Contents

Introduction

- **About Saudi Arabia**

The Kingdom of Saudi Arabia was founded in 1932 by Ibn Saud (King Abdulaziz Al Saud the first king of Saudi Arabia). It is one of the top largest three oil producers in the world and is the only Arab country to be part of the G-20. Saudi Arabia is a desert country surrounding most of the Arabian Peninsula. The Kingdom is well-known as the birthplace of Islam and is home to the religion's two most sacred mosques: Masjid al-Haram, in Mecca, and Medina's Masjid an-Nabawi, the burial site of the prophet Muhammad.

Population: Approximately 34.8 Million

Religion: Islam

Currency: The Saudi Arabian Riyal (SAR).

The Riyal is pegged with U.S. dollar (USD)

$1 USD = 3.75 SR.

Language: The official language of SAUDI ARABIA is Arabic, although English is widely used in business circles. **Any correspondence with the Government bodies, however, should be in Arabic e.g. business agreements and contracts.**

Government: The King of Saudi Arabia {Custodian of the Two Holy Mosques} King Salman bin Abdulaziz Al Saud is both the Head of State and the Head of Government.

- **The Legal System**

- Islamic law Shari'a

Saudi Arabia is an Arab Islamic state and, pursuant to the Basic Law of Governance, the Holy Qur'an serves as the constitution of the country together with the Sunnah (the traditions of the Prophet Muhammad, PBUH). Together, these form the Islamic Shari'a which is the primary foundation of all Saudi Arabian laws.

- Governance

The king combines legislative, executive, and judicial functions and royal decrees form the basis of the country's legislation. The king is also the prime minister and presides over the Council of Ministers (Majlis al-Wuzara), which comprises the first and second deputy prime ministers (usually the first and second in line to the throne respectively) and there are 23 ministers with portfolio and seven ministers of state, two of whom have special responsibilities. All members of the council are appointed by royal decree. The king makes appointments to and dismissals from the Council, which is responsible for such executive and administrative matters as foreign and domestic policy, defense, finance, health, and education, administered through numerous separate agencies. There is also a 150-member Consultative Assembly, appointed by the King, which can propose legislation to the King but has no legislative powers itself, including no role in budget formation. The government budget itself is not fully disclosed to the public. "Fully 40%" is labeled `Other sectors` (including defense, security, intelligence, direct investment of the kingdom's revenues outside the country, and how much goes to directly to the royal family)

- Judiciary

The independence of the Judiciary is a principle enshrined in the Basic Law of Governance and the Law of the Judiciary.

The judicial system of the Kingdom of Saudi Arabia is comprised of a number of courts and adjudicatory bodies. These include the Shari'ah courts, the Board of Grievances and various specialized committees. The Shari'ah courts, generally, have jurisdiction over all civil claims, except for claims the jurisdiction for which has been reserved to one of the other adjudicatory bodies established in the Kingdom of Saudi Arabia (i.e. the Board of Grievances or another specialized committee). In particular, the Shari'ah courts generally have jurisdiction over all family law, real estate property matters and the majority of criminal matters. In addition to the Shari'ah courts and the Board of Grievances, specialized committees have been established under the authority of various Ministries and government agencies. The jurisdictions of these specialized committees are determined by their constitutive regulations. They include the Committee for the Settlement of Banking Disputes, the Negotiable Instruments Offices and the Committees for the Settlement of Labor Disputes. Such committees are independent of the Shari'ah courts and the Board of Grievances.

Contracts are Fully Enforceable:

The formation and enforceability of contracts is governed by and relies upon Shari'ah principles. The Shari'ah rules relating to contracts are not codified.

Under Shari'ah, contracts which are not expressly prohibited by the Holy Qur'an or the Sunnah are permitted as binding and valid. In practice, the parties are generally free to agree their commercial bargain except and to the extent that it contravenes Shari'ah principles as interpreted and applied in Saudi Arabia or any secular law. This is the basis on which, for example, obligations relating to the payment of interest (known as riba or more generally the payment of money on money) are generally not enforceable in Saudi Arabia. It is advisable that contracts be reviewed for compliance with Saudi law and Shari'ah before being entered into.

A Saudi court has considerable discretion to apply the basic Shari'ah precepts to a particular set of circumstances. Saudi courts generally regard themselves as competent, consistent with general Shari'ah principles, to determine each particular case before them as it considers necessary to achieve a fair result in all the circumstances of that case.

- **Incentives for foreign investors**

In order to ease the procedures for foreign entities setting up in SAUDI ARABIA, the Government established the Ministry of Investment ("MISA"). MISA was established to assist foreign investors in the approval process for operating in SAUDI ARABIA, obtain a license and labor visas and conduct other business affairs under one umbrella.

MISA offers a number of incentives in order to attract investors to the country among them are:

- 100% foreign ownership of property and companies in certain industries
- Lower minimum capital requirements (discussed below)
- No restriction on repatriation of capital
- The ability for foreign investors to sponsor foreign employees
- Tax incentives if the company is registered in certain "economic cities" located in the less developed provinces of SAUDI ARABIA.

The SAUDI ARABIA government is in the process of developing a number of economic cities in several areas around SAUDI ARABIA. Investments made in the below listed economic cities (located in underdeveloped areas of SAUDI ARABIA) may be able to benefit from certain tax incentives.

- Ha'il
- Jazan
- Najran
- Al-Baha
- Al-Jouf
- Northern territory

Among the incentives offered for certain qualifying companies include allowing tax deductibility for additional training and salary costs.

More deductions are granted if investment capital for any project exceeds SAR 1 million and if more than five employees of SAUDI ARABIA nationality have jobs of a technical or administrative nature with contracts of at least one year.

Furthermore, an exemption from customs duties is available on machinery and raw materials that are required for approved projects, provided that they are not available in the local market. Such exemptions should be applied for prior to their importation and are subject to certain terms.

