Grant Thornton

Tax Newsletter

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Contents

Swift Customs Refund Under Proof of Origin Rules

Since introducing the Proof of Origin guidelines in 2021, all imports into Saudi Arabia must comply with strict Rules of Origin criteria. Non-compliance resulted in importers being subject to customs duties. Over time, businesses and large conglomerates have taken significant steps to ensure compliance, and many have now successfully met the required conditions to claim refunds on previously paid customs duties.

We are pleased to observe a positive shift in regulatory implementation, with improved documentation processes leading to successful customs duty refunds from ZATCA. This progress highlights ZATCA's commitment to supporting industries by streamlining compliance procedures and facilitating refunds.

ZATCA Announces Wave 21 E-Invoicing Criteria

On Friday, 26th July 2024, Zakat, Tax and Customs Authority (ZATCA) announced, through Umm Al Qura issue No. 5040, the 14th wave of taxpayers required to implement Phase 2 of e-invoicing integration. This phase now encompasses taxpayers whose taxable revenues exceeded SAR 5.00 million in 2022 or 2023.

Starting February 1, 2025, these businesses must integrate their e-invoicing systems with the FATOORA platform. This integration is part of ZATCA's ongoing efforts to enhance the efficiency and transparency of the tax system, ensuring real-time processing and validation of electronic invoices.

Businesses within this revenue bracket must prepare to align their invoicing processes with the technical and procedural requirements outlined by ZATCA. This includes ensuring their systems can generate, store, and exchange electronic invoices that comply with the specified standards.

Integrating the FATOORA platform is expected to streamline tax compliance, reduce the administrative burden, and minimise errors associated with manual invoicing. ZATCA encourages all affected businesses to begin their preparation well before the deadline to ensure a smooth transition and avoid any potential penalties for non-compliance.

This announcement underscores ZATCA's continued commitment to modernising tax administration in Saudi Arabia, fostering a more robust and transparent economic environment for businesses.

VAT Refund for Donors on Public Benefit Projects

A significant update from the Zakat, Tax, and Customs Authority (ZATCA). On February 17, 2025, ZATCA issued a tax bulletin outlining the mechanism, requirements, and obligations for applying for VAT refunds on expenses incurred by donors for Public Benefit Projects, as per Article 70(a) of the KSA VAT Implementing Regulations.

Public Benefit Projects Definition: ZATCA has specified that VAT refunds apply to projects that involve the establishment, construction, demolition and reconstruction, restoration, or expansion of mosques, health centers, educational facilities, and similar public benefit projects. The project must be fully donated to the competent authority in Saudi Arabia upon completion.

Eligibility for VAT Refund:

- The donor must register with ZATCA as an 'Eligible Person' to qualify for the refund.
- The donor is required to submit a contract/agreement between themselves, the competent authority, or a third party.
- ZATCA retains discretionary power to approve or reject applications for VAT refunds.

Application Timeline

- Donors must submit their VAT refund application within six (6) months from the end of the calendar year in which the expense was incurred.
- Any failure to file within this timeline will result in the loss of eligibility for the VAT refund.
- Important Update: Donors can also claim VAT incurred on qualifying projects since VAT introduction in 2018, provided they submit their refund application before June 30, 2025.

This initiative by ZATCA is a welcome move and is expected to encourage charitable activities and donations for public benefit projects. We encourage all eligible donors to review their VAT records and take the necessary steps to submit their claims before the deadlines.

Should you require further assistance in assessing your eligibility or filing the refund application, please feel free to contact us.

ZATCA's Initiative on Tax Compliant Environment

The Zakat, Tax and Customs Authority (ZATCA) has officially issued its Advance Pricing Agreement (APA) Guidelines, marking a significant step toward enhancing tax certainty and compliance in Saudi Arabia. This initiative aligns with global tax practices and provides multinational enterprises (MNEs) and businesses operating in the Kingdom with a structured framework for transfer pricing arrangements.

Key Updates in the New APA Guidelines:

The latest APA Guidelines introduce several critical changes compared to previous guidance, further strengthening tax compliance and predictability for taxpayers.

