



Doing Business in Kuwait

**Your guide to Tax and
Regulatory framework in
Kuwait**

2020

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Kuwait - The business landscape

Oil reserves in Kuwait make up 8 percent of the oil reserves in the world and its economy significantly relies on oil based revenue. The forecast reduction in the price of oil implies a weakening fiscal outlook, however the economy may gradually recover supported by the still buoyant non-oil activity and infrastructure spending planned by the government.

Therefore, the key challenges are dependency on the oil sector and implementation of major structural reforms towards the non-oil sector economy. Over the past two years the non-oil sector economy has experienced a slight increase and there are plans to transform it in the future.

Kuwait 'Vision 2035' aims to transform Kuwait into a world class financial and commercial center, with the private sector leading economic activities, fostering competitiveness, and increasing productivity. The government will provide the necessary infrastructure and ensure there is an adequate legal framework and positive business environment.

In line with 'Vision 2035', Kuwait has streamlined its regulations to attract foreign capital to invest in the non-hydrocarbon sectors. This is expected to help the country to diversify and if successful will attract more foreign capital in the future.

Kuwait was ranked 83 out of 190 during 2019 in terms of ease of doing business by the World Bank Group.

Kuwait's key development initiative include:

- moving away from an oil-based economy (Kuwait's non-oil growth expected to be 3% in 2019)
- reducing subsidies, encouraging PPPs (public private partnerships) to finance infrastructure projects
- additional revenue measures in the form of introduction of Value Added Tax (VAT) and excise duty expected during 2020-2021
- attracting foreign companies to invest in Kuwait, offering them the ease of doing business, by working with Kuwait Direct Investment Promotion Authority (KDIPA)
- creating a more tax transparent environment by adopting Organisation for Economic Co-operation and Development initiatives.

I Regulatory/Legal

Setting up business

Generally, foreign ownership in Kuwaiti companies is restricted to a maximum of 49 percent .

The Foreign Direct Investment law allows foreign individual or entities to own up to 100percent of the shares in a Kuwaiti company provided that the foreign investor undertakes a permissible activity in a permissible sector. The Foreign Direct Investment Law No. 8 of 2001 has now been superseded by Direct Investment Law No. 116 of 2013 (DIL). Furthermore, Kuwait Direct Investment Promotion Authority (KDIPA) issued executive regulations to the DIL on 14 December 2014.

DIL is an initiative of Kuwait government to attract foreign investment in almost all the sectors of the economy with only limited exclusions. It offers up to 100 percent of foreign ownership, tax credits and custom duty exemption for foreign companies intending to set up a business presence in Kuwait.

The DIL allows the following options to foreign companies setting up operations in Kuwait:

- Kuwaiti company with up to 100 percent foreign ownership;
- commercial branch of a foreign company; or
- representative office without engaging in commercial activities.

Commonly used set up options for doing business in Kuwait

Foreign companies have the option to carry on business in any of the following forms:

- through a joint venture
- by establishing a Kuwaiti Shareholding Company i.e.
 - Limited Liability Company (W.L.L.)
 - Closed Joint Stock Company
 - Public Joint Stock Company

Companies Law include certain other forms of companies in Kuwait, including:

- General Partnership Company
- Limited Partnership Company
- Partnership Limited by Shares
- Professional Services Company
- Single Person Company
- Holding Company

Apart from the above options, a foreign company that intends to carry on business activity but does not wish to incorporate a company may carry on business under the sponsorship of a Kuwaiti registered agent or sponsor.

Main legal formalities for the formation of a company or registration of a branch

Shareholding companies incorporated in Kuwait are regulated by Companies Decree Law No. 25 for the year 2012 which put various restrictions on the minimum amount of share capital, number of shareholders and business sectors available to different kinds of companies formed under the law.

In the case of a wholly owned GCC company branch office of the company can be established in Kuwait. A license for the branch office will be issued by the Ministry of Commerce and Industry (MOCI) based on the license of the GCC entity and in line with current Kuwait regulations.