- **Foreign Currency Control**

There are virtually no currency exchange restrictions in SAUDI ARABIA. Payments abroad may be made freely and there are no taxes or subsidies on purchases or sales of foreign currency. Officially, the SAR is pegged to the International Monetary Fund's Special Drawing Rights. Since 1981, however, the Saudi Arabian Monetary Authority has instead chosen to peg the SAR to the US dollar.

- **Legal and regulatory framework**

SAUDI ARABIA is an absolute monarchy and has no legally binding written constitution. However, in 1992, the Basic Law of SAUDI ARABIA was adopted by royal decree. The Basic Law outlines the responsibilities and processes of the governing institutions but is insufficiently specific to be considered a constitution.

This, and the lack of judicial precedent, has resulted in uncertainty in the scope and content of the country's laws. The government therefore announced its intention to codify Shari'a in 2010, but this is yet to be implemented. Shari'a has also been supplemented by regulations issued by royal decree covering modern issues such as intellectual property and corporate law. Nevertheless, Shari'a remains the primary source of law, especially in areas such as criminal, family, commercial and corporate law and the Qu'ran and the Sunnah are declared to be the country's constitution.

Royal decrees (nizam) are the other main source of law but are referred to as regulations rather than laws to indicate that they are subordinate to the Shari'a. Royal decrees supplement Shari'a in areas such as labour, commercial and corporate law. Additionally, other forms of regulations (lai'hah) include Royal Orders, Council of Ministers Resolutions, Ministerial Resolutions and, Ministerial Circulars, and are similarly subordinate to Shari'a. Any Western commercial laws or institutions are adapted and interpreted from the standpoint of Shari'a law.

Establishment of business

- **Introduction**

Deciding on a form of business presence in Saudi Arabia requires consideration of many factors. For foreign (that is to say, non-GCC) businesses, obtaining a foreign investment license is a necessary pre-condition. Other considerations, including type of business to be conducted, sector/industry and taxation/zakat will also factor in the investment decision about the most appropriate type of presence.

The formation and operation of entities is regulated by the Companies Law (1437H/2015G) was published by the Ministry of Commerce and Industry (MOCI) on 9 November 2015, published in the Saudi Gazette (Um Al-Qura) on 4 December 2015, and into effect on 2 May 2016. The new Companies Law completely replaces the old Companies Law.

To establish any type of entity structure, foreign investors are required to obtain an Investment License from MISA under the Foreign Investment Regulations. For certain forms of business, foreign investors may need to obtain a pre-approval from the concerned Ministry before receiving the MISA license.

- **Foreign Investment Licenses**

The Foreign Investment Law, originally issued in 2000 and supplemented since then through regulation, is the centerpiece of the Saudi government's foreign investment regulatory regime.

Generally speaking, foreign businesses wishing to establish commercial operations in Saudi Arabia must obtain a foreign investment license from the Ministry of Investment, generally referred to as "MISA". There are exceptions, for example, professional companies.

Serious penalties (which may include criminal penalties as well as heavy fines) can result if activities are undertaken in contravention of the Foreign Investment Law and even more so if the business activity involved "fronting arrangements" in breach of Saudi Arabia's Anti-Concealment Law. Breaches will also put in peril future investment in Saudi Arabia.

- **Commercial Agency arrangements:**

In general, SAUDI ARABIA Companies Law generally allows for eight forms of business entity structures which are as follows:

a) General Partnership.
b) Limited Partnership.
c) Joint Venture.
d) Stock Corporation (Joint Stock Company).
e) Limited Liability Company.

Foreign investors can operate in SAUDI ARABIA through the following structures:

1. Joint stock companies
2. Limited liability companies and Limited liability companies (one person)
3. Foreign office branch
4. Technical and scientific offices (Representative Offices)
5. Temporary Commercial Registration (TCR)

The most common forms for the foreign investors are the limited liability companies (LLC) and foreign office branch while other forms are less common. Foreign investors may also operate through representative offices and agencies.

The ability for foreign investors to undertake business activities in SAUDI ARABIA are limited in the absence of a formal presence in SAUDI ARABIA. More importantly, in the absence of a formal presence, such activities may potentially be in violation of the so-called “Anti-Fronting” Law, unless local agents or distributors are appointed.

Non-SAUDI producers of goods are allowed to appoint local SAUDI agents as their representatives to sell their products and/or services in SAUDI ARABIA. (Whether they act as distributors, sales agencies, or otherwise, the Saudi Arabian commercial agencies law governs the arrangement).

The law requires a direct relationship between the business agent or distributor of products and the originator company abroad. Non-Saudis are prohibited from engaging in import and export businesses and commercial agencies in SAUDI ARABIA.

Further, the Saudi individuals and companies are not allowed to work as commercial agents unless they are registered in the registry designed for this purpose at Ministry of Commerce and Industry (MOCI) and they should apply for the registration during the first three months as from the date of implementation of the agreement. Any agency contract should generally follow the standard format approved by the MOCI, however this is not mandatory.

Joint Stock Company (“JSC”)

A shareholding company is a company whose capital is divided into shares of equal value and tradable. Each joint stock company shall have a name indicating its purpose. The share capital of the company shall be sufficient to achieve its purpose. A board of directors shall manage the joint stock company. The company's structure shall determine the number of its members, but not less than three and not more than eleven.

Limited Liability Company (“LLC”)

Limited Liability Company is a company with no more than 50 partners. The Limited Liability Company shall have a name derived from its purpose or originator. If one person owns the company, the name must include a limited liability company owned by one person. All partners shall sign the Articles of Association of the Limited Liability Company. The contract shall include, in particular, the statements of ownership, capital, management, powers and others. The Limited Liability Company shall appoint one or more auditors.

Limited Liability One-person Company

One person establishes a limited liability company, and all its shares owned to one person. The responsibility of such person shall be limited to the allocation of capital to be the capital of the company. Such person shall have the powers of the director and the board of directors of the company and the general assembly of the partners. He may appoint one or more directors to be represented with the courts, arbitral tribunals and third parties, and shall be responsible for managing. In any case, a natural person may not establish or own more than one limited liability company, and a limited liability company owned by one person (natural or corporate) may not establish or own another limited liability company from a one person.

