



Doing business guide

Understanding Kuwait's
tax position

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Kuwait fact sheet

Geography

Location	Southwest Asia
Area	17,818 sq km
Boundaries	Bordering the Persian Gulf, between Iraq and Saudi Arabia
Coastline	499 km
Terrain	Mostly flat plain desert
Climate	Extreme hot summers and short winters
City	Kuwait City
Time zone	GMT +3

People

Population	3.82 million (1 million locals and the remaining expatriates)
Ethnic groups	45% Kuwaiti, 35% Arabs, 9% Asian, 7% Iranian, 4% European/American
Language	Arabic is the official language while English is widely spoken
Religion	Islam; 85% of the population are Muslims
Demographics	The largest percentage of the total population is between 25 and 55 years representing more than 50%

Government

Type	Constitutional monarchy. Most executive power resides with the Amir (ruler); the prime-minister and deputy-prime ministers are appointed by the monarch
Constitution	Adopted 11 November 1962
Amir	Sheikh Sabah Al-Ahmad Al Sabah
Divisions	6 governorates (muhafazat) which are further divided into districts
Politics	Mainly stable with few public protests and minimum effect on the economy
Legal system	Civil Law jurisdiction; Kuwaiti Laws are derived from Egyptian Laws and French Laws with Sharia' (Islamic Law) as the main source of legislations

Economy

National GDP	USD 135.31 Billion (IMF estimate for FY 2018)
Real GDP growth	1.3% (IMF estimate for FY 2018)
Currency	Kuwaiti Dinars (KD) / 1 KD = US\$3.33 (as of March 12, 2018)
Inflation	3.5% (2015 est.)
Unemployment %	3.5% (2015 est.)
Imports	US\$24.42 billion (2013 est.)
Exports	US\$112 billion (2013 est.)

Business environment

The Kuwaiti legal system allows for the establishment of a wide range of commercial entities and business structures.

The following are some of the most common business structures in Kuwait:

Limited Liability Company (W.L.L)

- This is the easiest to incorporate and administer, and the most common form adopted by foreign investors entering Kuwait. A limited liability is a company where the members of the company shall only be responsible for their share of capital contribution in the entity.
- Number of members: Between a minimum of 2 and a maximum of 50 members. A corporate body may be a member. The process of forming a W.L.L. is simple, and it takes approximately three months.
- W.L.L. entities require a minimum of 51% Kuwaiti shareholding unless the venture receives approval under the Foreign Direct Investment or Public Private Partnerships regulations allowing up to 100% foreign ownership after certain required conditions are fulfilled.
- The actual capital costs will depend on the objects chosen for any such

company and the approval by the Ministry of Commerce and Industry (MOCI).

- Annual transfers of at least 10% of net profits are to be made to a legal reserve until the reserves amount to 50% of the capital of the company. The legal reserve may be used to ensure payment of a cash dividend of up to 5% in years in which profits are insufficient to justify a dividend of this size.

Kuwaiti Shareholding Company (K.S.C.)

- The liability of a shareholder in a K.S.C. is limited to the value of their subscribed shares. Shares cannot be disposed off prior to three years from the date of inception.
- K.S.C. entities require a minimum of 51% Kuwaiti shareholding.
- A longer time is required to form a K.S.C. company compared to a W.L.L. company.
- The actual capital costs will depend on the objects chosen for any such company and approval by the MOCI.
- K.S.C.s are required to transfer 10% of their annual net profits to a statutory reserve.

- Following this transfer, 1% is required as contribution to the Kuwait Foundation for the Advancement of Sciences (KFAS). Public K.S.C.s must also pay 2.5% of net profits towards Kuwait's National Labor Support Tax and 1% of net profits towards Zakat/Contribution to State's Budget (CSB).

Partnerships

- This form is applicable to non-corporate investors (individuals) and there are two types of partnerships that can be established under the Companies Law as follows:
 - General partnership: consists of two or more persons who are jointly liable for partnership liabilities to the extent of their personal wealth (unlimited liability).
 - Limited partnership: can have two types of partners, general partners with unlimited liability and partners with limited liability. These partnerships are considered to have a separate legal entity for any business transaction.

Joint venture

- Pursuant to Article 57 of the Kuwaiti Companies Law, joint ventures are formed under simple contracts between two or more persons and are not considered a legal entity.
- Each party is independently liable for its obligation.
- There are no restrictions on foreign participation in joint ventures.
- Registration with the commercial registrar are not required.
- This type of entity is common among foreign contractors involved in major projects in Kuwait.

Entities can operate in Kuwait through legal business structures such as limited liability and shareholding companies, or through contractual relations such as joint ventures and sponsorship agreements.

Sponsorship agreement

- A Kuwaiti merchant or a Kuwaiti entity is appointed as an agent of the foreign entity – referred to as the sponsor. Commercial agencies act as a means for a foreign company to do business in Kuwait without participating in a Kuwaiti business, since all the trade and commercial licenses are issued to Kuwaiti merchants or entities, except under special laws.
- Law No. 36 of 1964 on the Regulation of Commercial Agencies and the Kuwaiti Commercial Code regulate commercial agencies; non-Kuwaitis may not act as commercial agents in Kuwait as per Article 1 of Law No. 36 of 1964.
- A commercial agency is not valid prior to its registration with the Ministry of Commerce, which is to be finalized within three months of the appointment of a local agent.
- Appointment of a commercial agent may give rise to taxable presence in Kuwait.
- There are three types of agents:
 - In a contracts agency, the local agent, by contract, undertakes to promote the principal's business on a continuous basis in the territory and to enter into transactions in the name of the principal in return for a fee.
 - A distributorship entails a local agent as the distributor of the principal's product in a defined territory in return for a percentage of the profit (Article 286 of the Kuwait Commercial Code). Distributorships are governed by the same general rules as contracts agencies if the distributor is the sole distributor for the whole country.

- In a commission agency, which is provided for in Articles 287 through 296 of the Commercial Code, the agent enters into contracts in his own name. The principal's name may not be disclosed without his permission.
- Various laws and regulations protect commercial agents in Kuwait, and any unlawful termination of an agency agreement can result in the agent seeking compensation through court proceedings.

Commercial representatives

- Duties and obligations of commercial representatives are regulated under articles 297 and 305 of the Kuwaiti Commercial Code No. 68 of 1980.
- Commercial representatives are Kuwaiti individuals or entities appointed by foreign companies to represent their business interests in Kuwait.
- Relative to agents, the authority granted to commercial representatives is much more limited. When signing documents on behalf of the foreign company, commercial representatives are to include their name, the foreign company name and specify that they are the commercial representative.
- Fees of commercial representatives can be either a commission, percentage of profits, or a fixed amount.
- The foreign company is responsible for the actions of their commercial representative and are fully liable, assuming the company is aware of those actions, and they fall within the scope of the "Commercial Representation Agreement."

