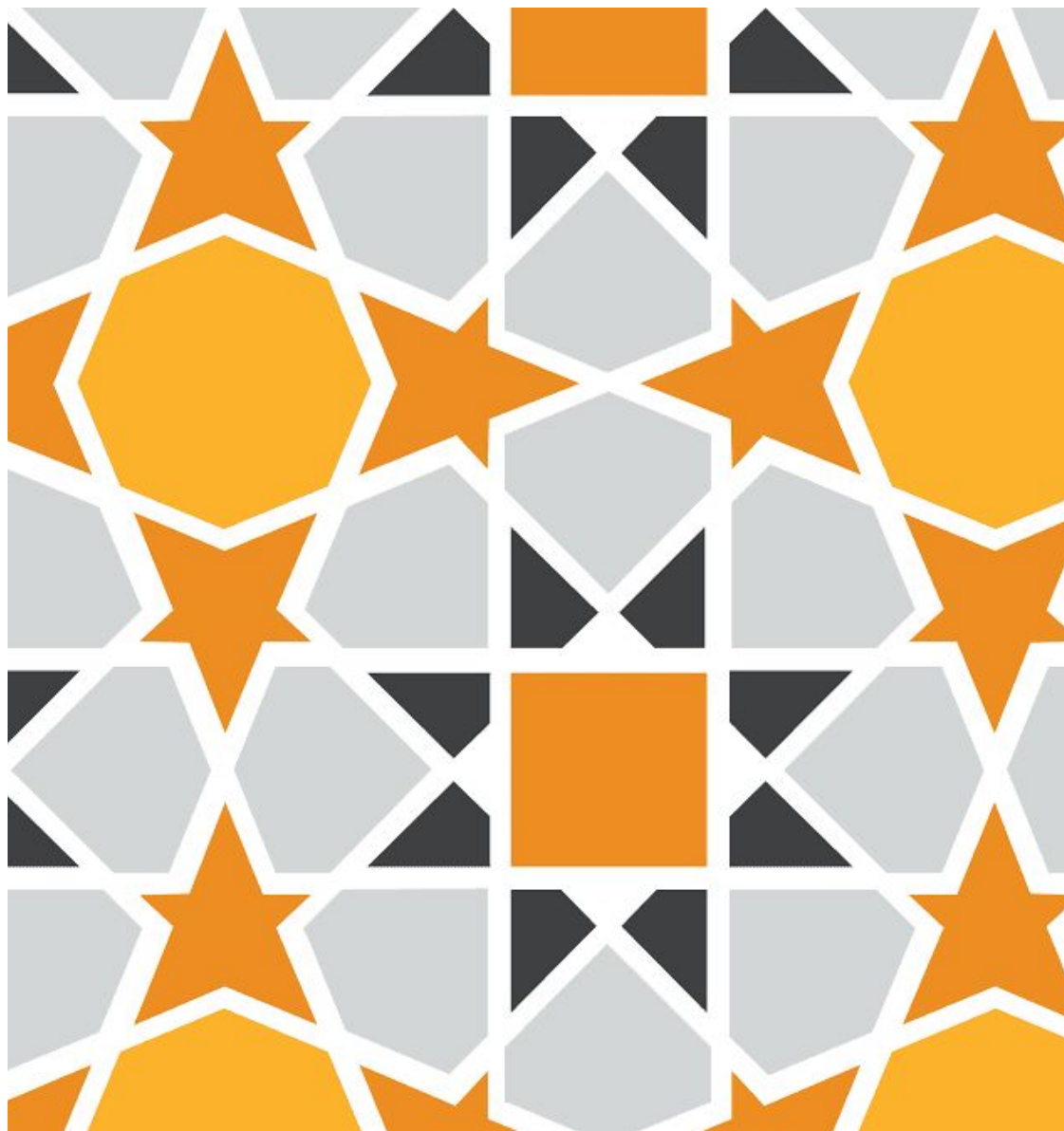


Saudi Arabia: Updates regarding the Service PE concept

May 2023





In brief

On May 17, 2023 the Zakat, Tax and Customs Authority (ZATCA) has released a new publication regarding the Taxation of the Permanent Establishments “PE” in the context of the Double Tax Avoidance Agreements “DTAs”.

This includes the taxation of different types of the PEs as Fixed Place of Business, Agency PE, Service PE...etc.

The importance of this publication arises from the new ZATCA's views regarding the Virtual PE concept which was one of the very hot topics over the past few years as it has considerable impact on non-residents deriving service income from a source in Saudi Arabia.

We are providing a summary below of the recent developments in ZATCA's position regarding the Virtual PE , the anticipated impact on the non-residents deriving service income from a source in Saudi Arabia in addition to other important implications of ZATCA's publication.

In detail

Publication Summary:

The Kingdom of Saudi Arabia used to apply the concept of the Virtual PE based on the interpretation of the term “Furnishing Services” in the PE Article of most the DTAs as the interpretation of this term was that physical presence is not required to create a PE for the non-resident as long as the service is provided for a period or periods exceeding the PE threshold (I.e., mostly 183 days) within 12 months period, even this service is provided remotely or the non-resident's personnel were physically present in Saudi for short periods less than the PE threshold as per the DTA.

This interpretation created a challenge for the non-resident service providers who reside in a treaty country and want to claim the treaty benefit for their service income derived from a source in Saudi.

In line with the Vision 2030, ZATCA has reconsidered the interpretation of the term “Furnishing Services” and clarified the criteria which create PE for the non-residents service providers who are resident in country has a DTA with Saudi Arabia.

ZATCA has clearly stated that the Physical Presence of the service provider's personnel for a period or periods exceeding the PE threshold as per the DTA within any 12 month period is a must to create a PE for the non-resident.

This key development sets the boundaries for the non-resident service providers who would like to provide services to beneficiaries in Saudi Arabia and claim the treaty benefits.

Effective Date:

The Virtual PE concept has been originally introduced by ZATCA's circular No. 1/80/1436 dated 10/2/1436AH (corresponding to December 2, 2014).

As per the publication, the new updates regarding the Virtual PE concept will be applicable to the transactions made after the publication date of the updated version of the Circular on the ZATCA's website, which is yet to be published.

Key outcome:

Non-resident service providers who are residents in a treaty country can avail the treaty benefits under DTA conditions without being exposed to have a virtual PE as long as their personnel were not physically present in Saudi Arabia for a period or periods exceeding the PE threshold within 12 months period, provided that they fulfill the treaty application requirements.



ZATCA has introduced a new guidelines regarding the interpretation of the PE provisions as per the DTA which provides more clarity regarding one of the most hot topics over the past few years, this provides additional enhancement to the tax environment in Saudi to develop it even further in line with Vision 2030.



The takeaway

Non-resident service providers should assess the impact of this publication on their business in Saudi and how it may affect their overall tax burden.

If you wish to find out more about this and how this can impact your business, feel free to reach out to us for support.

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Let's talk

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

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