Foreign office branch

Foreign Company Branch is the Companies operating in the Kingdom through a branch, office, agency or any other form. It is an entity based in the Kingdom to

practice their activity and business inside the kingdom and or to represent, direct, or coordinate work carried out outside the Kingdom. Each branch of a foreign company must print in Arabic language in all its papers, documents and publications in the Kingdom, in addition, the full name of the company, address, head office and the name of the agent.

The branch of the foreign company within the Kingdom is a homebased for its activities in the Kingdom and all applicable regulations apply to it.

Technical and Scientific Office ("TSSO" or "Rep Office")

A TSSO may be used where there is a registered commercial agency distribution agreement between a foreign manufacturing entity and a registered Saudi distributor dealing with the local market.

A TSSO: can generally only be used in relation to complex products can assist the registered distributor in SAUDI ARABIA with marketing and customer relations;

- must not market or sell products or generate any revenue;
- does not require any capitalization;
- requires the existence of a current distribution agreement registered with the Commercial Agencies Department of the Ministry of Commerce and Industry.

The main advantages of a TSSO are as follows:

- The formation process is simpler than a company and similar to that of a branch
- a TSSO may conduct market studies for the company's business activities and prepare reports arising from those studies to the parent entity
- there are no capital requirements

The main disadvantages of a TSSO are as follows:

- not all products are sufficiently complex to require a TSSO
- the applicant for a TSSO must be the actual manufacturer of the product, not a downstream supplier
- as there is no separate legal identity, the parent cannot quarantine liability in SAUDI ARABIA and may be exposed in its place of incorporation
- as it does not have licensed objects like a branch, a TSSO cannot perform services outside of local technical support for the registered local distributor
- a TSSO is limited in terms of the number of employees with the number set by Saudi authorities;
- a TSSO must provide MISA with an annual report of its activities
- a TSSO must have a registered Saudi distributor.

It should be noted that the TSSO structure is not commonly used in SAUDI ARABIA, mainly due to the disadvantages listed above and in particular because a TSSO

- must be established by the actual manufacturer
- cannot market or promote products and must only support the local distributor
- must provide technical and scientific services to the SAUDI ARABIA distributor and consumers of complex products
- must conduct a market study for the company's business activity and prepare reports on such study for the headquarters
- must provide MISA with an annual report of its activity.

Temporary Commercial Registration (TCR)

Temporary Commercial Registration is not strictly a branch office and is only relevant to servicing a SAUDI ARABIA government contract or semi-government company. The foreign investment license is generally issued more quickly than for a conventional branch office (although a copy of the signed government contract will be required).

The main advantages of a TCR are that a TCR:

- can be obtained for consulting projects
- may sometimes be converted to a permanent commercial registration
- may be able to be converted from temporary status to a regular commercial registration at a later stage
- is generally easy to liquidate

The main disadvantages of a TCR are that a TCR:

- can only be issued to a foreign investor after it has been awarded a government contract
- may not be suitable for subcontractors on government projects
- is limited to the scope and duration of the contract (extensions to commercial registration may be applied for with the support of the government party)
- cannot have the purpose of:
    - promoting or marketing business
    - monitoring or surveying market conditions
    - providing other business opportunities

- **Minimum Capital Requirements**

It is worth noting that the Foreign Investment Law permits foreign investors to operate in all economic sectors except for the activities in the negative list (discussed later).

The minimum capital required by foreign investors investing in the industrial sector is SAR 1,000,000 for all entity types, except for the technical and scientific office where no minimum capital is required.

For the services sector, the minimum capital requirement is SAR 500,000. In the case of limited liability companies which operate in trading sector, the minimum capital is

SAR 20,000,000 and requires a SAUDI ARABIA local partner(s) to hold at least 25% of the company's shares (i.e. maximum foreign ownership in a Trading company is limited to 75%).

No	License Type	Minimum Acceptable Capital (SR)	Minimum Saudi Participation (%)
1	Commercial with Saudi Partner	26,666,667 Foreign capital shareholding not less than twenty million (SR 20,000,000) and partnership not more than % 75.	% 25
2	Commercial % 100 Foreign	30,000,000	-
3	Communications	--	% 70
4	Communications Value Added	--	% 30
5	Insurance	--	% 40
6	Reinsurance	--	% 40
7	Property Financing	--	% 40
8	Property Investment	The value of each project is not less than30,000,000 (covering land and construction); the land and building will be outside the perimeter of the two Holy Mosques	--
9	Management of Construction projects, detailed engineering design and EPC contracts	--	% 25
10	Public transport (bus transportation within cities)	500,000	% 30
11	Public transport (metro transportation within cities)	500,000	% 20
12	Joint Stock Company.	500,000	--

- **Registration Procedures for Limited Liability Companies**

To incorporate a 100% foreign owned LLC in SAUDI ARABIA, an investment license and a commercial registration ("CR") should be obtained from MISA and MOCI, respectively.

Documentation requirements from MISA are as follows:

- Completed online Investment License Application Form.
- The Company board resolution stating their desire to invest in SAUDI ARABIA enclosing the partners' names, capital, each partner's contribution percentage, activity and general manager appointment. Such a resolution should be attested by the concerned authorities and SAUDI ARABIA Embassy in the foreign investor's country.
- Proof of track record or experience in the industry the company wishes to engage in (e.g. audited financial statements of the foreign investor for the last financial year attested by the SAUDI ARABIA embassy in the foreign country).
- Copies of the participating companies' CRs attested by the concerned authorities and SAUDI ARABIA Embassy in the foreign investor's country.
- A copy of the enterprise articles of incorporation attested by the concerned authorities and SAUDI ARABIA Embassy in the foreign investor's country.
- Copy of the passport of the general manager.
- Where the activity requires the approval of the concerned authority including financial services, insurance, information, tourism, health or education, the applicant shall provide the approval of the concerned ministry.
- A copy of trade name booking in case the company desires to obtain trade name.
- Authorization to the applicant approved to finalize all the procedures. This authorization shall be attested by the Saudi embassy or by the investor in the case where it enters SAUDI ARABIA conforming to commercial visa.

