
Saudi Arabia

International Estate Planning Guide

Individual Tax and Private Client Committee

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I. Wills and planning documents

The Kingdom of Saudi Arabia (KSA) is a Sharia jurisdiction; it adheres to the Islamic laws of succession and inheritance rather than common or civil law. Therefore, despite there being certain similarities with other civil law jurisdictions (in relation to forced heirship provisions), estate planning in Saudi Arabia is uniquely positioned in comparison to other civil and common law succession frameworks.

Testamentary instruments are limited to the bequest (*wasiyya*). A bequest is a single disposition of an asset, which can be a standalone disposition. It can also be combined with other bequests in a single document, akin to a will.

A. Will formalities

Under the Saudi 2022 Personal Status Law, a testator may transfer his or her property through bequest(s). These bequests can attribute a share (up to one-third, in most circumstances) of the totality of his or her assets to a recipient.

At any time, a testator may revoke a bequest through a subsequent clause, written or oral, or a subsequent act that indicates his or her desire to do so. However, a subsequent bequest, even of the same asset, does not revoke an earlier bequest, unless expressly stated (Article 177(1)).

There are five core requirements relating to a will:

1. Requirements of the bequest: The bequest must be made orally or in writing. Only when a testator is incapable of both may he or she use a gesture that conveys his or her intent to make a bequest (Article 174).
2. Requirements of the testator: The testator must be of age and of sound mind (Article 176).
3. Requirements of the bequeathed asset: The bequeathed asset must be owned by the testator (if a specific asset), must exist (or possibly exist) and be legal. It may be an asset, usufruct or valuable right. It may also be an undivided or divided interest (Article 180).
4. Requirements of the beneficiary: The beneficiary may be any person, Muslim or not, that is legally allowed to own the bequeathed asset (Article 178). However, the beneficiary may not be an heir that will inherit through forced heir provisions as applied to the testator at his or her time of death, unless the bequest is ratified by some or all of such heirs after the testator dies.
 - If all such heirs ratify the bequest after the testator dies, the entirety of the bequest is allowed to devolve to the beneficiary. If only some such heirs ratify the bequest, the bequest is only partially allowed to pass to the beneficiary and is taken pro rata from the share of the ratifying heir(s) (Article 179).
 - The beneficiary must be alive; however, unborn children known to have been conceived at the time the bequest is made can be included. The bequest may also be made to a class of beneficiaries, whether limited or unlimited.
 - The beneficiary may also be a legal person that the laws of Saudi Arabia deem able to accept a bequest, that is, a *waqf* or mosque, or more generally, for good, or for God (Article 180).

5. Requirement of acceptance: If the beneficiary is a natural person, legal person, *waqf*, mosque or limited class of natural persons, the beneficiary (or his or her guardian, or a duly authorised person who has the authority to accept the bequest in the case of non-natural persons) must formally accept it for the bequest to be completed. Other beneficiaries need not accept the bequest for it to be completed (Article 181).
 - If a beneficiary does not accept before his or her own death, the bequest is automatically deemed accepted and devolves to his or her heirs under forced heirship laws (Article 184).

B. *Limitations applicable to the one-third share*

Bequests, in aggregate, may not be greater than one-third of the testator's estate. If greater, unless one or more bequests are ratified by the heirs under the forced heirship clause, each bequest must be reduced so that their aggregate totals one-third. If the bequests are not of specific assets (but instead, eg, of percentages), then each bequest is reduced pro rata (Articles 177(2) and 190).

However, this rule only applies when there are no rightful heirs under the forced heirship clause or if the only such heir is the testator's spouse. In such a case, the aggregate of the bequests may be greater (but, in the latter case, must be limited so as to not infringe upon the share of the forced heir) (Article 191).

C. *Events invalidating a bequest*

A bequest is invalidated if it is validly revoked; if the beneficiary dies before or simultaneously with the testator; if the beneficiary rejects it after the testator's death; if the beneficiary kills the testator; or if the bequeathed asset is destroyed or revendicated (Article 196).

II. **Estate administration**

All matters regarding estates and succession fall under the jurisdiction of the Ministry of Justice, usually under the Personal Status Courts. Saudi law does not require a probate process. Rather, the only administrative requirement is that the Personal Status Courts issue a declaratory deed confirming the rightful heirs of the decedent. Once obtained, the heirs (or their appropriate guardian(s)) may arrange for the transfer and division of the assets themselves, provided that they all agree on the proposed division of the estate.