Free Trade Zone

- In order to conduct business in the Free Trade Zone (FTZ), an entity must be established and must obtain a FTZ license to carry on one of the permitted activities outlined in the KFTZ Law. Setting up business through the KFTZ Law would only be applicable if it limits all of its operations to the FTZ only.
- There are no limits on foreign ownership, or branches of foreign companies established in the KFTZ. A foreign company could operate independently in the KFTZ without having to appoint a Kuwaiti agent or establish a Kuwaiti company. However, the managing authority, the Public Authority for Industry, is no longer issuing any new licenses.
- Benefits under the KFTZ Law include tax and customs exemptions and no restrictions on importing and exporting activities (although there are some limitations on the attachment or seizure of capital invested by foreign companies).

Audit and accounting requirements



Kuwait follows International Financial Reporting Standards (IFRS) and International Standards on Auditing (ISA). This mandate is made in accordance with the Ministerial Resolution No. 110 of 1991.

Companies incorporated in Kuwait must have annual audits and comply with International Accounting Standards (IASs).

Foreign contractors must support their income tax filings by providing audited financial statements of their Kuwait operations.

Filing requirements



Individual companies are required to comply with the filing requirements set out by the Ministry of Commerce and Industry and other relevant regulatory bodies.

Individual companies are required to submit annually audited financial statements to the Ministry of Commerce and Industry (MOCI) within 3 months from the end of their financial year.

Individual companies include partnerships, limited partnerships, partnerships limited by shares, proprietorships, and companies with limited liability.

Closed shareholding companies are required to submit their annual audited financial statements within 90 days from the end of their financial year to the MOCI and Kuwait Stock Exchange, after obtaining the approval of the Capital

Markets Authority (CMA), if supervised by the CMA (i.e., trading in securities).

Public shareholding companies are regulated and supervised by:

- Central Bank of Kuwait (CBK)
- CMA
- Kuwait Stock Exchange

Public shareholding companies are required to submit their quarterly unaudited financial statements to the Kuwait Stock Exchange authority 45 days after the end of the quarter. Subsequently, listed companies are required to submit their audited annual financial statements to the MOCI, and to the Kuwait Stock Exchange upon approval of the CBK or CMA.

Laws of labor and employment

Employment contract

- Labor and employment in the private sector are governed by Law No. 6 of 2010.
- Contracts are required to be in writing and to provide a description of the job, remuneration payable, date of appointment and length. Contracts may not exceed five years nor last less than one year, but may be renewable upon expiry. Contracts may be in another language but the court of law will consider the Arabic version to resolve disputes.
- Employment contracts of non-Kuwaitis require approval by the Ministries of Interior and Social Affairs.
- Contracts in the probationary period (100 days) may be terminated without prior notice and an accumulated compensation will be given to the employee.

Visas

- Visas are valid up to three months and are issued for business purposes or for visiting relatives, and therefore must be sponsored by a company or by a relative staying in Kuwait.
- Kuwait grants 34 nationalities and citizens of GCC countries entry visas upon arrival. Other nationalities must apply to obtain a visa before arrival.

Work permits

- Foreign employees require work permits to work in Kuwait; these are to be obtained by the employers.
- Work permits are handled by the Ministries of Interior and Social Affairs and should be presented at Airport Security upon arrival.
- Work permits are issued for a period of three years and are renewable upon expiry. GCC nationals do not require work permits.

Wages

- No minimum wage implemented in the private sector.
- Basic pay, commissions, incentives,

obligatory bonuses, gratuities from third parties and employee benefits such as housing and transportation allowances are included in the remuneration.

Social security

- Social security is only applicable to Kuwaiti nationals. As per the 1977 Social Security Law, a Kuwaiti employee and his employer must contribute 10.5% and 11.5% respectively of the employee's gross salary to the Public Authority for Social Security towards the employee's social security pension.

Working hours and overtime

- Eight hours a day or 48 hours a week are the required working hours.
- An employee must be allowed an hour rest or break after five consecutive hours of work. This one hour rest or break is not included in the computation of working hours.
- Overtime rates are 1.25 times the basic hourly rate for excess hours worked on ordinary days, 1.50 times the basic hourly rate for all hours worked on the weekly day off (Friday/Saturday) and twice the basic hourly rate for all hours worked on public holidays.
- Overtime working is only permitted for a maximum of 90 days a year, and is limited to an additional two hours a day, six hours a week and 180 hours a year. The employee has the right to refuse overtime work.

Leave

- Every employee is entitled to 30 annual leave days as per Article No. 70 of Law No. 6 of 2010.
- Women are entitled to paid maternity leave of 70 days, not included in their other leave, provided that they give birth within this 70 days period. After the end of the maternity leave, the employer may grant, at the employee's request, unpaid leave for a period not exceeding four months to take care of the baby.

- An employee is entitled to sick leave, subject to a satisfactory medical report. Employees are entitled to 15 days with full pay, 10 days with 75% pay, 10 days with 50% pay, 10 days with 25% pay, and 30 days without pay.

Health and safety

- All employees are entitled to health insurance coverage.
- Employees must be protected against physical hazards and occupational diseases at work. Therefore, employers are obliged to take the necessary precautions to protect the welfare of their employees in line with the regulations and guidelines outlined in the Labor Law.

Termination indemnity

- A minimum of three months' notice period must be provided to an employee on termination as per Kuwait's Labor Law. Likewise, in cases where the employee is resigning.
- The employee is entitled to an end-of-service benefit as follows:
 - a. An employee paid on a daily, weekly, hourly or piecework basis is entitled to 10 days remuneration for each of the first five years of service, and 15 days remuneration for each year thereafter. The total of the end-of-service benefit should not exceed one year remuneration for employees.
 - b. An employee paid on a monthly basis is entitled to 15 days remuneration for each of the first five years of service and one month remuneration for every year thereafter. The total of the end-of-service benefit should not exceed one and a half year remuneration.
- The employee is entitled to half of the end-of-service benefits in cases where he/she terminates an indefinite term contract and the service period is between three and five years, and two thirds of the benefit if the service period is between five and 10 years.

Foreign Direct Investment

Incentivizing investment in Kuwait

The Foreign Direct Investment (FDI) law promotes direct foreign investment in the State of Kuwait and allows foreign investors to own up to 100% of business entities in some sectors.

Investing under Foreign Direct Investment Law No.8 of 2001

This Law, later updated by Law No. 116, issued in June of 2013, promotes direct foreign investment in the State of Kuwait and allows foreign investors to own up to 100% of business entities in some sectors, provided the MOCI issues a license.

How will this Law alter the status quo?

The Law is a welcome addition to a host of new economic laws and regulations that have recently been approved for the purpose of improving the overall investment climate, fostering competitiveness, encouraging more engagement in value added investment opportunities by both local and foreign investors, and contributing to achieve Kuwait's economic and social objectives.

Investment entities permitted under the FDI Law

The direct investment business shall be licensed in accordance with the provisions of law and its executive regulations, through an investment entity specified according to any of the following forms:

- A Kuwaiti company, which will be

incorporated for the purpose of direct investment. The foreign investor's interest may amount to 100% of the capital of the company (whether shareholding, with limited liability or sole proprietorship)

- A branch of a foreign company licensed to operate within Kuwait for the purpose of direct investment
- Representative offices having the sole purpose of preparing market studies and production possibilities, without engaging in a commercial activity or activity of commercial agent

However, the board of directors of the Kuwait Direct Investment Promotion Authority (KDIPA) shall establish the principles and rules for the licensing of each form of the investment entities referred to in the Law.