- **MISA New Requirements and incentives**

On 24 October 2014, MISA started implementing a new program which measures the impact of foreign investments to SAUDI ARABIA economy.

The firms which demonstrate the following may be granted special incentives and privileges to help promote and motivate excellence and sustainability.

- Transfer and localization of technological know-how.
- Diversification of SAUDI ARABIA's economy.
- Increasing of exports and decreasing of imports.
- Developing SAUDI ARABIA's human resources.
- Reinforcing economic competitiveness and its products in both the domestic and foreign markets.
- Balanced development among the different regions of SAUDI ARABIA.

According to this program, firms will be divided into the following categories: Strategic; Distinctive; Advanced; Limited; Innovative and Promising, and Contracting. The categories are based on specific objective quantitative and qualitative indicators. Further details on each of the categories are shown below:

Strategic

Firms committed to deepening the value chain across targeted sectors, such as: transportation, healthcare, education and technology that are bringing in associated investments.

Distinctive

Firms employing at least 10 SAUDI ARABIA nationals, with monthly wages of a minimum SR10,000 each, and are within the "platinum" category prescribed by the Ministry of Labour; firms with a labour force that exceeds 100 employees and a Saudization rate of over 50%; and finally, the top 10 firms in different sector based on their capital.

Advanced

Publicly listed companies or international consulting firms with no less than 25 employees, in which the Saudization range is within the "platinum" category; contracting companies with more than 300 employees with monthly average wages of not less than SR5,000 per employee, and in the "green" category prescribed by the Ministry of Labor.

Limited

Contracting companies with less than 300 employees with monthly average wages less than SR5,000 per employee; individual establishments, firms working in the restaurant industry, and technology companies that are not internationally classified and industrial workshops.

Innovative and Promising

Innovative firms which have registered patents.

Non-Classified Contracting Entities

Contracting companies without classification, will be granted a temporary license to help them establish a sustainable foundation and obtain categorization from MOMRA, the Ministry of Municipal and Rural Affairs.

- **Businesses prohibited for foreign investments**

Industrial Sector

1. Oil exploration, drilling and production. Except the services related to mining sector listed at (CPC 5115+883) in International Industrial classification codes.

2. Manufacturing of military equipment, devices and uniforms.

Service Sector

1. Catering to military sectors.

2. Security and detective services.

3. Real estate investment in Makkah and Medina.

4. Tourist orientation and guidance services related to Hajj and Umrah.

5. Recruitment and employment services including local recruitment offices.

6. Real estate brokerage.

7. Printing and publishing. Except the following activities:

- Pre-printing services internationally classified at (CPC 88442)
- Printing Presses internationally classified at (CPC 88442)
- Drawing and calligraphy internationally classified at (CPC 87501)
- Photography internationally classified at (CPC 875)
- Radio and Television Broadcasting Studios internationally classified at (CPC 96114)
- Foreign Media Offices and Correspondents internationally classified at (CPC 962)
- Promotion and Advertising internationally classified at (CPC 871)
- Public Relations internationally classified at (CPC 86506)
- Publication internationally classified at (CPC 88442)
- Press Services internationally classified at (CPC 88442)
- Production, selling and renting of computer software internationally classified at (CPC 88)
- Media consultancies and studies internationally classified at (CPC 853)
- Typing and copying internationally classified at (CPC 87505 + 87904).
- Motion picture and video tape distribution services internationally classified at (CPC 96113).

8. Commission agents internationally classified at (CPC 621).

9. Audiovisual and media services.

10. Land transportation services, excluding the intra-city passenger transport by trains

11. Services provided by midwives, nurses, physical therapy services and quasi-doctoral services internationally classified at (CPC 93191).

12. Fisheries.

13. Poison Centers, Blood Banks and Quarantine

Incorporation process

Registration of a company in Saudi Arabia follows this stage process:

1. Prepare the documents including legalization by the Saudi consulate. This takes 2 weeks.

2. Submit an application to the Ministry of Investment (MISA) and obtain an investment license. This takes 3 to 4 weeks and costs SR 20,000.

First step: Deciding the business structure that will be used of company registration in Saudi Arabia, foreign company registration-formation, at the beginning a company name should be approved if said name is vacant;

Next steps of company formation in Saudi Arabia: collecting and preparing the required documents:

- Shareholders resolutions for establishing an entity in Saudi Arabia
- Certificate of registration of the parent company
- and financial statement of the last financial year for the parent company prove the financial capacity.

3. Obtain approval from the Companies Department at the Ministry of Commerce and Industry after submitting the Articles of Association and the company name if it is required for your activity. This takes 5 days.
4. Sign the Articles of Association in front of a notary public. This takes 2 days.
5. Publication of the company name and a summary of the Articles of Association in the official gazette. This takes 2 days and approximately SR 5,500.
6. Open a bank account, transfer the share capital and obtain a certificate stating that the capital has been deposited - a process which takes 2 weeks.
7. Register with the General Department of Passports, Ministry of Interior and the Ministry of Labor and obtain a work visa for the company manager. This takes 2 weeks.
8. Company manager getting his visa stamped at the Saudi consulate and obtaining his work permit and residence permit upon arrival in Saudi Arabia a process that takes 2 weeks.
9. Registrations with the Commercial Registry at the Ministry of Commerce and Industry and the Chamber of Commerce. This takes 2 days and costs 8,100 SR.
10. Obtain a file number and certificate of business commencement by registering with the Zakat, Tax and Customs Authority (ZATCA), Ministry of Finance. This takes one day.
11. Register with the General Organization of Social Insurance “GOSI”. This takes one day.

- **Fast Track registration**

MISA has also recently introduced the "Fast Track" process for a certain category of foreign investors that intend to establish business and presence in SAUDI ARABIA. MISA has stated that as part of the fast track process, the foreign investor should be able to obtain the required investment license from MISA within five business days from the date of application.

