

The dilemma: ~~(T~~the disparity of the levy application for investors residing in Saudi Arabia due to Islamic obligations), ~~as it~~ will be explained in Chapter Two.

In brief, Saudi Arabia's government imposes a flat 20 percent corporate tax rate on foreign-owned firms. Saudi investors do not pay corporate income tax but are subject to a 2.5 percent tax, or "zakat," on net current assets. ~~(GCC nationals~~ Nationals of Gulf Cooperation Council (GCC) states are considered Saudi citizens for tax purposes.)

Suppose a company has both Saudi and foreign shareholders. In ~~that the case of a~~ company with both Saudi and foreign shareholders, the corporate income tax is calculated on the portion of taxable income attributable to the non-Saudi shareholders, while the Saudi-owned part contributes to the tax base of Zakat.

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Chapter 3:

Background:

Saudi Arabia has long been considered an attractive environment jurisdiction for investments ~~with because of a misunderstanding of its tax system. low tax rate~~ In its ~~current tax system, es, however,~~ Saudi Arabia imposes ~~a~~ 20% ~~as~~ corporate income tax in addition to its levy of Zakat. ~~In fact, this misunderstanding has been so pervasive that Saudi Arabia appeared on the Dutch government's FY 2019 list of international low-tax jurisdictions having a statutory CIT rate below 9% as well as those on the EU's list on non-cooperative jurisdictions for tax purposes. The following year, however, the Dutch government removed Saudi Arabia from this list, which serves to combat base erosion and profit shifting.~~

~~The Dutch listed low tax jurisdictions for FY 2019 to combat base erosion and profit shifting. The list is comprehensive and includes all nations having a statutory CIT rate below 9% as well as those on the EU's list of non-cooperative jurisdictions for tax purposes. However, in 2020 Saudi Arabia was removed from the list as the average local tax burden exceeds the aforementioned 9% tax over profit, considering the local corporate tax system and the levy of Zakat.¹~~

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¹ https://www.ey.com/en_gl/tax-alerts/ey-netherlands-removes-kuwait-qatar-saudi-arabia-and-belize-from-list-of-low-taxed-jurisdictions-for-fy-2020

~~This inclusion in the list could impact multinational entities or permanent establishments in one of the jurisdictions controlled by or engaged in transactions with Netherlands taxpayers.~~

~~Those Jurisdictions including Saudi Arabia should not have been included on the Dutch tax haven blacklist, but it is because of a general misunderstanding that they don't have a corporate income tax or have low corporate income tax rates.²~~

~~a common~~The misconception that Saudi Arabia is a low tax jurisdiction ~~is because stems from the fact that its~~ corporate income tax law is mostly not applicable to Saudi citizens. ~~The reason~~Instead, Saudi Arabia has ~~a behind that is the~~ unique dual corporate levy system that differs ~~in the application-based depending~~ on citizenship ~~that and~~ is justified by a religious considerations. ~~GCC countries' citizens~~Citizens of GCC countries are subject to Zakat ~~Collection-collection Lawlaw~~, while corporate income tax law only applies to income generated by foreign investors in the Kingdom of Saudi Arabia as detailed above. (ch2)

Imposing zakat on Muslims is an application of its constitution. Saudi Arabia strictly upholds the Qur'an and Sunnah as its primary legal sources. The first Article of the Basic Law of Governance states the following: "The Kingdom of Saudi Arabia is a fully sovereign Arab Islamic state. Its religion shall be Islam and its constitution shall be

Commented [JMR3]: I wonder if you really want this topic (The Netherlands black list) so prominently in the first paragraphs of the chapter. It gives the reader the impression that this will be the central topic of the chapter--but really it is just used as an example of a misunderstanding of the Saudi tax system.

Commented [JMR4R3]: My idea is to make it more explicit that this Dutch example is being used to illustrate the misconceptions that exist about the topic of taxation in KSA

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² https://www.bloomberglaw.com/product/tax/bloombergtaxnews/daily-tax-report-international/XE8C425000000?bna_news_filter=daily-tax-report-international#jcite

the Book of God and the Sunnah (Traditions) of His Messenger, may God's blessings and peace be upon him (PBUH)."³

There are several interpretations of the Qur'an and Sunnah, which in turn has led to differences in methodological practices and opinion. In addition, Sharia law is actually flexible and open to progression in all times progressing with the times, so no doubt that additional two sources that are ijihad and fatwa that have a major role in the emergence of the Islamic financial industry.⁴ All sources are discussed in the previous chapter(2).

Nevertheless, the existence of these two applied tax systems in the Kingdom of Saudi Arabia may raise several issues-concerns for foreign investors at a time when the SA's-Saudi government is-seekingseeks to attract foreign investment. Thisin-addition-it dual system may also lead to the loss of revenues from domestic investments.

Despite the disparity between the size of domestic and foreign investments, we found that the generated revenues from corporate income tax and Zakat are convergent.

The End-end of the year budget report of fiscal year 2022 stated that "Taxes on income, profit, and capital gain for FY 2022 were around SAR24 bn, increasing by

³ The Basic Law of Governance, Art. 1, Royal Order No. A/90, 27 Shaaban1412 A.H., (Mar. 1, 1992)

⁴ https://jfslt.journals.ekb.eg/article_14168_79f46173dbe5a2df701b6af31bf21621.pdf

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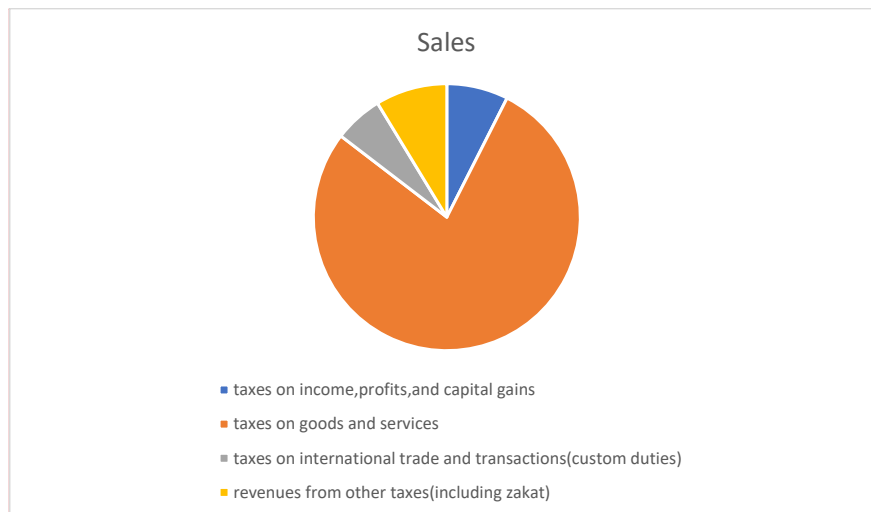
Commented [JMR7]: This transition does not work here. Not clear enough to the reader what it refers to

Commented [JMR8]: I would expect now some more specific info on the types of concerns, specific examples of foreign investors, and specific ways in which it results in loss of revenues from domestic investments.

Commented [JMR9]: Can you make the difference in size more explicit to the reader? In what way are they disparate? Which is larger?

56.1% (SAR 9bn) over the approved budget. This is primarily due to the improvement in the performance of economic sectors, notably the manufacturing industries, in addition to the extension of the disclosure and exemption of fines initiative during FY 2022."⁵

While Revenue from other taxes (including zakat) for FY 2022 were SAR 28 bn, increasing by 10.2% (SAR 3bn-) over the approved budget, due to the improvement in the performance of economic sectors in addition to the collection of dues from the previous period."



We can see that generated revenues from corporate income tax and Zakat are convergent.

