of tax deduction in respect of contribution made to authorized retirement funds, up to 25% of taxable income before claiming such deduction.

Companies will now be able to claim deductions in respect of contributions made to retirement funds, social insurance funds or other funds established for the purpose of settling employees' end-of-service benefits or to meet the medical expenses, provided:

— The deduction does not exceed the unfunded liabilities relating to those funds, due at the beginning of the financial year for which the deduction is claimed.

— The fund (whether established in or outside Saudi Arabia) – to which the contribution has been made – has an independent legal status.

Article 43 – Tax losses

This is another welcome amendment. Previously, a company would lose its right to carry forward its tax losses in the event of a change of 50% in the ownership or control of the company. As a result of the amendment, a company will now be able to carry forward its tax losses regardless of any change in the ownership or control, provided it keeps on carrying on the same activity.

It has also been clarified that the transfer of assets between companies will not be considered a change in the ownership or control.

Article 61 – GAZT right to information

The assessing officers are now empowered to seek information in relation to tax treaties and rulings. The law empowers the Finance Minister to for non-compliance penalties by amending the tax bylaws.

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