1. Formal Integration into the Transfer Pricing Framework:

- Taxpayers must have a minimum SAR 100 million in annual intercompany transactions to apply for an APA.

2. Financial Threshold for Eligibility

- APAs are now explicitly included within the Transfer Pricing (TP) Bylaws under Article 23, reinforcing their role in tax certainty and dispute prevention.
- Certain complex transactions may be exempted from this threshold at the discretion of ZATCA.

3. Standard APA Duration and Renewal

- The initial APA period is three years, with an option to renew for an additional three years if key conditions remain unchanged.

4. Mandatory Compliance and Reporting

- Annual Compliance Reporting (ACR) is now required within 120 days after the end of each financial year to ensure continued adherence to APA terms.

5. Importance of Critical Assumptions

- APAs must include predefined critical assumptions, which, if altered, may trigger a revision or cancellation of the agreement.

6. Introduction of Unilateral APAs

- Currently, only unilateral APAs (agreements between ZATCA and the taxpayer) are available.
- Bilateral and multilateral APAs (involving other tax authorities) are not yet introduced but may be considered in the future.

7. Enhanced Submission and Processing Requirements

- Pre-filing meetings are now mandatory before submitting an APA request.
- APA applications must be submitted via the ERAD electronic portal.
- ZATCA has defined a 12-month processing timeline, ensuring quicker resolution of APA requests.

The introduction of these formal APA guidelines provides companies with greater certainty in their transfer pricing arrangements, reducing the risk of disputes and audits. Businesses with significant intercompany transactions should assess their eligibility for an APA and consider engaging with ZATCA proactively to benefit from this initiative.

Our Transfer Pricing (TP) team at Grant Thornton Saudi Arabia can support you in navigating these new APA guidelines, including:

- Assessing APA eligibility for your business.
- Preparing pre-filing and formal APA submissions.
- Advising on critical assumptions and risk mitigation strategies.

New Transfer Pricing Requirements for Zakat Payers

The latest update is the Transfer Pricing Regulations will affect “All Entities” subject to Zakat. Hence, effective January 1, 2024, ZATCA has expanded the transfer pricing compliance requirements to include All Zakat Payers.

Key Compliance Requirements:

1. Transfer Pricing Disclosure Form and Affidavit:

- All Zakat payers who engage in transactions with “Related Parties” are required to submit a Transfer Pricing Disclosure Form and an affidavit from a chartered accountant along with their Zakat returns, regardless of the total value of these transactions.

2. Transfer Pricing Documentation

Local File and Master File preparation needed:

2.1 Phase 1 (FY 2024 – FY 2026):

- Transactions ≤ SAR 48 million: Not required to prepare Local File and Master File.
- Transactions between SAR 48 million and SAR 100 million: Optional to prepare.
- Transactions > SAR 100 million: Mandatory preparation and maintenance of both files.

2.2 Phase 2 (FY 2027 onward):

- Transactions ≤ SAR 48 million: Not required to prepare Local File and Master File.
- Transactions > SAR 48 million: Mandatory preparation and maintenance of both files.

3. Transfer Pricing Policy and Supporting Documentation:

Zakat payers must maintain the following transfer pricing documentation:

- Group’s Transfer Pricing Policy;
- Evidence of arm’s length transactions; and
- Group’s Transfer Pricing Policy;

This underscores the importance of demonstrating that all related-party transactions are conducted on an arm’s length basis, ensuring compliance with ZATCA’s transfer pricing requirements.

Next Steps::

1. Immediate Action Needed: We recommend that finance departments familiarize themselves with these new requirements, review their transfer pricing policies and get in touch with us for any information. Initiate working on TP Disclosure Form as soon as possible, as the process may take time and efforts.
2. Data Consistency: It’s important to ensure that all transaction details with related parties are mutually verified to maintain consistency and accuracy.
2. Collaboration: We would be glad in maintaining close communication (GT Team / Us or with Your tax advisor) to ensure timely and accurate compliance.

