Saudi Arabia

Taxation of Foreign Multinational Enterprises Conducting Business in and with Saudi Arabia

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In this article, the author considers the tax implications of Saudi Arabian domestic law (outbound payments, permanent establishment issues) and the tax treaties that Saudi Arabia has concluded for multinational enterprises doing business in and with Saudi Arabia. The article also provides insights into the practices of local tax authorities.

1. Introduction

Saudi Arabia is transforming into an industry-based economy rather than an oil-based economy, with a strong focus on the development of infrastructure. In particular, Saudi Arabia is concentrating on the construction of transport systems, such as metro systems, airport facilities, power projects and seaports. Most of the contracts are substantial and government sponsored. This is backed by new technologies that, to a large extent, originate in developed western nations. Multinational enterprises (MNEs) from the United States, the European Union and Southeast Asia have intensively penetrated the local market by way of supplies of equipment and machinery, and the provision of construction, installation and engineering services. One of the most remarkable examples is the Riyadh Metro Project that is currently under way.

MNEs face various tax-related issues that arise as a result of their projects in Saudi Arabia. To date, the country remains primarily a capital-importing country, where equipment, skills and technology are purchased from foreign suppliers, mainly from industrialized nations. This determines the source-focused approach of tax law, tax policy and tax practice in Saudi Arabia.

2. The Saudi Arabian Tax System

The tax system of Saudi Arabia consists of two separate layers or subsystems. In the first one, nationals of Saudi Arabia and the other Gulf Cooperation Council (GCC) countries, i.e. Bahrain, Kuwait, Oman, Qatar and the United Arab Emirates, are subject to a religious levy, the *zakat*, which is in proportion to their shareholdings in a Saudi Arabian resident company. In the second one, non-GCC resident shareholders in a Saudi Arabian resident company are subject to corporate income tax at 20%.

A withholding tax (WHT) is also levied on various types of outbound payments, i.e. dividends, interest, fees in respect of technical or consulting services, international telecommunications and international transport, royalties, capital gains and “other” payments. The rates of WHT range from 5% to 20%, depending on the type of payment.

Interestingly, the following two provisions of the income tax law of Saudi Arabia appear to be quite special and necessitate careful consideration:

(1) a branch remittance tax applies to after-tax distributions of profits by a branch to its head office, which is economically similar to a WHT on dividends at a rate of 5%; and

(2) a WHT also applies to any payments made by a Saudi Arabian branch of a non-resident company to its head office or to any related parties against any services provided or charges made to the Saudi Arabian branch of the same entity at the rate of 15% on the gross payment (article 68 of the By-Laws to the Income Tax Law). It is questionable whether Saudi Arabian tax treaties can be used to obtain relief from this WHT.

These provisions are closely related to the most contentious area of tax practice, i.e. the taxation of permanent establishments (PEs).

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In addition, Saudi Arabian domestic tax law restricts the tax deductibility of payments from a local Saudi Arabian PE to its head office entity in the form of royalties, commissions, loan charges (essentially interest expenses), as well as indirect administrative and general expenses allocated on an "estimated" basis. It should be noted that provisions of tax treaties based on the UN Model[1] may effectively override these restrictions, to the extent that head office charges represent a *reimbursement of actual expenditure* incurred by the head office for the purposes of the PE, rather than some arbitrary cost allocation.

Given the foregoing, the Department of Zakat and Income Tax (DZIT) is primarily focused on source taxation of cross-border services. Technical and consulting services are subject to WHT on a gross basis, regardless of the place of physical delivery, unless the services result in a PE in Saudi Arabia and the income is declared and taxed there. There is a lot of controversy around the meaning and definition of the term "technical services" (*see further* in this section). Interestingly, sometimes the DZIT does not insist that a PE arises if WHT is actually applied by the contractual parties.

In addition, the DZIT has stated in one of its "Q&A" publications[2] that, in its view, a PE arises in connection with a lease agreement for technological equipment if the lessor also provides some associated works or services, e.g. operation, supervision, maintenance or inspection. Non-residents may apply tax treaty rules to exempt the income from tax in Saudi Arabia, but only to the extent that their activities do not form a PE there. The very question of whether a PE arises is presently a point of sharp disagreement between the DZIT and MNEs conducting business in the country.