The KDIPA encourages filling out the Concept Form to identify the proposed project. This Form will provide the KDIPA with a brief regarding the proposed project features and the extent of its conformity with the goals, considerations and standards stipulated in the Law and executive regulations and resolutions thereto. The complete Concept Form can be sent either via e-mail to the KDIPA or submitted by hand to the Investors Services Center, at the KDIPA's headquarters. A decision on the merits of the Concept Form shall be rendered within three days from the date of submission. Upon approval of the Concept Form, the KDIPA will contact the company to inform of the next procedures regarding the request application for licensing the new project under this Law.

The license application is to be submitted to KDIPA and should be accompanied with the information and data required by the competent authorities and such information should be correct and legally valid.

Further, the investor should clarify in the application the expected date of commencing both implementation and operations.

Incentives and exemptions

The procedures for obtaining incentives and exemptions:

The investment entity submits to the KDIPA an application to be able to access benefits that it is entitled to including incentives and exemptions stipulated in the Law, and this occurs simultaneously or subsequently to applying for the license.

A multi-activity investment entity's entitlement to incentives and exemptions, including tax exemptions, is limited to its activity; the KDIPA is the body responsible for approving any such incentives and exemptions.

Tax exemption (credit basis)

The licensed investment entity must have accounting records that are monitored and certified by one or more chartered auditors.

In case the investment entity practices more than one activity, it should claim the tax exemption for each activity separately

and provide a separate calculation of the period of tax exemption from the date it commenced the activities' actual operations.

Initially, it was proposed that the investment entity can be granted an exemption from income tax or any other taxes for a maximum period of ten years, from the date of commencing the actual operation of the investment entity. However, as per the KDIPAs recently announced introduction of tax credit framework, the originally proposed incentive system of tax holiday as noted above, has now transitioned to a 'tax credit' incentive system. The tax credit shall be granted for ten years.

The investment projects which were granted a tax holiday under FDI No. 8 of 2001 will be able to continue with such tax holiday until expiration.

Under the tax credit system, the KDIPA will use the following three categories as criteria for determining the amount of tax credit to be granted to a particular investment project on annual basis:

- Technology transfer
- Job creation and training creation for Kuwaiti nationals
- Local content

In order to determine the tax payable on an investment project, the KDIPA credits shall be deducted from the project's taxable income. The subsequent adjusted taxable income shall be then multiplied by the statutory tax rate, at 15%. Any excess tax credit attributable to an investment project for one year cannot be carried forward to subsequent years.

Under the tax credit framework, the applicant shall apply to KDIPA for the tax incentive, prepare and submit year-end financial statements at least two weeks before submission of tax declarations; and submit the tax declaration to the

Ministry of Finance (MOF), along with KDIPA Certificate of Tax Credit.

The KDIPA upon receipt of tax incentive application shall review such application, provide approval based on relevant criteria, and inform both the applicant and MOF. The tax credits applicable shall be estimated based on the tax incentive application.

Further, the KDIPA shall review and approve the verification report at least one week before the date the applicant is due to submit the tax declaration. Three copies of the Certificate of Tax Credit shall be issued to the following parties: KDIPA file, applicant, and MOF.

The applicant's auditor shall issue a verification report of the tax credits; and the Kuwait MOF shall review the tax declaration submitted by the Applicant with the KDIPA Certificate of Tax Credit, and subsequently implement the tax credit mechanism.

License and tax credit based on scoring system

KDIPA has issued Decision No. (313) of 2016 announcing the introduction of a scoring system that will be followed when evaluating the issuance of investment licenses and the approval incentive licenses. The aim of the new standards is to encourage businesses who have successfully contributed to Kuwait's economy by offering them a set of incentives in accordance with the Law No.116 of 2013 on Direct Investment promotion in the State of Kuwait and Executive Regulation thereto.

The scoring system and the corresponding awards listed below will be applied based on the above criteria:

- Below 59% - Investment license and incentive application shall be rejected.
- Above 60% - Only the investment license will be provided.

- Above 70% - The investment license and one incentive selected by the investor will be provided.
- Above 80% - The investment license and all incentives determined by the law will be provided.

KDIPA has recently issued Resolution No. 76 of 2018 on 25 February 2018. The above Resolution has adopted a number of changes to the basis on which the foreign taxpayers could calculate and claim their annual tax credit for their licensed operations. The Resolution has also amended the definitions of national labor training and local content. The above Resolution shall be effective for the fiscal years starting from January 1, 2018.

Customs exemption

The exemption application must be submitted along with the list of information requested by the KDIPA. The director manager needs to issue an exemption certificate and this is set as a binding force before all concerned parties without need for other approvals.

The KDIPA coordinates with both the General Administration of Customs and other concerned parties, in order to determine the mechanisms and the procedures related to the exemption of customs for direct investment entities.

The investment entity shall have full or partial exemption from fees and customs tax, with consideration that the import should be in the name or in favor of the investment entity and the imported materials, in terms of quantity and quality, which should be consistent with the nature of the investment activity and commensurate with its needs.

The investment entity may be exempted in full or in part from taxes and customs fees and any other fees that may be payable on the necessary imports for the direct investment purpose, including:

- Machinery, tools, equipment, transportation and other technological devices
- Spare parts and necessary maintenance accessories as described in the previous item
- Required goods, raw materials, partial manufactured goods, and materials and supplies packaging

List of business activities for which a Foreign Investment License may be granted:

- Industries other than oil and gas exploration and production
- Construction, operation and management of infrastructure enterprises in the fields of water, power, drainage and communications
- Banks, investment corporations and foreign exchange companies which the CBK agrees to consider incorporation thereof
- Insurance companies which the MOCI agrees to incorporate
- Information technology and software development
- Hospital and medicines manufacturing
- Land, sea and air transport
- Tourism, hotels and entertainment
- Culture, information and marketing except for the issuance of newspapers, magazines and opening of publishing houses
- Integrated housing projects and zones development except for real estate speculation

- Real estate investment through foreign investor subscription to the Kuwaiti shareholding companies according to the provisions of Law No. 20/2002;
- Storage and logistic services
- Environmental activities

Furthermore, the Council of Ministers Resolution No. 1006/2 of 2003 provides that a license may be issued to a Kuwaiti shareholding company (closed) in which the share of the foreign investor is 100% of its capital, subject to compliance with the following terms and conditions:

- The company's capital must be sufficient to achieve its objectives and must be fully subscribed to by the founders
- The company must fulfill the procedures, rules and regulations prescribed under the Kuwaiti Commercial Companies Law (No. 15 of 1960)
- The company must engage in one of the sectors as listed in Resolution No. 1006/1 of 2003, and must pursue one or more of the following objectives:
 - a. Transfer of modern technology and administration of practical, technical and marketing expertise
 - b. Expansion and participation of the Kuwaiti private sector
 - c. Creation of job opportunities for national labor and contribution to training
 - d. Support of national products exports

Sectors excluded from an investment license

Following the issuance of Law No. 116 of 2013 regarding the promotion of direct investment in the State of Kuwait, the Council of Ministers has issued Decision No. 75, which includes ten different sectors which are not eligible for an investment license. Such exclusions include many companies in the energy and manufacturing sectors.