For non GCC entities operating in Kuwait, there is no formal registration or separate legal status of foreign branches in Kuwait except under the new Foreign Direct Investment Law No. 116 of 2013 regarding promotion of direct investment in the State of Kuwait (please refer to our comments above in this respect).

However, in practice under sponsorship/agency arrangements, foreign companies operate in Kuwait as an extension of their head office. Under this arrangement, a Kuwaiti merchant or a Kuwaiti entity is appointed as a sponsor/agent of the foreign entity. The agency agreement should set out the authority and responsibility of the principal (foreign entity) and of the Kuwaiti agent.

A joint venture has no separate legal existence under Commercial Companies Law. The form of joint venture associations could be incorporated (as a company) or un-incorporated (through an agreement between foreign partners, where each partner would be operating through a local sponsor). The sponsorship or agency agreement should be registered with the MOCI.

Currency/monetary restrictions

Currently, there are no foreign currency restrictions in Kuwait.

Regulatory requirements for Financial Services

Financial services companies are generally governed, licensed and regulated by the Central Bank of Kuwait. These companies need be either Closed Joint Stock or Public Joint Stock in nature.

I Accounting/Finance for companies and branches of foreign companies

Audit requirements

Annual financial statements must be prepared under International Financial Reporting Standards for all incorporated companies. However, no statutory filing of audited financial statements to the Ministry of Commerce and Industry is required for foreign branches.

Foreign companies who are filing tax declarations on an 'actual basis' are required to either file accounts prepared in accordance with International Financial Reporting Standards or audited income statement and balance sheet prepared for tax purposes only.



Audit requirements (cont.) In accordance with Article 13 and 15 of the Executive Bylaws of Law No. 2 of 2008, the following books and financial records are required to be maintained by corporate bodies:

- balance sheet and profit & loss
- trial Balance
- general Ledger
- contracts
- supporting Documents like invoices, vouchers, custom clearance document, payment advices etc
- stock record showing quantity and value for each item of stock
- fixed assets register showing purchase date, its cost, addition, depreciation rate applied, written down value and addition and disposal for each item

Requirements for foreign investors A foreign investor operating under local agency agreement should register its agency agreement with the Ministry of Commerce and Industry to commence business under the sponsorship of a Kuwaiti individual or company.

In addition a foreign company is also required to register with Kuwait Tax Authority (KTA) within 30 days of starting the activity or signing the contract.

Book year/accounting currency The choice of accounting year depends on the entity. KTA does not set the accounting year for entities. A taxpayer may select any accounting year with the approval of KTA. Duration of first accounting period can be between seven and eighteen months, with prior approval of KTA.

An entity may keep its books of accounts in any currency. In practice, net taxable profit is calculated in the same currency as that of books of accounts and using the average declared by Central Bank of Kuwait (CBK), it is then converted to Kuwaiti dinars for determination of the tax liability. However, KTA requires foreign entities to submit tax declarations in Kuwaiti dinars.

I Tax

Approval requirements Approval is not required from KTA for setting up a business. However, an application for tax registration with KTA should be submitted within thirty days from the date of starting the activity or signing the contract related to Kuwait.

Advance tax rulings/ Advance pricing agreements (APA) The tax law does not includes any provisions for obtaining advance rulings or advance pricing mechanism for proposed agreements/transactions. However, in relation to signed agreements, a foreign company may file a letter with the KTA to obtain a No objection letter (NOL), authorizing the contract owner to release or not to retain 5% tax on the payment in relation to the contract, which in principle confirms that the company is not liable to tax for the contract in Kuwait.

Income tax compliance Income tax compliance is governed by Amiri Decree No. 3 of 1955 and the Law No. 2 of 2008 along with its Executive Bylaws and circulars (collectively the income tax law).

The income tax law is applied only to foreign entities carrying on trade or business in Kuwait and is not applied, in practice, to Kuwaiti entities or Gulf Cooperation Council (GCC) countries. Tax liability of foreign companies investing in Kuwait for the fiscal years commencing after 3 February 2008 shall be calculated at flat 15% tax rate on net taxable profit. This has replaced a range of progressive tax rates between 0- 55% under the previous tax law.