In order to qualify for the Fast Track process, the parameters considered by MISA include:

- A multinational company;
- A publicly listed company whose shares are traded on an internationally recognized stock exchange;
- A company that manufactures products that are certified by independent international agencies, and employ authorized or licensed process technology;
- Small and medium size enterprises which are classified as innovative enterprises;
- A company proposing to establish regional centers in Saudi Arabia;
- A construction company classified 'first class' in its country, or which has implemented a project with a value of not less than SR 500,000,000 and have manpower of not less than 2,000 employees and total assets of not less than SR 50 million.

The aim of MISA's Fast Track Service is to facilitate foreign direct investment into target sectors in the Saudi economy, namely: information technology and communications; downstream petrochemical and mining; industrial manufacturing; healthcare and life science; transportation and infrastructure; human capital development; and energy and petrochemicals.

Key considerations

- **Taxation**

    - **Tax Overview**

There are two main types of direct taxes in SAUDI ARABIA, Zakat which is based on Islamic concepts, and income tax. Zakat is applicable to the ownership in a SAUDI

ARABIA company by nationals of SAUDI ARABIA or other GCC countries (United Arab Emirates, Oman, Qatar, Kuwait, and Bahrain). Zakat is assessed at 2.5% compared to a higher amount for income tax.

Zakat is applicable on the SAUDI ARABIA/GCC ownership of the higher of net income or net wealth in a SAUDI ARABIA company. Whereas income tax is applicable on the non-GCC ownership of a SAUDI ARABIA company's net income.

The government authority which administers and collects zakat and tax liabilities is the Zakat, Tax and Customs Authority (ZATCA) which is a department within the Saudi Ministry of Finance.

It is worth noting the SAUDI ARABIA tax law was completely re-written, as of 30 July 2004, for all taxpayers whose financial year starts after this effective date. The withholding tax regulations took effect as of 30 July 2004, irrespective of when the financial year started for the taxpayer.

Persons subject to tax in SAUDI ARABIA are as follows:

- A resident capital company to the extent of its non-SAUDI ARABIA shareholding.
- A resident non-SAUDI ARABIA natural person who conducts business activities in SAUDI ARABIA.
- A non-resident person who carries out activities in SAUDI ARABIA through a permanent establishment ("PE").
- A non-resident person who has other income subject to tax from sources within SAUDI ARABIA.
- A person engaged in natural gas investment fields.
- A person engaged in oil and another hydrocarbon production.

Only non-SAUDI ARABIA investors (and SAUDI ARABIA branches of any foreign company) are liable for income tax in SAUDI ARABIA. In most cases, SAUDI ARABIA and GCC nationals, who are considered to be Saudi citizens for SAUDI ARABIA tax purposes, are liable for Zakat. Where a company is owned by both SAUDI ARABIA and non-SAUDI ARABIA investors, the portion of taxable income attributable to the non-SAUDI ARABIA interest is subject to income tax, and the SAUDI ARABIA share goes into the basis on which Zakat is assessed.

Value Added Tax: In line with the other GCC countries, in April 2017, Saudi Arabia approved the introduction in 2018 of value added tax at 5%.

Tax rates and fiscal years

The income tax rate on taxable net income allocated to foreign shareholders is generally a flat rate of 20%. The corporate income tax rate would differ for companies involved in the oil and natural gas business, these rates are as follows:

• 30% for companies engaged in natural gas investment (where the rate of internal return exceeds 8%, graduated tax rates up to 85% will be applied).

• 85% for those engaged in oil and hydrocarbon production.

The taxable year of a taxpayer for all activities is the state's fiscal year (being the Hijri year which is based on the lunar calendar).

- A taxpayer's fiscal year shall start as of the date of its commercial registration or license unless evidences prove otherwise.
- A taxpayer may use a different fiscal year under the following conditions:
- The taxpayer has been using a different fiscal year approved by the ZATCA prior to enacting of the Law.
- The taxpayer is using a Gregorian fiscal year.
- A company is a member in a group of companies or is a subsidiary of a foreign company using a different fiscal year.

The companies law is allowing the first financial year to be from 6 months to 18 months, However the online tax portal is designed to split the first tax year if it is more than 12 months into two tax years, as the first tax year will be the short one.

Tax Administration

Tax Return Filing:

Tax filings are based on the company's fiscal-year. Returns are due to be filed with the Zakat, Tax and Customs Authority (ZATCA) and tax due must be paid within 120 days after the taxpayer's year end. The system is one of self-assessment.

Applicable tax penalties

Item	Penalty as per Tax Law
Non-registration	From SR 1,000 to SR 10,000
Failure to file the tax return	From 5% to 25% of the unpaid tax, However the system is calculating SR 20,000 at minimum
Delay payment	1% of the unpaid tax for each 30 days of delay
Evasion	25% of the unpaid tax

Advance tax payments

Advance tax payments are required to be made for a current tax year under the following conditions:

- The taxpayer has earned income during the year.
- An advance payment is 25% of the amount resulting from the taxpayer's tax liability based on the previous year's return.
- The computed payment is at least SAR 500,000.
- Three equal advance payments of tax on the last day of the sixth, ninth and twelfth months of the tax year.
- Late payment of an advance payment is subject to a delay penalty of 1% of the amount due for every 30 days of delay

Tax calculation

To determine the taxable income for any business, the net income (book income) should be adjusted by adding disallowable expenses and deducting allowable expenses. Disallowable expenses include, but are not limited to, salaries paid to owners, partners or shareholders; social security contributions paid abroad, all kinds of provisions (e.g. end of service, provision for bad debt, etc.), fines and penalties, board of directors' fees, entertainment and corporate tax and withholding tax.

Disallowable amounts also include depreciation in excess of the ZATCA allowable amount.

Allowable expenses which could be deducted from the net book income include the utilized provisions, exempted income (capital gain realized from disposal of securities traded in Stock Market in SAUDI ARABIA) under certain conditions and depreciation differences.