3. Source Taxation Principles for MNEs Conducting Business in and with Saudi Arabia

3.1. PEs in general

Article 4 of the Saudi Arabian Income Tax Law[3] establishes taxing rules for non-residents based on the PE threshold. The Law recognizes a "physical place of activity" of a non-resident enterprise as a PE-creating factor, as well as a dependent agency relationship. The Law does not, however, establish any conditions regarding the arising of a PE in the absence of a fixed place of activity, but rather by reference to the duration of activity (e.g. "service PE" provisions). The provision of technical, consulting and other services is covered by the WHT provisions (article 68 of the Income Tax Law).[4]

There has been a recent change in the DZIT's approach to the creation of a PE with regard to the provision of cross-border services, especially in situations where tax treaties may apply to exempt such income based on article 7 (Business profits) of the OECD Model.[5]

More frequently we see that the DZIT insists that a PE arises even in the absence of a physical fixed place of business. In its view, if a foreign enterprise undertakes a project in Saudi Arabia that involves works and services, such a project would give rise to a PE under Saudi Arabian domestic tax law and/or the applicable tax treaties (*see* section 3.3.).

3.2. Attribution of profits to PEs

Saudi Arabian domestic tax law does not provide clear guidance on how profits should be attributed to PEs in Saudi Arabia. However, some principles are clearly set out. One of these is the limited "force of attraction" principle. Broadly, the law attributes profits from sales of all goods, works and services of a foreign enterprise to Saudi Arabia if similar activities are also supplied via a PE in Saudi Arabia. In this respect, profits from offshore supplies that a non-resident derived directly from a customer in Saudi Arabia should be aggregated and reported to the DZIT by the PE. This must be followed, even if works or services have physically been provided outside Saudi Arabia and are not related to the PE. Having said this, the limited force of attraction principle should apply only in non-treaty situations.

The second important principle for determining profit is laid down by the provisions on "estimated tax" in article 16 of the By-Laws to the Income Tax Law (the By-Laws). Foreign contractors may consider, on a case-by-case basis, applying to the DZIT to compute the tax base on an "estimated tax" basis, whereby taxable profits are determined by applying a deemed profit percentage. The allowed percentages range from 15% to 80% of the value of the contract and depend on

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1. Most recently, *UN Model Tax Convention on Income and on Capital* (1 Jan. 2011), Models IBFD.
2. *See* https://dzit.gov.sa/faq.
3. *See* https://dzit.gov.sa/taxpayers.
4. *See* https://dzit.gov.sa/collection-of-tax.
5. Most recently, OECD Model Tax Convention on Income and on Capital (26 July 2014), Models IBFD.

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the nature of the activity. Usually, the DZIT allows a deemed profit rate of 20% or 25%. The DZIT usually imposes higher rates for management-type services.

A further principle applies to the profit element related to cross-border delivery or supply contracts that include associated work that is not separately priced in the contract but embedded in the total value of the contract. In such a case, the profit element is determined under the deemed attribution rule of article 16.6 of the By-Laws, which states that each such element of work attracts a taxable profit estimated at 10% of the total gross value of the contract. This generally reflects a form of the formula apportionment approach, which can also be found in the tax legislation of some developing countries. The DZIT has applied this principle in some cases, especially where a non-resident was present in Saudi Arabia without registering a PE and without maintaining records.

3.3. Provision of technical services

If a foreign MNE engages in a cross-border technical consulting, engineering or survey contract, such payments are, in principle, subject to a 5% WHT for payments to unrelated parties or a 15% WHT for payments to related parties. Interestingly, the WHT applies even if technical or consulting services are provided remotely, where no presence of a foreign contractor is created in Saudi Arabia. This is due to a particular provision (article 6 of the By-Laws) which stipulates that a service is deemed to be performed in Saudi Arabia if the work required is carried out in full or in part in Saudi Arabia, even though the service is remotely performed.

Notably, if a foreign service provider is considered resident under the tax treaty concluded with Saudi Arabia,[6] it will most likely seek relief, based on article 7 (Business profits) of the OECD Model, from WHT on technical services. The exemption claim is based on the general international principle laid down in tax treaties, which stipulates that if a non-resident service provider does not create a PE in the source country then such business profits are taxable only in the state of its residence.

Cross-border services generally lead to the creation of a PE in accordance with the provisions of article 5(3)(b), based on the UN Model, of most Saudi Arabian tax treaties. In such a case, the tax should be paid by self-assessment.