The income tax law does not define a permanent establishment for companies operating in Kuwait. Accordingly, foreign companies earning Kuwait sourced income are considered by the KTA as subject to tax in Kuwait.

Under the current practices of KTA even a single day's visit of the company's official to Kuwait creates a taxable presence for a foreign company in Kuwait. In cases where a contract provides for services in Kuwait, the entire contract, including income from supply of material/equipment to Kuwait and services provided outside Kuwait would be considered subject to tax in Kuwait.

Royalties/license fees earned from Kuwait are subject to tax irrespective of physical presence of the brand owner in Kuwait.

Retentions

Ministry of Finance enforces tax retention regulations. Ministerial Order (MO) 44 of 1985, Articles 16, 37 and 39 of the Executive Bylaws of Law No. 2 of 2008 (the tax retention regulation) require contract owners to retain 5% from payments to contractors/subcontractors or any beneficiary and to release tax retention only on the provision of a Tax Clearance Certificate (TCC) obtained by the beneficiary from KTA. Article No. 39 of the Executive Bylaw to Law No. 2 of 2008 states that the violating contract owner can be held responsible for paying taxes otherwise payable by the contractors/subcontractors or any beneficiary.

TCC is obtained from KTA following submission of tax declarations, completion of the tax inspection process and settlement of tax, as stated in the final tax assessment for each year.

KTA continuously reviews and changes its practices with respect to tax retentions and other tax matters, which are at times enforced retrospectively.

Income tax compliance
(cont.)

Capital Gains

Gains derived by a foreign company on the disposal of assets and shares are taxable as normal business profits. However, capital gains derived by a foreign company from mere trading in shares listed on Kuwait Stock Exchange (KSE) (provided no other activity or presence in Kuwait) are exempt from tax.

In addition to the above, income resulting from money lending is taxable in Kuwait under Law No. 2 of 2008.

Please note that there is currently no Kuwait income tax imposed on individuals.

Zakat

According to Law No. 46 of 2006, Kuwaiti shareholding companies are required to pay Zakat at 1% of net profits. KTA, by reference to Ministerial Order (MO) No. 3 of 1989, concerning equality between citizens of Kuwait and GCC in terms of tax matters, now requires non-Kuwaiti GCC companies (similar in nature of Kuwaiti shareholding company) with activities in Kuwait to register for Zakat and file annual Zakat declarations. KTA has become very active in this respect and has issued official letters to such entities.

In the past, KTA was accepting exemption of share of profits attributable to Kuwait Government for levy of Zakat. However, under the revised practices KTA is levying Zakat on the entire income i.e. including share of profits attributable to Kuwait Government.

We however understand that wholly owned Kuwait Government entities are still exempt from Zakat. Although a formal clarification is still awaited from KTA on this matter.

National Labour Support Tax (NLST)

According to Law No. 19 of 2000, all public Kuwaiti shareholding companies listed on the KSE are subject to NLST at 2.5% of their annual net profit, excluding share of profits attributable to a foreign body corporate and after certain allowable deductions.

Electronic submission of
tax declaration summaries

For Corporate Income tax, Zakat and NLST declarations filed as of January 2017 and onwards, the MoF has requested all taxpayers to provide a summarized tax form of the declarations electronically (i.e. on a CD), in addition to filing a hard copy of tax declaration with the MoF as usual. Some procedural aspects of these requirements are not yet clarified. These requirements suggest that the MoF may be looking to implement an electronic filing system and is starting to gather data for this purpose.

Annual Tax Card for
Corporate Income tax

On 1 January 2017, the Ministry of Finance (MoF) amended the rules regarding tax cards issued to foreign companies that are subject to Corporate Income Tax (CIT) in Kuwait. Changes to the rules are as follows:

- Tax cards will be issued annually, valid up to 31 December of each year. The MoF has issued tax cards for tax-registered companies for the year ending 31 December 2017.
- Tax cards will be renewed each year by submitting an application issued by the MoF for this purpose.
- The MoF has confirmed that government entities, and public and private Companies are prohibited from dealing with any corporate body that does not hold a valid tax card.

