

## تعميم

الموضوع: ترجمة التعميم بوجوب التقرير عن الزكاة والضريبة في قائمة الدخل وفقاً لما وجه به الأمر السامي الكريم رقم ٣٦٧٦٣ وتاريخ ١٤٤٠/٧/٣ هـ ومرفقاته ٢٣.

حفظهم الله

الإخوة والأخوات/ الأعضاء الأساسيين

السلام عليكم ورحمة الله وبركاته ...

أشير إلى التعميم المرسل لكم برقم (٢٣٠٩٩/٢٠١٩) وتاريخ ١٤٤٠/٨/٢٦ هـ الموافق ٢٠١٩/٥/١ م، بشأن وجوب التقرير عن الزكاة والضريبة في قائمة الدخل وفقاً لما وجه به الأمر السامي الكريم رقم ٣٦٧٦٣ وتاريخ ١٤٤٠/٧/٣ هـ ومرفقاته.

ويسرني إرفاق ترجمة رسمية لذلك التعميم نظراً لحاجة عدد من الشركات، وبخاصة الشركات العاملة في القطاعات المالية، ومكاتب المحاسبة المتعاملين معهم للاستعانة بخبرات عدد من غير الناطقين بالعربية.

وتقبلوا تحياتي ...

الأمين العام

  
د. أحمد بن عبدالله المغامس

**Official translation of the SOCPA's Circular No. 2019/23099, dated 26/8/1440, corresponding to 1/5/2019.**

**Subject: Zakat and Tax shall be reported in the statement of income, in accordance with the Royal Decree No. 36763 dated 3-7-1440 A.H. and its annexes.**

**M/s Certified Public Accountants**

Peace be upon you

This is to inform you that a Royal Decree No. 36763 dated 3-7-1440 A.H. and its annexes have been issued. In summary, it endorses the Council of Ministers' decision, which rejects the Public Investment Fund's suggestion to recognize in the statement of changes in equity the effect of tax on the interests of stockholders who are subject to income tax, and the effect of Zakat on the interests of stockholders who are subject to the Zakat Law.

According to the Letter No. 5403 dated 21-6-1440 A.H., issued by HE Secretary General of the Council of Ministers and annexed to the abovementioned Royal Decree, the Bureau of Experts' report that was the basis for the recommendation of the Council of Economic and Development Affairs, then the decision of the Council of Ministers confirmed by the abovementioned Royal Decree, relied on provisions of the Companies Law, the Income Tax Law and the implementing regulations of the Royal Decree No. m/40 regarding Zakat collection, all of which consider Zakat and tax as a liability of a company, rather than stockholders. Accordingly, the Bureau of Experts' report sets out that the inclusion of the effect of Zakat and tax in the statement of changes in equity instead of the statement of income is not legally permissible. It also clarifies that the issue of variation in the Zakat and tax liabilities of limited liability/joint stock companies is not restricted to the case raised by the Public Investment Fund, but it includes all mixed companies owned by persons subject to the Income Tax Law and others subject to the Law of Zakat Collection.

Below is a summary of the bases of such report:

First: to oblige stockholders to assume tax or Zakat liabilities arising from the activities conducted by a limited liability/joint stock company is a violation of Article 118 of the Companies Law that provides that "The company may not request the shareholder to pay amounts other than the amount determined upon issuing the share, even if the company's articles of association stipulates otherwise."

Second: the principle of limited liability -the core of the legal form of limited liability/joint stock companies- which is represented by the separation between company liabilities and stockholder liabilities, does not allow financial liabilities arising from company's activities to be charged on stockholders. The Companies Law, Article 52, provides that "A joint-stock company shall be solely liable for debts and liabilities arising from its activities". Therefore, stockholders may not legally be required to assume Zakat or tax liabilities arising from company's activities.

المراسم



Third: It is the limited liability/joint stock company that is liable for Zakat and taxes before the competent authority according to the Income Tax Law and the implementing regulations of the Law of Zakat Collection. The Income Tax Law, Article 2, paragraph (a) states that persons subject to taxation also include a resident limited liability/joint stock company with respect to interests owned directly or indirectly by non-Saudi persons. In addition, the implementing regulations of the Royal Decree No. m/40, Article 2 states that persons subject to Zakat collection include a resident Saudi company with respect to interests owned by Saudi persons and GCC nationals who are treated like Saudi nationals and with respect to interests owned by Saudi government entities and institutions. Thus, it is the company itself that is liable for Zakat and tax, not holders of such interests. In confirmation of the principle of separation between liabilities, the Income Tax Law, Article 6, states that the tax base of a resident limited liability/joint stock company is determined separately from its stockholders.

Fourth: In contrast to a limited liability/joint stock company, the Income Tax Law explicitly states that partners in partnerships, not the company itself, shall be subject to tax because liability of partners is not separate from that of the company, but instead, partners are jointly liable for company's liabilities since they themselves conduct the business activity.

In light of the above, to report Zakat and tax outside the statement of income (i.e. not to deduct it from income to calculate the net income), notwithstanding the financial reporting framework applied by the company, is a violation of provisions of the Companies Law, the Income Tax Law and the implementing regulations of the Royal Decree No. m/40 regarding Zakat collection, all of which are confirmed by the abovementioned Royal Decree.

Therefore, in auditing financial statements of companies that apply a financial reporting framework other than that endorsed in Saudi Arabia, that is the International Financial Reporting Standards (IFRS) and other standards and pronouncements endorsed by SOCPA, and such different framework treats Zakat and tax outside the statement of income (as is the case of banks, insurance and financing companies), the external auditor shall deal with that treatment in accordance with the requirements of ISA (250), as endorsed in Saudi Arabia, and report on it in accordance with ISA (700) and ISA (705), as endorsed in Saudi Arabia, and in light of the clarification issued by SOCPA about how an auditor can report on company violations of provisions of the Companies Law or articles of association in accordance with Article 135 of the Companies Law dated 28-1-1437 A.H.

This is for your information to act accordingly.

Sincerely,

المرشد



Secretary General

**Dr. Ahmed bin Abdullah Al-meghames**