The Zakat, Tax and Customs Authority (“ZATCA”) mandates all Kingdom of Saudi Arabia reporting financial institutions to conduct an annual audit and issue a certificate for FATCA and CRS

January 2023

In brief

The Zakat, Tax and Customs Authority ("**ZATCA**"), in accordance with the provisions of the agreements to which the Kingdom of Saudi Arabia is a party issued pursuant to Ministerial Resolution No. (131) dated 20/1/1444 AH, recently issued a publication announcing the relevant audit arrangements and procedures required to be implemented by KSA Reporting Financial Institutions ("**KSA RFIs**") to determine compliance with the Foreign Account Tax Compliance Act ("**FATCA**") and the Common Reporting Standard ("**CRS**").

Businesses in the KSA will be required to ensure they are prepared to comply with these new requirements and increased scrutiny from the ZATCA.

In detail

- **Background:** The CRS, developed by the Organisation for Economic Co-operation and Development ("**OECD**") and approved by the G20 in February 2014, is a global reporting standard for Automatic Exchange of Information ("**AEOI**"). The KSA signed up to the CRS in 2017 with a go-live date of 8 September 2017. Royal Decree No. M/125 of 1/12/1438 H. was ratified into domestic law in November 2017 and information has been exchanged since 2018 for calendar year 2017 onwards, on a reciprocal basis. The Foreign Account Tax Compliance Act ("**FATCA**") is the first of the AEOI regimes developed by the United States ("**US**") Internal Revenue Service ("**IRS**") to combat tax evasion by U.S. persons holding financial accounts in other countries. Effective 1 July 2014, all KSA RFIs are required to comply with the provisions of FATCA legislation ratified by Royal Decree No. (M/52) dated 10/5/1438 AH in relation to the Intergovernmental Agreement ("**IGA**") between the Government of the United States of America and the Government of the Kingdom of Saudi Arabia to Improve International Tax Compliance and to Implement FATCA ("**KSA-US IGA**").
- **Existing requirements:** FATCA and CRS both require all in scope KSA RFIs to perform enhanced onboarding and due diligence procedures (including reviewing and collecting data on their account holders) in order to identify reportable account holders for FATCA and CRS purposes and report certain financial account information to their local jurisdiction (or directly to the IRS in certain instances) which will be exchanged with foreign authorities and the IRS, on an annual basis. Reporting under FATCA and CRS in the KSA is to ZATCA on an annual basis.
- **New increased compliance requirements:** ZATCA, as the competent authority for both the FATCA and CRS regimes in the KSA, is responsible for ensuring that KSA RFIs are compliant with the requirements set-out in the provisions of the KSA-US IGA and CRS by establishing an effective FATCA and CRS compliance programme to monitor activities and ensure compliance with the regimes.
- **Mandatory audit certification:** On 26 August 2022, ZATCA issued a publication mandating KSA RFIs to conduct annual audits and issue an annual certificate of compliance ("**Annual Audit Certificate**") for both FATCA and CRS. KSA RFIs are required to submit a separate certificate of audit, for FATCA and CRS.

Deadlines and compliance actions

The deadline to submit the Annual Audit Certificate is 1 August of each year and we understand the first deadline to be 1 August 2023 in respect of calendar year 2022 (reporting period 1 January 2022 - 31 December 2022). As part of the Annual Audit Certificate, KSA RFIs are required to provide the following information:

- Confirmation of the classification of the concerned entity as a Reporting Financial Institution;
- Ensure the KSA RFI has in place appropriate internal systems and procedures to enable it to comply with the provisions; and
- Conduct a sample test with respect to new accounts, existing accounts, reported accounts and unreported accounts.

The Annual Audit Certificate is likely to be required to be an extensive and detailed disclosure, enabling the ZATCA to assess whether there have been any violations of the FATCA and CRS legislation in the KSA.

Furthermore, in the event that KSA RFIs commit any of the following violations, the fines indicated below shall be applied:

Offense	Financial Penalty
Non-delivery of CRS and/or FATCA tax reporting on or before May 31 of the year following the calendar year to which the tax reporting relates.	A fine of (500) five hundred Saudi riyals for each day of delay after the end of the period specified for submitting the tax report, provided that the amount of the fine in its entirety does not exceed (15,000) fifteen thousand Saudi riyals.
Failure to file a tax information return as required under the specified CRS and/or FATCA form.	A fine of (5000) five thousand Saudi riyals for each declaration specific to each country.
Provide incorrect or incomplete statements about the information required to be included in the CRS and/or FATCA Declaration of Information unless that information relates to a third person and it is established that incorrect or incomplete statements were not intended.	A fine of (5000) five thousand Saudi riyals.
Refrain from cooperating with the competent employee during the performance of his work and the exercise of his powers according to the common reporting standard or FATCA	A fine of (3000) three thousand Saudi riyals.

Mechanism of review

As part of its compliance actions, ZATCA has indicated it may further conduct the following activities:

1. ZATCA has the right to conduct audits and/or require the KSA RFI to provide information to determine its compliance with the CRS and/or FATCA as required.
2. ZATCA shall notify the KSA RFI in writing of its intention to conduct an audit and shall specify the information required for the audit twenty (20) days as a minimum.
3. As an exception to point 2 above, ZATCA reserves the right to conduct a review process without prior notice in the following cases:
    a. Cases involving suspected actions leading to non-compliance.
    b. Cases where the KSA RFI has already refused to cooperate with ZATCA.
    c. Situations in which prior notice to the KSA RFI may destroy evidence.
4. KSA RFIs shall cooperate with ZATCA and provide all records, documents, information and interpretations as requested during the audits conducted by ZATCA, whether inside or outside the headquarters of the KSA RFI.

