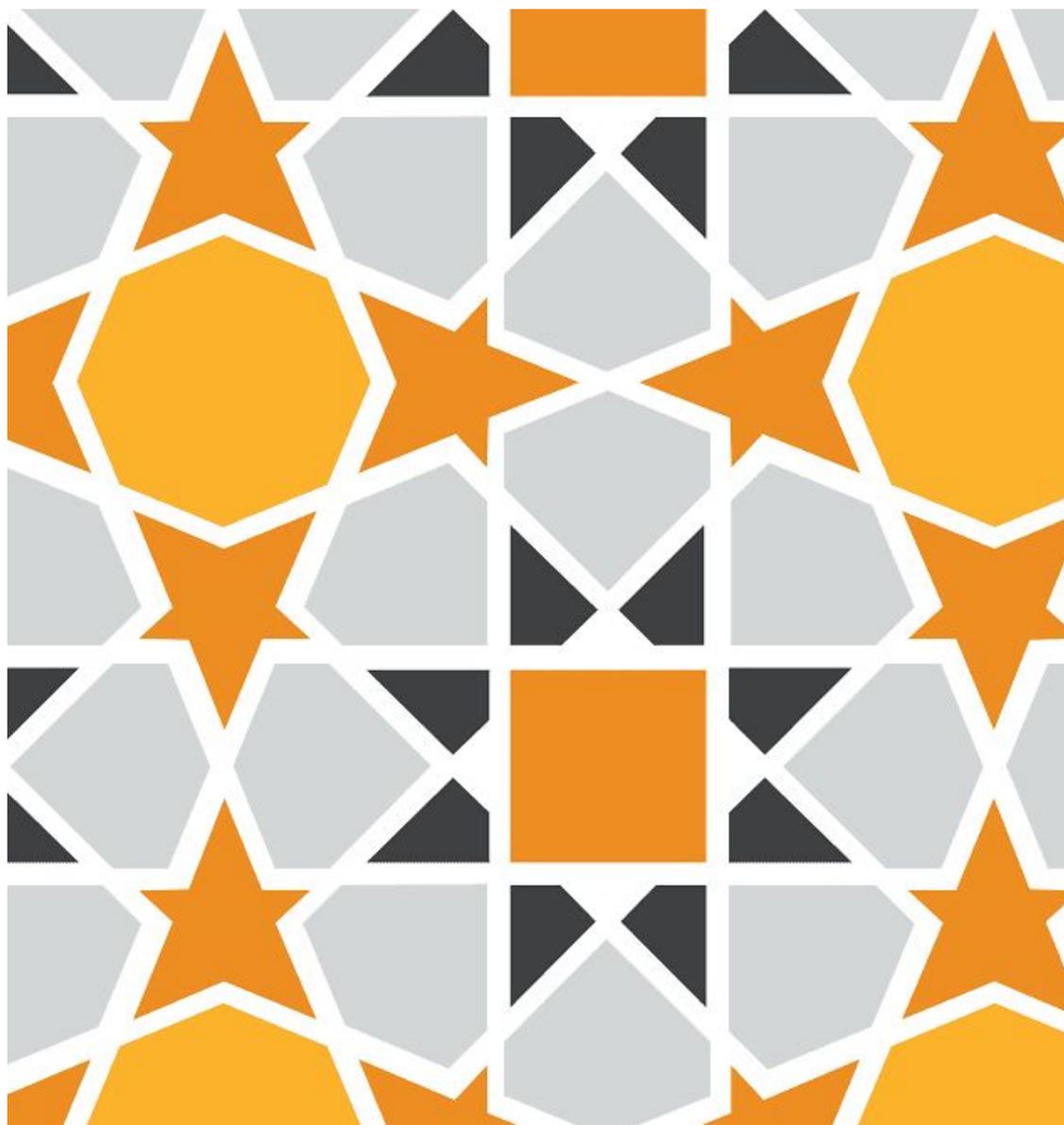


Kingdom of Saudi Arabia: Regional headquarters program

March 2023





Regional Headquarters Program Timeline



Multinationals' concerns/uncertainties

- Offshore/foreign subsidiaries of multinational groups ("MNC") meeting central management and control conditions in KSA could be taxed in more than one jurisdiction due to setting up/relocation of RHQ.
- There is no clarity/visibility on much talked about "Tax Benefits Package for RHQs"
- Where should an MNC set up its headquarters i.e. in special economic zone(s) ("SEZ") or mainland? Are there any benefits of setting up in SEZ, which SEZ should be preferred in this regard?
- Will RHQs be able to engage in commercial activities and how will such activities be taxed?
- Should there be any tax implications at all for RHQs engaged purely in prescribed activities (mandatory/optional activities) considering that RHQ is a special purpose vehicle solely engaged in non commercial activities?
- What is happening to RHQs already set up in KSA? Is Zakat, Tax and Customs Authority ("ZATCA") opening any assessments and subjecting them to audits/examinations?



The Saudi Minister of Investment H.E. Khalid Al-Falih while addressing concerns of multinationals setting up their RHQ in KSA clarified that the tax regime for RHQs is under codification and that income earned by RHQ from prescribed activities will be granted tax relief.





Controls for Contracting between Government Agencies and Companies that do not Have a Regional Headquarters in the Kingdom and Related Parties

In Brief

Although no tax rules/guidelines have been published to date in connection with the RHQ program, on December 27 2022, the Saudi Ministry of Finance issued a new set of controls sharply limiting the ability of Saudi government agencies to do business with MNCs that do not have RHQ in Saudi Arabia. The controls, which will enter into effect on January 1, 2024, allow only for very narrow exemptions (bidding/procurement related).

For MNCs doing business in the Kingdom, particularly those that generate significant business from the government, time is of utmost importance. If not done so already, companies that wish to secure access to government procurement should move quickly to ensure they are ready to comply with the RHQ policy by 2024.

This will require rigorous internal planning to address the various organisational, tax, operational and legal aspects of any RHQ move. Companies should view the RHQ Program in the context of their long-term business goals in the Kingdom – this is not just about compliance, but rather strategic engagement with government decision-makers.