If a tax payer realizes losses in a year of operation, he may carry forward these losses to the following years until the cumulative loss is fully offset. The tax loss utilization is limited to 25% of the year's taxable profits as reported in the taxpayer's return.

There is currently no concept of taxation on a consolidated basis, or group relief, for related companies in SAUDI ARABIA, other than for wholly owned subsidiaries of SAUDI ARABIA/Gulf Cooperation Council owned companies that are subject to Zakat only. However, an entity operating in SAUDI ARABIA that has undertaken more than one project under the same commercial registration is required to consolidate the results of such projects into the financial statements of that entity and subject them to taxation as a single operation.

- **Withholding tax**

Service payments made from a resident party or a permanent establishment ("PE") of a non-resident party to a non-resident are subject to withholding taxes ("WHT").

The rates vary between 5% (e.g. dividend, interest, etc.), 15% (Royalty, related party payments, etc.) and 20% (e.g. management fees) based on the type of service and whether the beneficiary is a related party. The applicable WHT rate may be reduced where a relevant double tax treaty is in force.

The withholding tax should be paid within the first 10 days of the month following the month during which the payment was made.

- **Capital gains tax**

Capital gains realized by a non-resident investor from the sale of shares in a SAUDI ARABIA resident company will be subject to capital gains tax in SAUDI ARABIA at the rate of 20%. This rate can be reduced or completely relieved under certain double tax treaties.

- **Transfer pricing**

The SAUDI ARABIA tax law does not have detailed transfer pricing regulations; however, it does explicitly state that transactions between related parties should be conducted based upon the arm's-length principle. The ZATCA has been drafting guidelines on the application of the transfer pricing rules. Taxpayers should expect more scrutiny of their pricing with related parties in the future.

The tax law provides the ZATCA with the power to re-allocate revenues and expenses in transactions between related parties to reflect the returns that would have resulted if the parties were independent or unrelated.

- **Custom duties**

SAUDI ARABIA is part of the GCC Customs Union, which was established in 2003 to remove customs and trade barriers among the GCC member states. The implementation of the GCC Customs Union is still in progress.

The GCC member states apply a Common Customs Law and a Unified Customs Tariff with a standard customs duty rate of 5% of goods' Cost, Insurance and Freight value. However, there are certain items that are subject to a 12% duty rate, and certain commodities which are produced locally are subject to custom duties at 20%, in order to protect local production.

SAUDI ARABIA law prohibits importation of the following products: weapons, alcohol, narcotics, pork, pornographic materials, distillery equipment, and certain sculptures.

The GCC Customs Law does not levy export customs duties.

SAUDI ARABIA grants duty free imports to most national goods originating in other GCC member states, and member countries of the Greater Arab Free Trade Agreement ("GAFTA"), if certain conditions are met.

The GCC Customs Law sets out the general legal framework for customs regulations and procedures; however, the practical application of the Law is subject to the interpretation of the local customs authorities in the GCC member states. This has sometimes led to discrepancies and contradicting practices among the member states which eventually affected businesses.

The Saudi Standards, Metrology and Quality Organization (SASO) has implemented a Conformity Assessment Program (CAP) covering goods destined for SAUDI ARABIA. CAP requires quality checks and inspections on companies looking to export to SAUDI ARABIA. Proof should be provided in the form of a Certificate of Conformity. MOCI provides details of import procedures.

- **Municipal or property tax**

Currently, there are no municipal or property taxes levied in SAUDI ARABIA. However, the SAUDI ARABIA tax authority recently introduced a new legislation imposing certain Zakat charges on SAUDI ARABIA nationals owning land property that is not used (so called “white land”). It should be noted that the application of this new regime is not yet clear in practice.

- **Stamp taxes**

Currently, there are no separate stamp taxes levied in SAUDI ARABIA.

- **Personal income tax**

There are no personal income tax regulations in SAUDI ARABIA. However, social security contributions apply. Social insurance tax is paid monthly based on the monthly basic salary plus housing with an upper limit of SAR 45,000 and is computed at 2% for non-SAUDI ARABIA employees and paid by the employer. For SAUDI ARABIA employees, the rate is 21.5% and is paid by both the employees (9.75%) and the employer (11.75%).

- **Indirect Tax - VAT**

SAUDI ARABIA have applied indirect tax (VAT) since January 2018 for rate of 5% till end of June 2020, then Starting from July 2020 the rate is 15%.

ZATCA noted that according to the GCC Unified VAT Agreement, any business whose annual revenue exceeds SAR 375,000 is required to register for VAT, while businesses whose annual revenue is between SAR 187,500 and SAR 375,000 may register voluntarily in order to claim VAT input tax. Businesses whose revenues fall below SAR 187,500 are exempted from registration.

Those whose annual revenue falls under SAR 1,000,000 will be allowed until December 20, 2018 to register, while those whose revenue exceeds SAR 1,000,000 are required to register before December 20, 2017.

All VAT-eligible businesses must take action to issue tax invoices that comply with Article 53 of the VAT Implementing Regulations. Tax invoices are required to include the legal name and address of supplier and customer, invoice issue date, unique invoice serial number, tax identification number of the supplier and customer, and the date on which the supply took place.

Businesses also required to submit VAT returns to ZATCA electronically no later than the last day of the month following the end of each tax period, with a monthly frequency for businesses whose annual revenue exceeds SAR 40,000,000 and quarterly for businesses whose annual revenue falls below SAR 40,000,000.

Key considerations:

Foreign investors are subject to corporate income tax at the rate of 20% on their share of the net income of a Saudi company. SAUDI ARABIA or GCC investor's share is subject to Zakat at the rate of 2.5%.

Non-resident foreign investors providing services to resident SAUDI ARABIA companies are subject to WHT at rates of either 5%, 15%, or 20%. Reduction of the WHT rate or total relief can be achieved under the provisions of certain double tax treaties.

A non-resident shareholder selling shares in a private SAUDI ARABIA resident company will generally be subject to tax at the rate of 20% on the capital gains realized from the sale of shares. Noting that capital gains realized from sale of securities listed on the Saudi Stock Exchange (Tadawul) should be exempt from tax.