The following direct investments will be excluded from the scope of the provisions of the aforementioned Law No. 116 of 2013:

- Extraction of crude petroleum (Class 0610)
- Extraction of natural gas (Class 0620)
- Manufacture of coke oven products (Class 1910)
- Manufacture of fertilizers and nitrogen compounds (Class 2012)
- Manufacture of gas; distribution of gaseous fuels through mains (Class 3520)
- Real estate (Level L), excluding privately operated building development projects
- Security and investigation activities (Division 80)
- Public administration and defense; compulsory social security (Level O)
- Activities of membership organizations (Division 94)
- Activities of hiring labor including domestic labor

The KDIPA intends to undertake (in coordination with the relevant authorities), an update of the titles shown above, in accordance with the upcoming amendments to the International Standard Industrial Classification (ISIC), which is the international reference classification of productive activities. This is in addition to proposing amendments in the investment activities stated in Decision No. 75.

Foreign Investment License may be granted for a specified list of activities, while certain sectors are excluded from being eligible to obtain an investment license.

Public Private Partnerships

Promoting investments in the Kuwaiti public sector

Potential benefits to the foreign investor include income tax holidays up to 10 years, and exemptions from custom duties for importing relevant equipment/materials into Kuwait.

Kuwait is seeking to create a healthier and more encouraging investment climate for the private sector to invest in infrastructure projects through the issuance of Law no. 116 of 2014.

How will this Law affect the partnership scheme?

The above Law is considered, in many ways, a development to the Build-Operate-Transfer (BOT) Law no. 7 of 2008 and other similar schemes together with addressing certain provisions of Law Decree no. 105 of 1980 regarding state property.

Potential benefits to the foreign investor include income tax holidays up to 10 years and exemptions from custom duties for importing relevant equipment/materials into Kuwait.

Under the above, the Kuwait Authority for Partnership Projects (KAPP) will be responsible for collaborating and co-operating with the public entities for the implementation of the projects (Article 6 of the Law).

It is required for the foreign investor (or a consortium) to establish a company as part of the bidding process. This company can be fully owned by the foreign investor (or the consortium) for a project costing up to KD60 million. However, if the project exceeds such a value, a joint stock

company is required to be established which will comprise of the following:

- 50% - issued to Kuwaiti nationals listed in the Public Authority for Civil Information, by way of an IPO;
- 26% and above – to be held by the successful investor with a maximum of 10% allocated to the initiator; and
- Between 6 to 24% to be held by the public entities or KAPP, until the project is operational.

The benefits to be granted to the foreign investor include the right to invest/use state-owned property, the extension of the contract term up to a maximum of 50 years, the reservation of the IP rights to the initiator and the choice of finance to use the assets of the project company as collaterals in order to finance the project.

Conclusion

The KAPP is currently in the process of initiating several high-impact projects in the power, water/wastewater, education, health, transportation, communications, real estate, and solid waste management sectors.

For more details of such projects and the current status, please refer to this link:
www.ptb.gov.kw/en/Projects

Capital markets

Promoting investment in Kuwait

An amendment to Law No. 7 of 2010 (the Law) concerning the establishment of the CMA and regulating securities activity was published in the Official Gazette Al-Kuwait Al Yawm under Law no. 22 of 2015, on 10 May, 2015. The relevant executive rules were issued on 11 November, 2015.

How will this law alter the status quo?

As per the supplementary explanatory note and the executive rules which were published in the Official Gazette, this amendment is intended to be received as an incentive for investing in securities activities, as well as encouraging companies to be listed on the Kuwaiti Stock Exchange. In effect, this amendment will be one of the contributing factors for motivating and encouraging investment as well as trading in the Kuwaiti capital market.

As per the amendment, returns on securities, bonds and finance instruments, as well as all other similar securities, shall be exempted from tax, regardless of the issuer. This is with no prejudice to tax exemptions given for gains on disposal of securities issued by the companies listed on the stock exchange.

Our primary understanding of such an amendment is that the dividends earned by foreign corporate bodies in Kuwait may

be exempted from corporate income taxes at 15%, and consequently the relevant executive rules relating to withholding taxes may be suspended.

The prime minister and ministers in each jurisdiction are expected to implement this Law, which will be enforced after six months from its publication in the Official Gazette.

Next steps

The Tax Department has yet to issue rules regarding the implementation mechanisms of such tax exemptions to become effective.



Kuwait tax law

There is no personal income tax or wealth tax in Kuwait.

Income tax is governed under Law No. 3 of 1955, which has been amended by Law No. 2 of 2008 and applies to foreign companies doing business in Kuwait.

The Department of Income Tax (DIT) under the MOF enforces Kuwait Tax Laws.

Kuwait's tax system is comprised of the following taxes each regulated by a separate legislation in the Amiri Decree:

- Corporate Income Tax on Foreign Business Entities
- Zakat (Islamic Tax) or Contribution to the State's Budget (CSB) on Kuwaiti Shareholding Companies
- National Labor Support Tax (NLST) on Kuwaiti Listed Companies
- Custom Duties

There is also an annual compulsory contribution to the Kuwait Foundation for the Advancement of Sciences (KFAS) imposed on Kuwaiti shareholding companies.

Who is taxed?

Income tax in Kuwait is administered by Kuwait Tax Decree No. 3 of 1955 ("the Decree"). Some provisions of this Decree have been amended through the issuance of Tax Law No. 2 of 2008, which started to apply to the fiscal periods commencing after 3 February 2008. In practice, the Law applies only on foreign entities carrying on trade or business in Kuwait, with the exception of entities registered in Gulf Cooperation Council (GCC) countries (comprising of Kuwait, Saudi Arabia, Bahrain, United Arab

Emirates, Oman and Qatar) and fully owned by Kuwaiti/GCC citizens.

There is a special law applied on the income earned from business carried out in the Divided Neutral Zone between Saudi Arabia and Kuwait (explained in more detail later).

In case of mixed ownership, tax is imposed only on the share of profits attributable to non-GCC ownership. Moreover, individuals and their shareholdings in a corporate body are not subject to tax in Kuwait.

What is taxed?

