



# Saudi Arabia: Suggested amendments to the Transfer Pricing Bylaws

July 2022



## In brief

On 4 July, Zakat, Tax, and Customs Authority (ZATCA) released a public consultation paper with proposed amendments to the Transfer Pricing (TP) Bylaws in the Kingdom of Saudi Arabia (KSA).

Comments on the consultation paper are due by 30 July 2022. These proposed changes would bring Zakat payers in scope of transfer pricing rules. The table provided in this document provides a summary of the specific proposed amendments along with the potential impact on taxpayers in KSA.



## Proposed amendments to the TP Bylaws

Particular	Proposed revisions to KSA Transfer Pricing Bylaws (changes in bold)	Impact of the amendment
<b>Bylaws applicable to ZAKAT payers also</b>	Notwithstanding any provision to the contrary herein, the Bylaws shall be applicable to every Taxable Persons pursuant to the Law and Implementing Regulations, Zakat Collection Regulations, or both, as necessary.	Under these proposed revisions, the TP Bylaws would be extended to apply to Zakat payers having related party transactions. This would be a significant change from the current provisions whereby 100% Zakat payers are not subject to the TP Bylaws, with the exception of Country-by-Country (CbC) reporting compliance. Zakat payers would thus need to ensure the arm's length nature of their related party transactions and meet annual compliance and documentation requirements subject to a materiality threshold of SAR 6 million.
<b>Other proposed changes in relation to applicability of the Transfer Pricing Bylaws to ZAKAT paying</b>	<p>The ZATCA proposed following changes with respect to the applicability of the Bylaws to the Zakat paying entities:</p> <p>(i) Taxable person means persons subject to tax as per <b>the Law or the Collection of Zakat Regulations. (Articles 1, 2, and 3)</b></p> <p>(ii) For purposes of income tax and zakat, any Person engaged in a Controlled Transaction shall conduct such transaction under Terms that are similar to Comparable Transactions between Independent Persons. <b>(Article 3)</b></p> <p>(iii) If the terms of the related party transactions are similar to transaction between independent person, the <b>adjustment to be made to the Tax or ZAKAT base (Article 4)</b></p> <p>(iv) The tax or ZAKAT base of the Taxable Person shall not be adjusted if the information concerning the comparable Transaction is not available to the Taxable Person <b>(Article 13)</b></p> <p>(v) A taxable person shall submit to the authority a Disclosure Form <b>for the tax/zakat year under the return as reported in the return for the same tax/zakat year (Article 14)</b> To include details in Master file for <b>Tax/Zakat year (Article 16)</b></p>	



## Proposed amendments to the TP Bylaws

(vi) To provide details if the Taxable Person has been involved in or affected by business restructurings or transfer of intangible property, in the current Reporting Year **and the tax/zakat year** immediately preceding it.

**(Article 17)**

(vii) **To provide** Annual financial statements for **the tax/zakat year** concerned of the Taxable Person.

**(Article 17)**

(viii) A Constituent Entity that is not the Ultimate Parent Entity or Surrogate Parent Entity of a Multinational Group shall file with the Authority a CbC Report conforming to the requirements set forth in the Bylaws and the Guidelines with respect to the **tax/zakat year** of the Multinational Group.

**(Article 18)**

(ix) In conducting audits of Controlled Transactions, the Authority shall follow the audit rules and procedures established under **the Law, Zakat Collection Regulations and the rules (Article 23)**

(x) All

Provisions of the Law and its implementing regulations and **Zakat Collection Regulations** shall be interpreted and construed in a manner consistent with the provisions of these Bylaws. **(Article 25)**

(xi)

These Transfer Pricing Bylaws shall be published in the official gazette and shall take effect from the date of publication therein, without prejudice to the **Law and Zakat Collection Regulations.**

(xii)

**“Tax/Zakat Year”** means the tax/zakat year as defined in the Law.

(xiii) **“Taxable**

**Person”** means a Person subject to tax as per the Law **or the Collection of Zakat Regulations.**

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### Transfer Pricing Method

**“Transfer Pricing Method”** means any of the transfer pricing methods, **whether approved or any other method used as per the provisions of Articles 9 and 6 of these Bylaws.**

Zakat payers will have the burden of proof to demonstrate that they have applied an acceptable method under Articles 6 and 9.



## Proposed amendments to the TP Bylaws

### Content of Disclosure Form (Article 14)

4. Total revenue, total expenses, amount of net profit or loss, **assets, total advance payments, debts, other zakat base components, total deductible amounts of zakat base for the tax/zakat year under the return as reported in the return for the same tax/zakat year.**

It is proposed to enhance the level of information to be provided in the disclosure form. The taxpayer needs to maintain the additional details (assets, debt, advance payment, deductible amount of zakat base) ahead of compliance due date so that the details can be submitted in the disclosure form.

