

Saudi Tax Authority adopts strict assessment of permanent establishments relating to service providers and agents

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Article 4 [a] of the Saudi Arabian Basic Tax Regulations (BTR) provides that, “(a) permanent establishment (PE) of a nonresident consists of a permanent place through which the nonresident carries out business in Saudi Arabia, in full or part, including through *an agent*.”

Article 4 [1] of the bylaws to the BTR defines an “agent,” referred to in the regulations, as including a non-independent agent enjoying the following authority to:

- ▶ Hold negotiations on behalf of the nonresident principal
- ▶ Enter contracts on behalf of the nonresident principal
- ▶ Hold inventory on behalf of the nonresident principal to meet the principal’s customers’ requirements

The General Authority for Zakat and Tax [GAZT] is now taking the view that in the case of a service contract tenure exceeding a six-month period, the service provider will be deemed to have established a PE for tax purposes in Saudi Arabia.¹ This matter is currently under appeal at different levels as taxpayers believe that the contract tenure cannot be the sole criteria for a PE determination in accordance with the above cited bylaws.

Currently, the GAZT is also undertaking a review of distributorship agreements entered into by a number of multinational companies (MNCs) for marketing their products in Saudi Arabia. Such agreements may have been entered into many years, if not decades, ago. Thus, the agreements may not have taken into account the new tax laws promulgated in 2004 and any subsequent developments in this regard. MNCs should review their present business relationship with their agents in Saudi Arabia to ensure that the arrangements in place are in compliance with the regulations in force and the practices currently followed in this regard.

Endnotes

1. See EY Global Tax Alert, [Saudi Arabian Government clarifies Service PE concept](#), dated 16 February 2016.

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EYG no. 01231-171Gbl

1508-1600216 NY

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