As per the Law, the income of a corporate body, carrying on activities in Kuwait, is considered as realized from inside Kuwait in cases when it is generated as a result of any of the following:

1. Any activity or business executed in whole or in part in Kuwait, whether the contract is concluded inside or outside Kuwait, as well as income realized from supply or sale of goods or rendering services
2. Amounts earned from the sale, lease or granting the concession to use or exploit any trademark or design or patent or copyright and printing or any other moral rights or those related to rights of intellectual property against use of any right to publish any form of literature, technical or scientific work
3. Commissions due or derived from conventions of representation or trade brokerage, whether cash or in-kind commissions
4. Profits of industrial and commercial activity in Kuwait
5. Gains on assets disposal, including sale of the asset or a part thereof or transfer of its title to other parties or any other disposals as in shares of companies, whose assets consist of immovable funds located in Kuwait
6. Income realized from lending funds inside Kuwait
7. Profits from the purchase and sale of goods or property or rights thereto in Kuwait, whether such rights relate to tangible assets or moral rights including mortgage and franchise
8. Opening a permanent office in Kuwait where contracts of sale and purchase are executed; i.e. the premises in which business are executed or contracts are concluded, whether these premises are owned by the taxpayer or leased from another party, or such business is executed in the premises of the other party inside Kuwait
9. Profits from leasing of any property including movable and immovable funds used in Kuwait
10. Profits resulting from the rendering of services including managerial, technical or consulting services or concluded contracts executed in whole or in part inside or outside Kuwait
11. Profits realized from carrying on activity in the Kuwait Stock Exchange either directly or through investment portfolios or funds

The taxable status of an entity is determined based on whether it carries on trade or business in Kuwait and not on whether it has a permanent establishment or place of business in Kuwait.



Kuwait adopts the territorial concept in its tax legislation; in other words, the distinction is made between “trading with” the states i.e. the supply of goods to the Kuwaiti port; and “trading in,” which involves activity in the state. In broad terms, the latter activity is taxable whilst the former is not.

Tax is levied on the net profit earned from the carrying on of a trade or business in Kuwait at a 15% flat tax rate.

Who is exempted?

As per the Law, the income of a corporate body, carrying on activities in Kuwait, is without prejudice to exemptions prescribed for entities subject to provisions of the Decree and any provisions stipulated in any other laws or international treaties issued by laws, which are valid up to the elapse of the prescribed period and within its limits, the following cases shall be exempted:

1. Profits of corporate body arising only from dealing transactions in the Kuwait Stock Exchange, whether directly or through investment portfolios or funds
2. Income earned by natural persons from carrying on trade or business in Kuwait unless it is proved that such income represents a share to a corporate body
3. Profits generated from activity carried out in the FTZ are exempt from taxes under the Free Zone Law No. 26 of 1995
4. Profits generated from activity under FDI Law No. 116 of 2013 (tax credit basis using certain multipliers)
5. Dividends earned by foreign corporate bodies in Kuwait under the CMA Law No. 22 of 2015

Tax administration

Registration

Foreign corporate bodies are required to register with the DIT within 30 days of commencing their activities or signing the contract. As part of the registration process, they are required to select a financial year from the commencement date of their operations. Any year-end comprising 12 consecutive Gregorian months is valid. For tax declarations covering the first period in Kuwait, it is possible to obtain approval for a period of up to maximum 18 months.

Tax filing

A tax declaration must be submitted within three and a half months from the end of the taxable period.

Taxable period

Generally, the taxable period is on a calendar-year basis but can be different once a request has been approved by the DIT. However, the requested period cannot exceed 18 months from the beginning or end of the contract period.

Tax declarations must be submitted within three and a half months from the end of the taxable period or an extended period if approval has been acquired.

Payment of tax

The tax due as per the declaration can be paid in full at the time of filing the tax declaration or it can be settled in four equal installments falling due on the fifteenth day of the fourth, sixth, ninth and twelfth months from the end of the taxable period.

The tax declaration should be submitted to the DIT in a specified format in the Arabic language. It must be accompanied by an approved report from an auditor registered at the Ministry of Commerce and Industry and approved by the MOF.

Corporate bodies that are tax exempted are not exempted from submitting a tax declaration.

Extension of the taxable period

In the event of delay, a request for an extension in time should be submitted to the DIT by the 15th day of the second month after the fiscal year end.

The request should be accompanied by a valid reason for such a request. It is at the discretion of the DIT to grant an extension. An extension of up to two additional months may be granted if the tax declaration is prepared in accordance with the accounting books and records and not prepared on a deemed profit basis.

Penalties

A fine of 1% on each 30 days or fraction thereof is computed in the following cases:

1. Delay of submission of the tax declaration from the due date of its submission until the submission date based on the tax amount as per the tax assessment
2. Delay of settlement of installments as per the tax declaration from the due date of each installment until the settlement date thereof and based on the installment value

Tax declarations must be submitted within three and a half months from the end of the taxable period or an extended period if approval has been acquired.

3. Delay of settlement of the tax due as per the final tax assessment after 30 days from the date of notification of the assessment letters or reply to the objection or the resolution of the Tax Appeal Committee or the final court judgment until the settlement date

Accounting records and audit

According to the Tax Law, any taxpayer in Kuwait is required to maintain the following books of account and records in respect of their operations. These records may be in English and are subject to inspection by Tax Department officials:

- General journal
- Stock list
- General ledger book
- Expenses analysis book
- Material/inventory record with details of the amounts received or released, and the authority or project for which the materials are released

For tax declarations filed on accounting basis, losses may be carried forward up to three years and deducted from taxable profits of subsequent accounting periods.

Tax inspection and tax assessment

Following the filing of the tax declaration, the DIT carry out an inspection of the corporate body's accounting books and records to verify the income and expenses reported in the tax declaration to the supporting documents. Based on the findings from the tax inspection, adjustments are normally made to taxable profit, e.g. if expenses are not supported they are disallowed at the time of the tax inspection.

Following the inspection, a tax assessment letter will be issued by the DIT. For assessments not disputed by taxpayers, additional tax, if any, as per the assessment is settled within 30 days of the date of assessment.

The DIT may raise an arbitrary assessment, with an estimation of the profitability, if proper accounting books and records are not maintained for the Kuwait operations or documents normally required by the DIT for verification are not made available.

Self-assessment procedures

Per Circular No. 1 of 2014 issued by the DIT, companies are encouraged to prepare a draft a 'self-assessment letter' for expenses and revenues based on adjustments per their latest assessment issued (FY 2009 onwards). This is required to be submitted within three months from filing of the tax return.

Compliance with the above gives the company priority in terms of assessment and No Objection Letter issuance, and usually this is within 6 months from submission of the self-assessment letter. However, this timeline is not legally binding and the DIT could take more time to finalize the inspection process. The DIT may request further documents and make further adjustments to the submitted self-assessment report.

Expenses deductible from income

- All expenses, other than capital in nature, are allowed provided the expenditure is supported by sufficient documentation, directly related to and necessary for the Kuwait operations.
- Imported material costs resold in Kuwait must not exceed 85% - 95% of the relevant revenues depending on the source of material (third party, related party, or head office).

- Design costs incurred abroad must not exceed 75%-85% of the relevant revenues. Consultancy costs incurred abroad must not exceed 70%-80% of the relevant revenues. The above ranges are depending on the relevant location at which such costs have been incurred (head office, affiliated company office, or third party office).
- Interest paid must be commercially justifiable, except for that paid against the head office current account or any related party as they are not accepted as deductibles.
- 10% of basic salary is allowed for Social Security contributions paid abroad.
- Leave salaries and benefits are allowed in excess of the limited as per the Kuwait Labor Law if supported by the sufficient documentation.
- Bonuses up to a maximum of three months' salary in the event the company makes a profit.
- Fixed assets are depreciated on a straight-line basis under rates set out under Law no. 2 of 2008.
- Provisions are not acceptable, however any relevant payments/reversals or write-offs are allowed based on the supporting documentation.

