

INSIGHTS INTO KUWAIT TAX SYSTEM

December 2022



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Under the Kuwait tax law and regulations, any income earned from carrying out trade or business in the State of Kuwait, either directly or through an agent, is taxable. An agent is a person or entity authorized by a principal to carry out business or activity on behalf of and for the account of the principal under a binding agreement

Entities subject to Kuwait tax

Under the Kuwait Income Tax Decree of 1955 as amended by Law No. 2 of 2008 ("tax law"), all entities (either local or foreign) carrying out trade or business in Kuwait are taxable. However, in practice, the tax law has not been applied on entities incorporated in member states of the Gulf Corporation Council ("GCC") [comprising Saudi Arabia, UAE, Qatar, Oman, Bahrain and Kuwait] if they are owned by individuals who do not represent foreign companies or are owned by GCC companies that are in turn owned by individuals. Accordingly, the Kuwait tax law has been applied only on foreign entities and their shareholding in local entities or in GCC entities carrying out trade or business in Kuwait.

Tax rate

For tax periods beginning after 3 February 2008, the income tax rate is a flat 15% on net income. Previously the tax rate ranged from 0% to 55% based on prescribed income slabs.

Tax registration and tax card

Tax registration is required to be done within 30 days of commencing business or signing of a contract with a Kuwaiti customer.

All foreign entities carrying on trade or business in Kuwait, or earning income that is deemed taxable in Kuwait, are required to apply for and obtain a tax card from the Department of Income Tax in Kuwait ("DIT"). The tax card is required to be renewed on annual basis.

Government and private sector entities are forbidden from dealing with entities that do not have a valid tax card.

Filing of tax declaration

All entities that earn taxable income from Kuwait are required to file a tax declaration with the DIT, through an approved audit firm. Entities that maybe exempt from Kuwait tax under a tax treaty are still required to file a tax declaration. The tax declaration should be filed on the standard actual profit basis and accounting records should be maintained.

However, in practice, the DIT accepts tax declarations filed on deemed profit basis - where expenses are estimated as a percentage of revenue attributable to Kuwait.

There are limited exemptions to the tax filing obligation. For example, entities earning profits or other income from listed securities in the Kuwait Stock Exchange, as well as certain foreign airlines working in Kuwait are currently exempt from the tax filing requirement.

Tax inspection and assessment

Following the filing of the tax declaration, it is the practice of the DIT to carry out a tax inspection to verify supporting documents relating to amounts reported in the tax declaration. Once the tax inspection is completed, an assessment letter is issued. It is the practice of the DIT to disallow, wholly or partially, expenses that are not supported by documents, are paid outside Kuwait or are paid in cash.

Withholding tax / tax retentions requirements

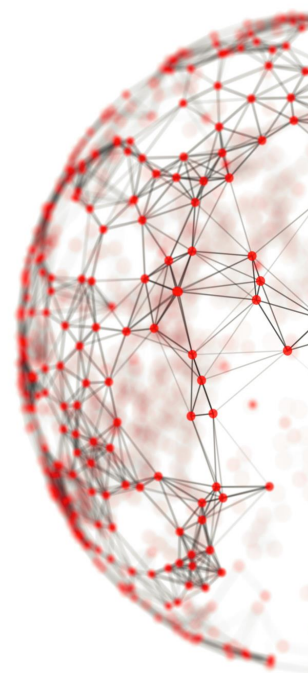
Kuwait does not apply a withholding tax system. Instead, there is a requirement for tax retentions. Local as well as foreign entities carrying out trade or business in Kuwait (or those earning income that is deemed to be taxable in Kuwait) are required to retain 5% of the total contract value or from each payment made to any vendor.

This retention can be released only on receiving a tax clearance letter /retention release letter issued by the DIT. Entities that fail to comply with the above may not be allowed to claim an expense deduction for payment from which tax retentions were not made. Further, such entities may be held liable for paying the tax due of the vendor that has failed to settle its taxes.

Additionally, public and private entities are required to submit a periodic Tax Retention Notification notifying the DIT of any contract, agreement or transaction they enter into.

