KSA: Capital gains, dividend income and other income tax amendments

October 2017

In brief

A number of significant amendments to the Saudi Arabian (KSA) Income Tax law ('Law') have been issued through a Royal Decree. The amendments appear intended to support the objectives of Vision 2030 or achieve alignment between the Saudi tax authority practice and international practice.

Two notable changes include the exemption from income tax for KSA resident recipients of dividends from KSA resident or certain KSA non-resident companies; and the potential removal of capital gains on the intra-group transfers of assets (including shares) in certain circumstances.

In detail

Royal decree M/131 amends certain articles of the Law

The Royal Decree No. (M / 131) dated 29/12/1438H (20 September 2017) has amended certain articles of the Law.

The key amendments are as follows:

Article 2: Persons subject to taxation

Persons subject to taxation also include a resident 'capital company' (includes a joint stock company and limited liability companies) with respect to shares owned either directly or indirectly by persons operating in oil and hydrocarbon production.

This amendment appears to mean that any subsidiaries or joint ventures of companies operating in oil and hydrocarbons should be subject to income tax. Previously, such subsidiaries/joint ventures would only be Zakat payers to the extent owned by GCC shareholders.

Article 6: Tax base

The Decree confirms that the tax base of a capital company (includes a joint stock company and limited liability companies) is determined independently from its shareholders, partners or its subsidiaries, irrespective of whether the accounts of the capital company are consolidated or not. This merely reinforces current practice that taxpayers should continue to file on a standalone basis.

Article 7: Tax rate for oil and hydrocarbon companies

Whilst the tax rate for for oil and hydrocarbon companies used to be fixed at 85%, progressive tax rates are being introduced based on the company's capital assets as follows:

Total capital investment of company	Tax rates
More than SAR 375b	50% of the taxpayer net profit
SAR 300b to SAR 375b	65% of the taxpayer net profit
SAR 225b to SAR 300b	75% of the taxpayer net profit
Not more than SAR 225b	85% of the taxpayer net profit

"Total capital investment" is the aggregate accumulated value of fixed assets (including prospecting and exploration costs of oil and hydrocarbons and their development), before deducting depreciation/ amortization.

The tax rate has been banded (effectively reduced by up to 35%) to encourage foreign investment in this sector.

Article 9: Intragroup transactions for certain assets

Intragroup transfers of cash, shares, financial securities and other tangible and intangible assets can now be done tax neutrally. The 'cost base' of the relevant intragroup transactions will be net book value to achieve the no gain no loss result.

Previously, there was no specific exemption for intragroup transfers of assets.

This amendment aligns the Law with reorganisation regimes that exist in many countries and concurs with previous rulings from Appeal Committees that share transfers within a KSA group should not be subject to tax.

Article 10: Tax exemptions extended

The types of income that are tax-exempt has been extended to include:

1. Capital gains from the disposal of shares of a Saudi listed company that is listed on dual or multiple stock exchanges. In other words, if a Saudi company is listed on the Saudi Stock Exchange and on a foreign stock exchange (e.g. NASDAQ), the exemption from Saudi capital gains taxation also applies to the shares listed on the foreign stock exchange. Currently, only capital gains realised from disposal of securities traded on the Saudi Stock Exchange are tax exempt.

2. Dividend income (cash or in kind) received by a KSA resident company from a foreign or KSA resident company, provided that:
   a. The ownership in the company is 10% or more; and
   b. The period of ownership is at least one year.

Local dividend income is currently exempt under Ministerial Resolution 3294, but this amendment now exempts foreign dividends as well.

Article 17: Depreciation

The cost base of assets transferred or distributed between companies that are part of the same "group" (at this stage, companies that would fall under the same "group" has not been defined and as such, we hope that clarification on this will be provided in the amendments to the By-laws). should set at the net book value in line with Article 9 above.

Article 20: Contributions to authorized retirement funds

A capital company is now allowed to deduct its contribution to a retirement fund, a social insurance fund or any other fund established for the purpose of settling employee end of service benefits or to meet staff medical expenses, provided they meet certain conditions.

It should be noted that there is a notification requirement to General Authority of Zakat and Tax (GAZT) in order to claim any deduction of the contribution.

Article 43: Loss carry forward on change of ownership

Capital companies are now allowed to carry forward tax losses regardless of a change in the ownership or control in the company provided the company continues to undertake the same activity. Previously, a change in control or ownership of 50% or more would result in carried forward tax losses to be forfeited.

This amendment falls within the government's objective to encourage foreign investment.

The Authority's right to information

GAZT's right to obtain information from taxpayers now extends to the provisions of international bilateral/ multilateral agreements.

Effective date

Amendments to Articles 2, 7 and 20 are applicable from 1 January 2017.

All other amendments are effective from the commencement of the financial year immediately after the issuance of the said Royal Decree (i.e. for most companies it will be from 1 January 2018).

Amendments to By-laws which are anticipated to provide further details concerning the above amendments are expected to be issued soon.

The takeaway

Many of these changes will be well received by taxpayers and foreign investors; specifically the those relating to intragroup transactions, extension of tax exemptions and loss carry forward on change of ownership.

PwC Middle East Tax contacts

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

Jeddah

Mohammed Yaghmour
mohammed.yaghmour@pwc.com

Mohammad Hussein Amawi
mohammad.h.amawi@pwc.com

Yaseen AbuAlkheer
yaseen.abualkheer@pwc.com

Fehmi Mounla
fehmi.o.mounla@pwc.com

Riyadh

Soudki Zawaydeh
soudki.zawaydeh@pwc.com

Mohammed Al-Obaid
mohammed.alobaidi@pwc.com

Abdulkhamid (Abdul Hameed) Muminov
abdulkhamid.muminov@pwc.com

Fayez Aldebs
afayez.aldebs@pwc.com

Wael Osman
wael.osman@pwc.com

Khobar

Ebrahim B Karoli
ebrahim.karolia@pwc.com

Mugahid Hussein
mugahid.hussein@pwc.com