

Source Rule of Taxation

Qatar follows the source Rule of taxation where Income derived from Qatar is subject to tax in Qatar. Article 2 and Article 3 of the Tax laws 2009 give the scope of taxation.

Article 2

An annual tax shall be imposed on the taxpayer's taxable income derived from sources in the State during the previous taxable year.

Notwithstanding the provisions of the previous paragraph, the tax shall be imposed on:

1. Bank interest and returns realized outside the State provided that they are derived from amounts resulting from the activity of the taxpayer in the State; and
2. Commissions due under agency, brokerage or commercial representation agreements accrued outside the State in respect of activities carried on in the State.

Article 3 gives a further meaning by what is meant by "Income derived from State".

Article 3

Income derived from the State shall include:

1. Gross income derived from an activity carried on in the State.
2. Gross income derived from contracts wholly or partly performed in the State;
3. Gross income from real estate situated in the State including the sales of shares in companies or partnerships the assets of which consist mainly of real estate situated in the State;
4. Gross income from shares in companies resident in the State or listed on its stock markets;
5. Consideration for services paid to head offices, branches or related companies;
6. Interest on loans obtained in the State;
7. Gross income from the exploration, extraction or exploitation of natural resources situated in the States: and
8. Gross income subject to tax in the State under a double taxation agreement.

What is the Exact meaning of "derived from"? This has been a matter of debate as there can be no straight Jacket Answer to this question. However, the Act and the regulation do provide some guidance on the meaning and scope of "derived from the State". "Derived from" is synonym with "accruing and arising" from the State and therefore when we discuss and refer to "derived from" the State we are also verifying to the income "arising" from the State. This is because most of the Countries and jurisdiction use the alternative terminology "arising from" in place of the words "derived from". At times "derived from" and "arising from" are both used by jurisdictions.

The approach to determine whether the income is "derived from" or "arise from" Qatar would be to ask two Questions:

1. Where the operations took place?
2. What the operations were that produced the profits?

The reply to the first question "Where the operations took place?" by and large answers the source of Income and the place from where the income is "derived" or "arises". If it is found that the work is entirely performed in the State of Qatar then the question of "Where" is clearly answered and so also the question of "What". All such income would be income "derived" or "arising" for Qatar.

There may be difficulties were the operation have not taken place entirely in Qatar and in such cases the Tax Law 2009 seeks to bring only such income which relates to the portion of work performed in the State of Qatar. This is clear from the Executive Regulations of the Tax Law 2009. There Executive regulations explain the Tax Laws 2009 and are part of the Tax Laws. Article 3 of the Regulation 2010 in Para 2 explains, that the activity of a supplier of goods and equipment to the state is not covered in the scope of taxation as “derived” or “arising” in the State. However where the supply contract includes other accessory services such as transport, installation, maintenance, training and other services performed in the State. In such a case, only the consideration for accessory services shall be regarded as “derived” or “arising” from an activity in the State. In Para 2 of the same Article 3 of the Regulation we find that service contracts include a group of services that are separate from each other, and some of these services are performed outside the State. In such a case, only the consideration for services performed in the State shall be regarded as “derived” or “arising” from an activity in the state. It further clarifies that a service shall be regarded as separate from other services where it belongs to a phase of the project which is different from the phase to which the other service belongs or where it requires means and skills that are different from these required by the other service.

Other issues may arise where the main contract is performed outside the State of Qatar but only some preliminary or ancillary work is performed in Qatar. What constitutes “preliminary” or “ancillary” works would be a question of facts as they are not defined in the Tax laws 2009 or the Executive Regulations 2010. In the opinion of the author, Preliminary or ancillary work would essentially be preparatory or incidental and such which by itself or independently will not give rise to any income. Ex: Getting a License to operate or forming a Company or Branch.

Income deemed to “arise” in Qatar

On perusing g Article 2 of the Tax laws 2009, it will be observed that there are two exceptions where Income is *deemed* to “arise” in Qatar. Here, even though income in these two cases would “arise” outside Qatar the same is still taxable since it would to *deemed* to “arise” in Qatar.

Article 2 of Tax Laws 2009

An annual tax shall be imposed on the taxpayer’s taxable income derived from sources in the State during the previous taxable year.

Notwithstanding the provisions of the previous paragraph, the tax shall be imposed on:

1. *Bank interest and returns realized outside the State provided that they are derived from amounts resulting from the activity of the taxpayer in the State; and*
2. *Commissions due under agency, brokerage or commercial representation agreements accrued outside the State in respect of activities carried on in the State.*

The Tax Law therefore have two situations where Income will be “deemed to arise” in Qatar although it may arise elsewhere.

The first situation is with respect to Bank Interest and Returns which are realized outside Qatar. Tax Regulations 2010 further Explain that tax shall be imposed on Bank interest realized outside the state and derived from amounts resulting from the activity of the taxpayer in the in the State, Shall, include interest accrued to the taxpayer during the period of his activity in the State, unless it is provided that they are not connected with such activity.

Taxation of Bank Interest realized outside the State and which is relatable to amounts arising in the State poses difficulties. For determining the source of interest income there are a no of factors, the most important is the Residence of the borrower or debtor and the location of his assets. However, the Tax Laws and the Regulations have give province to the factor of source of funds- when it seeks to tax Bank interest deriving or arising from amounts resulting from the activity of the taxpayer in the State. Here, if the Banks Source of funds is entirely from the State of Qatar, the law & regulations seeks to bring the Bank Interest to tax even though it might have been earn outside the State.

As far as Return on investments / Securities which are realized outside the state are concerned the source of funds are relevant as also the place where the stock Exchange located or where the purchase/ sale contract are Executed.

Agency Commissions accruing outside the State of Qatar it is *deemed* to arise in the State of Qatar where the Activities are carried on in the State. To take a simple Ex: Where a non Resident does buying & Selling in Qatar and gets Agency Commission outside India the same would deem to arise in Qatar & is liable to be taxed. But in reality the earning of agency Commission by non-Residents from activities in Qatar is far more complex than what is covered by this simple example. The agency commission could arise out of “Business Connection” in Qatar. By Business Connection we mean existence of some organisation in Qatar (Branch, factory, Subsidiary) or an agent in Qatar or a Business Relationship in Qatar.

But “Business Connection” would mean more than just “Business”. There should be a relationship between a business carried on by a non-Resident which yields profits and some activity in Qatar, which contributes directly or indirectly to the earning of these profits. In short, there must be a real and intimate relation between the activity carried on outside Qatar and the trading activity carried on in Qatar and the relation between the two should contribute to the Earning’s of “agency Commission” outside Qatar for the activity in Qatar. However, the issue of “Business Connection” and the issue of agency Commission arising to the Non Resident out of activities in Qatar is one of facts and at times quite complex.

The tax laws 2009 also provide exemptions from tax. In Article 4 of the Tax law certain income which are derived or arise from the State are specifically exempted for taxation.