Audit requirements

Companies are required to have annual independent audits. Joint stock companies and limited liability partnerships must appoint at least one independent auditor, and banks are required to have two independent joint auditors. Other companies, however, such as partnerships are not required to do so which will have an impact from Zakat/tax prospective. The appointed auditor must be a certified public accountant member of the Saudi Organization for Certified Public Accountants "SOCPA" and licensed within SAUDI ARABIA from MOCI. Such licenses are only given to Saudi nationals.

Accounts must be prepared in accordance with International Financial Reporting Standards (IFRSs) as endorsed in Kingdom of Saudi Arabia, in the Arabic language and denominated in the Saudi Riyals.

- **Accounting books and records**

MOCI requires that all companies and establishments should keep the following books of account locally in Arabic in SAUDI ARABIA:

• Daily Journal.

• General ledger.

• Inventory book- this is a comprehensive trial balance of

all assets, liabilities and results of the year, which should be comparable to a detailed balance sheet and income statement.

These requirements were enforced by Royal Decree in July 1989. Tax payers must maintain Arabic accounting records within SAUDI ARABIA.

Computerized accounting systems are allowed, provided that they comply with the requirements of the MOCI and that Arabic printouts of the accounts are generated on a regular basis.

There are also tax implications if no Arabic books are properly maintained. The Ministry of Finance controls the enforcement of these requirements by having the ZATCA report to the MOCI those cases where companies do not comply with Arabization rules.

- **Accounting standards**

Companies registered in SAUDI ARABIA are required to comply with International Financial Reporting Standards (IFRSs) as endorsed in Kingdom of Saudi Arabia.

The regulations require that financial statements should include auditor's report, balance sheet, statements of income, cash flows and changes in the shareholder's equity and notes to the financial statements.

Auditors are required to be licensed by SOCPA in SAUDI ARABIA, which functions under the auspices of the MOCI. It has been vested with the responsibility of monitoring and guiding the auditing profession, issuing auditing standards and accounting principles and enforcing the rules and regulations relating to the licensing of auditors and reporting violations.

- **Filing with MISA**

All publicly-held and limited liability companies are required, on an annual basis, to file copies of the board of directors' report and audited financial statements with the MOCI within six months after their financial year-end. In addition, manufacturing entities are required to file a performance report including financial and operational ratios.

Only open joint stock companies (available for public) accounts are disclosed. Other companies accounts are only disclosed for authorities and other concerned parties.

There are no filing fees required by the authorities. Appointed CPA or lawyers, however, will have their own professional fees to assist with the filing process.

Additional legal considerations

- **Human Resources and Employment Law**

All labour and work affairs in SAUDI ARABIA are regulated by the Work and Workmen Regulations ("Labour law") which was issued by a Royal Decree in 2005.

Contract requirements

Work contracts should be in two copies, one for the employer and the other for the employee. It should state the employer's name, address and location, employee's name, nationality, ID number, agreed salary, nature and place of work.

In case of hiring a non-Saudi employee, the employee's contract should be in writing specifying the work duration. According to the labour law and regulations, the employer will be liable to pay the fees of immigration, residence visa (iqama), work permit together with their renewal and any fines resulting from their delay, re-entry visas and the final departure tickets.

Minimum wage and working hours

There is no minimum wage standard in the SAUDI ARABIA Labour Law. The Labour Regulations state that an employee may not actually work for:

• More than eight hours a day if the employer uses the daily work criterion; or

• More than forty-eight hours a week if he uses the weekly criterion.

It is important to note that during the month of Ramadan, the actual working hours for Muslims shall be reduced to a maximum of six hours a day or thirty-six hours a week.

Wage protection system

The Saudi Ministry of Labour has recently issued a new “Wage Protection System” (WPS) whereby the Qualified Employers (who meet the number of employee criteria) are mandated to transfer the salaries of their employees through Saudi banks.

- **Immigration and visas**

To travel to SAUDI ARABIA, a valid visa should be obtained by all except:

• Nationals of Bahrain, Kuwait, Oman, Qatar and United Arab Emirates.

• Transit passengers continuing their journey by the same or first connecting aircraft within 18 hours, provided they hold valid onward or return documentation, do not leave the airport and make no further landings in SAUDI ARABIA (except nationals of Burkina Faso, Mali, Niger and Nigeria who always require a transit visa).

• Holders of re-entry permits and ‘Landing Permits’ issued by the SAUDI ARABIA Ministry of Foreign Affairs.

Business visit visas are generally used for consultants and other personnel who are required to be in SAUDI ARABIA for short-term visits, etc. The person entering on a Visit visa is not eligible to employment and salary in SAUDI ARABIA; however, such persons often work in SAUDI ARABIA on short-term basis. Usually, they are single entry & exit visas, but in some cases also multiple entry and exit visas can be issued.

Such visas are issued for a duration ranging from fourteen days to six months.

A business visit visa can be applied for by providing the following:

• Application form to Consulate (or Consular section at Embassy).

• Letter of invitation from SAUDI ARABIA host company endorsed by a SAUDI ARABIA Chamber of Commerce (original and copy).

• Letter from company or organization in own country.

Obtaining work visas for expatriates can be a burdensome process and should be considered early in any business planning.

- **Unions**

Workers unions and collective bargaining are currently prohibited in SAUDI ARABIA.

- **Termination of employment**

Pursuant to the SAUDI ARABIA Labour Law, any employment contract shall be terminated in the following cases:

- If both parties agree to terminate it, provided that the employee's consent be in writing.
- If the term specified in the contract expires, unless the contract has been explicitly renewed in accordance with the provisions of this Law in which case it shall remain in force until the expiry of its term.
- At the discretion of either party in indefinite term contracts.
- The employee attains the age of retirement, which is sixty years for males and fifty-five years for females, unless the two parties agree on continuing employment after this age. The retirement age may be reduced in cases of early retirement as provided for in the Employer's organizational regulations. If it is a fixed-term employment contract which extends beyond the retirement age, it shall terminate at the end of its term.
- Force majeure.

