Kuwait Tax Retention

KUWAIT TAX RETENTION

Overview of Kuwait tax retention requirements

The Kuwait Tax Retention Rules ("KTRR") is a set of tax obligations introduced to aid in the collection of taxes in Kuwait and is applicable on foreign as well as local companies. Although introduced many years ago, many corporate bodies in Kuwait are either unaware of the applicability of the KTRR or do not fully comply with the KTRR requirements.

Requirements and applicability

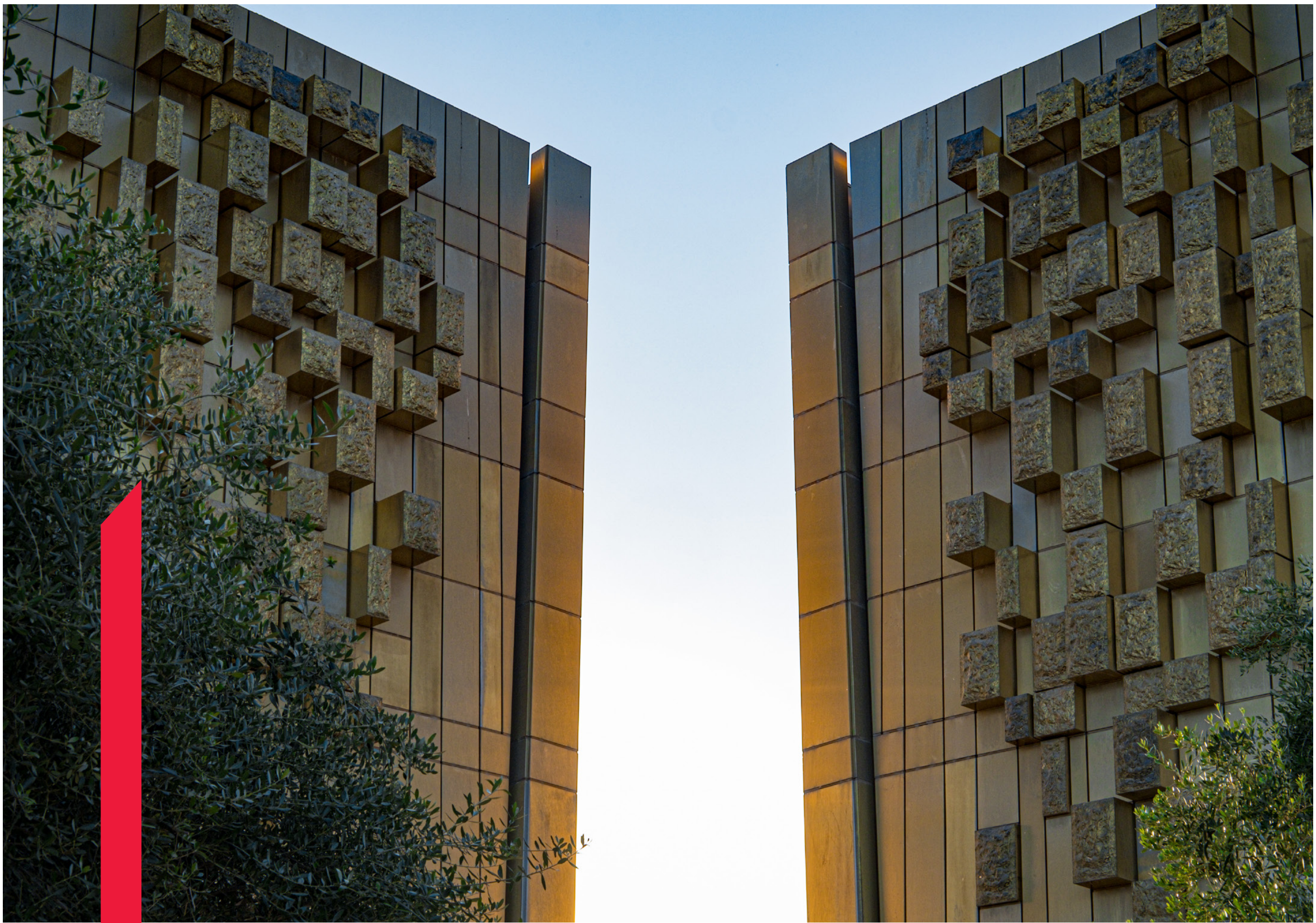
In principle, Article no. 37 of the Executive Bylaw casts an obligation on all public and private entities (hereinafter referred to as "Payer"), doing trade or business in Kuwait, to retain 5% of total contract value or from each payments made to any person with whom they enter into contracts, agreements or transactions.

The scope of KTRR is wide and covers under its ambit any payment made by a Payer. Foreign as well as Kuwaiti and other GCC companies are required to adhere to KTRR.

