PROPOSED LAW RELATING TO EXCHANGE OF INFORMATION FOR TAX PURPOSES IN KUWAIT

The Kuwait Ministry of Finance ("MOF") recently circulated a draft law concerning the Exchange of Information for Tax Purposes ("the Draft Law"). The Draft Law covers any international agreements signed by Kuwait that provides for exchange of information for tax purposes, but excludes FATCA which is already covered under a separate law. The Draft Law applies mainly to financial institutions but contains certain obligations on other entities as well as individuals as explained below.

The Draft Law reiterates the key obligations under Common Reporting Standards ("CRS") that reporting financial institutions ("RFIs") in Kuwait must meet and introduces significant penalties and sanctions for failure to comply with the CRS requirements (see next section for the list of proposed sanctions and penalties). Account holders, whether corporates or individuals, can also be subject to penalties in case of failure to complete accurate self-certification forms.

BACKGROUND

Kuwait is a member of the Global Forum on Transparency and Exchange of Information for Tax Purposes ("Global Forum") which has over 160 members. The Global Forum conducts Peer Reviews on the effectiveness of the implementation of the Automatic Exchange of Information (AEOI) standard. Kuwait is scheduled to have its Peer Review conducted by the OECD later this year. One aspect of the Peer Review looks at the legal frameworks and the administrative procedures in the jurisdiction requiring RFIs to comply with the CRS. The Draft Law will help contribute to the existing legal framework already in place for the effective implementation of CRS in Kuwait.

The Draft Law introduces obligations for any person (natural or legal) to cooperate with the MOF to submit documents and information required to implement international agreements relating to Exchange of Information for Tax Purposes. It aims at supporting the Convention on Mutual Administrative Assistance in Tax Matters ("MAC") signed by Kuwait in May 2017 and passed locally via Law No.76 of 2018. The MAC provisions entered into force on 1 January 2018 and Kuwait is therefore committed to cooperate with any member country of the MAC.

By way of background, the MAC is a multilateral agreement which provides for all possible forms of co-operation between countries in the assessment and collection of information and taxes. Broadly, such co-operation includes the exchange of information (automatic, upon request, and spontaneous), assistance in recovery of taxes, tax audits and servicing documents.

IMPLICATIONS FOR NATURAL & LEGAL PERSONS

Every natural or legal person in Kuwait has to comply with the following requirements set out under the Draft Law:

- Provide the MOF with any information requested about a particular taxpayer, in response to a request received by MOF from a foreign tax authority
- Information requested by the MOF should be provided within a period of 15 days.
- In case of failure to comply with the above or in case of providing incorrect information, penalty between KD 40,000 to KD 50,000 can be levied.

The above obligations will impact various sectors in Kuwait including but not limited to financial institutions, professional services firms, legal firms and insurance companies. Entities may therefore need to revisit their clients' engagements and records keeping policy.

IMPLICATIONS FOR FINANCIAL INSTITUTIONS

In addition to the above, RFIs in Kuwait have the following obligations under the Draft Law, in addition to the above obligations:

- File a report on CRS reportable accounts electronically on an annual basis by 31 May of each year, in relation to the previous calendar year. Extension for submitting the CRS reports can be granted for up to 60 days, subject to the MOF's approval.
- In case of no reportable accounts, a nil report is required to be filed.
- CRS reports must be audited by an approved audit firm.
- Self-certification forms for CRS must be collected from customers at time of new accounts opening.
- Compliance Officer must be appointed to ensure compliance with CRS and other international agreements for exchange of information for tax purposes.
- Records (physical and electronic) must be maintained for a minimum period of 5 years.
- Comply with the CRS due diligence procedures requirements.

MOF and other regulatory authorities such as the Central Bank of Kuwait, and the Central Market Authority have the right to review RFIs procedures and documents (including CRS related documents) to ensure that the RFIs are in compliance with the Draft Law and the CRS requirements.

SANCTIONS AND FINANCIAL PENALTIES

Sanctions

The Draft Law introduces significant sanctions and penalties. Under the Draft Law, in case the MOF or any other regulatory body in Kuwait has determined that the RFI has been non-compliant with the CRS requirements or any other agreements of exchange of information for tax purposes, the following sanctions can be imposed:

- Written warnings of the violation
- Issuing an order that includes adhering to specified procedures
- Issuing an order to submit regular reports on the actions taken to address the violations
- Preventing the RFI from working in the relevant sector for a period to be determined by the regulatory authorities
- Restricting the powers of members of the board of directors and members of the executive or supervisory management or their directors and controlling owners, including the appointment of a temporary auditor
- License suspension
- License withdrawal

Financial penalties

As per the Draft Law, below is the minimum list of financial penalty that can be imposed notwithstanding any higher penalty applicable under any other laws or the right of other regulatory bodies to impose administrative procedures according to this law or any other law:

	Violation	Penalty (KD)
1	Failure by any person to provide timely or accurate information requested by the regulatory authorities.	KD 40,000 to KD 50,000
2	Failure by a RFI to submit CRS reports or in case of submitting incorrect or incomplete CRS reports.	KD 40,000 to KD 50,000
3	Failure by a RFI to comply with the due diligence procedures required under CRS or the Draft Law.	KD 30,000 to KD 40,000
4	Failure by a RFI to appoint an approved audit firm to review the CRS reports, failure to appoint a compliance officer, or failure to maintain the required records for a period of five years.	KD 20,000 to KD 30,000
5	Failure to cooperate with the regulatory authorities in performing their roles or duties under the Draft Law.	KD 10,000 to KD 20,000
6	Failure to obtain self-certification forms upon account opening.	KD 5,000 to KD 10,000
7	Failure by any person in completing a self-certification form with correct data.	KD 5,000 KD 10,000
8	Failure by the approved auditor in disclosing the violations or the errors in the CRS reports of the RFI.	KD 5,000 to KD 10,000
9	Failure to comply with the secrecy of the information collected under the Draft Law or in case of disclosing the information collected.	KD 10,000 to KD 30,000

OUR COMMENTS

The Draft Law is a step forward taken by the MOF to help improve the existing domestic legal framework for the implementation of exchange of information for tax purposes. We understand that Kuwait is scheduled to have its OECD Peer Review during quarter four of this year and therefore the MOF is interested to have the Draft Law reviewed and passed as soon as possible.

The Draft Law was circulated to key stakeholders for feedback. Key stakeholders have proposed certain changes and requested the MOF to reduce the proposed penalty and sanctions. This is understandable given that the proposed financial penalties are among the highest in the region. Once the Draft Law is finalized it would undergo the governmental review process following which it would go to the Parliament for approval.

Kuwait RFIs should revisit their CRS compliance program and assess whether the existing compliance framework is compliant with the CRS requirements. As per the Draft Law, the law will become effective on the next day following the publication in the official Gazette in Kuwait leaving RFIs in Kuwait with limited time to close any gaps present in their current CRS compliance framework.

Account holders (individuals and corporates) should ensure that their CRS self-certification forms are completed correctly otherwise they could face a penalty in the range of KD 5,000 to KD 10,000 as proposed under the Draft Law.

ABOUT BDO

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. Our team works closely with most financial institutions in Kuwait and is a market leader in the AEOI area. Please feel free to contact us if you have any questions.

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