Foreign companies operating in Kuwait through an agent are allowed to claim up to 1.5% of their revenues less the cost of work executed by subcontractors (and the like) and reimbursable expenses as indirect head office overheads allowance. This percentage is reduced to 1% for foreign minority shareholders in a Kuwaiti company or foreign partners in a Kuwaiti joint venture.

- Up to 2% of income is allowed as commission to an agent in Kuwait.

Carryovers

Provided there is continuity of activities in Kuwait, losses may be carried forward up

The deemed profit method is not specifically mentioned in the Kuwait Income Tax Decree. However, this method is often used by the DIT to help arrive at a negotiated settlement with the taxpayer.

to three years and deducted from the taxable profits of subsequent accounting periods; they may not be carried back to previous periods.

Assessment process

An assessment letter is issued by the DIT subsequent to inspection of the accounting records maintained by the taxpayer. The assessment may be on an accounting basis or deemed basis.

Accounting basis

Taxable profit under the accounting basis is determined by deducting the actual expenses of Kuwait operations from the relevant revenues.

This basis is preferred for companies when most of their expenses are incurred inside Kuwait and the costs charged by the head office are minimal. It is easy in such cases to provide sufficient proof for the expenses incurred to the DIT at the time of the tax inspection.

Deemed profit assessment

The deemed profit method is not specifically mentioned in the Kuwait Income Tax Decree. However, this method is often used by the DIT to help arrive at a negotiated settlement with the taxpayer. Under this method, an arbitrary percentage of total revenues is considered as taxable profit. The percentage used is usually subject to

negotiation and its determination depends on the facts and circumstances of each taxpayer. In cases where a tax declaration is filed on a deemed basis, no extension can be applied.

The DIT generally uses the deemed (estimated or ad hoc) profit method of assessing tax mainly in the following cases:

- The taxpayer does not maintain proper books of account and records; or
- Original supporting documentation is not available; or
- The taxpayer fails to file a tax declaration.

Filing objections and appeals

If the taxpayer disagrees with the assessment, an objection against the tax assessment may be filed within 60 days from the date of issuance of the tax assessment. The DIT is required to resolve the objection within 90 days from the date of filing the objection.

A revised tax assessment is issued by the DIT following resolution of the objection filed by the taxpayer. Tax payable per the revised assessment entails settlement within 30 days of its issuance.

No formal response from the DIT beyond 90 days in respect of the objection denotes an implied rejection of the objection.

The taxpayer has the right to appeal against the revised tax assessment or rejection of objection to the Tax Appeal Committee (TAC). The appeal should be filed with the TAC within 30 days of issuance of the revised assessment (or 30 days from the expiry of 90 days following the submission of an objection, if a revised assessment is not issued).

The matter is resolved through appeal hearings and the issuance of a final revised assessment, based on the decision of the TAC. The tax payable per the revised assessment must be settled within 30 days of issuance.

In the event of a dispute with the DIT regarding the tax assessment, and following the rejection of an appeal with the TAC, the taxpayer may refer to the civil courts for adjudication or arbitration. However, this process can take several years to be resolved as the court normally transfers the case to a committee of accounting experts for their opinion.

Tax retention rules

These rules were administered by Ministerial Order No. 44 of 1985 under the Decree, but were later included in the new Tax Law No. 2 of 2008 as follows:

1. Ministries, public authorities and directorates, companies, associations and sole proprietorships should advise the DIT of anybody corporate with whom they enter into contracts or agreements or transactions such as main contractors, sub-contractors, contractors and all beneficiaries. The notification should contain the basic information of the foreign incorporated body which has been contracted, agreed or dealt with.
2. All ministries, authorities, public bodies, companies, societies, individual firms, any natural person and others as specified by the Executive Rules and Regulations shall retain 5% of the contract price or each payment with any entities they entered into contracts, agreements or transactions. According to the Tax Law, unless the body incorporated informs the DIT with its subcontractors or does not commit to withhold 5%, the DIT will disallow what had been paid to subcontractors during the inspection, to account enforced tax.
3. The release of the tax retention, in whole or in part, is not allowed until the relevant contracting party presents a tax exemption letter from the DIT (if not taxable) or a certificate issued evidencing release of its withheld amounts (known as a No Objection Letter for taxable entities after undergoing the inspection process and settling all the taxes due).
4. Ministries, public entities and establishments, companies,

The release of tax retention, in whole or in part, is not allowed until the relevant contracting party presents a tax exemption letter or a No Objection Letter from the DIT.

2. All ministries, authorities, public bodies, companies, societies, individual firms, any natural person and others as specified by the Executive Rules and Regulations shall retain 5% of the contract price or each payment with any entities they entered into contracts, agreements or transactions. According to the Tax Law, unless the body incorporated informs the DIT with its subcontractors or does not commit to withhold 5%, the DIT will disallow what had been paid to subcontractors during the inspection, to account enforced tax.
3. The release of the tax retention, in whole or in part, is not allowed until the relevant contracting party presents a tax exemption letter from the DIT (if not taxable) or a certificate issued evidencing release of its withheld amounts (known as a No Objection Letter for taxable entities after undergoing the inspection process and settling all the taxes due).
4. Ministries, public entities and establishments, companies,

Amendments to existing executive rules



The Kuwait Tax Authorities (KTA) issued the Ministerial Order No. 2028 on 3rd January 2016 through the Official Gazette which brought about minor changes to the existing executive rules (ERs) issued in relation to the Corporate Income Tax (CIT) Law, and Zakat law.

The amendments pertaining to the foreign CIT law cover the following; and apply to the financial periods that ended on 31st December 2015 onwards.

- Additional enclosure requirements for taxable entities established under the FDI law with respect to submission of their tax declarations;
- Exemption of dividend income from withholding tax – This covers exemption on any gains or returns on securities, bonds and finance instruments (and other similar securities) from CIT, regardless of the issuer. As per letter no. 1264 dated 12th January 2016 issued by the KTA, the effective date for such

exemption is 10th November 2015, and any profits related to periods prior to such date shall be considered taxable, regardless of whether the decision for dividend distribution was issued after such date;

- Exemption of airlines operating in Kuwait;
- Exemption of custom duties for entities operating in FTZ.

The amendments pertaining to the Zakat/CSB law cover the following; and has come into effect from 1st January 2016.

- Abolishment of Zakat ER related to the application of tax treaties signed with Kuwait to claim credit amount against the Zakat due for the relevant fiscal year. Further, the KTA is currently in the process of amending the provisions of certain tax treaties, starting with that signed with Egypt, to exclude the Zakat from the taxes covered.

Divided Neutral Zone (DNZ)



Law No. 23 of 1961 is applicable to the entities carrying on business or trade in the areas known as the “Specified Territory” in the Divided Neutral Zone. The “Specified Territory” consists of the partitioned neutral zone between Kuwait and Saudi Arabia and the islands of Kubr, Qaru and Umm al Maradim and their territorial waters.

The tax laws of both Kuwait and Saudi Arabia do not specifically provide rules for filing of tax declarations and assessment of tax on income earned by contractors in the divided neutral zone.