In Detail

Going forward from January 1, 2024, the Ministry of Investment, in coordination with the Ministry of Finance and the General Authority for Foreign Trade shall prepare a list of Companies with no Regional Headquarters in the Kingdom. The list will be updated periodically and will be published in the unified electronic portal for government procurement, meaning that such groups will not be awarded Government projects other than in exceptional circumstances.

Exceptions:

1. Government Agencies may contract with MNCs or their related parties not having RHQ in KSA where:
 - the estimated cost of the works and procurements is less than one million Saudi Arabian Riyals; or
 - the works and procurements are conducted outside KSA.
1. MNCs or their related parties not having RHQ in KSA may submit bids for any public tender put forward by Government Agencies, provided that such Agencies only accept these bids in either of the following cases:
 - there is only one technically accepted bid; or
 - the bid submitted by the Multinational Group not having its RHQ in KSA, is the best technical bid after the overall evaluation and in financial terms is twenty five percent (25%) less than the value of the second-best bid.
1. Government Agencies may invite MNCs or their related parties that do not have RHQ in KSA to participate in limited tenders in either of the following cases:
 - there is only one qualified bidder (other than companies or related parties that do not have their RHQ in KSA); or
 - there is an emergency that can only be addressed by inviting companies or related parties that do not have their RHQ in KSA.
1. Government Agencies are only permitted to invite MNCs or their related parties to participate in direct purchases in either of the following two cases:
 - the works or procurements are exclusively available at the company or the related party that does not have its RHQ in KSA;
 - there is an emergency that can only be addressed by direct purchases from the company or the related party that does not have its RHQ in KSA.

In relation to above, an Exemption Committee (reporting to the Ministry of Finance) would be created to review and approve exemption applications submitted by relevant Government Agencies.



Recap of previous publications related to regional headquarters

MISA Guidance

In February 2022, MISA published detailed guidance on Invest Saudi portal defining as to what constitutes a regional headquarter along with comprehensive explanation of RHQ prescribed activities, licensing and employment requirements.

