

Client Alert

Corporate, Finance and Investment

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ZATCA Clarifies the Requirements for Granting a 30-Year Tax Relief to Multinational Corporations under the Regional Headquarters Program.

BACKGROUND

The Government of the Kingdom of Saudi Arabia (“**Kingdom**”) in February 2021 announced its objective to limit governmental contracting with multinational companies (“**MNCs**”) that do not have a Regional Headquarter (“**RHQ**”) in the Kingdom.

On 27 December 2022, the Kingdom’s Council of Ministers issued the “Regulations of Government Agencies Contracting with Entities that do not have a Regional Headquarter in Saudi Arabia and the Related Parties” under Cabinet Resolution number 366 (the “**Regulations**”) which came into effect on 1 January 2024.

RHQ’S TAX RELIEF

The Ministry of Investment of Saudi Arabia (“**MISA**”) provided clarifications on what constitutes an MNC in addition to the requirements for and benefits of receiving an RHQ license. In short, an MNC is a foreign parent corporation with subsidiaries, branches, or affiliates operating in at least two jurisdictions other than the parent company’s jurisdiction. According to the guidelines published by MISA, RHQs cannot engage in revenue-generating commercial activities, but may generate revenue from certain eligible activities, and must operate as a “center of administrative control” of the MNC’s activities in the MENA region.

To make it attractive for MNCs to establish an RHQ in the Kingdom, MISA offered MNCs a 30-year tax relief (0% tax rate) period on corporate income and withholding taxes.



ZATCA CLARIFICATION

On 4 February 2024, the Zakat, Tax and Customs Authority (“**ZATCA**”) published the rules governing the grant of the 30-year tax relief under the RHQ program. Notwithstanding the requirements set out by MISA, ZATCA will impose economic substance requirements on the grant of tax exemptions to an RHQ, which will be as follows:

1. The RHQ must hold a valid RHQ license from MISA and only engage in the mandatory activities set out by MISA and at a minimum must engage in three optional activities (collectively, “**Eligible Activities**”). The mandatory activities include business planning, budgeting, monitoring financial performance, preparing marketing strategy for the MENA region, and supporting merger and acquisition activities in the MENA region. The optional activities include human resources, training, accounting, auditing, and logistics and supply chain management.
2. The RHQ must have a physical office in the Kingdom suitable for its contemplated activities in the Kingdom.
3. The RHQ’s activities must be conducted and managed in the Kingdom. Additionally, the RHQ’s board of directors’ meetings must be held in the Kingdom.
4. The RHQ must incur operational expenses corresponding to its activities in the Kingdom.
5. The RHQ must generate revenue from the Eligible Activities.
6. The RHQ must maintain separate books and records when conducting non-Eligible Activities. Income produced from such activities is subject to taxation in accordance with Saudi Arabia’s Income Tax Law published pursuant to Royal Decree Number M/1 dated 30 July 2004 (as amended from time to time).
7. The RHQ must have at least one executive that is a resident in the Kingdom. We note that MISA requires the RHQ to employ at least three executives within a year of the grant of the RHQ license.
8. The RHQ must employ an adequate number of full-time employees within the fiscal year commensurate to the size of the Eligible Activities to be conducted. We note that MISA requires a minimum of 15 employees to be employed by the RHQ within one year of the grant of the RHQ license.
9. The RHQ must comply with the Transfer Pricing Bylaws issued by ZATCA pursuant to Board Resolution Number 6-1-19 dated 31 January 2019 and conduct transactions with related parties at an arm’s length basis.

RHQs that are registered with ZATCA and meet the above-mentioned requirements and MISA’s requirements are eligible for the following tax incentives:

1. Zero percent (0%) income tax on income from Eligible Activities.
2. Zero percent (0%) withholding tax on payments made by the RHQ to non-Saudi residents, only with respect to the following:
 - a. dividends;
 - b. payments to related parties; and
 - c. payments to unrelated person for the performance of services necessary for the RHQ’s activities.

Such tax incentives are only available for a period of 30 years (subject to renewal), commencing on the date of the grant of the RHQ license until either (i) the lapse of the 30-year period, or (ii) the entity ceases to be an RHQ as per MISA’s guidelines.



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