If one of the heirs is a minor and lacks a guardian, or if he or she has a guardian but the assets to be distributed comprise immovable property, such as land, court approval is needed, in the former, to appoint a guardian, and, in the latter, to approve the proposed transaction.

If a dispute arises between the heirs or if the heirs are more generally unable to agree on any part of the estate, an application for adjudication must be made in court. However, there is also an alternative resolution forum: *infath* is a government programme that assists families with the provision of specialists (eg, professional agents, lawyers and evaluators) who can collectively ensure a fair liquidation and division of the estate.

A. Payment of funeral costs, debts and bequests

After a decedent passes, if reasonable funeral and burial costs have not been covered by another family member, they must be paid out of the estate. All outstanding debts of the decedent must be fulfilled by the estate prior to any distributions being made. Following such distributions, the remaining one-third of the estate can be used to fulfil other bequests made by the decedent (Article 198).

B. Intestate succession and forced heirship

Saudi Arabia has forced heirship provisions. As stated above, testamentary freedom only applies to the one-third of the estate remaining after funeral costs and payment of debts. The entire remaining two-thirds of the estate, together with any portion of the one-third that is not given by bequest, falls within the forced heirship provisions of the Personal Status Law. Therefore, if a decedent dies intestate, his or her entire estate will be distributed according to the rules stated below in accordance with such forced heirship provisions.

QUALIFICATIONS OF AN HEIR

To qualify as a rightful heir, a person: (1) must be one of the heirs listed under the forced heirship provisions; (2) must be alive at the time of the decedent's demise; (3) did not kill the decedent; and (4) is not of a different religion (ie, a Muslim and non-Muslim cannot inherit from each other, but Muslims may inherit from each other and non-Muslims of different religions may inherit from each other).

HEIRS UNDER THE FORCED HEIRSHIP PROVISIONS

The heirs under the forced heirship provisions are the decedent's spouse, husband or wife, children, parents, grandparents and siblings. However, depending on who has survived the decedent, not all are guaranteed shares of the estate. For example, a living son will preclude a living brother from receiving a share of the estate.

For the sake of simplicity, this summary will focus on the three most common heirs: spouses, children and parents. If alive, each is guaranteed a share, unlike grandparents and siblings, whose share is not necessarily sacrosanct.

Saudi law differentiates between males and females, and therefore distinguishes the entitlements of spouses, parents and children. Additionally, the term 'descendant' is only used to define first degree descendants of the decedent and onward descendants of the male descendants of the decedent. Therefore, a daughter of a daughter is not a descendant for the purposes of forced heirship, whereas the daughter of a son is.

The applicable forced heirship provisions are summarised in the table below. 'Estate' refers to the entire estate in the case of intestacy or the residuary estate after distributions are made pursuant to bequests (if applicable).

Heir	Share of the estate
Husband	<p>The husband receives half the estate, provided the decedent has no descendants.</p> <p>The husband receives a quarter of the estate if the decedent has descendants.</p>
Wife	<p>The wife receives a quarter of the estate, provided the decedent has no descendants.</p> <p>The wife receives one-eighth of the estate if the decedent has descendants.</p>
Son	<p>The sons of the decedent (as a collective) receive the balance of the residuary estate following the distribution of any other shares.</p> <p>If the deceased parent was survived by both male and female children, the sons receive twice the entitlement of their female siblings; that is, the residuary estate is divided using a 2:1 ratio.</p>
Daughter	<p>The daughter of the decedent receives half the estate if her deceased parent had no other children.</p> <p>The daughters of the decedent (as a collective) receive two-thirds of the estate, if their deceased parent had no sons.</p> <p>If the deceased parent was survived by both male and female children, then the daughters (as a collective) receive half the entitlement of their male siblings; that is, the residuary estate is divided using a 1:2 ratio.</p>
Father	<p>The father receives one-sixth of the estate when the decedent had a male descendant.</p> <p>The father receives one-sixth of the estate, as well as the residuary estate (following the distribution of other shares), where the decedent had only female descendants.</p> <p>The father receives only whatever remains after the other shares when his deceased child has no descendants.</p>
Mother	<p>The mother receives one-sixth of the estate where the decedent had descendants and/or two or more siblings.</p> <p>The mother receives one-third of the residuary estate (following distribution of the other shares), where the decedent's sole survivors were his or her spouse and both parents.</p> <p>The mother receives one-third of the estate in all other circumstances.</p>

While the rules are straightforward for most cases, due to the large number of possible iterations, it is recommended to consult with an estate specialist to confirm the precise distribution predetermined in accordance with the applicable forced heir provisions.