Key Tax Facts

- Income tax rate: 15%
- Zakat: 1%
- NLST: 2.5%
- KFAS: 1%
- Tax Retentions: 5%
- Withholding Tax: NA



Local and foreign companies in Kuwait must adhere to the Kuwait tax retention rules. Failure to do so may result in such entities being liable to pay the taxes due by their contracting parties that failed to settle their taxes.

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Income deemed to be taxable in Kuwait

Income earned from the following is deemed to be earned from the State of Kuwait and is therefore taxable in Kuwait.

- Income earned from any activities or businesses wholly or partially executed in the State of Kuwait whether the contract has been concluded inside Kuwait or abroad.
- Royalty, franchise, license and similar fees earned from Kuwait.
- Commissions or fees earned in cash or in kind from representation or brokerage agreements relating to Kuwait.
- Profit from any industrial or commercial activity in the State of Kuwait.
- Profit from sale or transfer of assets including sale of shares in a company whose assets are principally formed of immovables in the State of Kuwait.
- Income earned from lending of funds in the State of Kuwait.
- Profit from purchase and sale of goods or property in the State of Kuwait.
- Income earned from having a permanent office in Kuwait where sale and purchase contracts are concluded.
- Profit from leasing of any movable or immovable property for use in the State of Kuwait.
- Profit from rendering of services in Kuwait including fees from administrative, technical or consulting services (irrespective of whether the contract is wholly or partially performed in Kuwait or signed inside Kuwait or abroad).

Deductible expenses

Broadly, all expenses directly incurred in carrying out trade or business in Kuwait, subject to the limits specified in the tax law, are allowed as a deduction in computing taxable profit, subject to the satisfaction of the following conditions:

- The expense is necessary for earning the revenue;
- The expense is real and supported by proper documents; and
- The expense relates to the taxable period

However, in practice, the DIT tends to disallow expenses partially or wholly that are incurred / paid outside Kuwait or those paid in cash.

Tax clearance certificate / Retention release letter

A tax clearance certificate / tax retention release letter is issued by the DIT in the following cases:

- a) if an entity is not subject to tax or is exempted from tax or has incurred a loss; or
- b) if an entity has settled all due taxes; or
- c) if an entity has submitted an approved bank guarantee for the value of its tax retentions.

Self-assessment

In early 2014, the DIT introduced the concept of "self-assessment". Under Circular 1 of 2014, entities that received a tax assessment for 2009 onwards are required to file a self-assessment with the DIT within three months of filing the tax declaration.

In the self-assessment letter, the taxpayers are expected to make any necessary adjustments to the expenses claimed and provide certain additional details of the expenses / revenue reported. This applies to actual profit tax filing.

Carry forward of losses

The losses arising in any tax period can be carried forward to be offset against future taxable profits, for a maximum period of three years.

Double tax treaties

Kuwait has signed a number of double tax treaties. Under the Kuwait tax regulations, even if an entity is exempt from Kuwait tax under the provisions of a particular double tax treaty, it is still required to file tax declaration with the DIT.

Statute of limitation

The statute of limitation is five years from the date of submitting tax declaration or the date from which the DIT becomes aware of the taxpayer's activities/information relating to the tax liability.

Penalties

Delays in the submission of the tax declaration is subject to late filing penalties of 1% of the tax payable as per assessment for each 30 days delay or part thereof in filing the tax declaration. Additionally, penalty is charged for any delay in payment of tax, at the rate of 1% of the tax due for each 30 days delay or part thereof.



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Contribution to Kuwait Foundation for the Advancement of Sciences (KFAS)

Kuwaiti shareholding companies (public and closed) are required to pay 1% of their profits after transfer to the statutory reserve to KFAS which supports scientific progress.

National Labor Support Tax (NLST)

Under Law No. 19 of 2000 relating to supporting National Manpower and encouragement of National Manpower to work in Non-Government agencies, all shareholding companies listed on the Kuwait Stock Exchange are required to pay a 2.5% annual tax on the net profits.

Zakat

Under Law No.46 of 2006, Kuwaiti shareholding companies (public and closed) are required to pay 1% of their net profit as Zakat.

Personal taxation

There are currently no taxes on personal income, including salary income.

VAT & Excise tax

There is currently no VAT or excise tax in Kuwait as of the date of this publication.