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Commented [JMR12]: I'm not seeing this clearly in the pie chart; Zakat is included with 'other taxes' so it doesn't isolate those two categories: corporate income tax and zakat

⁵ <https://www.mof.gov.sa/en/financialreport/2022/Pages/default.aspx>

Overview of investment in the S.A. market and generated tax revenue, and tax relationship in attracting investment

On the fringes of the World Economic Forum in Davos, the Saudi Minister of Investment, Eng. Khaled Al-Falih, ~~declared~~ announced that total investments in the Kingdom had reached to SR 900 billion by the end of 2021.⁶ Additionally, it was also announced in Khalid Al-Falih while addressing the opening session of the Saudi Special Economic Zones Investment Forum revealed that the investment sector in Saudi Arabia exceeded one trillion riyals in year 2022 (about \$ 266.6 billion)⁷⁸⁹

Commented [JMR13]: The relationship between taxes and investment (I'm not going to change it because I'm not sure if this is what you mean)

Commented [JMR14]: This is a curious word to include. I would just remove it. Also, give the date and country (not just city)

Commented [JMR15]: Be sure to choose a consistent expression for currency (you use 'bn' in other locations)

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⁶ <https://en.maaal.com/archives/202205/al-falih-investment-in-saudi-arabia-amounted-to-sr-900-bln-in-2021/>

⁷ <https://uacorg.org/en/News/details/5040/%D8%A7%D9%84%D8%A7%D8%B3%D8%AA%D8%AB%D9%85%D8%A7%D8%B1-%D9%81%D9%8A-%D8%A7%D9%84%D8%B3%D8%B9%D9%88%D8%AF%D9%8A%D8%A9-%D9%8A%D8%AA%D8%AC%D8%A7%D9%88%D8%B2-%D8%AA%D8%B1%D9%8A%D9%84%D9%8A%D9%88%D9%86-%D8%B1%D9%8A%D8%A7%D9%84-%D9%84%D8%A3%D9%88%D9%84-%D9%85%D8%B1%D8%A9-%D9%81%D9%8A-%D8%A7%D9%84%D8%AA%D8%A7%D8%B1%D9%8A%D8%AE>

⁸ <https://www.independentarabia.com/node/456896/%D8%A7%D9%82%D8%AA%D8%B5%D8%A7%D8%AF/%D8%A3%D8%AE%D8%A8%D8%A7%D8%B1-%D9%88%D8%AA%D9%82%D8%A7%D8%B1%D9%8A%D8%B1-%D8%A7%D9%82%D8%AA%D8%B5%D8%A7%D8%AF%D9%8A%D8%A9/%D9%82%D8%B7%D8%A7%D8%B9-%D8%A7%D9%84%D8%A7%D8%B3%D8%AA%D8%AB%D9%85%D8%A7%D8%B1-%D8%A7%D9%84%D8%B3%D8%B9%D9%88%D8%AF%D9%8A-%D9%8A%D8%AA%D8%AC%D8%A7%D9%88%D8%B2-2666-%D9%85%D9%84%D9%8A%D8%A7%D8%B1-%D8%AF%D9%88%D9%84%D8%A7%D8%B1-%D8%A8%D9%86%D9%87%D8%A7%D9%8A%D8%A9-2022>

⁹ <https://saudigazette.com.sa/article/632889>

Khalid Al-Falih while addressing the opening session of the Saudi Special Economic Zones Investment Forum revealed that the investment sector in Saudi Arabia exceeded one trillion riyals in year 2022 (about \$ 266.6 billion)¹⁰¹¹¹²

While foreign investments in Saudi Arabia grew by 2% to SAR 2.42 trillion in 2022, based on the latest official data issued by the Saudi Central Bank (SAMA). The change in 2021 was 303.97 (SAR bln), and in 2022 was 38.32 (SAR bln). Foreign direct investments made up 42 percent of the total foreign inflow in the Kingdom, worth SR 1.01 trillion, while portfolio investments totaled SR822.8 billion, also it, the data also showed that other investments accounted for SR572.3 billion.¹³

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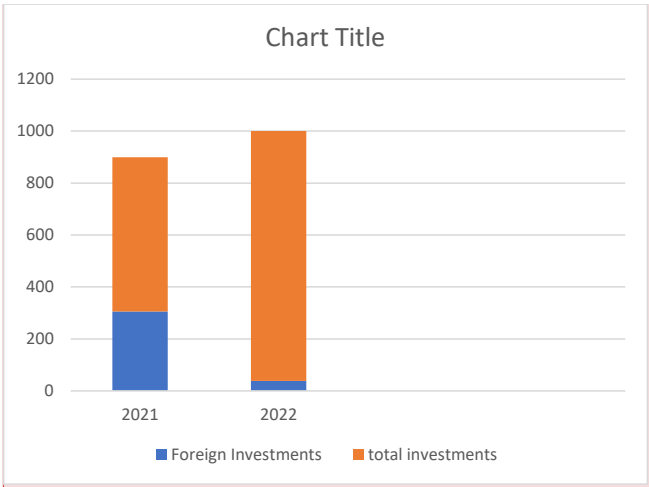
¹⁰<https://uacorg.org/en/News/details/5040/%D8%A7%D9%84%D8%A7%D8%B3%D8%AA%D8%AB%D9%85%D8%A7%D8%B1%D9%81%D9%8A%D8%A7%D9%84%D8%B3%D8%B9%D9%88%D8%AF%D9%8A%D8%A9%D9%8A%D8%AA%D8%AC%D8%A7%D9%88%D8%B2%D8%AA%D8%B1%D9%8A%D9%84%D9%8A%D9%88%D9%86%D8%B1%D9%8A%D8%A7%D9%84%D9%84%D8%A3%D9%88%D9%84%D9%85%D8%B1%D8%A9%D9%81%D9%8A%D8%A7%D9%84%D8%AA%D8%A7%D8%B1%D9%8A%D8%AF>

¹¹

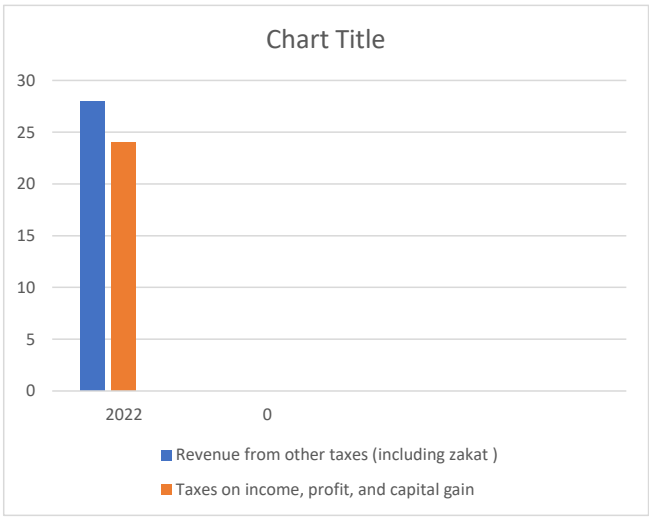
<https://www.independentarabia.com/node/456896/%D8%A7%D9%82%D8%AA%D8%B5%D8%A7%D8%AF/%D8%A3%D8%AF%D8%A8%D8%A7%D8%B1%D9%88%D8%AA%D9%82%D8%A7%D8%B1%D9%8A%D8%B1%D8%A7%D9%82%D8%AA%D8%B5%D8%A7%D8%AF%D9%8A%D8%A9/%D9%82%D8%B7%D8%A7%D8%B9%D8%A7%D9%84%D8%A7%D8%B3%D8%AA%D8%AB%D9%85%D8%A7%D8%B1%D8%A7%D9%84%D8%B3%D8%B9%D9%88%D8%AF%D9%8A%D9%8A%D8%AA%D8%AC%D8%A7%D9%88%D8%B2-2666%D9%85%D9%84%D9%8A%D8%A7%D8%B1%D8%AF%D9%88%D9%84%D8%A7%D8%B1%D8%A8%D9%86%D9%87%D8%A7%D9%8A%D8%A9-2022>

¹² <https://saudigazette.com.sa/article/632889>

¹³ <https://www.argaam.com/en/article/articledetail/id/1635999>



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We analyzed the given information of statements of the minister of investment above to create Chart 1. In chart 1 we can see the ratio of foreign investment to the

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comprehensive investment value in the year 2022. It is % of the total investment in year 2021, and % of the total investment in year 2022.