Annual Tax Card for Corpo-
rate Income tax (cont.)

- A temporary concession is provided for companies that are starting up their business in Kuwait and are in the process of registration with the MoF and obtaining their tax card.
- Tax card holders are required to return their tax cards to the MoF when they cease activities in Kuwait.
- Tax cards are not to be considered as approval for the release of tax retention amounts or evidence for clearance of tax liabilities.

Tax Card no longer
required for
Kuwaiti companies

The MoF also cancelled a rule that required public and closed Kuwaiti shareholding companies to apply for tax cards for Zakat and the National Labour Support Tax (NLST) purposes. Accordingly, tax cards will no longer be issued to Kuwaiti companies.

Where a Kuwaiti company has a foreign shareholder that is subject to CIT, the foreign shareholder should apply for a tax card for corporate income tax, as discussed above.

Indirect tax compliance

Sale tax/Value Added Tax (VAT) is currently not levied. The Kuwaiti Government has proposed the introduction of Value Added Tax in line with other GCC countries. However, the precise introduction and implementation date has not been confirmed.

Goods imported are subject to customs duty at 5% of the invoice/assessed value of the goods.

Other tax compliance

Taxpayers are required to submit a 'tax declaration' to KTA on or before the fifteenth day of the fourth month following the end of the taxable period.

Taxpayers have a choice to pay the amount of income tax due either in one lump sum payment along with the tax declaration filing, or in four equal instalments. The instalments shall be due on or before the fifteenth day of the fourth, sixth, ninth and twelfth month, respectively, following the end of taxable period.

In certain circumstances it is possible to obtain an extension of up to a maximum of 60 days for the purposes of filing a tax declaration. Where such an extension is granted, no tax payment is necessary until the declaration is filed.

The tax law requires that a tax declaration must be prepared on an 'actual basis' by maintaining proper books of accounts for Kuwait operations.

In practice, tax declarations may be prepared on a 'deemed profit' basis which has been accepted by KTA. The profit percentage currently applied by KTA for companies for varied line of business ranges from 30% to 40% of the resultant taxable profit. KTA has issued Circular 1 of 2014 (Circular) requiring companies to file a tax declaration on deemed profit at a profit percentage accepted by KTA per latest assessment or minimum at 30 percent deemed profits. KTA may apply an aggressive approach against companies who do not comply with requirements of Circular 1 of 2014 (Circular), resulting in a higher deemed profit percentage being applied and potential delay in completion of tax assessment.

Failure to file a tax declaration by the due date results in a penalty at 1% of tax as per the final tax assessment for each period of 30 days or fraction thereof until the tax declaration is filed. In addition, failure to pay tax by the due date results in an additional penalty at 1% of tax for each period of 30 days or fraction thereof from the due date to the date of settlement.

Other tax compliance (cont.)

The tax law provides for a statute of limitation for 5 years from the date of submission of a tax declaration or from the time KTA become aware of income earned by foreign companies in Kuwait. KTA argues that such statute of limitation does not apply where the taxpayer has not filed a tax declaration. In such instances, KTA could levy tax and penalties from the commencement of activities of such taxpayer in Kuwait.

A key additional requirement introduced by the Circular No.1 of 2014 is that companies which file their tax declaration on an actual basis are also required to formally submit a report to KTA within 3 months of submitting the said tax declaration. The report should provide a computation of tax and incorporate the adjustments applied by KTA in its most recent tax assessment (provided it is for 2009 or later) of the company.

Following the tax inspection, an assessment letter is issued. If additional taxes are assessed, foreign body corporate has the option of either paying the additional taxes and obtain a TCC from the MoF or contest the assessment by submitting an objection letter within 60 days from the date of the tax assessment letter. If the tax objection is not satisfactorily resolved within 90 days of submitting the objection letter, the foreign body corporate has the right to have its case heard by an Appeals Committee.