C. *Waiving reserved shares*

An heir may gratuitously waive his or her reserved share under the forced heir provisions, and may also waive it, fully or partially, in exchange for something else, whether from the decedent's estate or not. However, such waivers can only take effect after the death of the decedent.

III. **Alternative vehicles for estate planning**

Due to a combination of Saudi Arabia's conservative cultural nuances, the lack of probate expenses and delays, and the fact that there is no estate, inheritance or gift tax, there are few exceptional, alternative estate planning options that allow a greater degree of flexibility and testamentary freedom, which are used especially by wealthier Saudi families.

Endowments

An endowment (*waqf*, plural *awqaf*) is used in Sharia law to refer to a voluntary, permanent and irrevocable dedicated disposition of assets made by an endower (*waqf*). Until recently, the application of Saudi law governing endowments was the sole purview of the Sharia courts, as there were no published rules or regulations detailing the formalities of *awqafs*. Rather, judges at the Sharia courts used classical Islamic law to make decisions.

However, following the establishment of Saudi Arabia's General Authority for the Regulation of Endowments (the 'Authority') in 2010, it is anticipated that a systematic law codifying the rules of endowments will be released within the next two years, ushering in a number of changes and clarifying much of the existing framework. The draft law was released for public consultation in 2023. Pending the introduction of revised estate and probate laws, we have included a summary of the current law and the recently published trustee regulations.

TYPES OF ENDOWMENTS

There are three types of endowment in accordance with Sharia:

1. *al-waqf al-khayri*: a charitable endowment whose benefit or revenue is initially designated for a public welfare entity, specifically or by description, such as the poor and needy, and mosques;
2. *al-aaqf al-ahli*: a family endowment whose benefit or revenue is designated for the endower, their progeny, or specific individuals by name or description, or their descendants; and
3. *al-waqf al-mushtarak*: a joint endowment whose benefit or revenue is designated for both a charitable entity and family entity.

ENDOWMENT FORMALITIES

To be a valid endowment, it must comprise the following four key elements:

1. an endower who meets specific eligibility requirements;
2. the principal of the endowment;
3. beneficiaries of the endowment; and
4. a valid deed of endowment.

ENDOWER REQUIREMENTS

In order to eligibly create a Saudi endowment, the endower must meet the following specific criteria:

1. the endower must be of age, of sound mind and not otherwise legally incapacitated;
2. the endowed asset must be entirely owned by the endower;
3. the endowment must be dedicated by the endower for a charitable cause or beneficial end; and
4. the endowment must be designated by the endower for a specific purpose.

VALIDITY OF THE ENDOWMENT DEED

For the endowment deed to be valid, it must contain:

1. the name and title of the endower;
2. the type of endowment, details of any specific conditions and its expenditures;
3. the name of the beneficiary (whether a natural or legal person, or for general purposes); and
4. the date of the endowment.

ENDOWMENT CLASSIFICATION

The Authority classifies endowments into four categories:

1. large endowments: endowments with a total endowed principal of SAR 200m or more;
2. medium-sized endowments: endowments with a total endowed principal of between SAR 50m and 200m;
3. small endowments: endowments with a total value of endowed principal of less than SAR 50m; and
4. endowments of direct benefit: endowments that enable the endowed beneficiary to benefit from the endowed principal directly, such as the endowment of medical devices and centres for providing advisory services.

TRUSTEESHIP OF ENDOWMENTS UNDER SAUDI LAW

In accordance with the laws of Saudi Arabia, a trustee may be appointed to supervise the endowment at the discretion of the endower, or it may be managed by the endower in his or her capacity as the designated trustee. The trustee can be either a legal entity or natural person. If a legal entity is appointed, it must be licensed by the Authority. If a natural person is appointed as

a trustee, he or she must meet the following conditions, which must be properly verified by the Authority:

1. the trustee must be a Muslim;
2. the trustee must have legal capacity;
3. the trustee must possess the requisite knowledge and suitable qualifications in order to properly manage the endowment;
4. the trustee must be of good reputation and conduct, not having been convicted of a crime that involves moral turpitude or dishonesty;
5. the trustee must not have been previously removed from trusteeship by a final judicial ruling due to lack of integrity; and
6. in cases where the endower is foreign and the endowed asset is real estate, the proposed trustee must be a Saudi national.