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~~To clarify more of the~~ The disparity in the volume of domestic and foreign investment in regards to indirect investments ~~is we can see that is~~ evident in ~~the~~ listed companies. There is a difference in Saudi and non-Saudi shares of listed companies on the main Saudi stock markets. The ownership of foreign investors in the Saudi stock market shows foreign investors own Only 3.36 percent of the market value of the listed companies.¹⁴

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~~The Q~~qualified ~~F~~foreign ~~I~~investors (QFIs) may not own 10% or more of any issuer's listed shares or convertible debt instruments except for foreign strategic investors, who may not own more than 49% of the issuer¹⁵. According to Saudi Arabia's Income Tax Law, QFIs are subject to a 5% withholding tax from the total dividends distributed by the listed company ~~where whose~~ capital gains are not subject to tax.¹⁶

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~~In regard to terms of~~ direct investments, most of the FDI in 2021 came from the state oil company Saudi Aramco, ~~which sold~~ ~~selling~~ a \$12.4bn stake in an oil pipeline entity to investors led by EIG Global Energy Partners.¹⁷

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¹⁴ <https://saudigazette.com.sa/article/619271>

¹⁵ https://www.saudiexchange.sa/wps/portal/saudiexchange/trading/investing-trading/qualified_foreign_investors

¹⁶ id

¹⁷ <https://www.bloomberg.com/news/articles/2022-03-29/saudi-arabia-s-fdi-hit-decade-high-last-year-on-aramco-deal#xj4y7vzkg>

~~The~~ By 2022, foreign investment had reached 2.4 trillion in total ~~by 2022~~; however, the total investment ~~in just in the span of 2022 alone only one year~~ was 1 trillion ~~in 2022~~.

Although ~~t~~There is a ~~huge~~ significant difference between Saudi and non-Saudi contributions in the comprehensive investment in SA, ~~Although~~ the revenues from income taxes and zakat are almost the same for two main reasons. ~~This result because of two reasons:~~

First, oil companies are taxed at a rate between 20% and 80%, and this is what made the income tax revenues closer to zakat revenues. In 2022, Saudi Aramco posted the largest annual adjusted profit ever recorded by an oil and gas company or ~~of~~ any listed company globally.¹⁸ Aramco's net income increased by 46.5% to a record \$161.1 billion in 2022, compared to \$110.0 billion in 2021¹⁹

The other reason Saudi and non-Saudi investment contributions are relatively balanced is the fact that the proceeds of zakat based on its rules (2.5% of the zakat base) are low compared to income taxes because Saudi shares size is huge in non-oil sectors, and they are not subject to CIT.

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Commented [JMR23]: What does this pronoun refer to?

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¹⁸ <https://www.bloomberg.com/news/articles/2022-08-14/aramco-profit-surges-on-high-prices-and-strong-demand-for-oil>

¹⁹ <https://www.aramco.com/en/investors/annual-report>

<https://www.aramco.com/ar/investors/reports-and-presentations>

The National Investment Strategy (NIS) aims to contribute to achieving the goals of Saudi Vision 2030 by tripling annual investments by 2030, providing a cumulative investment target ~~exceeding of over~~ SAR 12.4 trillion between 2021 and 2030, from all sources; ~~the goals also include the following:~~ ~~Triple-tripling~~ investment volume (as measured by Gross Fixed Capital Formation (GFCF) to SAR 2 trillion by 2030 (equivalent to 30% of GDP); ~~more than:~~ ~~> More than double-doubling of~~ the overall domestic investment component of GFCF to SAR 1.65 trillion (average annual growth rate of ~9%); ~~increase-increasing~~ FDI approximately twenty-fold by 2030 (to 5.7% of GDP) by 2030. The total amount of 12.4 total amount ~~has is calculated based on the contributions of~~ several participants, including companies enrolled in the Shareek Program; ~~large companies in the private sector (listed and non-listed companies) with adding 5.0 SAR Tn, the Public Investment Fund with adding 3.0 SAR Tn, FDI with adding 1.8 SAR Tn, government and other local investment, including SMEs, with adding 2.6 SAR Tn.~~ ²⁰

So despite Saudi Arabia's desire to attract foreign investments, it is clear that taxes do not play a role in attracting investment in S.A. It is found that countries with a

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Commented [JMR26]: To be honest, I don't see how the information up to this point would allow the reader to draw this conclusion.

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²⁰ The National Investment Strategy (NIS), pdf, an economic overview of the national investment strategy of kingdom of Saudi arabia.

higher level of tax complexity, both within the tax code and the tax framework, tend to be less attractive. The tax complexity level in S.A. is very high.²¹

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Furthermore, ensuring equality between Saudi investors and among non-Saudi investors is one of the Investment Principles and Policies in the Kingdom.²² Besides that, ~~The~~ the new investment Law-law strives to support the principle of competitive neutrality and fairness in the marketplace.²³

Commented [JMR28]: Further than what?

However, while most international investment agreements do not exclude taxation from their scope,²⁴ ~~however,~~ S.A. has tended to ~~have an~~ include articles or provisions that ~~illustrates that tax matters are excluded~~ excludes tax matters from its investment treaties. ~~For example~~ Some examples include the following: (1) A treaty between Iraq and Saudi Arabia ~~treaty includes the wording,~~ "The provisions of this agreement do not apply to the following: tax matters".²⁵ (2) between Spain and SA includes, "The treatment granted under this article shall not apply to tax matters".²⁶ (3) a an investment treaty between Malaysia and Saudi Arabia ~~investment treaty, the contains~~ a provision of a "no less favorable clause." which excludes a tax-related matters where

²¹ file:///C:/Users/m-a-s/Downloads/SSRN-id3469663%20(2).pdf

²² <https://www.misa.gov.sa/ar/investment-principles/>

²³ [New Investment Law to treat Saudi and foreign investors equally - The Sovereign Group](#)

²⁴ <https://investmentpolicy.unctad.org/publications/1245/international-investment-agreements-and-their-implications-for-tax-measures>

²⁵ <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/6527/download>

²⁶ <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/5472/download>

in which the provision states that relative to the granting of treatment not less favorable than that accorded to the investors of any third State-state shall not be construed so as to oblige one Contracting Party to extend to the investors of the other the benefit of any treatment, preference or privilege resulting from taxation or any domestic legislation relating wholly or mainly to taxation.²⁷

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The guiding model for an agreements between the Kingdom of Saudi Arabia and other countries on encouragement and mutual protection of investments was issued recently and it is based on encouragement and mutual protection of investments.²⁸ The second Article related to the scope of the Saudi Arabia agreement expressly stated states that the provisions of the agreement shall not apply to (3) tax matters.²⁹

Commented [JMR30]: Article of what? Maybe remind the reader that it is the second article of _____ (whatever law/policy/document)

Achieving these targets would mean that investment's the contribution of investments to GDP is expected to increase to 30% by 2030, up from 22%, in 2030, making the Saudi economy one of the 15 largest economies in the world.³⁰ the-The different tax applications between domestic and foreign investors may raise other concerns before the foreign investors will be as discussed below.

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²⁷ <https://investmentpolicy.unctad.org/international-investment-agreements/treaty-files/1965/download>

²⁸ Issued by by Cabinet Resolution No. (387) dated 7/14/1443 AH 02/15/2022

²⁹id

³⁰ file:///C:/Users/m-a-s/Downloads/Quarterly%20Economic%20and%20Investment%20Monitor%20English%202024Oct2021%20(1).pdf

There is no doubt that pumping this money into these investments has a positive economic role in increasing the GDP. However, in terms of taxation and its role in raising the GDP, ~~it is clear to us~~ the difference between the volume of foreign and domestic investments is quite clear. The profits of local companies from the investment will not be subject to a CIT later, only to Zakat. The zakat only would not generate revenue more than CIT would in most cases.

Commented [JMR32]: Foreign?