Profits up to KD 500,000 are taxed at 20%. Profits exceeding KD 500,000 are taxed at 57%. However, marginal relief is granted for profits up to KD 930,233.

Taxability of joint ventures

A joint venture or consortium has no legal status in Kuwait.

In cases of integrated joint ventures between Kuwaiti and non-Kuwaiti companies, tax is imposed on the non-Kuwaiti partner's share of profit in the joint venture. In this case, a set of financial statements covering the full operations of

a joint venture agreement) between a Kuwaiti and foreign companies, the foreign partner alone is required to submit a tax declaration, supported by audited financial statements for their share of the gross revenue, and to pay tax on the taxable results. In this case, the foreign partner's status for tax is that of a branch of a foreign company.

For a joint venture between a foreign company and a Kuwaiti company, the DIT may require documents to confirm the ability of the Kuwaiti partner in undertaking the contract and to confirm a proper joint venture agreement exists between the partners.

the joint venture is to be submitted to the DIT. The foreign partner is required to pay tax on its share of the profit in the joint venture.

For divided joint ventures (where each joint venture partner's responsibilities and share of contract revenue are specified in

For a joint venture between a foreign company and a Kuwaiti company, the DIT may require documents to confirm the ability of the Kuwaiti partner in undertaking the contract and to confirm a proper joint venture agreement exists between the partners.

Tax treaties

Kuwait has signed double tax avoidance treaties with several countries.

Companies whose countries have signed such treaties may use the provisions of such treaties to exempt all or a portion of their revenue from tax in Kuwait.

Kuwait has not signed such a treaty with the United States.

The countries with which Kuwait has entered into double tax treaties include: Belarus, Belgium, Bulgaria, Canada, China, Croatia, Cyprus, Czech Republic, Ethiopia, Egypt, France, Germany, Hungary, Indonesia, India, Ireland, Italy, Japan, Jordan, South Korea, Lebanon, Malta, Mauritius, Mongolia, Netherlands, Pakistan, Poland, Romania, Russian

Federation, Singapore, South Africa, Spain, Sri Lanka, Sudan, Switzerland, Syria, Tunisia, Turkey, Ukraine, and the United Kingdom.

Further treaties with several other countries are at various stages of negotiations or ratification.

Kuwait has also entered into treaties with several countries relating solely to international air and/or sea transport.

Kuwait is the signatory of the Arab Tax Treaty and the GCC Joint Agreement, both of which provide for the avoidance of double taxation in most areas. The other signatories of the Arab Tax Treaty are Egypt, Iraq, Jordan, Sudan, Syria and Yemen.

Companies whose countries have signed tax treaties may use their provisions to exempt all or a portion of their revenue from tax in Kuwait.

Offset program



The Offset Program, established by Decision No. 694/1992, requires all foreign contractors who meet certain criteria to participate in the Offset Program. Foreign firms that win government contracts above certain thresholds are required to make an investment that will add value to the economy, through the transfer of

advanced technology, creation of jobs and provision of training for the local workforce.

This program has been suspended until further notice following the issuance of the new FDI law.

Taxes on Kuwaiti companies

National Labor Support Tax (NLST)

As per Law No. 19 of 2000, Kuwaiti companies quoted on the Kuwait Stock Exchange are required to pay an incentive for the employment of Kuwaitis in the private sector tax as follows: basis of computation 2.5% of the net profits per financial statements (before payments of KFAS/NLST/Directors fees) less cash dividends from companies listed on the Kuwait Stock Exchange and profit sharing from companies listed on Kuwait Stock Exchange, whether or not such annual profits are distributed to shareholders. The provisions of the tax treaties can be applicable to profits from countries with effective agreements.

All companies subject to the provisions of the Law are required to submit a declaration audited by one of the accounting and auditing offices approved by the MOF on or before the 15th day of the fourth month following the end of the fiscal period.

Similar to the CIT Law, the taxpayer is required to undergo the inspection process for the issuance of the assessment letter that can be contested through the objection, appeal and court procedures.

Zakat/Contribution to the State's Budget (CSB)

Law No. 46 of 2006 and its executive bylaws (issued in the form of Ministerial Order No. 58 of 2007) regarding Zakat/CSB is applicable on Kuwaiti/GCC shareholding companies (both listed and non-listed).

As per the above-mentioned executive bylaws, listed and non-listed Kuwaiti/GCC companies are subject to Zakat/CSB at 1% of net profits. The companies have the right to allocate the payable amount either as part of Islamic Zakat to the Kuwait Zakat

House or as a contribution to the government's budget and allocated to specific public sectors, for example, health services or housing.

For companies with mixed ownership, the profits attributable to the Kuwaiti/GCC shareholding are subject to Zakat/CSB, whereas those attributed to foreign shareholding are exempted.

Closed shareholding companies that are fully owned by the Kuwaiti government and established through special laws together with those subject to the CIT Law are exempted from Zakat/CSB. However, for companies with mixed ownership (foreign and Kuwaiti/GCC), the profits attributable to the Kuwaiti/GCC shareholding are subject to Zakat/CSB, whereas those attributable to foreign shareholding are exempted.

Similar to CIT and as mentioned earlier, the Zakat/CSB Law stipulates that only the costs that are actually incurred by the company are accepted as deductible expenses. In this respect, any provisions recorded in the financial statements of a company would be disallowed in the Zakat/CSB declaration. It should be noted that accruals may be considered as being provisions by the KTA.

Zakat/CSB rules also state that a parent company that consolidates the financial statements of its subsidiaries will be treated as one taxable body, given that the

company's share of the amounts paid by its subsidiaries under the Zakat/CSB law will be directly deducted from the amount due from the parent company. Further, the provisions of the tax treaties can be applicable for profits from countries with effective agreements and where the relevant subsidiary has paid Zakat in the other country.

All companies subject to Zakat are required to submit a declaration audited by one of the accounting and auditing offices approved by the Ministry of Finance on or before the 15th day of the fourth month following the end of the subject period.

Similar to the CIT Law, the taxpayer is required to undergo the inspection process for the issuance of the assessment letter that can be contested through the objection, appeal and court procedures.

Kuwait Foundation for the Advancement of Sciences

Kuwaiti shareholding companies and closed shareholding companies in Kuwait are required to pay 1% of their profits after transfer to the statutory reserve and the offset of loss carry forwards to the Kuwait Foundation for the Advancement of Sciences (KFAS), which supports scientific progress.

The KFAS provides sponsorship and grants for many types of scientific research projects in Kuwait.

Companies are not required to file any audited tax declaration to the KFAS.

Other taxes

No other types of taxes (i.e. salary tax, stamp duty, VAT, etc.) are imposed on foreign corporate bodies carrying on trade or business in Kuwait. Kuwait Government has committed to introduce VAT by signing the main framework agreement with the GCC countries. However, such agreement has not yet been approved by the parliament. Further, the draft law is to be prepared and submitted to the parliament for discussion and approval subsequent to the approval of the above-mentioned agreement by the parliament.

Personal income tax

No personal income tax is levied in Kuwait either on salaries or on income from commercial activities.

