Disposals of fixed assets

Kuwait Tax Alert
October 2024

The Kuwait Tax Authority ("KTA") has issued a notification reiterating requirements on the disposal/destruction of fixed assets provided under the current Executive Rules of the Kuwait tax law.

The rules are strict and would require taxpayers to monitor any disposal/destruction of fixed assets and arrange **notifications** to the KTA **no less than 30 days before disposal**. In addition, arrange for inspectors to visit companies' offices in order to physically observe the disposal/destruction. Past practices of the KTA have been inconsistent and attendance of tax officials at the time of disposal/destruction was not strictly applied.

The impact of not adhering to the requirements can lead to the disallowance of the loss on disposal/destruction of assets and potential imputation of a capital gain which would impact the final tax liability of a taxpayer.

Background

Income Tax Decree No. 3 of 1955 as amended by Law No. 2 of 2008 and its Executive Bylaws provide that capital gains on disposals of assets should be treated as normal business profits and subject to tax at 15%. Any losses on disposal of fixed assets should be tax deductible.

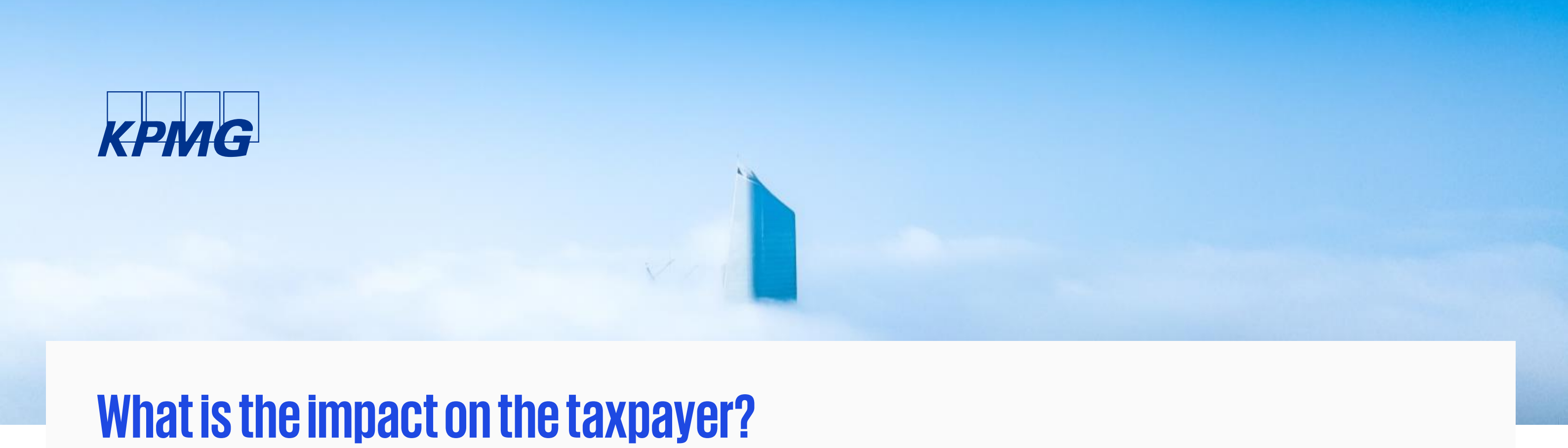
Furthermore, Executive Rule No. 31 requires that gains or losses on the disposal (includes sale, donation, and transfer to other branches or to the head office or substitution and barter thereof) of fixed assets will be accepted by the KTA where the following supporting documents are available:

1. Contracts;
2. Invoices; and
3. Custom statements (where applicable in case the assets are being shipped to another country).

While proof of payments is not specifically mentioned under the Executive Rule 31 as a supporting document, during the mandatory tax inspection stage, tax inspectors typically request for this information in order to assess the gain or loss on disposals of fixed assets.

In addition to the above, the Executive Rule requires that the taxpayer notifies the KTA of the disposal of an asset and is not permitted to dispose the asset until a representative of the KTA is in attendance.

In the case of a loss on disposal, where the KTA is not satisfied with the documentation or process of disposal in line with the requirements of the tax authority, any losses on disposal maybe disallowed. The Executive Rule further clarifies that the KTA could deem a capital gain which would be subject to 15% tax.



What is the impact on the taxpayer?

In our experience with the KTA, the application of a deemed gain where there is insufficient documentation is a common occurrence.

There is currently no defined percentage of the deemed gain. However, we have noted that the deemed gain is typically in the range of 20%.

In the past, the KTA has not insisted on being present at the time of the disposals of fixed assets.

However, the KTA have notified tax advisors in Kuwait reiterating the requirement that taxpayers notify the KTA with a letter at least a month in advance of the disposal of fixed assets.

The letter from the taxpayer should cover the following aspects:

- The list of assets to be disposed;
- Purchase dates of the assets; and
- Book value of each asset.

In order to avoid tax risk on disposal/destruction of fixed assets, taxpayers should maintain a track record of the assets to be disposed and adhere to the above notification requirements to the KTA.

Reach out to us

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