# КРМС

# Business Profit Tax in Kuwait – Proposed Law

Kuwait Tax Alert December 2024



## Introduction

Further to our earlier alerts, a draft copy of the Business Profits Tax Law (the "Tax Law") is available in the public domain<sup>1</sup>. This draft legislation signifies a substantial transformation in Kuwait's tax framework, aiming to broaden the tax base and increase the number of companies subject to tax. The Tax Law is expected to bring extensive changes, impacting multinational corporations, resident entities, and individuals (establishments) engaged in business operations.

The draft Tax Law aligns with our earlier expectations of a wider corporate income tax regime being implemented in two phases. The first phase targets multinational companies ("MNE") with revenues over EUR 750 million (currently approx. KD 242 Million), aligning with companies subject to Base Erosion and Profit Shifting (BEPS) Pillar 2 framework. The second

<sup>1</sup>https://www.aljarida.com/article/83373

phase will apply to all Kuwaiti businesses, including corporate entities, partnerships, and individuals (establishments) engaged in business operations that have turnover exceeding KD 1.5 Million annually.

The draft Tax Law states that Executive Regulations would be issued within 6 months from the date of issuance of the Tax Law, meaning that these would be expected by the end of June 2025 subject to the Tax Law being officially published in the local gazette by end of December 2024.

We set out below a summary of key points based on informal translation of the Arabic draft Tax Law currently available in the public domain. Provisions of the final law may differ from what is stated below and hence this summary is not for reliance purposes.

### Summary of the Business Profits Tax Law

Category	Key Points
Covered Person	• Resident legal persons (including companies under Law No. (1) of 2016, Partnerships, any authority, public institution, fund, or any legal person established under laws or resolutions) for their income sourced inside and outside Kuwait;
	• Resident natural persons engaging in activities (commonly known locally as establishments) for their income sourced inside and outside Kuwait; and
	Permanent Establishments for their income derived within Kuwait.
Effective dates	<ul> <li>Applies to MNEs (with revenues exceeding EUR 750 Million, in line with BEPS Pillar 2 requirements) from 1 January 2025</li> </ul>
	<ul> <li>All remaining in scope taxpayers that exceed annual turnover of KD 1.5 Million from 1 January 2027</li> </ul>



### Summary of the Business Profits Tax Law

Category	Key Points
	The following activities are expected to be considered as taxable:
	Income from a permanent establishment
	Income from sports and artistic activities within Kuwait
	Income from real estate and equivalent assets within Kuwait
Taxable	Dividends from shares in resident legal persons
activities/sources	Capital gains from securities in resident legal persons
of income	Interest paid by the government, residents, or permanent establishments
	<ul> <li>Rent, licensing fees, and royalties paid by the government, residents, or permanent establishments</li> </ul>
	Insurance premiums for risks within the State
	Income from any other activities within the State
	<ul> <li>Standard tax rate: Business profits tax rate is 15%</li> <li>Exceptions:</li> </ul>
Toy rates	<ul> <li>Legal persons wholly owned by State of Kuwait: 0%</li> </ul>
Tax rates	<ul> <li>Businesses operating in the divided zones or the divided submerged zone are expected to face a flat tax rate of 30%, with a potential 50% waiver if the taxpayer pays 50% of the taxes in KSA.</li> </ul>
	The following entities are exempt from the Business Profits Tax
	Kuwaiti government entities
	Kuwaiti non-profit organizations.
	Covered Persons whose business turnover does not exceed KD 1.5 Million.
	In addition to the above, the following are expected to be exempt from Business Profit Tax:
Exemptions	• Dividends received by a resident from Participating Interests in a resident or non-resident legal person, provided the interest is at least 10% for twelve months before distribution and taxed at not less than 15% in the non-resident's country.
	• Capital gains from the disposal of Participating Interests in a resident or non-resident legal person, provided the interest is at least 10% for twelve months before disposal and taxed at not less than 15% in the non-resident's country.
	<ul> <li>Income earned by a non-resident person through a permanent establishment from operating aircraft or ships in international transport, including:</li> </ul>
	<ul> <li>International transport of passengers, goods, livestock, mail, or parcels.</li> </ul>
	Leasing of aircraft or ships, with or without crew.
	<ul> <li>Leasing essential equipment for navigating ships or flying aircraft in international transport.</li> </ul>
	This exemption requires reciprocal treatment for residents conducting similar activities in the non-resident's country.