### Exceptions for maintaining documentation (Article 19)

A. Notwithstanding any provision to the contrary, the following Persons are not required to maintain the documentation described in Article 16 and Article 17 of these bylaws:

1. Natural persons **except for entities.**

B.3. **Where the Authority sees that the transaction, or a part thereof, is artificial or abusive or its main purpose is to reduce tax or zakat burden or change tax or zakat effect on the transaction, or the transaction does not reflect the transaction's form, essence and nature.**

Taxpayers will not be able to rely on any exemptions for TP documentation where the arrangements are considered by ZATCA to be artificial or abusive in purpose.

### Permanent Establishment (Article 3)

C. The tax base of a Permanent Establishment in the Kingdom shall be determined according to the Arm's Length Principle. Subject to the provisions of the relevant International Taxation Agreement to which the Kingdom is a Party, **expenses that may be deducted from the tax or zakat base of a Permanent Establishment shall be determined in accordance with the relevant laws, regulations, and international agreements.**

The ZATCA proposed that the deductible expenses of any permanent establishment shall be determined based on relevant laws, regulations and agreements. In the current provisions such expenses are to be determined as per Chapter 5 of the laws. The ZATCA proposed to clarify that for determining such expenses, reference can also be made to relevant laws and also double taxation avoidance agreements.



## Proposed amendments to the TP Bylaws

### Corresponding adjustment (Article 22)

A. The Authority may reject to apply the provisions of the corresponding adjustments in any of the following cases: 1. Where the transaction is considered artificial or abusive or its main purpose is to reduce tax or zakat burden or change **tax or zakat effect** on the transaction, or the transaction does not reflect the transaction's form, essence and nature.

B. The statutory time limitations period established **under Article 65 of the Law shall be applicable to the taxable person subject to tax, and Articles 21, 22 and 23 of Zakat Collection Regulations for the taxable person subject to Zakat Collection Regulations.**

The statute of limitation of the amended Bylaws would follow the existing statute of limitations under Articles 21, 22, and 23 for Zakat payers.

### Arm's Length principle

**"Arm's Length Principle"** or **"Arm's-Length"** means where conditions are made or imposed between two or more Related Persons in their commercial or financial relations which differ from those which would be made between Independent Persons, any profits which would, but for those conditions, have accrued to one of such Related Persons, but, by reasons of those conditions, have not so accrued, may be included in the profits of that Person.

Zakat payers would be required to structure their intercompany dealings in accordance with the existing arm's length principle that corporate income tax payers are currently required to follow.

### Definition of Bylaws

The **"Bylaws"** means these Transfer Pricing Bylaws issued by The Authority pursuant to Board Resolution No [6-1-19] dated 25/05/1440H corresponding to 31/01/2019, **and any amendments that may occur thereto.**

Any further amendments in the KSA TP Bylaws will also come under the purview of "Bylaws".

### MNE Group

The term "MNE Group" is amended to be "Multinational Group".

### Addition of new definitions

**"Zakat Collection Regulations"** means the Executive Regulations of the Zakat Collection, issued under the Ministerial Decree No. 2216 on 07/07/1440 AH and any amendments thereto.

**"Return"** means tax return for persons subject to return for tax purposes by virtue of the law and zakat return for persons subject to return for zakat purposes by virtue of the Zakat Collection Regulations.

**"Group"** means two or more related persons who are obliged to prepare consolidated financial statements as per the relevant accounting standards or will be obliged to prepare consolidated financial statements if one of these persons is an entity whose shares are listed in the financial market.

# The takeaway

**Should these proposed amendments to the TP Bylaws become law, the impact would be significant and would impact companies in KSA differently depending on their tax status:**

- 1. 100% Zakat payers:** 100% Zakat payers that are subject to these provisions will face the biggest impact as they may not have yet done a transfer pricing analysis or prepared any TP documentation. Given the significance of these proposals, such companies should take care to ensure a plan is in place to comply with the amended Bylaws once they become law and to address any gaps they may have.
- 2. Mixed taxpayers:** Mixed taxpayers will likely have already considered the TP Bylaws and performed such analyses and documentation to their entities that are currently subject to corporate income tax. However, they will still be impacted as there will be a need to evaluate how to prepare for the extension of these Bylaws to their zakat paying entities that engage in intercompany transactions.
- 3. 100% corporate income taxpayers:** companies that are currently subject to corporate income tax and not zakat will not be impacted by these amendments as they are already fully subject to the TP Bylaws.

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## Let's talk

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