Ministerial Resolution on Zakat Obligations

Stay informed about recent Ministerial Resolutions (No. 1007 and 947) that may impact your Zakat obligations. These resolutions offer Zakat payers the option to apply the new Zakat regulations (1445H) to previous years, providing potential benefits. It's important to note that the deadline to take advantage of these provisions is April 30, 2025.

Specifically, these resolutions allow:

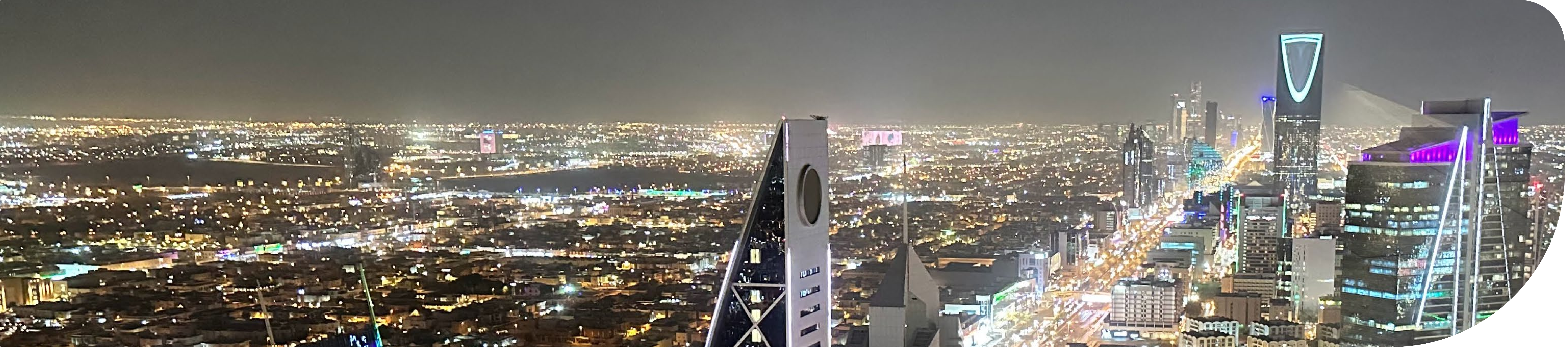
- Late Submissions: Zakat payers who haven't yet submitted Zakat returns for prior years can now do so in accordance with the 1445H regulations.
- Revisions: Even if you've already submitted returns based on initial draft or audited financial statements, you can consider submitting revised returns reflecting the new 1445H regulations.
- Revisions: Even if you have already submitted returns based on the audited financial statements, you may consider submitting revised returns that reflect the new 1445H regulations. This will streamline the ZATCA examination process, increase the possibility of the return's acceptance, and reduce the risk of additional zakat liabilities in future assessments.

We strongly recommend assessing whether applying the new regulations would be advantageous for your organization. If so, you can request approval from the Zakat, Tax and Customs Authority (ZATCA) to resubmit your returns.

Please note that all Zakat returns must be based on audited financial statements.

To help you navigate these changes, we offer the following support services:

- Zakat Calculation: We can calculate your Zakat liability based on the new 1445H regulations.
- ZATCA Communication: If the revised calculation is beneficial, we can assist you in communicating with ZATCA and obtaining their approval for the revised return.
- Return Preparation & Filing: We can prepare and file your revised Zakat return.



Issuance of the Rules on Ultimate Beneficial Ownership in the Kingdom of Saudi Arabia.

The Minister of Commerce, has officially resolved to issue The Ultimate Beneficial Ownership Rules (the "UBO Rules"). The UBO Rules require all companies in KSA (unless exempted) to disclose and maintain accurate information about their ultimate beneficial owners ("UBO") in a newly created register with the Ministry of Commerce.

