



Obtaining No Objection Letters for release of Tax Retention

Obtaining a No Objection Letter (NOL) for release of Tax Retention from the Kuwait Tax Authority (“KTA”) for a Foreign company operating under agency structure or through direct contracting with customer

Route 1

Where a foreign company is only involved in supply of material/equipment (ex-works) and/or offshore services (excluding any management, lending, subscription services, royalty and license arrangements) without any physical presence or agent in Kuwait

Route 2

Where a foreign company is involved in activities with physical presence or that have an agent in Kuwait

Know more by clicking on the relevant option



Route 1

Where a foreign company is only involved in supply of material/equipment (ex-works) and/or offshore services (excluding any management, lending, subscription services, royalty and license arrangements) without any physical presence or agent in Kuwait

Where the arrangement is for pure supply of equipment (this excludes the sale of software/licenses) and/or offshore services (excluding any management, lending, subscription services, royalty and licensing arrangements) as an initial step a foreign entity may write a letter to the KTA requesting a NOL on the basis that there was no physical presence in Kuwait and hence the company should not be subject to tax in Kuwait under the Kuwait domestic tax laws.



The KTA is inconsistent in its practices and it may be that they approve release of retentions on invoices issued to date rather than issue a NOL that covers the duration of the contract, including future payments.

Please note that the KTA review each NOL application on a case by case basis. Where the KTA is not satisfied with the documentation to conclude that the company is not taxable for the contracts, the KTA reserves the right not to accept the application for NOL and require company to complete the formal tax compliance requirements and require to register with the KTA and file for annual tax returns as noted below.

Route 2

Where a foreign company is involved in activities with physical presence or that have an agent in Kuwait



Where there have been visits to Kuwait or the company earns income which is considered taxable in Kuwait irrespective of physical presence, such as royalties, license fees, commissions, etc., the following points need to be considered:

Income Tax Decree No. 3 of 1955 and Law No. 2 of 2008, amending certain provisions of Decree No. 3 of 1955 (“the income tax law”) imposes tax on the income of anybody corporate, wherever incorporated, earning income of Kuwait source. In practice, no income tax is imposed on companies incorporated in the Gulf Cooperation Council (GCC) and entirely owned by citizens of the GCC as corporate income tax is only imposed on income earned by non-GCC (foreign body corporate).

Law No. 2 of 2008 provides for tax at a flat 15% on taxable profit for fiscal periods commencing after 3 February 2008.

Kuwait domestic tax law does not provide for a definition of a Permanent Establishment (PE) or taxable presence, instead states that contract wholly or partially executed in Kuwait are subject to tax in Kuwait. In practice, the KTA considers even a single day’s visit of the company’s officials in Kuwait or earning certain income of Kuwait source (such as royalties, license fees, commissions, etc.) irrespective of any physical presence in Kuwait, sufficient in determining the taxable presence.

According to Article 13 of the Executive Bylaws of Law No. 2 of 2008, foreign companies which are subject to treaty exemptions, are still required to file their tax declaration in order to claim such exemptions which would be later be substantiated by the KTA when it confirms that the company is eligible to such treaty benefits as claimed.

Accordingly, foreign entities considered to have a taxable presence in Kuwait are required to comply with the following requirements:

- Registration with KTA;
- Reporting Kuwait sourced income by filing an annual tax declaration with KTA. If any treaty claims are to be sought, these should be declared in the tax declaration. The tax declaration is to be signed off by a local tax advisor.
- Providing all relevant documents during a mandatory tax inspection carried out by KTA (tax audit) of the income reported in the tax declaration;
- Settle tax (if any) as indicated in the annual tax assessment; and
- Obtain a Tax Clearance Certificate (TCC) and NOL for release of 5% tax retentions made by their customers. In this case, the TCC and NOL are issued on an annual basis after completion of the compliance process.

It is the responsibility of the foreign head office to comply with the Kuwait tax requirements. As mentioned above, the KTA consider that the Kuwait tax regulations provide for taxable presence to be created even with one days in-country presence. The Kuwait tax law also specifically provides that contracts that are executed wholly or partially in Kuwait are considered subject to tax in Kuwait.

The income tax law requires that tax declarations should be supported by audited financial statements for tax purposes of the Kuwait activities, i.e. on an actual basis. Separate books of account need to be maintained for the Kuwait project; however, these can be maintained outside Kuwait.

Although not provided for in the income tax law, in cases where the nature of the activities are such that separate books and records are not maintained for the Kuwait contract or the company would not be able to produce the exhaustive level of documents required by the KTA to support costs claimed in the tax declaration, the KTA has in practice accepted tax declarations on an estimated (deemed) profit basis

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