Frequently, cross-border service contracts are remotely provided by foreign technological enterprises without a substantial presence in Saudi Arabia. Taxpayers located in tax treaty countries usually claim an exemption from tax based on the “Business profits” article, as noted above, substantiating their claim with the absence of a “service PE” under the provisions of article 5(3)(b). However, the DZIT does not normally accept tax treaty claims, countering that a PE arises if the activity continues for longer than six months, regardless of physical presence (*see* section 3.6. on disagreements between taxpayers and tax authorities with regard to the creation of a “service PE”).

3.4. Turnkey contracts

Engineering, procurement and construction (EPC) contracts are common in the infrastructure, real estate and industrial construction sectors and usually include initial conceptualization and design, provision or procurement of required equipment and services as well as construction, installation and commissioning. Such contracts are sometimes referred to as “lump-sum turn-key” contracts, as the project owner obtains an almost completed object with regard to which operations can readily commence. Broadly, EPC contracts are divided into two activities: onshore and offshore.

It is not uncommon, therefore, that a large proportion of the activities under such contracts are performed outside Saudi Arabia. Further elements include the supply of equipment, substantial engineering and design works, construction, installation, procurement, local commissioning and project management services. The design, planning and procurement of equipment are usually undertaken in the foreign entity’s home jurisdiction, whereas the construction, commissioning and installation services are performed locally.

The implementation of such contracts should, in most situations, give rise to a PE in Saudi Arabia, as the government entities responsible for the project also require commercial/tax registration of the primary contractor with the DZIT in order to release payments under the contract. This is an established practice and usually does not cause any disagreements; however, most of the contention arises when it comes to the attribution of profits to Saudi Arabia.

The existing rules are inadequate and unclear with regard to profit attribution. In addition, most of the tax treaties that Saudi Arabia has signed were concluded relatively recently and, therefore, no application in practice has developed.

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6. For more on Saudi Arabian tax treaties, *see* EY, *2015 Worldwide Corporate Tax Guide*, Chapter on Saudi Arabia, available at www.ey.com/GL/en/Services/Tax/Worldwide-Corporate-Tax-Guide---XMLQS?preview&XmlUrl=/ec1mages/taxguides/WCTG-2015/WCTG-SA.xml.

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The usual approach of the Saudi Arabian tax authorities requires that the entire value of the EPC/turn-key contract is reported in the tax return of a Saudi Arabia branch. This is partly because such contracts do not provide for a split between in-country and foreign-performed components, and partly because the branch is supposed to issue invoices for the total price of a project. If the total value and total costs are reported in the local (Saudi) tax return, then the profit related to foreign (offshore) activities will also be taxed locally, which runs counter to tax treaty principles. Moreover, the offshore portion of services under the contract will be subjected to a WHT of 15% based on the provisions of article 68 of the By-Laws and hence suffer double taxation.

Many tax professionals believe that the current tax practices are not in line with the provisions of the tax treaties and protocols that Saudi Arabia has concluded. Most such treaties and protocols establish the threshold rules in respect of the taxation of cross-border supply and installation contracts. The limitations on taxability of such projects in Saudi Arabia can, therefore, be derived from these provisions.

A good example of such a provision is contained in the protocol to the Saudi Arabia-United Kingdom Income and Capital Tax Treaty (2007).[7] This provision reads as follows:

> 3. With reference to Article 7 (Business Profits):
>
> it is understood that
>
> (a) in the case of contracts for survey, construction, supply or installation, the profits of a permanent establishment shall not be determined on the total amount of the contract, but shall be determined only on the basis of that part of the contract which is effectively carried out by the permanent establishment in the state where the permanent establishment is situated. Any portion of the contract executed outside the Contracting State in which the permanent establishment is situated shall not be taken into consideration in determining the profits of that permanent establishment; ...

The protocol provides a governing rule for the attribution of profits for combined turnkey contracts and is consistent with both the Commentary of Article 5 of the OECD Model[8] and the UN Model.[9]

To summarize, the treaty principles of profit attribution in Saudi Arabia can be further defined as follows:

- no “force of attraction” rule should apply;
- only profits that are determined on the part of the contract that is effectively carried out by the PE are attributed to a PE in Saudi Arabia;
- any part of the contract in effect outside Saudi Arabia should not be attributed to the PE and, therefore, should not be taxed in Saudi Arabia; and
- all expenses incurred for the purposes of the PE, other than internal charges, should be deductible when computing a PE’s profit.

It is, therefore, very important for MNEs to account for and allocate the relevant portion of an EPC contract properly. This must be conducted, especially where the contract envisages a lump-sum total price for all the supplies, including equipment, works and services, without a breakdown.