To illustrate my point more regarding this, ~~the author~~ it is useful to look at uses Saudi Arabia ~~Bank's Settlement~~ in 2018 over Zakat to demonstrate the different generated revenues from tax and the Zakat payers. The

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~~2018 Saudi banks' settlement, major banks were required major banks to~~
~~te~~ make additional payments. Saudi banks and the ZATCA reached a settlement, worth a combined 16.7 billion riyals in total (\$4.5 billion) ~~over~~ a dispute about retroactive zakat, requiring additional payments due to a change in the zakat base calculation. These additional payments were required due to the disallowance of long-

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term investments, statutory deposits, and financing leases for the purpose of computation of the zakat base.³¹

The claims periods were backdated as far as 2002³², ~~and~~ for a range of approximately 5 to 7 years. ~~It~~ The claims ~~varyies~~ from bank to bank; for example, The ~~annual audit report of auditor of "Riyad Bank" in its annual audit report~~ stated that the bank had received additional claims from the General Authority for Zakat for the years ~~(2008-2013)~~, amounting to 3.5 billion riyals,³³ ~~and while~~ Al Rajhi Bank's assessment orders were for 2002-2009.³⁴ Another example, ZATCA issued "assessment orders" for Al Rajhi bank for the years 2002-9 amounting to \$193 million, nearly 8 percent of its 2017 net profit.³⁵

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The settlement ~~demonstrated demonstrates that there was a~~the significant ~~differentiation-differences~~ in the generated revenues based on the difference between zakat and tax bases. The required amount was estimated that most banks would have to pay zakat at a rate of 10% of net profit. For example, Bank AL Jazira experienced the

³¹ <https://www.bloomberg.com/news/articles/2018-12-20/saudi-arabia-banks-in-4-5-billion-settlement-over-islamic-taxes>

³² <https://www.reuters.com/article/us-saudi-banks/jump-in-islamic-tax-liabilities-worries-saudi-banks-idUSKCN1G61LU>

³³ [مطالبات هيئة الزكاة على البنوك: المطالبات الإضافية على "بنك الرياض" تبلغ 3.5 مليار ريال \(argaa.com\)](http://argaa.com)

³⁴ <https://www.reuters.com/article/us-saudi-banks/jump-in-islamic-tax-liabilities-worries-saudi-banks-idUSKCN1G61LU>

³⁵ Id 24

most significant increase in its effective total tax rate, as the payment of the amount of zakat is equivalent to, going from 7% to 10.7% tax rate.³⁶

~~Another example, ZATCA issued "assessment orders" for Al Rajhi bank for the years 2002-9 amounting to \$193 million which is nearly 8 percent of its 2017 net profit.~~³⁷

Commented [JMR36]: Example of what?

~~The amount difference that produced a fair amount of revenue was because of a change in the zakat base calculation on financing activities.~~³⁸

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After ~~that the bank~~ settlement, ~~and the beginning of 2019~~ rules for calculating the zakat on financing activities were issued at the beginning of 2019. The rules distinguish ~~b~~Banks, and finance companies licensed by the Saudi Arabian Monetary Agency (SAMA) ~~are different~~ from the ~~rest of the companies~~ other companies.³⁹ The rules state minimum and upper limits for the Zakat base, ~~;~~ meaning that no bank, in cases ~~when ease~~ a net profit is realized, will pay less than 10% of the net profits, even if 2.5 of

Commented [JMR39]: Is this a percentage?

³⁶ https://www.spglobal.com/marketintelligence/en/news-insights/trending/qX24FSb_a6-rL3DTMmwsow2,
<https://www.al-jazirah.com/2018/20181224/ec1.htm>

³⁷ ~~Id-24~~

³⁸ RULES FOR CALCULATING THE ZAKAT ON FINANCING ACTIVITIES, issued by the General Authority of Zakat & Tax pursuant to Ministerial Resolution No. (2215) Dated: 07/07/1440 H | 14/03/2019

³⁹ <https://zatca.gov.sa/en/HelpCenter/guidelines/Documents/Zakat%20Simplified%20Guideline%20for%20Zakat%20Payers%20Financing%20Activities.pdf>

the Zakat base was less, ~~and; banks not will~~ pay ~~no~~ more than 20% of the net profits, even if 2.5 of the zakat base is more, which is not likely 40.

The new zakat calculation rules for financing activities especially affect banks; ~~especially banks~~ with a greater share of domestic shareholders; however, banks with greater foreign ownerships still pay higher effective tax rates, 20% of net profit, on these shares than on local ones.

The amendment generated fair revenues although most Saudi banks had to pay only 10% of net profit. Moreover, this amendment is considered the first tax reform to generate equivalent revenues; ~~especially since~~ as banks are among the biggest investors in Saudi Arabia

This Settlement, while it clarifies the difference in revenue paid by foreign and Saudi citizens investors, draws our attention to the issue that while the CIT (corporate income tax) in Saudi Arabia is 20-%, some MNEs with Saudi shares would pay less than the 15% minimum ETR which will raise another issue in the purpose of applying pillar two which will be discussed later in CH4

Commented [JMR40]: What does this refer to? 'shares' or 'banks'? unclear

Commented [JMR41]: Is the amendment the same as the new financing rules (as discussed in the previous paragraph)

Commented [JMR42]: Should this paragraph be inserted earlier, when you discuss the bank settlements?

40

https://zatca.gov.sa/en/RulesRegulations/Taxes/Documents/10.Rules%20for%20Calculating%20the%20Zakat%20on%20Financing%20Activities_ENG_v.f.pdf

<https://zatca.gov.sa/en/HelpCenter/guidelines/Documents/Financing%20Activities%20Guideline%20Eng.pdf> P;34

The published draft of the new Saudi investment law aims to improve the investment environment in Saudi Arabia, enhance its competitiveness ~~and~~ keep pace with best practices internationally, promote equal treatment of local and foreign investors, and increase investor confidence, taking taxes out of the scope⁴¹

Commented [JMR43]: law code? Or investment laws?

However, on the sidelines of taxes, the disparity in applying the system to citizens and foreigners would raise investor concerns ~~for investors regarding about~~ trust and competitiveness. ~~Two questions target these issues: would discuss these issues under two questions;~~ To what extent is Saudi ~~is~~ applying tax neutrality? and does the discrepancy in applying the system lead to discriminatory taxes, ~~and the~~ and related problems problems ~~associated with them~~ like evasion cases and loss of revenue?

Commented [JMR44]: What does this phrase mean?

This part of this thesis poses a series of concerns relating to the tax disparity in S.A. through analyses of concepts of non-discrimination and the neutrality of taxation systems and in the context of issues that may arise due to the inconsistency with international corporate tax.

~~the~~ The government has the capacity as a sovereign person of public law to impose taxes by administrative means known, or occasionally with justice, respecting a certain extent the principles and traditions unique to tax. Principles of neutrality and non-discrimination are relevant in terms of describing the relations between public authorities and taxpayers.⁴²

⁴¹ <https://istitlaa.ncc.gov.sa/ar/Trade/Misa/1234/Pages/default.aspx>

⁴² Ioan Dan Morar, 2012. "[About Tax Neutrality And Non-Discrimination](#)," [Annals of Faculty of Economics](#), University of Oradea, Faculty of Economics, vol. 1(1), pages 736-738, July

~~we~~ Here we shall analyze whether the existing business tax system in SA can be considered to be in accordance with an overall policy goal of prevention of discriminatory taxation and tax neutrality, which corresponds to investor ~~s'~~ confidence and competitiveness protection.

Tax Discrimination and tax neutrality are overlapping concepts and ~~both~~ ~~are mainly mostly~~ used for removing obstacles and distortions initiated by taxation across borders; CFC rules, tax treaties, and trade treaties due to the simultaneous involvement of two separate tax systems of two countries to avoid a duplicative layer of taxes or to avoid paying more in taxes than citizens of the source country.

Commented [JMR45]: Not sure what the verb of this sentence should be, but it needs one

Notwithstanding, the general discussion of tax disparity in Saudi Arabia motivates the analysis of the application of two concepts ~~ss'~~ ~~application~~ to Saudi Arabia's business tax law. It is possible to examine these two principles under Saudi Arabia's business tax law within the borders of one country that applies ~~applying~~ two different systems to two classes of taxpayers in the same market, ~~which makes its system making~~ different from any other countries. ~~Principles'~~ ~~The applications~~ application of these principles were mostly envisaged in comparison with the European Union, ~~where the single market is also~~ which also has a single market. The single market refers to the EU as a unified territory without internal borders or other regulatory obstacles, such as ~~like~~ the removal of taxation-based obstacles and distortions.