The tax appeal has to be filed within 30 days from the date of issuance of the tax department's letter in response to the tax objection. In case no response is received from the tax department; the tax appeal has to be filed within 30 days after the end of the 90 day period from the date the objection letter was filed. If the foreign body corporate is not satisfied with the decision of Appeals Committee, it has the option to refer the case to civil courts.

The KTA has recently issued a letter requesting taxpayers to submit a soft copy of tax appeal letters to KTA's specified email address. The electronic submission of tax appeal is in addition to the manual submission of tax appeal letters. We understand the purpose of electronic submission of the tax appeal is to expedite the administrative burden of typing tax appeals and its responses.

Director's liability to tax

There is no specific liability on the director under the tax laws. However, any person responsible for mis-statement, on conviction, may be liable to imprisonment of 2 years or to a fine or both.

Double Taxation Avoidance Agreements (DTAA)

Kuwait has executed DTAA with a number of countries in which 'permanent establishment' has been defined. Accordingly, the taxpayer may avail treaty benefits by applying the beneficial provisions. However, the taxpayer is still required first to file a tax declaration and thereafter claim treaty protection.

There are 68 countries with whom Kuwait has executed DTAA including Austria, Belgium, Bulgaria, Canada, China, Germany, Greece, Hungary, India, Iran, Italy, Japan, Lebanon, Malaysia, Netherlands, Portugal, Russian Federation, South Africa, Spain, Tunisia, United Kingdom and Yemen.

On 7 June 2017, Kuwait and 67 other jurisdictions signed the Multilateral Convention to Implement Tax Treaty related measures to prevent Base Erosion and Profit Shifting (MLI). The MLI modifies the application of thousands of bilateral tax treaties concluded to eliminate double taxation. Kuwait submitted a list of 45 tax treaties entered into by Kuwait (40 in force) and other jurisdictions that Kuwait would like to designate as Covered Tax Agreements (CTAs), i.e. tax treaties to be amended through the MLI.