Reporting the total revenue and costs from the contract in the local tax return, pursuant to the DZIT’s position, may not be accepted by the foreign tax authorities of the residence state of the head office and could give rise to double taxation. In these circumstances, a foreign company could invoke a mutual agreement procedure (MAP) between its home state tax authorities and the DZIT, which is provided for in the tax treaties. Under such a procedure, the tax authorities of both states should consult with each other directly to resolve double taxation issues.

3.5. Taxation of royalties

Under Saudi Arabian domestic tax law, royalties or proceeds for the use or the right to use of trademarks, patents and other intellectual property rights, as well as know-how and information regarding industrial, commercial or scientific

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7. *Convention between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Kingdom of Saudi Arabia for the Avoidance of Double Taxation and the Prevention of Tax Evasion with respect to Taxes on Income and on Capital* (31 Oct. 2007), Treaties IBFD.
8. Most recently, *OECD Model Tax Convention on Income and on Capital: Commentary on Article 5* (26 July 2014), Models IBFD.
9. Most recently, *UN Model Tax Convention on Income and on Capital: Commentary on Article 5* (1 Jan. 2011), Models IBFD.

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experience, are subject to a 15% WHT. However, most of the tax treaties concluded by Saudi Arabia limit taxation at source to 5% to 10%. Payments that do not generally fall within the category of royalties or "technical or consulting services" should generally fall within the concept of "other payments". Such payments should not be subject to WHT if the work or service in respect of which the payment is made is carried out entirely outside Saudi Arabia. The DZIT generally follows this approach, although a different interpretation may arise regarding the proper characterization of these payments. In a recent case, for example, payments for the creation of various advertising materials or samples were treated by the DZIT as payments for "technical services", although the taxpayer considered such payments as "other services" that were performed entirely outside of Saudi Arabia. The contention was escalated to the level of the Board of Grievances, where the first level of the judiciary ordered in favour of the DZIT. Therefore, it is not uncommon for the DZIT to insist on a treatment of a type of payment as royalties, rather than "technical" or "other" services, because of the higher WHT rates that Saudi Arabia may collect under tax treaties. The author has also witnessed attempts to classify some items of business profits as royalties, which would allow the DZIT to apply WHT under the royalties article instead of the business profit article. In addition, the DZIT has confirmed that software purchased for future resale should not be subject to WHT; however, payments for any rights with respect to software are to be considered royalties. This runs counter to the Commentaries to Article 12 of both of the OECD and UN Model Conventions, which provide a more narrow view on what should be treated as royalties for tax treaty purposes. In the latter, an important condition for qualification as "royalty" is that the payment is for commercial use of a copyrighted article, e.g. software. A payment for software under an end-user licence or even under an "enterprise licence" is not sufficient for a payment to be classified as "royalty".

Therefore, taxpayers should expect more contention with regard to the classification of software payments as royalties in Saudi Arabia. Finally, according to the DZIT, software upgrades are treated as technical or consulting services and are subject to a 5% WHT; however, a contrary view would be to treat such payments as "other" services that are performed entirely outside of Saudi Arabia and therefore not subject to tax at source.

3.6. A "virtual" service PE

One of the differences between Saudi Arabian tax treaties and the OECD Model[10] is the UN-based concept of a "service PE", wherein a foreign service provider may give rise to a PE in the source state if it provides services within that state which continue for more than six months, i.e. 183 days, in a 12-month period for the same or a connected project.

The DZIT interprets this provision quite widely and contrary to OECD principles. This practice creates a challenge in respect of the attribution of the out-of-state portion of works and services provided under any cross-border services project.

The traditional OECD understanding has been that in order for a service PE to exist, the works and services need to be physically performed in the state for the specified period.

However, the DZIT has changed their views recently, and will insist on the registration of a PE in Saudi Arabia if the total duration of the contract exceeds 6 months.[11] As for the UN position, various consultation documents show that no agreement exists among experts and further work is required for a clear position to be established.

Taxation of short-term cross-border consulting, engineering and survey activities and similar contracts has become a particular area of controversy in Saudi Arabia due to inconsistent application of tax principles and general uncertainty. Notably, such contracts generally do not require the long-term presence of consultants or related employees of a non-resident service provider in Saudi Arabia. Due to advancements in modern telecommunications and computer technology, most of the design and engineering work can be performed from outside Saudi Arabia by employees located in the home offices of the service provider, in which case only infrequent trips are made to clients in Saudi Arabia and only when necessary.