Commented [JMR46]: Are the 'two concepts' and 'two principles' the same? What are they? Discrimination and neutrality?

A neutral tax will boost efficiency by ensuring the best possible allocation of the means of production is achieved, and it will ~~providing~~ provide an ideal tax system that

raises revenue while minimizing discrimination in favor of, or against, any particular economy.⁴³

DISCRIMINATORY TAX

The term "discrimination" was originally very neutral, referring to making an action of distinction or division. However, today this term is negatively interpreted ~~negatively~~ as meaning receiving less favorable treatment. The ban on discrimination does not restrict more favorable treatment. The author found that although both concepts are clearly related, there is a subtle difference between the principle of non-discrimination and the principle of equality.

Commented [JMR47]: Does this refer to you as the writer?

Throughout history, ~~Governments~~ governments have tended to impose heavier burdens on foreigners than on their own citizens. For instance, the French droit d'aubaine was a feudal power that allowed the king to confiscate all a foreigner's⁴⁴ property upon their death within the kingdom, excluding all heirs, regardless of whether they were either foreigners or citizens.⁴⁴

~~Looking at EU tax law that covers cross-border inside the EU situations, it is~~ challenging to define the term "discrimination" when looking at EU tax law that cover cross-border inside the EU situations, precisely because there are so many different sorts of discrimination that have been identified in legal literature and case law.⁴⁵

⁴³ <https://www.oecd-ilibrary.org/docserver/9789264218789-5-en.pdf?expires=1689851684&id=id&accname=guest&checksum=A36480644A1EB2615DEB1C719F38D422>

⁴⁴ The principle of non-discrimination in international and European tax law By Niels Bammens

⁴⁵ [The Principle of Non-Discrimination in International and European Tax Law sample.pdf \(ibfd.org\)](#)

Under the ECJ's interpretation, the EU tax discrimination doctrine is highly controversial. ~~the~~ The decisions of ECJ are obscure and lack any guiding principles of tax discrimination meaning. Disadvantages brought on by rate differences do not amount to discrimination. However, the ECJ takes a comparison approach to evaluate member state tax laws for discrimination by comparing the complaining taxpayer with a "similarly situated" taxpayer if the former receives worse tax treatment, it would be considered tax discrimination. Nevertheless, the court generally concludes that public policy reasons can justify tax discrimination.⁴⁶

Commented [JMR48]: Define the acronym when using it for the first time

Commented [JMR49]: This is a noticeable shift in tone. This becomes evaluative/subjective. Will the reader understand this opinion?

Commented [JMR50]: I don't understand the use of this transition here.

Comparably, upon checking the base of the division, zakat is applied to Saudi or Gulf residents entities or investors, while income tax law is applied to foreign entities or investors, we can see that it is not based on nationality as is ~~common~~ knowledge commonly assumed, because it ~~stipulated~~ stipulates the a residence condition as well, where zakat is not applied to Saudis residing abroad of Saudi Arabia in most cases.⁴⁷

~~For example,~~ As an example, let's take a joint liability company, a partnership company owned by an Emirati residing in Saudi Arabia, and a Saudi residing in the UAE. The Saudi will be subject to tax, but the Emirati will be subject to zakat. However, now let's look at a limited liability company owned by an American residing in Saudi

⁴⁶ Mason, Ruth and Knoll, Michael S., What is Tax Discrimination?. Yale Law Journal, Vol. 121, Pg. 1014, 2012, U of Penn, Inst for Law & Econ Research Paper No. 12-17, Available at SSRN: <https://ssrn.com/abstract=1647014>

⁴⁷ Zakat applies to non-resident Saudis investing through PE that meet the requirements in all its worldwide activities; it would be subject to income tax (not zakat) on the Saudi branch's activities if it doesn't meet the requirement.

Arabia, and a Saudi residing in America. The Saudi will be subject to Zakat, and the American will be subject to tax.⁴⁸

At the same time, zakat applies on foreigners' shares in the Saudi ~~stuck stock~~ market in resident Saudi companies listed on a Saudi stock exchange ~~which is not~~ founding shareholders or their successors.⁴⁹

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Commented [JMR51]: What does this describe? Stock exchange or companies?

If there is such tax discrimination, ~~unknown those~~ who would have the preferential treatment (foreigners whose income tax is imposed on them, or GCC citizens whose zakat is collected from) ~~it~~ depends on each case separately, public policy, and Basic Law of Governance foremost (~~is which~~ derived from the Qur'an and Sunnah), ~~and the~~ SA constitution, ~~as~~ mentioned above, therefore, such tax discrimination based on the religious basis can be justified.

Moreover, the comparability test "similarly situated" cannot be met ~~Because~~ ~~because~~ ~~they~~ are in different situations originally; it is not possible to put them in a similar situation; imposing income tax on Saudis will constitute a heavy burden by double payments since they pay mandatory zakat with fixed rate and standardized base

Commented [JMR52]: Who?

⁴⁸

⁴⁹ art. 2(A) Income Tax Law and SA: Implementing Regulations of Income Tax Law (and its amendments), issued by Ministerial Resolution No. 1535 and dated 11/06/1425 (28 July 2004), art. 1(1), A Royal Decree No. 153/M dated 5/11/1441AH corresponding to June 26, 2020 has been issued approving the ministers' Council Resolution No. 687 dated 2/11/1441AH corresponding to June 23, 2020 which provides an approval of the amendment to Article (2) paragraph (A) of the Saudi income tax law.

on the grounds of the established right of the needy.⁵⁰ At the same time, because of this consideration, zakat cannot ~~be levied~~ ~~zakat from/on~~ foreigners who are non-Muslims, except ~~the~~ ~~one~~ case mentioned above ~~where-in which~~ the foreigner's shares are owned for the purpose of trading in the Saudi stock market due to its continuous change and instability. The company pays the zakat on their behalf since ~~we~~ zakat cannot ~~be~~ imposed ~~zakat~~ on non-Muslims because it is not a part of their faith; ~~That-that~~ much is universally agreed upon.⁵¹ However, resident Muslims other than GCC citizens could have a double payment in SA.

The non-discrimination ~~Article-article~~ is found in Article 24 of the OECD MC (2017), the UN MC (2018), and the US MC (2006). Ensuring that the source country does not impose a greater tax burden on foreign investments relative to domestic investments is one of the Article's main goals. the non-discrimination ~~Article-article~~ that is incorporated in most tax treaties is absent in all Saudi tax treaties because the Kingdom already has some sort of tax disparity.⁵²

However, ~~it the article~~ does not go as far ~~as to saying~~ there is discrimination under the current tax law system. It is worth mentioning that some Saudi treaties have

⁵⁰ Holy Quran, 51:19 and 70:24-25

⁵¹ https://iei.kau.edu.sa/Files/121/Files/152672_34-A-FiqhAlZakah-Vol-I.pdf p33

⁵² Alholiby, Saud M., Saudi Arabia's Tax Treaties: What Does Zakat Have to Do with Them?

(December 15, 2022). Bulletin for International Taxation, 2023 (Volume 77), No. 3, Available at SSRN: <https://ssrn.com/abstract=4313295>

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a special provision to the treaty protocols, expressing the ~~if~~ desire to add a non-discrimination article. ~~if~~ Saudi Arabia started to include such an article in its future tax treaties in case the Kingdom of Saudi Arabia introduces an income tax applicable to its nationals.

Commented [JMR53]: Can you sort this sentence out?
I'm not quite sure what it's saying.

Double Taxation Avoidance Agreement (DTAA) aims to provide contracting countries benefits of eliminating taxing the same income twice and provides a credit of taxes paid by the taxpayer in the source country. However, Saudi tax treaties exclude nationals, zakat payers, from the methods of eliminating double taxation and from any zakat relief.