The mechanism

The 5% tax is required to be retained from every payment being made, or from the total contract value, and such amount is required to be held in trust by the Payer and should not be released until the happening of either of the following events:

- The payee submits a retention release Letter ("RRL"), issued by the Ministry of Finance ("MoF"), based on which the retentions held can be released to the payee; or
- The MoF directs the Payer to remit the taxes retained to the account of the MoF. This rarely happens and occurs in a situation where the MoF is unable to contact or collect the tax due from the taxpayer.



Difference between tax retention and withholding taxes?

Unlike withholding taxes which are normally required to be deducted and mandatorily remitted to the tax authority and treated as a final tax in most cases, under KTRR the Payer is required to hold the amount of the tax retentions in trust until the happening of one of the events referred to in the aforementioned paragraph. As for the payee, the 5% tax retention is not considered in lieu of taxes or an exemption from filing annual tax returns, if required.

Examples where tax retention is not required to be done

- Foreign payees: in certain cases, foreign companies execute tax-exempt contracts and are able to obtain a RRL in advance from the MoF. In such a situation the RRL will state that no retentions should be made for a particular contract and therefore no retentions need to be made by the Payer from payments made under such tax-exempt contract.
- Kuwaiti or GCC payees: Tax retentions are not required to be made only if such Kuwaiti or GCC payee submits a valid No Objection Certificate ("NOC") and such non-retentions will be valid for the period mentioned in the NOC (normally valid until the end of a calendar year).

Implications for non-compliance with KTRR

The MoF has a right to demand from an entity (whether Kuwaiti or foreign), that failed to make the tax retentions, the tax debt payable by the payee/vendor. Additionally, for foreign companies having tax filing obligation in Kuwait, non-compliance with KTRR may lead to disallowances of amounts paid without applying the 5% tax retention.

Other obligations on the Payer

Kuwaiti and foreign businesses are required to file a Tax Retention Return/Notification with the MoF on a regular basis covering the following:

- Name and addresses of contractors, subcontractors and other kind of beneficiaries;
- Contract information including contract type, value, duration and date in respect of contracts signed;
- Copy of the contract; and
- Nationality and tax card number of the vendor.

Although the above notification requirements have been in place for many years, the MoF has recently become active in requesting entities to comply with the above. The MoF team has been visiting, and sending letters, to foreign and local companies enquiring about compliance with the above.

Further, as per Article no. 3 of the Executive Rules to the Kuwait income tax law, public and private entities are forbidden from dealing with an incorporated body that does not have a valid tax card. Tax cards are normally issued to foreign taxpayers and are valid for one year.

For how long should the retentions be held in trust?

There is no statute of limitation prescribed for holding the retained amount and therefore technically the retentions should be held until they can be lawfully released to the payee (on submission of valid RRL/NOC) or until the MoF specifically demands for such amount to be remitted to the MoF. However, corporate bodies can contact the MoF to deposit the retained amounts that have remained unclaimed for a long period of time.

Process for obtaining tax retention release letter (RRL) / tax clearance certificate (TCC)

The ability to obtain a RRL / TCC will depend on whether the company that suffered tax retention (payee) is a taxable entity in Kuwait or not and whether its contract is tax-exempt under Kuwait tax law and regulations. Entities which earn income that is deemed taxable in Kuwait are in most cases required to comply with the following tax compliance procedures before being able to apply for TCC/RRL:

a. Register with MoF, obtain a tax card and approval for first tax period;
b. Prepare, file income tax declaration and pay the required income tax (if any);
c. Comply with the tax inspection and assessment process that gets carried out by MoF; and
d. Settle any additional income tax demanded by MoF.

Kuwaiti / GCC companies are often able to obtain an advanced annual NOC, provided there is no foreign corporate shareholders. Foreign companies carrying out tax-exempt contracts maybe able to obtain a RRL without having to go through the above steps. Please feel free to contact BDO team to discuss your particular case in more detail.

How can BDO help?

Experienced team

BDO is amongst the largest global professional firms with an experienced team in handling all Kuwait tax matters. With over 35 years of experience in Kuwait and excellent relationship with the Kuwait tax officials, our team is able to provide tailor-made tax solutions to complication that might face companies on all aspects related to their Kuwait tax matters.

Our Services

- Review of contracts and advise on tax retentions requirements.
- Assisting in restructuring contracts from a Kuwait tax perspective.
- Assisting in obtaining tax retention release letter / tax clearance certificate from the Kuwait Ministry of Finance.
- Assisting in preparing and filing Tax Retentions Returns/ Notifications.
- Drafting tax retentions policy and procedures.

BDO is the World's 5th largest accountancy and advisory network. BDO in Kuwait is a leading firm in providing assurance, tax, and advisory services of high standards. We provide exceptional tax services well aided by over 35 years of experience of our Managing Partner in dealing with Kuwait tax matters and our innovative and comprehensive research and tailor made tax strategies. Please feel free to contact any of the following if you have any questions or require any assistance.

FOR MORE INFORMATION

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