Most tax treaties concluded by Saudi Arabia contain a "service PE" provision reflecting the definition found in article 5(3)(b) of the UN Model.[12]

The service PE notion is common for tax treaties based on the UN Model, which are frequently concluded by countries with an imbalance of payments for technology. Traditionally, it has been understood that some works and services must be performed locally through employees or related contractors for a period of 183 days for a service PE to exist. In other

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10. OECD, *supra* n. 5.
11. *See* EY, *Saudi Arabian tax authorities introduce Virtual Service PE concept*, Global Tax Alert (30 July 2015); EY, *Saudi Arabian Government clarifies Service PE concept*, Global Tax Alert (16 Feb. 2016), available at http://www.ey.com/GL/en/Services/Tax/International-Tax/Tax-alert-library.
12. *UN Model Tax Convention on Income and on Capital* (1 Jan. 2011), Models IBFD.

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words, physical presence for longer than 183 days has been understood to be a prerequisite for a service PE. However, the DZIT changed its interpretation of the aforementioned provisions, stating that no physical presence is required and that what matters is only the duration of the contract. This position is quite similar to a “virtual PE”, which stems from ideas relating to the taxation of e-commerce.

Under the concept of a virtual PE, the place of the physical performance of the services is irrelevant, provided that the services benefit a purchaser in Saudi Arabia. Consequently, if the total number of days in respect of the project, including services performed both inside and outside Saudi Arabia, exceeds the threshold period under Saudi Arabian domestic law or the relevant tax treaty, the DZIT considers a PE to have arisen. This applies even if the days on which services are performed inside Saudi Arabia do not exceed the threshold period under the relevant tax treaty.

The concept of the virtual PE was advanced by a few participants during the 11th session of the UN Committee of Experts on International Cooperation in Tax Matters (the “UN Committee”) in October 2015, which Saudi Arabia attended.[13] According to the majority of members of the UN Committee, a state should not have source taxation rights on income derived from the provision of services performed by a non-resident outside that state. However, in a number of cases, the DZIT has insisted that a PE arises even where the foreign service provider has no physical presence in Saudi Arabia.

In the DZIT’s view, under the concept of a virtual service PE, services performed abroad may result in a PE if:

- the services are also performed in Saudi Arabia for the same or connected projects via employees; and
- the duration of the services lasts for more than six months.

The position of the Saudi Arabian tax authorities was recently communicated through a letter from a Saudi Arabian ministerial authority to a diplomatic representative of an international government organization in response to their request for a clarification. Although the stated position is already known to the business and tax professional community, this is the first time it was communicated in writing at an official level. The letter is important as it sheds light on the official position of the Saudi Arabian tax authorities with regard to this issue, by providing also the reasons for this view and also giving some interesting international tax policy perspective.

The UN consultation documents regarding the service PE concept suggest that the view of the UN Committee is not firmly established and signify an ongoing debate in both the OECD and the UN Committee regarding this issue. However, the majority view of the UN Committee’s experts is that a physical presence is required for a service PE to arise, and this should be reflected in the next version of the UN Model and the Commentary on Article 5 of the UN Model.

In one particular case, a taxpayer appealed this treatment of the DZIT in ascribing a PE to a non-resident where engineering personnel were present in Saudi Arabia for much less than six months. The Zakat and Tax Preliminary Appeal Committee (PAC) of the Ministry of Finance ruled in favour of the taxpayer,[14] holding that a physical presence is required for a PE to exist as per article 5 of the Saudi Arabia–United Kingdom Income and Capital Tax Treaty (2007) and the Saudi Arabia–Netherlands Income Tax Treaty (2008).[15]

The taxpayer cited article 5(3)(b) of the Saudi Arabia–Netherlands Income Tax Treaty (2008), which is based on the UN Model, and referred to the service PE provision in the appeal. Specifically, the provision references:

services, including consultancy services, by an enterprise through employees or other personnel, where such activities continue (for the same or a connected project) within a contracting state for a period or periods aggregating more than 183 days (6 months) within any 12-month period.

The key word in this definition is “within” the contracting state, which means that services should be physically exercised in Saudi Arabia during the referenced period. The taxpayer also submitted further evidence with regard to the internationally accepted interpretation of the service PE term, which acknowledges that a physical presence is required for a PE to exist.