~~It~~ is not ~~sure-certain~~ whether ~~a-the~~ Saudi authority considers zakat as tax ~~or-not~~ in treaties. Zakat is not truly covered for the purpose of avoiding double taxation, despite being mentioned as a covered tax under Article 2 of Saudi tax treaties. However, including zakat as a tax ~~is-to-may~~ prove that Saudi and GCC citizens are subject to a somewhat similar levy to ~~the~~ income tax that ~~levies-levied~~ on foreigners. Saudi Arabia's tax treaties include ~~the following clause wording~~ to protect the country's zakat collection regime ~~_or-using-words_~~ such as "the methods for elimination of double taxation will not prejudice the provisions of the zakat collection regime as regards Saudi nationals' resident in the Kingdom of Saudi Arabia."

~~due-Due~~ to the religious nature of zakat, discussed in the subsection below, the exception plainly signifies that Saudi Arabia does not provide its citizens (zakat payers) with any relief from zakat, based on a tax treaty, even if they legally incur ~~(legally)~~ comparable capital taxes in other jurisdictions, or any relief for international double

zakat incidents.⁵³ ~~because of the uniqueness of zakat rules, which that prevents~~ a set-off between zakat and taxes, ~~which~~ will be discussed subsequently

Moreover, discriminating between Muslims and non-Muslims regarding zakat payment might lead to needless loopholes and evasion incentives.⁵⁴

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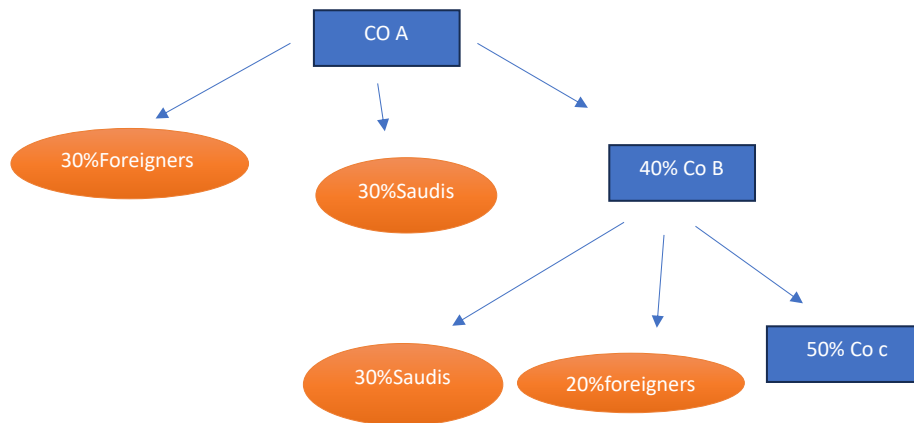
In a state where only Muslim citizens pay zakat, ~~this could increase the latter's~~ there may be incentive to evade. For example, a Muslim could marry a non-Muslim to transfer his property to the exempted spouse. On the other hand, if the state imposes a higher rate of tax on non-Muslims while Muslims are paying the low rate of zakat, non-Muslims may attempt to evade the high taxes charged to them. For instance, non-Muslim businessmen have the ability to register their companies in Muslim names to avoid the high rate of tax.⁵⁵ Saudi Arabia implemented the Anti-Concealment law on 28-/08/2020. However, ~~is hard to proving prove~~ cases of ~~-Concealment-concealment is~~ difficult in many situations.⁵⁶ For example, in an indirect ownership company, the law will charge the second level of ownership based on the nationality of the company so in the below figure if company C is Saudi, zakat will be impose on the company, no matter how much the foreign shares are.

⁵³ id

⁵⁴ AlQaradawi, Y., Fiqh AlZakat (Mo'asasat AlRisalah, Beirut 2002) vol. 1, p. 126

⁵⁵ <https://core.ac.uk/download/pdf/42131317.pdf>

⁵⁶ file:///C:/Users/m-a-s/Downloads/Anti-Concealment%20Law%20(2).pdf



The nondiscrimination article supports the objective of tax neutrality, the efficient taxing rights allocation between a source country and a national or resident country, discussed in the following principle.

NEUTRALITY IN TAXATION

Commented [JMR55]: The organization of this section is a bit 'loose', and a tighter organization needs to be developed. Let's see what your professor advises.

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~~The term "Neutralityneutrality" term~~ includes much more objection to arbitrary treatment and "equity" and "certainly " terms combined. 57 Neutrality, as ~~HAROLD~~ Harold M.

Commented [JMR56]: unclear

~~GROVES~~ Grove defined defined it, is "the impartiality of treatment that arises from (1) unequal treatment of essentially initially similar taxpayers; or (2) the same treatment of essentially different taxpayers." Taxes should be equitable, and they should deviate from neutrality only for a legitimate public purpose.⁵⁸

For the sake of the taxpayers' morale, neutrality is crucial, and it encourages taxpayers to comply in practice. Additionally, neutrality is crucial for the best use of resources and the maximum satisfaction of consumers. This means that any improvements made by lawmakers should not be a result of purposeful bias or bungling, but it also dispels the myth that tax laws can ever be applied equally and perfectly.⁵⁹

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The tax neutrality principle is commonly recognized. In practice, however, it can be challenging to resolve trade-offs between ~~different~~ concepts of neutrality and different goals. Nevertheless, in several situations, the tax neutrality principle has succeeded in providing a helpful approach to cut through some tax policy discussions and pinpoint a more economically effective method to organize the tax system.⁶⁰

Although it is challenging for the government of Saudi Arabia to achieve equal treatment between Saudi and foreign investors while there are different concepts and

⁵⁷ NEUTRALITY IN TAXATION, HAROLD M. GROVES, RICHARD GOODE THE NATIONAL TAX JOURNAL IN 1948-50 AND 1994-96, National Tax Journal 50, no.44 (Mar 2021): 707-718. <https://doi.org/10.1086/NTJ41789711>

⁵⁸ id

⁵⁹ id

⁶⁰ [Microsoft Word - furman tax neutrality.doc \(hamiltonproject.org\)](#)

different goals, the concept of neutrality helps us to identify the problem of inefficient

Production in Saudi Arabia, which worries investors and helps us to find a way to
organize the tax system in Saudi Arabia.

Commented [JMR57]: These seems out of place, as it contains the word 'us' and also seems to be a positive phrase that is describing a negative phrase (the problem of inefficient production in SA)

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Commented [JMR58]: What?

It can be said that it worries ~~the~~ foreign investors s more than , not the Saudi one
investors because ~~the Saudi investors~~ the latter will feel that they are fulfilling a religious
obligation even in the rare cases in which they pay more than the foreigner, such as the
case of not making profits of from a business or in event of a loss.

Muslims still have to pay Zakat even in the event of a loss when the other
requirements for Zakat are met; the essential difference between the Zakat base and
the income tax base, is that the latter depends on the adjusted profit ~~While-while~~ Zakat
depends on the financial solvency of the taxpayer (any item of wealth considered an
asset that is growing, able to grow, or a result of growth).⁶¹

Commented [JMR59]: Unclear how this fits in with the 'tax neutrality' concept

Saudi Arabia has the characteristics of a tax-neutral jurisdiction since it doesn't
pose tax harm to other countries or foreigners. It is committed to transparency and
works with law enforcement entities to combat fraud and tax evasion. it has engaged in
various forms of collaboration with the OECD, and tax conventions with the OECD;

⁶¹ Al-Zarqa

including the BEPS MLI⁶² and the Global Forum on Transparency and Exchange of Information for Tax Purposes.⁶³ Additionally, Saudi Arabia has issued a Transfer Pricing profile in response to an OECD questionnaire.⁶⁴

However, with regard to the characteristic of international consistency and following international standards, the Zakat collection regime is unique in different aspects, which makes it inconsistent with international standards.

Although business zakat is not intended to be a Saudi tax for the purpose of Saudi tax treaties because there is no actual coverage of the Zakat,⁶⁵ Zakat is considered a covered tax under Pillar Two of the BEPS (Base Erosion and Profit Shifting) framework.⁶⁶ However, some issues regarding the mismatch between Zakat and tax systems in Saudi Arabia related to Pillar Two will be discussed subsequently.