Under the guidance, Multinational groups having a foreign parent and carrying on business in more than two jurisdictions (other than parent country) through the parent entity, subsidiaries, branches or affiliates may apply for an RHQ license in KSA for the purpose of supporting, managing, and providing strategic direction to their branches, subsidiaries and affiliates operating in MENA region. The guidance further elaborated that RHQ would not directly conduct commercial operations that generate revenue other than RHQ License activities and may be incorporated either as a branch or an LLC. A detail of prescribed activities RHQ may engage in, available benefits, employment requirements and conditions under which RHQ license may be revoked are as follows.

Prescribed activities:

Mandatory RHQ activities for provision of strategic direction and management functions include: (a) Formulate and monitor the regional strategy, (b) Coordinate strategic alignment, (c) Embed products and/or services in the region, (d) Support acquisitions, mergers and divestments, and (e) Review financial performance. RHQ management functions include: (a) Business planning, (b) Budgeting, (c) Business coordination, (d) Identification of new market opportunities, (e) Monitoring of the regional market, competitors, and operations, (f) Marketing plan for the region, and (g) Operational and financial reporting. Further, such activities must commence within six months from the grant of the RHQ License by MISA.

Optional RHQ activities include: (a) Sales and Marketing Support, (b) Human Resources, and Personnel Management, (c) Training Services, (d) Financial Management, Foreign Exchange, and Treasury Centre Services, (e) Compliance and Internal Control, (f) Accounting, (g) Legal, (h) Auditing, (i) Research and Analysis, (j) Advisory Services, (k) Operations Control, (l) Logistics and Supply chain management, (m) International Trading, (n) Technical Support or Engineering Assistance, (o) Network Operations for IT System, (p) Research and Development, (q) Intellectual Property Rights Management, (r) Production Management, and (s) Sourcing of Raw Materials and Parts. The MNC group must commence any of the aforementioned three optional activities before the end the first year of receiving the RHQ License.

Benefits / exemptions:

- Exemption from Saudization requirements for a period of 10 years.
- Grant of Work visas (to RHQ employees) for Saudi nationals restricted professions.
- No limitation in the number of work visas that can be applied for RHQ employees.
- Ajeer program (to work and apply for jobs) for dependents of RHQ Employees.
- Relaxation in maximum age for residency of male dependents of RHQ employees extended to 25 years .
- Exemption of RHQ employees from professional accreditation requirements applicable in the Kingdom, if they are duly accredited in the country of origin.
- Waiver from the MISA subscription fees for access to MISA investor service centers following the first year.
- Access to MISA “end to end” services at discounted rates with preferential treatment.



Recap of previous publications related to regional headquarters: MISA guidance (cont'd)

Employment requirements:

- RHQ must employ at least 15 full time employees deployed in the conduct of RHQ activities within one year of issuing the RHQ License (including the senior level executives).
- RHQ employees carrying on mandatory RHQ License activities must have the relevant skills and knowledge developed at the headquarters or another regional headquarters of the Group, at least 3 employees of which must be of Executive Director level and Vice-President level.

Cancellation of license:

The RHQ License is subject to cancellation by MISA in any of the following situations:

- Failure to commence the mandatory or optional RHQ License activities, or hiring the minimum number of employees, within the stipulated time periods.
- The cessation of any mandatory RHQ activities or a minimum of three optional RHQ activities.
- The cessation of satisfying any of the RHQ License conditions by the RHQ or the Multinational Group.
- Violation of any licensing regulation established by MISA constituting 'Grounds for Cancellation.

The takeaway

The MNC groups must undertake an assessment for structuring their RHQ operation in a tax efficient manner and to avoid any unforeseen tax exposures for their offshore subsidiaries whilst at the same time securing valuable opportunities offered by the Middle East's largest economy, the Kingdom of Saudi Arabia. Issuance of tax benefits package for RHQs is around the corner, so watch out for more publications from PwC on this topic in future.

Let's talk

We at PwC have an experienced and specialist team that has extensive experience in this area, who is working closely with concerned authorities and brings unique and differentiated solutions on the table for MNCs looking to set up / relocate their regional headquarters in KSA. For a deeper discussion of how this issue might affect your business, please contact:

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Thank you

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