Tax on dividends

There is a 15% withholding tax on dividends earned by entities investing in securities listed on the Kuwait Stock Exchange. Banks, portfolio managers, or custodians who manage portfolios must withhold 15% of the profits on behalf of the foreign investors and deposit this within 30 days of deduction of tax.

Refer to section "Capital markets" (page 14) for information pertaining to the supplementary explanatory note of Law No. 7 of 2010, which outlines incentives and exemptions from the 15% withholding tax on dividends.

Withholding tax

There is no withholding tax in Kuwait.



Once VAT is implemented, businesses having operations in Kuwait will have to enable their systems to fully comply with local VAT obligations and reporting requirements, specifically to capture taxable supplies of goods and services and pay corresponding VAT.

Potential expansion in Kuwait tax regime

A new comprehensive CIT Law has been drafted by the MOF, with the assistance of the International Monetary Fund (IMF), and has been submitted to the Kuwaiti Parliament (National Assembly) to be debated.

How will this law alter the status quo?

The Draft Law is intended to introduce a more comprehensive CIT system in Kuwait including a clear definition of the terms "resident" and "permanent establishment", in addition to seemingly expanding the Kuwait tax regime to include the currently untaxed entities such as W.L.L.s, Partnerships, Joint Ventures, and other entities established under the Kuwait Companies Law.

Main articles of the Draft Law

Article (1) General definitions

This Article provides definitions of terms reflected in the Draft Tax Law, including those terms not previously covered under the current Kuwait Tax Law namely:

- "Company" – which now includes an array of entities not taxed under the current Tax Law
- "Permanent establishment" – The exact period of the nature of works as per the definition (construction, installation, assembly sites and rendering services) is yet to be determined as per the Draft Law
- "Tax sanctuary" – means any foreign company or part thereof which has a reduced or no tax, compared to the tax rates imposed in Kuwait
- "Withholding agent" and "Income subject to withholding taxes"

Article (3) Withholding tax

The mechanism of withholding tax is introduced through the Draft Law, including the income on which withholding tax shall not be imposed.

Article (4) Tax rates

Amended tax rates reflected in the Draft Tax Law are as follows:

- For companies – flat rate of 10%
- For entities other than companies:
 - Net taxable income ranging from NIL to KD50,000 – 0%
 - Net taxable income greater than KD50,000 – 10%
- Withholding tax rates of 5% against insurance premiums; and 10% against any other taxable income subject to withholding tax

There is no clear timeline as to when the Draft Law will be debated by the Kuwait Parliament, as well as the issuance of its relevant executive rules for its implementation.

Article (7) Exempted income

This Article specifies several sources of income that shall be considered exempt per the Draft Tax Law, mainly pertaining to dividend income and gains realized from disposal of shares/financial securities.

Article (9) Non-deductible costs

The limitation of "deductible costs" is to be determined as per the executive rules to the Draft Tax Law which is yet to be issued by the KTA. A list of expenses not allowed as deductible costs is outlined in Article (9).

Article (10) Rules related to bank and insurance companies

Executive rules to be issued by the KTA shall cover the deductibility of any bank reserves and reserves for unexpired risks booked by insurance companies (except for life insurance), and the computation of net taxable income earned by life insurance companies.

Article (11) Net carried forward losses

Net losses computed as per the Draft Tax Law shall now be carried forward for a maximum of five years after the end of the first taxable period during which the loss has incurred, provided certain conditions are met.

Next steps for the issuance of the final Law

There is no clear timeline as to when such Draft Law will be debated by the Kuwait Parliament. Further, once the Law is issued through the Official Gazette, the KTA will be required to issue the relevant executive rules for its implementation.

Deloitte in Kuwait – how can you benefit?

Deloitte Middle East (DME) is committed to providing client insight and delivering thought leadership to help our clients keep abreast of key developments in the

tax landscape. Deloitte has been present in the Middle East since 1926, making it the longest standing professional services firm in the region.

DME launched an International Tax Services Center for Excellence in Dubai in 2009. The Center offers clients and investors in the region services which include structuring groups with inbound and outbound investments within the Middle East and North Africa. The Center leads some of our largest global tax engagements.

DME's practice has been awarded a Tier One ranking in Tax services for six consecutive years by the International Tax Review's World Tax Awards. Top tier rankings are provided to firms that have "an international network and leading reputation" which is "reflected in the size and quality of transactions" in the relevant jurisdiction (International Tax Review).

Deloitte in Kuwait has long recognized that the complexity of modern taxation matters makes it a subject in itself. All tax affairs of Deloitte clients in Kuwait are therefore handled by a partner, principal and supported by a team of dedicated tax staff, available to serve clients anywhere inside and outside Kuwait, working in both Arabic and English languages. As all the tax staff are bilingual, it gives them strong credibility in discussions and negotiations with the DIT in Kuwait.

Deloitte's tax practice in Kuwait provides several services including:

• Tax planning

Prior to setting up operations in Kuwait, particular emphasis is given to strategic planning in order that tax structures are efficient and sustainable. During the development of tax planning strategies in Kuwait, our tax advisors take into

consideration the tax effect in the taxpayer's home country, tax treaties, and transfer pricing implications to enable companies to evaluate their tax decisions and to operate efficiently in Kuwait. Our clients are also kept up-to-date with Kuwait taxation developments to meet their expectations for high quality tax services.

Our dedicated team of tax professionals works closely with clients to understand their organization's global goals and strategies and how industry and economic trends affect their business.

• Corporate tax

Our corporate tax advisors do not only understand the intricacies of Tax Law in Kuwait, but also our clients' businesses. They will work with clients to manage their tax liability and ensure that it complies with domestic and international tax laws.

As a gateway to the vast tax resources within Deloitte, we can offer a fresh look at our clients' tax position in consideration of their broader business objectives. Our dedicated team of tax professionals works closely with clients to understand their organization's global goals and strategies and how industry and economic trends affect their business. Together, we can develop tax strategies that work for our clients' organizations and industry, and help streamline compliance processes.

• Tax compliance

In addition to all the above, our Deloitte tax team provides tax compliance services, including:

- Audit for tax filing purposes
- Preparation and filing of annual tax declarations
- Attendance on behalf of the clients at the tax inspection meetings of their accounting books and records
- Representation on behalf of clients at the DIT
- Obtaining tax clearance certificates from the DIT

• We also provide the following relevant services:

- Local payroll processing
- Bookkeeping
- FATCA compliance, including the certification of the reports to be submitted to the MOF
- Assisting in establishing an entity under the FDI and PPP Laws and obtaining the tax and customs exemptions, including verifying the tax credit calculation under the FDI Law.

We can help you with dynamic tax responses for today's fast-changing environment, given that we seek to deliver advice that is practical, relevant and cost-effective. By working with Deloitte, not only will you benefit from our expertise at the forefront of today's tax agenda, but also from the fresh energy that our people bring in their approach to helping with your tax decisions.

Want to do business in Kuwait?

We are here to help

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We welcome the opportunity to discuss your needs further and provide you with a better understanding of the issues discussed in this material. Please do not hesitate to contact one of our specialists. The 'Doing business guide' series are supplemented by the Middle East Tax Handbook, which provides a summary of basic tax information on a country-by-country snapshot.



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