Inconsistency of Zakat rules with international Tax has effects on tax neutrality which will be discussed in this section.

There is no consideration of the inclusion of zakat or of treaty allocation rules;⁶⁷ for example, Saudis cannot claim a foreign tax credit to compensate for some of their SA zakat liability as doing so would significantly increase home bias. It has been discovered that a relatively foreign tax rate that cannot be offset by tax credits greatly

⁶² [Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS - OECD](#)

⁶³ [Global Forum on Transparency and Exchange of Information for Tax Purposes Peer Reviews: Saudi Arabia 2016: Phase 2: Implementation of the Standard in Practice | en | OECD](#)

⁶⁴ [Transfer Pricing Country Profile – Saudi Arabia \(oecd.org\), 2015 BOCountryReport SaudiArabia.pdf \(transparency.org\)](#)

⁶⁵ id

⁶⁶ [Tax Challenges Arising from the Digitalisation of the Economy – Commentary to the Global Anti-Base Erosion Model Rules \(Pillar Two\) \(oecd.org\)](#)

⁶⁷ id

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increases home bias, which conflicts with the tax neutrality that decisions should be made on their economic merits and not for tax reasons.⁶⁸

However, regulations for zakat collection seek neutrality in regard to foreign investments of Saudi corporations; the provision of paragraph (5) of Article (4) of the regulations for zakat collection dealt with the controls for deducting foreign investment.

These controls are similar to the controls for deducting internal investment in accordance with the conditions for deduction from the zakat base but still can cause dual payment incidents, as mentioned above. ~~reducing~~ Reducing the taxation of foreign income brings the U.S. tax system more in line with the systems of other countries and has the potential to advance both American interests and global welfare.⁶⁹

~~The Saudi~~ ~~The S.A.'s~~ government cannot grant a reduction to the zakat payer ~~that in a way that~~ is consistent with other countries, as the rules for measuring the zakat base for businesses in Saudi Arabia are different from income taxes and are inflexible. Moreover, the zakat rules prevent a set-off between zakat and taxes which will be discussed later.

Neither a pure worldwide tax system nor a pure territorial tax system exists in any nation. A government would let domestic firms claim full credit for overseas taxes paid

⁶⁸ https://www.brookings.edu/wp-content/uploads/2016/06/0415_tax-_neutrality_furman-1.pdf

⁶⁹ Desai, Mihir A. and Hines, James Rodger, Evaluating International Tax Reform (July 2003).

Available at SSRN: <https://ssrn.com/abstract=425943> or <http://dx.doi.org/10.2139/ssrn.425943>

under a pure worldwide tax system, but no country does this. ~~even~~ Even the “national neutrality.” ~~National neutrality~~ that corresponds to a worldwide tax system with a deduction for foreign taxes paid instead of a full tax credit would decrease the after-tax return ~~to-on~~ investing abroad relative to investing at home and would lead to greater domestic investment.⁷⁰

In order to achieve neutrality, tax harmonization is generally required ~~which is used generally~~ to adjust tax systems of different jurisdictions through the removal of tax distortions that affect commodity and factor movements in order to bring about a more efficient allocation and enhance competition.⁷¹ Hence, tax harmonization shall be incepted domestically in Saudi Arabia to improve the neutrality and efficiency regarding different nationalities' entities investing within its territory.

In regard to across-border tax, although many international tax neutrality benchmarks have been introduced, countries have failed to achieve tax neutrality without harmonization of tax rates worldwide.

The US has shifted between CEN and CIN over the years and the reason for this shift in policy is ~~the~~that contradictory neutrality concept goals cannot be achieved simultaneously.⁷²

For instance, in terms of domestic and international investment, the U.S. corporation tax regime is not neutral, and one of the traditional principles is "capital

⁷⁰ U.S. International Corporate Taxation: Basic Concepts and Policy Issues (fas.org)

71

⁷² See, e.g. Michael J. Graetz, *Taxing International Income: Inadequate Principles, Outdated Concepts, and Unsatisfactory Policies*, 26 BROOK. J. INT'L L. 1357 (2001). Available at: https://scholarship.law.columbia.edu/faculty_scholarship/3481

export neutrality." ~~the~~The existing system grants overseas investments a tax benefit in the form of a deferral that is not available to domestic investments; ~~thus, it~~ violates this kind of neutrality.⁷³

Moreover, the disparity in the base and tax rate has given rise to concerns about how to ensure competitive neutrality, including how to ensure regulatory neutrality, calculating market consistent rates of return, and ensuring the same after-tax price in the single market.

Production efficiency is kept when an investor residing in a country pays the same rate of tax on foreign investment income regardless of the source of that income since this ensures equality of pre-tax returns to capital across countries.⁷⁴

When we think of Production efficiency in Saudi Arabia, it is most favorable to focus on the equality of pre-tax returns of the same source of income of two categories of resident investors: Saudi and foreign investors.

Generally, a distortion of tax allocation and distribution occurs at the cross-border level because countries have uniform local tax, ~~and n, but no~~ tax harmonization between countries; however, distortion in Saudi Arabia starts at an initial level, domestically, depending on the investor's nationality to some extent. The productivity of an investment differs based on its ownership in the same market.

⁷³ https://www.brookings.edu/wp-content/uploads/2016/06/0415_tax-_neutrality_furman-1.pdf

⁷⁴ Mishra, Anil V. & Ratti, Ronald A., 2013. "[Home bias and cross border taxation](#)," [Journal of International Money and Finance](#), Elsevier, vol. 32(C), pages 169-193.

The distribution of the same company would be subject to a different rate depending on the owner. In addition, the different domestic tax rate later triggers ~~later~~ different changes in prices than would occur in the absence of the tax and zakat. Foreign and local companies are all subject to the same laws of supply and demand as every other provider of goods and services but different laws of taxing the profit. With different tax rates applicable in Saudi Arabia, prices would be tax-distorted for one party because the prices depend on relative rather than absolute prices. It does not matter how high or low the national level of the tax rate is as long as the rates are not uniform within the country. The net price ratios of any two items should be identical, and therefore, should not make a difference in the competition in a single market or for real allocation later.

To gauge how far the tax code deviates from a pure income tax, it is useful to examine tax expenditures, which are defined as follows: “revenue losses attributable to provisions of the Federal tax laws which allow a special exclusion, exemption, or deduction from gross income or which provide a special credit, a preferential rate of tax, or a deferral of liability.”⁷⁵

Much of the US revenue loss can be ascribed to “non-neutralities” in the tax code due to the preferential rate of tax. We use US public law to illustrate our

⁷⁵ Fundamentals in Advance of Reform , Public Law 93-344, The Congressional Budget Act of 1974

arguments about the revenue losses by subjecting Saudis to Zakat and not including them under income tax law. |

In case SA treats Zakat as a form of business tax and an alternative to the income tax applied to foreign entities, any paid zakat that is less than 20-% of the income tax would be considered revenue losses for the government of SA due to the preferential rate of tax that is given to local companies.

Losses of revenues due to inconsistency of the base and rate of zakat with corporate tax income would possibly increase in light of the application of Pillar 2.

Although Zakat is considered a covered tax under Pillar Two of the BEPS (Base Erosion and Profit Shifting) framework, any paid zakat less than what is equivalent to 15% is a losses to the SA government. The expected impact of Saudi Arabia's application of Pillar 2 will be discussed in a later section.

The set-off between zakat and taxes:

Over the years, commercial activities (trade offers) are ~~one of these~~ funds that have evolved from simple merchandise to legal entities containing various commercial transactions.

Development in the economic arena has imposed unprecedented transformations which were represented in globalization which contributed to opening markets and removing various restrictions on international trade and the need to attract

Commented [JMR60]: This phrase doesn't work here. I'm not sure what to replace it with. Maybe "considering"?

a volume of foreign investment led to overlapping of the tax and zakat in many Islamic countries.

Commented [JMR61]: This is a run-on sentence. It needs to be broken up into 2 or 3 sentences. I would do it, but I am not sure how it is meant to fit together.