- **Anti-dumping regulations**

If a product is sold on an export market for a price that is lower than the price charged in the seller's domestic market, the seller risks an accusation of "dumping". This is regarded as an unfair trade practice.

If a person is suspected of dumping, that person may be investigated by the Anti-Dumping Committee and will be subject to anti-dumping duties.

- **Competition rules**

In order to control the competition environment in SAUDI ARABIA, a Royal Decree was issued in 2004 to approve and launch the Competition Law.

The Competition Law aims to protect and encourage the fair competition in the SAUDI ARABIA markets. It also prevents the monopoly and merger and acquisition transactions that

affect the markets.

Breaking the competition law may lead to pay a fine of maximum SAR 5 million.

- **Anti-bribery & corruption**

Anti-Bribery and Corruption (‘ABC’) is actively enforced through legislation and other initiatives in SAUDI ARABIA. Examples of SAUDI ARABIA’s commitment to international best practice include signing up to the UN Convention Against Corruption (UNCAC) and creating an anti-corruption commission (the National Anti-Corruption Commission or ‘Nazaha’) to combat administrative and financial corruption. The SAUDI ARABIA Anti-Money Laundering Law requires companies to implement internal controls, systems and policies. Records must be kept for 10 years.

- **Trade facilitation**

There are certain levies and/or taxes on imports to promote the purchase of Saudi equivalents, but SAUDI ARABIA has joined several World Trade Organization free trade agreements and is a member of the GCC Customs Union.

- **The Saudi Court system**

The current Saudi court system is composed of a Supreme Judicial Council, Courts of Appeals, and First-Instance Courts (General Courts and Summary Courts). Saudi Arabia also has an administrative judicial body known as the Board of Grievances which stands alongside the Courts System and is affiliated directly with the King. The board judicial function is carried out through Board of Appeal Circuits, Circuits of Appeals, and First-Instance Circuits. Each of these judicial bodies has jurisdiction over cases brought before it in accordance with the law. In addition, the Saudi legal system has several administrative committees that adjudicate civil, commercial, administrative and criminal cases. The judicial jurisdiction of each committee is always determined by the decree which constituted it.

On October 1, 2007, King Abdullah issued Royal Decrees approving an overhaul of Saudi Arabia's judicial system. The new Law of the Judiciary establishes a High Court which will take over the functions of the Supreme Judiciary Council as the highest judicial authority in the Kingdom. The new regulation will abolish the existing Courts of Appeals and will establish new Courts of Appeals in the Kingdom's provinces which will exercise their jurisdiction through Labor, Commercial, Criminal Circuits, Personal Status, and Civil Circuits. Moreover, First-Degree Courts will be established in areas, regions and centers, according to the needs of the system, and will exercise their jurisdiction through specialized Criminal, Commercial, Labor, Personal Status, and General Courts. Some of these courts will oversee disputes that had previously been addressed by special administrative committees.

The new Board of Grievances Law organizes the Board in the following order: seniority is held by the High Administrative Court, followed by the Administrative Courts of Appeals and, lastly, the Administrative Courts. The High Administrative Court will be established to look into cases objecting to the rules issued by Administrative Appeal Courts. There will be Administrative Courts to look into cases related to the rights of employees, administrative decisions, compensations, contracts, disciplinary actions and requests for the implementation of foreign rules. King Abdullah also approved a functional approach to both new laws which seeks to ensure a successful transition between the old and new systems.

- **E-Government and Research Links**

The government of Saudi Arabia places great importance on the concept of eGovernment and the transformative process that its implementation entails. The Saudi Government firmly believes in the enormous benefits the eGovernment project will have on the national economy.

Accordingly, Supreme Royal Decree number 7/B/33181, dated 10/7/1424 (7/9/2003), included a directive to the Ministry of Communications and Information Technology to formulate a plan for offering government services and transactions electronically.

Transformation to an information society can achieve with comprehensive collaboration and concerted effort. As part of that effort, the Ministry of Communications and Information Technology (MCIT), in conjunction with the Ministry of Finance and the Communication and Information Technology Commission (CITC), established YESSER, the Saudi eGovernment program, in 2005. Below are lists of web links of the governmental portal:

- Official Gazette Umm al-Qura Newspaper (Arabic) https://www.uqn.gov.sa/
- customs clearance https://www.fasah.sa/
- General Organization for Social Insurance

  http://www.gosi.gov.sa/portal/web/guest/home
- The Ministry of Investment Portal https://www.misa.gov.sa/en/
- Zakat, Tax and Customs Authority (ZATCA) https://zatca.gov.sa/en/Pages/default.aspx
- Electronic Visa Services https://visa.mofa.gov.sa/
- Saudi Laws and Regulations - Ministry of Justice (Arabic - English)

  https://www.moj.gov.sa/ar/Pages/default.aspx
- Gov. Agencies Directory https://www.my.gov.sa/wps/portal/snp/main

Sultan Ahmed M AlShubaily Certified Public Accountants Company services in Saudi Arabia

We are specialize in providing the following professional services:

- Tax, Zakat services and Business advisory.
- Assurance services- Audit & review assignments.
- Actuarial & Advisory services - Financial due diligence, business plan and feasibility studies;
- Banking and insurance technical training.

Sultan Ahmed M AlShubaily Certified Public Accountants Company is one of the growing professional organizations in the Kingdom of Saudi Arabia and a member firm of GMNI International.

Established Late 2020 in Saudi Arabia. We have since then established ourselves as one of the growing firms in Saudi Arabia as evidenced by our wide portfolio of clients that includes many well-established companies across a spectrum of different industries.

Contacts

- **Sultan AlShubaily** Managing Partner

T: +966 11 483 7877 M: +966 55 279 7797

E: sultan.alshubaily@alshubailycpa.com

- **Mohammed Yaseen** Partner

T: +966 11 483 7877 M: +966 55 863 7509

E: mohammed.yaseen@alshubailycpa.com