The PAC, therefore, held in favour of the taxpayer and supported the taxpayer’s contention that the PE was a resident of the Netherlands. The PAC further held that a physical presence is required for a PE to exist according to article 5 of the Saudi Arabia–Netherlands Income Tax Treaty (2008). Consequently, the taxpayer was not required to withhold tax

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13. *See Eleventh Session. Geneva, 19-23 October 2015. Agenda item 3 (a) (ii) Article 5 (Permanent establishment): The meaning of “connected projects”* (E/C.18/2015/CRP.9), available at www.un.org/esa/ffd/wp-content/uploads/2015/10/11STM_CRP9_Article5_clean.pdf.
14. SA: PAC, 24 Dec. 2014, Decision no. 3 and Decision no. 4 for the year 1436H issued on 2.3.1436H regarding objections no. 77/3 and no. 78/3.
15. *Convention between the Government of the Kingdom of the Netherlands and the Government of the Kingdom of Saudi Arabia for the Avoidance of Double Taxation and the Prevention of Tax Evasion with respect to Taxes on Income* (13 Oct. 2008), Treaties IBFD.

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from payments made to the non-resident due to the exemption available under the Saudi Arabia–Netherlands Income Tax Treaty (2008).

A similar decision was adopted by the PAC for the same taxpayer, but this time based on the Saudi Arabia–United Kingdom Income and Capital Tax Treaty (2007), article (5)(3)(b) of which contains the same wording as that of the Saudi Arabia–Netherlands Income Tax Treaty (2008).[16] The DZIT has appealed against the PAC's decision and, at the time of the writing of this article, the case was under review with the Higher Appeal Committee (HAC) of the Eastern Province of Saudi Arabia.

4. Transfer Pricing in Saudi Arabia

Transfer pricing is a relatively new concept in Saudi Arabia and, indeed, in the whole of the Middle East and North Africa (MENA) region. However, when it comes to field audits, the DZIT routinely challenges related-party transactions as part of the inspection process. In response to this, taxpayers are taking steps to defend their internal transfer pricing policies, thereby ensuring that policies are appropriately implemented. They are also strengthening their local transfer pricing documentation to position themselves to defend their pricing arrangements effectively under audit.

However, since the Saudi Arabian Minister of Finance issued Ministerial Resolution (MR) 1776 in March 2014, there has been no formal announcement from the DZIT indicating the precise format that any such legislation would take. In the MR, it was announced that the DZIT would issue rules for determining the "fair value" or "arm's length value" of related-party transactions in accordance with agreed international standards. However, at the time of the writing of this article, no guidance had been issued to taxpayers as to how to demonstrate that their intercompany pricing is in line with the arm's length principle. As a result, MNEs in the region are generally adopting policies and preparing supporting documentation that is in accordance with the guidance issued by the OECD[17] and the UN.[18]

Looking forward, as the OECD and G20 Base Erosion and Profit Shifting (BEPS) initiative progresses, many tax authorities are expected to consider ways to implement the recommended transfer pricing documentation standards through their local country legislation or administrative procedures. In light of the recommendations, transfer pricing documentation is likely to follow a three-tiered standardized approach, comprising a master file, local files and a country-by-country report. As Saudi Arabia is a key member of the G20, the international tax community is likely to closely monitor whether the DZIT elects to refer to these documentation standards. This will become apparent when the DZIT formally introduces its own version of transfer pricing rules, following MR 1776 of 2014.

5. Conclusions

Managing tax compliance in Saudi Arabia for MNEs is not easy. It is strongly recommended to thoroughly consider and plan any contemplated activity with the help of professional advisors. The most difficult areas are the taxation of cross-border service contracts and the ongoing uncertainty as to whether a non-resident's activity establishes a PE, especially with regard to services. Another contentious area is the application of tax treaties, particularly provisions on the attribution of profits to PEs and the interaction of such provisions with domestic law. Saudi Arabian tax authorities are known for their active stance in protecting the local tax base. When planning business activities with Saudi Arabia, it is recommended to use a tax treaty location, as provisions of tax treaties, especially protocols, may provide significant advantages. Further, not only passive income payments attract WHT in Saudi Arabia, but also payments for technical services. Special attention is required when addressing WHT treaty claims on cross-border services due to the recently introduced interpretation of the service PE provisions by the local tax authorities.

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16. Id.
17. OECD, *Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations* (OECD 2010), International Organizations' Documentation IBFD.
18. UN, *Practical Manual on Transfer Pricing* (UN 2013).

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