

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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