Foundations

There are four foundation regimes available throughout the Gulf Cooperation Council (GCC). The Qatar Financial Centre (QFC) was the first to introduce the civil law foundation in the region in 2015. It was swiftly followed by the United Arab Emirates (UAE), which now offers three foundation options in the emirates of Abu Dhabi (ADGM), Dubai (DIFC) and Ras Al Khaimah (RAKICC).

There has certainly been an increase in the number of Saudi Arabian business families establishing ADGM and DIFC foundations as an efficient and sustainable estate planning solution for the purposes of protecting and preserving their regional wealth.

The foundation can be carefully constructed to accommodate the principles of Sharia, if so desired. Conversely, it can also be adapted to reflect the requirements of the modern Arab family, which may prefer to adopt an equal distribution policy among family members. The fiscal frameworks of Saudi Arabia and the UAE provide tax efficient solutions that are easily administrable, especially where families wish to retain a greater degree of involvement and management.

Due care and attention must be given in the preliminary advisory stages to ensure that central management and control of the foundation remains in the UAE rather than Saudi Arabia.

Most assets can be directly transferred into a foundation ownership structure; however, certain restrictions may apply and advice must be taken on a case-by-case basis to analyse the precise composition of the estate in order to address any prohibitions that may apply to certain assets.

UAE foundations are subject to distinct Foundation Laws, which are broadly similar to other foundations in jurisdictions such as Liechtenstein, Panama, Guernsey and Jersey. If properly constituted, they can withstand forced heirship claims.

IV. Taxation

A. Domicile and residency

DOMICILE FOR INDIVIDUALS

In the KSA, individuals are not subject to income tax. A person would be considered a tax resident in the KSA where the following conditions are met:

1. where an individual's permanent home is situated in the KSA and the individual spends a total period of more than 30 days in a taxable year in the KSA; and
2. the person resides in the KSA for at least 183 days in the tax year.

Further, an individual's domicile may be determined to be in Saudi Arabia following various double taxation agreements (DTAs) that Saudi Arabia has entered into with a number of countries. Ordinarily, this would also take into account key factors, such as an individual's 'centre of financial or personal interests'.

RESIDENCY FOR COMPANIES

A company's tax residence is determined annually. A company will be a KSA tax resident if any of the following requirements is satisfied:

1. the company was incorporated in the KSA in accordance with the Companies Law;
or
2. the company's central management is located in the KSA.

Accordingly, a company incorporated in Saudi Arabia is automatically considered a resident. However, for foreign-incorporated companies, residency is established if the central management and control activities, such as board meetings and strategic decision-making, occur primarily in Saudi Arabia. This includes key management decisions, strategic planning, and governance. Resident companies are subject to Saudi Arabian tax laws on their global income.

Notwithstanding the above, the Zakat, Customs and Tax Authority (the 'ZATCA') has proposed a new tax law that considers and implements international best practices and Organisation for Economic Co-operation and Development (OECD) recommendations. The public consultation period of this proposed law ended on 25 December 2023; however, no clear update on when the law will be released has been provided.

B. Zakat and corporate income tax: an overview

As stated above, natural persons that are resident in the KSA are not taxed in the KSA, unless they perform a commercial activity. However, the KSA operates a corporate income 'tax' system in which two types of tax may be applicable to a corporate person: (1) corporate income tax (taxed on income) ('CT'); or (2) *zakat* (a religious tax that is levied based on net worth).

The two-tier tax system operates based on the shareholding of KSA incorporated entities (or KSA branches of foreign entities), as follows:

1. a Saudi company owned by KSA/GCC nationals is subject to *zakat* at approximately 2.5 per cent on the higher of its annual net profits adjusted for *zakat* purposes, or the '*zakat* base'; and
2. a Saudi company owned by non-GCC national shareholders only, it is subject to CT at the rate of 20 per cent applicable on the profits adjusted for CT purposes.

In the event that a Saudi company has both KSA (or GCC) and non-GCC shareholders, it is subject to both *zakat* and CT on a proportionate basis based on the shareholding. These entities can be called 'hybrid tax' entities.