The overlapping of tax and zakat has led to negative effects such as bearing Muslims dual burdens in several countries and other countries, which led to the dominance of taxes and the disappearance of voluntary zakat over time.⁷⁶

Some countries apply a tax system compulsory, and next to it is the voluntary zakat system such as Emirates.⁷⁷

Some countries make zakat compulsory for Muslims and next it is taxed for non-Muslims such as Sudan.⁷⁸ ~~some~~ Some countries, such as Malaysia and Indonesia, provide tax benefits to zakat payers.⁷⁹

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Saudi Arabia has implemented a tax system lately, about twenty years ago, next to the compulsory Zakat on businesses. Saudi Arabia has succeeded in codifying the zakat and coordinating the zakat system in an integrated manner with the tax system to some extent.

Despite it has been argued that Saudi Arabia relies on fatwas excessively for the implementation of zakat to the extent that fatwas have rendered the contemporary practice of zakat distant from the fundamental principles of zakat,⁸⁰ their Sharia scholars worked hard to determine the zakat base for commercial activities these days.

⁷⁶ سلطان فهد صالح الخنة: مشكلة تداخل الرضائية مع الزكاة ووسائل علاجها يف الفقه السليم إعداد
https://mdak.journals.ekb.eg/article_108197_7f2d431f2e8ba36f005b0bd10d64908e.pdf

⁷⁷ [Federal Tax Authority - Corporate Tax](#) , [Paying zakat](#) | [The Official Portal of the UAE Government](#).

⁷⁸ [Programme Profiles](#) | socialprotection.org

⁷⁹
⁸⁰ <https://core.ac.uk/download/pdf/42131317.pdf>

The fact of uniqueness of zakat regarding the rules of calculating its base and its distribution among the deserving categories leads to the Inadmissibility to overlapping between zakat and tax and has a significant implication in the disagreement over whether acceptable to compute the tax from zakat and vice versa.

However, it is found that what is paid for the income tax is automatically deducted from the (fund's Zakat) Zakat base which reduces the amount of Zakat eventually.³³ Moreover, Scholars found that deducting the taxes paid to the government,

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⁸³ القاهرة، مصر : دار المشورة، . التشجاعة، حسين حسين. [كيفية التنسيق والتكامل بين نظام الزكاة ونظام الضرائب في مجتمع معاصر] <https://search.emarefa.net/detail/BIM-719967> مع <https://search.emarefa.net/detail/BIM-719967> التكامل والتوفيق بين نظامي الزكاة والضرائب في مجتمع معاصر مع (manaraa.com)

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from the amount of zakat due to be paid led, after a period, to the rule of taxation and the extinction of zakat, as is the case in most Islamic countries.⁸⁴

***Attempts have taken place so far to try to bring the two systems closer together.**

However, with the unparalleled progress S.A. achieved, it can impose corporate tax besides Zakat in business without fears of these negative consequences that happened in other countries and benefit from other countries' practices like Malaysia which will be discussed later.

Having specific distribution to Zakat beneficiaries doesn't isolate the idea of Zakat from the tax concept. That practice exists in modern taxation which has legislatively exclusive expenditures of a levy; a tax does not necessarily have to fund all public goods and services. The US fuel tax, for instance, funds two particular programs despite utilizing a different base.⁸⁵

Over the years Saudi Arabia has kept reforming the zakat collections system alongside continuously modifying the zakat base rules to be consistent with the Evolution of trade in a way that is consistent with the fundamental principles of zakat and at the same time with the international tax guide to be consistence with international standards.

⁸⁴ Id

⁸⁵ Alholibi

Saudi Arabia came a long way in developing a single administrative apparatus for the collection of zakat and taxes, which ensures efficient collection that facilitates compliance procedures for payers, reduces administrative costs, and at the same time prevents conflict between administrative apparatuses.

The Saudi practice is fundamentally different from other countries, which establish zakat fund separate from the tax administration. ZATCA is the only authorized body to collect Zakat and Taxes. In regard to Zakat, ZATCA collects zakat and then remits it to another government agency (Social Security, currently under the Ministry of Human Resources and Social Development), which then distributes it to its deserving beneficiaries.⁸⁶

The Ministry of Finance and the ZATCA have issued a series of amendments to zakat collection law and regulations over the years.⁸⁷ The most significant amendment to Zakat law was released by ZATCA for public consultation, however, the draft has not yet been issued.⁸⁸

⁸⁶ alholibi

⁸⁷ the last of which were issued in 1438 (2017) 128 and 1440 (2019)

Issued by SA: Ministerial Resolution No. 2082 and dated 01/06/1438 (27 Feb. 2017) (1438 Zakat Regulations), Executive Regulations for the Collection of Zakat (the Zakat Regulations or the 1440 Zakat Regulations), art. 14. Replacing previous regulations, resolutions, instructions, and circulars, the Zakat Regulations

- was issued by Ministerial Resolution No. 2216 and dated 07/07/1440 (13 Mar. 2019) and amended by Ministerial Resolution No. 5123 and dated 24/12/1441 (14 Aug. 2020). An English translation is available at <https://perma.cc/JB88-GGZC> (accessed 2 Feb. 2023). In comparison, foreign investors and resident corporations in the Kingdom are subject to a flat rate income tax of 20% on their Saudi income under SA: Income Tax Law, issued by SA: Royal Decree M/1 and dated 15/01/1425 (6 Mar. 2004) (the Income Tax Law). (The first Saudi Income Tax Law was introduced by SA: Royal Decree 3321/28/2/17 and dated 21/01/1370 (1 Nov. 1950)).

⁸⁸ Alholibi

In 2019, They issued Calculation rules of Zakat levied upon financing activities⁸⁹ which clarify and set standards for the components of the Zakat base for financing activities, considering the specificity and nature of the activity and its objectives.

The government's bearing of zakat and income tax in lieu of taxpayers in many cases is to mitigate the conflicts / overlapping effects between the two laws and to enhance local and international investment.⁹⁰

In order to unify the treatment of taxpayers of the Income Tax Law & Zakat payers and apply all the obligations of the Transfer Pricing bylaws to Zakat payers, amendments to Transfer Pricing Bylaws to be applied to Zakat payers were issued⁹¹

Saudi Arabia to some extent tries to unify as much as it can between taxpayers and zakat payers to make its system rules consistent with the international tax rules and address the problems resulting from the different nature of zakat than taxes, while

⁸⁹ Calculation rules of Zakat levied upon financing activities which was issued by HE the Minister of Finance resolution No. (2215) dated 7/7/1440 AH, to be applied in the fiscal year beginning on 1-1-2019., https://zatca.gov.sa/en/RulesRegulations/Taxes/Documents/10.Rules%20for%20Calculating%20the%20Zakat%20on%20Financing%20Activities_ENG_v.f.pdf

⁹⁰ Aramco / sukuk and government bonds ,,,, royal order 16712 No. 16712, dated 11/3/1441H (corresponding to 8 November 2019G), the zakat obligations resulting from investments in the Shares listed on the Exchange will be settled as described in the following sentence. The Zakat amounts resulting from such investments will be calculated and deducted from tax payments by the Company and transferred to the zakat account at the Ministry of Finance for transfer-eligible zakat recipients in accordance with applicable law.

⁹¹ <https://zatca.gov.sa/ar/e-participation/consulting/Pages/Consulting-item-20.aspx> , <https://zatca.gov.sa/ar/RulesRegulations/Taxes/Documents/%D9%82%D8%B1%D8%A7%D8%B1%D9%85%D8%AC%D9%84%D8%B3%D8%A7%D9%84%D8%A5%D8%AF%D8%A7%D8%B1%D8%A9%D8%B1%D9%82%D9%85%208-2-23.pdf>

preserving the pillars of *Sharia*, which is part of its constitution. However, there is a lot to do regarding the disparate rate to face upcoming international tax development.

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In light of the Pillar 2 application where the minimum effective corporate tax rate of 15% is applied to multinational companies regardless of the local tax rate or tax base, although SA imposes a 20% income tax rate, it will face an issue.