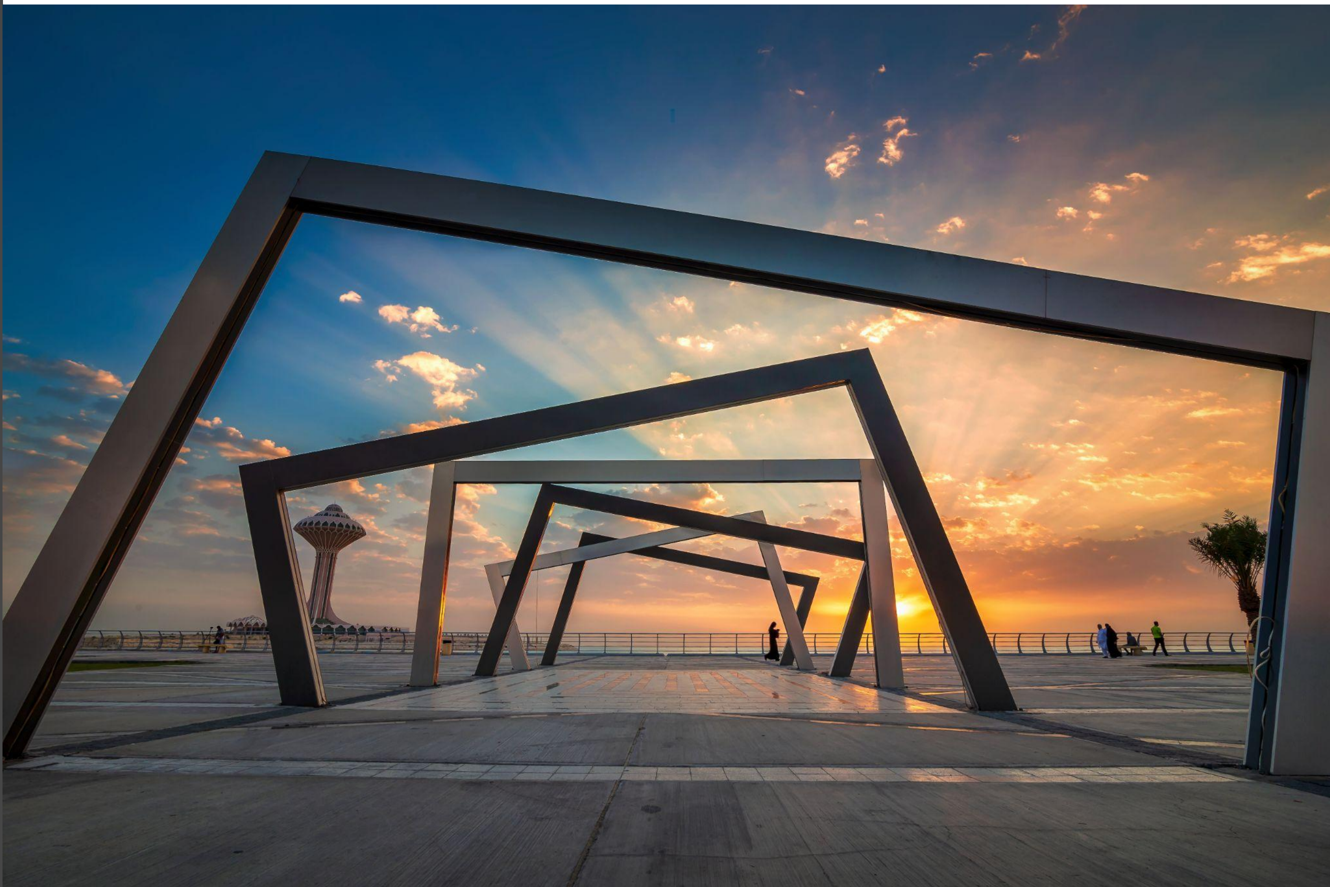
Key takeaways

- It is critical all KSA RFIs implement, in full, the FATCA and CRS requirements and ensure they are in compliance with the account onboarding, pre-existing due diligence, monitoring for changes in circumstances, governance framework (including ensuring the appropriate processes and procedures are in place) and annual reporting requirements.
- This is key in order to be prepared ahead of the submission of the first Annual Audit Certificate due 1 August 2023.

Next steps and how we can help

- Businesses should perform an assessment of whether they are in full compliance with the FATCA and CRS rules as set out in the Royal Decree No. M/125 of 1/12/1438 H for CRS and Royal Decree No. (M/52) dated 10/5/1438 AH for FATCA.
- Remedial actions should be taken where compliance gaps are identified.
- Systems and processes should be reviewed to ensure they have embedded the requirements of FATCA and CRS in a business as usual environment.

Our Middle East financial services tax and legal practice works with local, regional and global financial institutions and has a deep understanding of the FATCA and CRS issues typically faced by the sector. We would be delighted to arrange an introductory call to discuss these issues in more detail and how we may be able to support you.



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