The key new requirements under the UBO Rules include the following:

- New Company Formations: companies formed after the UBO Rules come into effect will be required to disclose details of their UBO to the Ministry of Commerce as part of the formation process.
- Register and Reporting for new and existing companies, each must:
  - maintain a UBO register (in the Kingdom of Saudi Arabia);
  - notify the Ministry of Commerce in the event there is any change to such information within fifteen (15) calendar days of such change; and
  - disclose or confirm their ultimate beneficial owners in their next annual filings with the Ministry of Commerce (on an annual basis within thirty (30) days before the anniversary of the date of formation).
- Exempt companies must evidence their exemption to the Ministry of Commerce.

The Ministry of Commerce may request disclosure of any information relating to the relevant UBO. Currently, it remains unclear what these requests may entail, however, the UBO Rules contemplate the Ministry producing a supplementary guideline to further clarify the relevant processes and implementation of the UBO Rules.

How do the UBO Rules define an "ultimate beneficial owner"?

The UBO Rules define an "ultimate beneficial owner" as any natural person (or a representative of any natural person), who directly or indirectly:

1. owns at least 25% of the company's share capital;
2. controls at least 25% of the voting shares in the company;
3. is entitled to appoint or remove a majority of the company's board of directors, its manager or president; or
4. has the ability to influence decision-making or the business of the company.

The UBO Rules also provide that in scenarios where an ultimate beneficial owner cannot be identified by applying the foregoing criteria, a company's director, board member, or chairman will be recognised as the real beneficiary.

Who is exempt?

The UBO Rules provide for certain exemptions with respect to:

1. listed joint-stock companies;
2. companies wholly owned by the state or any state-owned authorities whether directly or indirectly;
3. companies undergoing liquidation as per the Bankruptcy Regulations; and
4. companies exempted by way of Ministerial resolution, giving the Ministry of Commerce broad discretion in exempting companies.

When do the UBO Rules come into effect?

The UBO Rules come into effect on 5 Shawwal 1446H (corresponding to 3 April 2025G).

Penalties for failure to comply with the UBO Rules:

Companies found in breach of the UBO Rules can face fines of up to SAR500,000 ($133,000).

OECD's Working Paper on Taxing Capital Gains – Key Insights for Saudi Arabia

As Saudi Arabia continues its transformative journey under Vision 2030, capital gains are becoming a crucial topic in the financial landscape. With the Kingdom's efforts to attract foreign investments, foster entrepreneurship, and enhance market competitiveness, understanding global capital gains tax (CGT) policies is essential.

Recently, the OECD's Centre for Tax Policy and Administration released a Working Paper analyzing capital gains taxation in OECD countries, highlighting key challenges and potential reforms. This paper provides valuable insights into how different countries tax capital gains, the economic impact of these policies, and their implications for Saudi investors, businesses, and policymakers.

Key Takeaways from the OECD Working Paper

The report covers the international experience of capital gains taxation, including its economic rationale, equity concerns, and revenue implications. Here are the most relevant findings:

1. Capital Gains Are Usually Taxed Upon Realization
   - Most OECD countries tax capital gains only when the asset is sold, not as they accrue.
   - The majority apply lower tax rates or offer exemptions for certain types of assets, such as housing or business shares..

2. Favorable CGT Treatment May Create Distortions
   - Lower tax rates on capital gains compared to wages create equity issues, as wealthier individuals benefit disproportionately.
   - CGT relief can distort investment decisions, causing the "lock-in effect," where investors delay selling assets to defer tax payments.
   - Revenue collection challenges arise due to strategic tax planning and international tax competition.

3. OECD Recommendations for CGT Reform

The paper outlines potential alternatives to the current realization-based approach:

- Indexation for inflation to prevent taxation on nominal gains.
- Deemed realization at specific intervals to minimize lock-in effects.
- Retrospective taxation or accrual-based taxation, where feasible, to ensure fairer tax treatment.

Implications for Saudi Investors & Businesses

While Saudi Arabia currently does not impose a capital gains tax, policymakers may consider international trends as they refine tax regulations in line with Vision 2030. Investors, especially in M&A transactions, real estate, and equity markets, should stay informed about global CGT practices to ensure compliance in cross-border transactions.

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