Both *zakat* and CT are payable on the annual tax return of a company and are due 120 days after the end of their financial year (as per the entity's financial statements), according to either the Gregorian or Hijri calendar year.

C. Corporate tax liability

The corporate tax liability is largely based on the above principles of residency and 'source of income', subject to any applicable DTA. In relation to the connection between residency and source, the general rules are that:

1. Saudi tax residents who are subject to CT will pay CT on all income (including capital gains) from any source, whether in or outside KSA (subject to any applicable DTA);
2. foreign tax residents will pay CT on income (other than any capital gains) derived directly from a permanent establishment in the KSA or from sources in the KSA;
3. foreign tax residents will be liable to capital gains tax earned from disposals of Saudi companies; if they are tax residents, this appears on their annual tax return; otherwise, capital gains must be reported on the tax return of the Saudi company;
4. resident non-Saudi natural persons who carry on activities in the KSA; and
5. any person engaged in natural gas investment fields, or oil and other hydrocarbon production.

In relation to the above five categories, CT is applied on the net adjusted profits at 20 per cent.

In addition to the above, the CT rules require the Transfer Pricing By-Laws of the KSA to apply to entities subject to CT. This means transactions conducted between entities that are 'related parties' would be subject to arm's length pricing requirements.

D. Zakat

With regards to entities that are wholly or partially subject to *zakat*, *zakat* is calculated either on the 'net adjusted income for *zakat* purposes' or the '*zakat* base'.

Net adjusted income for *zakat* purposes is calculated using the accounting profit before tax and with adjustments made on broadly the same basis as the corporate income tax rules, but excluding the following main items:

1. the restriction on 'excessive' repairs and maintenance charges (subject to a four per cent limitation);

2. the restriction on interest expense deductions (subject to a limitation of 50 per cent of adjusted net income); and
3. the adjustment for the difference between tax depreciation and accounting depreciation.

The *zakat* base, however, broadly comprises the KSA/GCC shareholder's share of equity components, such as share capital, retained earnings and reserves, provisions and long-term financing, less fixed assets, long-term eligible investments and accumulated losses, plus/minus adjusted net income for the year.

From 1 January 2024, Transfer Pricing By-Laws will also apply to entities subject to *zakat*.

Taxation of *waqf* for *zakat* payers

In the context of *awqaf* in the KSA, from 1 January 2023, an entity that is subject to *zakat* (ie, the '*zakat* payer') that is owned either directly or indirectly by one or more *awqaf* established in the KSA, is exempt from KSA *zakat*. A specific application for the exemption to apply should be submitted and the ZATCA has sole discretion whether to grant it.

The exemption applies where:

1. the *zakat* payer is wholly owned by a *waqf*, whether in a direct or indirect manner;
2. the *waqf* is established and registered with legal methods in the KSA; and
3. the *waqf* disbursements are directed towards general charity (and not for disbursement to a specific person or for mutual disbursement, taking into consideration other criteria).

Specific rules apply on how to determine whether a disbursement is made for a charity and special consideration must be given to ensure the relevant documentation is provided as a part of the application to the ZATCA.

In addition, transfer pricing rules for related parties must continue to be met.

For completeness, the above treatment only applies to entities that are subject to *zakat* only and does not apply to entities that are 'hybrid tax' entities, being partly foreign owned and therefore subject to corporate tax.

E. Real estate transfer taxes

The KSA also has specific requirements for the transfer of property, transfer of shares in real estate companies and other disposals of property that are subject to a real estate transfer tax (RETT) of five per cent, which is applied regardless of the condition or use of the properties at disposal.

Specific exemptions apply to RETT, in particular where property is held by family or a charitable endowment, provided that no change had been made in equity of the beneficiary company for at least five years. Specific rules are required to be met to ensure that this exemption is applicable.

F. Other taxes

In addition to the above, the KSA also has the following taxes:

1. VAT: a tax of 15 per cent on taxable supplies of goods or services;
2. withholding taxes: taxes on payments made by a resident or a permanent establishment to a non-resident for services purchased from overseas; tax rates range from five per cent to 20 per cent and are subject to various DTAs;
3. customs duties: imposed on the imports of goods into the KSA and can range from five per cent to 25 per cent;
4. excise taxes: applied to the import and/or sale of goods and can range from 50 per cent to 100 per cent; and
5. social insurance tax: paid on a monthly basis for employees and is two per cent for non-Saudi employees and 21.5 per cent for Saudi employees.