Social security

Social security is not applicable for expat employees. However, in case of Kuwaiti nationals' employees, employers are required to contribute 11.5% and the national employees contribute 10.5% of the salary amount.

Customs duty

The GCC states have approved a unified customs tariff of 5% on CIF invoice price, subject to certain exceptions. The 5% tariff is due at the first point of entry to the GCC then goods can travel freely throughout the GCC, subject to documentation requirements. There are certain equipment / goods that are exempt from customs duty. Equipment imported on temporary basis maybe entitled to a refund of customs duty paid.

Divided Neutral Zone: Kuwait-KSA

Foreign entities carrying out projects in the Divided Neutral Zone between Kuwait and Saudi Arabia are subject to Law No. 23 of 1961. Under such law, profits up to KD 500,000 are taxed at 20%. Profits above such amount are taxed at 57% with marginal relief provided for profits up to KD 930,233.

Foreign Direct Investment

Kuwait Direct Investment Promotion Authority ("KDIPA") was set up to promote foreign investments in Kuwait. Currently the following incentives are offered by KDIPA to foreign investors:

- a) Setting up to 100% foreign owned company, branch or representative office in Kuwait
- b) Partial or full customs duty exemption
- c) Income tax benefits
- d) Land facilitation

In assessing applications for obtaining licenses and other incentives KDIPA considers the following main criteria:

- a) Transfer of technology
- b) Creating job and training opportunities for national labor;
- c) Use of local goods and services;
- d) Sustainable development (e.g. CSR); and
- e) Economic diversification.



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Tax indicators	
Exchange controls	Not applicable
Thin capitalization	Not applicable
Transfer pricing	<p>No explicit transfer pricing regulations in Kuwait. However, the Kuwait tax regulations permit the DIT to verify whether transactions between related parties are at arm's length.</p> <p>There are certain limits on deductibility of certain expenses incurred <u>outside</u> Kuwait, and such limits depend on location where cost is incurred (e.g. head office, related party, or third party)</p> <ul style="list-style-type: none"> • Imported material costs resold in Kuwait must not exceed 85% - 95% of the relevant revenues. • 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. <p>Further, in practice, the tax department disallow a portion of expenses that are incurred / paid outside Kuwait.</p>
Double tax treaties	<p>Albania, Armenia, Austria, Azerbaijan, Belarus, Belgium, Brunei, Bulgaria, Canada, China, Croatia, Cyprus, Czech Republic, Denmark, Djibouti, Egypt, Ethiopia, France, Georgia, Germany, Greece, Hong Kong, Hungary, India, Indonesia, Iran, Ireland, Italy, Japan, Jordan, Korea, Laos, Latvia, Lebanon, Malaysia, Malta, Mauritius, Moldova, Morocco, Netherlands, Pakistan, Philippines, Poland, Portugal, Romania, Russian Federation, Serbia and Montenegro, Singapore, Slovakia, Slovenia, Tajikistan, South Africa, Spain, Sri Lanka, Sudan, Switzerland, Syria, Thailand, Tunisia, Turkey, Ukraine, United Kingdom, Ukraine, Uzbekistan, Venezuela, Vietnam, Yemen, Zimbabwe.</p> <p>Kuwait is a signatory to the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting ("MLI"). As of December 2022, Kuwait has not ratified the same.</p>
Double Tax Treaties awaiting conclusion or ratification	Algeria, Bangladesh, Benin, Bosnia and Herzegovina, Guyana, Kenya, Lithuania, Luxembourg, Macedonia, Nigeria, Senegal, Seychelles, UAE.
Bilateral Investment Treaties ("BIT")	<p>Austria, Belarus, Belgium, Bosnia, Bulgaria, China, Croatia, the Czech Republic, Denmark, Egypt, Ethiopia, Finland, France, Germany, Hungary, India, Iran, Iraq, Italy, Jordan, Kazakhstan, Latvia, Lebanon, Lithuania, Malaysia, Malta, Mauritania, Moldova, Mongolia, Morocco, Netherlands, Pakistan, Poland, Romania, Russia, Serbia, Slovenia, Spain, South Korea, Sweden, Switzerland, Syria, Tajikistan, Tunisia, Turkey, the United Arab Emirates, and Yemen</p> <p>BITs with some of the above countries are yet to be ratified.</p>

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