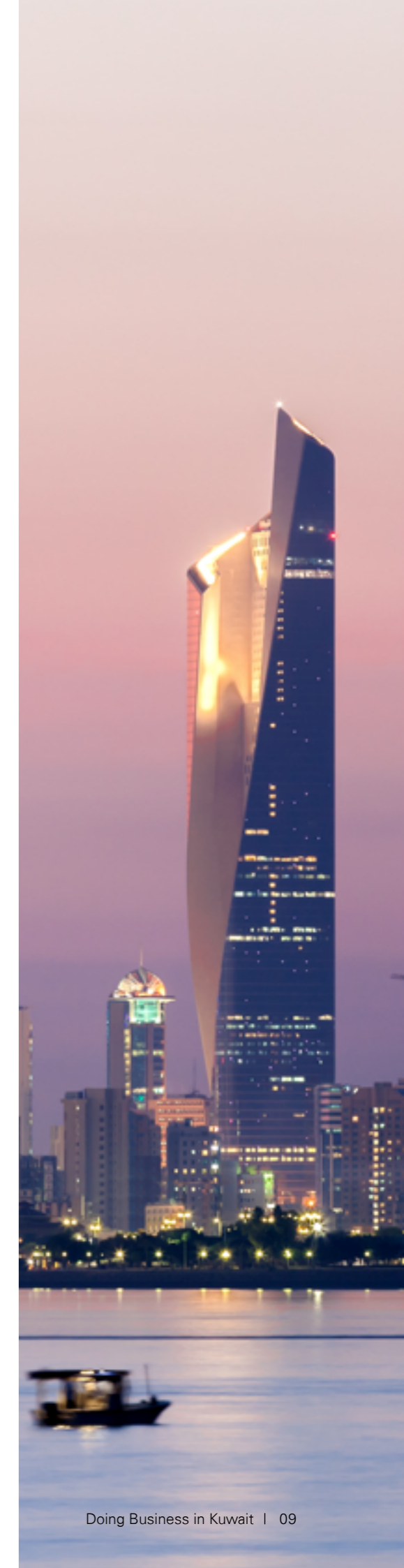
Transfer pricing

There are no explicit transfer pricing regulations in Kuwait for governing related party transactions and/or transactions made outside Kuwait (such as cost incurred from head office, related parties and third parties). However, in practice KTA closely scrutinizes all inter-group transactions in the course of tax inspections. Accordingly, KTA would disallow a portion of inter-group transactions and/or transactions made outside Kuwait if it does not consider such transactions to be at arm's length, based on guidance provided in the Executive Rules issued by KTA.

Advance Tax Retention Release letter/NOL

Currently there is no withholding tax in Kuwait. However, tax retention regulations require a contract owner in Kuwait to retain 5% from all invoices paid to any kind of beneficiaries. These amounts are normally retained with the contract owners and released only when the beneficiary of the amount provides a TCC for Kuwaiti companies/100% GCC owned companies and No Objection Letter (NOL) for foreign entities/Mixed GCC entities (owned by foreign and GCC shareholders) issued by the Kuwait Tax Authority (KTA) authorizing the contract owner to release amounts retained.

Whilst local Kuwaiti and 100% GCC owned companies can obtain TCC in advance from the KTA as they are in practice not subject to corporate tax in Kuwait. Foreign entities/Mixed GCC entities can obtain a tax retentions release letter or NOL from the Kuwait Tax Authority only after completing full tax compliance procedures. However, in cases where all services have been performed outside Kuwait or the arrangement is for pure supply only, a foreign entities/Mixed GCC entities may request a NOL to KTA 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. Please note that these matters are reviewed by the KTA on case by case basis.





The tax function at KPMG Kuwait

The issues surrounding tax are constantly evolving, both locally and globally. Changes in law, practice, or in the approach of tax authorities, can have major ramifications.

A business's approach to tax can be subject to public scrutiny and is now a major driver of reputation.

We provide expert advice on domestic and international corporate tax issues with the objective of sharing our experience and industry knowledge to help make your commercial objectives a reality.

OUR SERVICES

We address a variety of business needs and help organizations align their businesses in a more tax efficient manner.

Corporate Tax

- Tax compliance and inspection services
- Tax retention Compliance
- Applying for advance NOL

Indirect Tax

- Trade and Custom
- Value Added Tax
- Excise Tax

Corporate Services

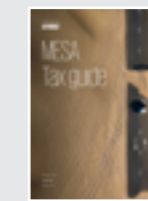
FATCA and CRS advisory and certification services

Transfer Pricing solutions

Zakat Tax Compliance services

International Tax services including support on BEPS initiatives

PUBLICATIONS



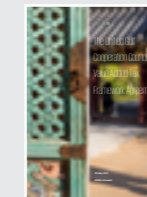
MESA Tax Guide 2019



MESA Tax Guide 2018



Tax Retention Regulations



VAT Framework in GCC



Excise Tax in Kuwait



Understanding VAT

AWARDS



Source: International Tax Review Magazine

OUR CLIENTS

GOVERNMENT ENTITIES



FINANCIAL SERVICES



TELECOM & MEDIA



EDUCATION



INDUSTRIAL MARKETS



RETAIL AND CONSUMER MARKETS



HEALTHCARE



TECHNOLOGY



KPMG in Kuwait

With over 200 employees and 9 partners based in Kuwait, we form part of a global network of more than 219,000 outstanding professionals working together to deliver value in 147 countries, drawing on global industry insights to complement our strong local knowledge.

KPMG in Kuwait operates through its member firms KPMG Safi Al-Mutawa & Partners and KPMG Advisory W.L.L.

We provide a full range of audit, tax and advisory services to a portfolio of clients that includes major corporations, family businesses and entrepreneurs, government institutions, public sector agencies and not-for-profit organizations.



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