Category	Key Points
Domestic Minimum Top-up Tax ("DMTT")	<ul> <li>Applicability: Imposed if the effective tax rate for MNE is below 15%, based on OECD Pillar 2 rules.</li> <li>Calculation: Based on the difference between the effective tax rate and the global minimum tax rate.</li> </ul>
Exemptions from DMTT	<ul> <li>The following are expected to be exempt from DMTT:</li> <li>Government entities</li> <li>Non-profit organizations</li> <li>International organizations</li> <li>Pension funds</li> <li>Investment funds</li> <li>Real estate investment vehicles</li> </ul>
Withholding Tax ("WHT")	<ul> <li>Applicability: On gross payments sourced from Kuwait to non-residents (excluding PE of non-residents in Kuwait)</li> <li>Rate: 5% on payments to non-residents.</li> <li>Transactions in scope: <ul> <li>Interest</li> <li>Royalties</li> <li>Consideration for services, including technical, consulting, and administrative services</li> <li>Rental payments for movable or immovable property (lease payments)</li> <li>Dividends from holding shares in local companies, except those issued by companies listed on the Kuwait Stock Exchange</li> <li>Consideration for sports or artistic activities performed in Kuwait</li> <li>Insurance premiums paid from a source in Kuwait</li> </ul> </li> <li>The WHT is expected to be deducted at source by the payer which would be defined as a "withholding tax agent".</li> </ul>
Permanent Establishment ("PE")	<ul> <li>A PE is a fixed place through which a non-resident person wholly or partly conducts activities, including:</li> <li>Premises whether related to the place of management, branches, shops, office, factories, workshops, sales outlets, warehouses, mines, oil or gas wells, quarries, or locations for exploring, extracting, or exploiting natural resources</li> <li>Construction, installation, assembly projects, or related supervisory activities lasting over 6 months within a 12 month period</li> <li>Services provided by a non-resident within Kuwait for over 6 months in total within a 12 month period</li> <li>An agent</li> <li>The Executive Regulation may define additional cases and set rules for applying this Article.</li> </ul>

Category	Key Points
Registration/de- registration requirements	The taxpayer must register with the Tax Department within 30 days of starting their activity. If they fail to do so, the Tax Department can register them based on available information and notify them appropriately. The taxpayer must inform the Tax Department of any changes to their activity or registration details within thirty days of the change. They must also request deregistration within thirty days if they permanently stop their activity. The Executive Regulation will outline the registration mechanism, notification procedures, and related provisions. Given that the law is expected to be applicable on MNEs from 1 January 2025, MNEs have 6 months from the enactment of the Tax Law to register with the Tax Department without facing administrative penalties.
Filing deadlines	<ul> <li>Business Profits Tax: Taxpayers must submit a tax declaration, including audited financial statements, within 6 months from the end of the tax period.</li> <li>Supplementary Tax: Taxpayers subject to this tax must submit a tax declaration, including audited financial statements, within 15 months from the end of the tax period.</li> <li>Withholding Tax: Withholding tax agents must submit a tax declaration for tax deducted at source within 15 days from the end of the month in which the tax deduction becomes due.</li> </ul>
Tax filing requirements	The Business Profits Tax and Supplementary Tax declarations are required to be submitted to the Tax Department along with audited financial statements audited by an audit firm accredited by the Ministry of Finance.
Revised tax filings	The taxpayer or withholding tax agent can submit an amended tax declaration within five years of the original filing deadline if they find an omission, material error, or computational mistake, provided no tax assessment has been issued for that period. This is subject to the penalties set out below.
Tax payments	The taxpayer and withholding tax agent must pay or remit the tax due to the Tax Department by the statutory deadlines for filing the tax declaration. If they overpay or remit excess tax, they are entitled to a refund after settling any outstanding amounts owed.
Advance tax payments	<ul> <li>Taxpayers with income above the threshold set by the Executive Regulation must make four advance tax payments, each due within one month after each three-month period. These payments are based on quarterly financial data and must be supported by specified documents.</li> <li>Upon filing the tax declaration, the payments will be reconciled, with the taxpayer either paying any remaining tax due or requesting a refund for any excess amount. The advance payment system is optional for other taxpayers.</li> <li>MNEs have been allowed a postponement for advance tax payments to tax periods starting on or after 1 January 2026.</li> </ul>



Category	Key Points
Losses to be carried forward	A taxpayer can deduct a loss incurred at the end of a tax period from the income of the next tax period. The losses can be carried forward for up to a maximum of 5 tax periods following the period it was incurred. The deductible losses cannot exceed 75% of the taxable income for the period. The Executive Regulation is expected to outline the rules, conditions, and regulations for this provision.
Related party transactions / transfer pricing	The Tax Department can determine taxable profit based on the arm's length price if related parties set terms in their transactions that differ from those between unrelated parties, reducing the tax base or shifting the tax burden to an exempt or non-taxable party. The Executive Regulation is expected specify the rules for calculating the arm's length price and all related rules, conditions, and regulations.
Tax audits/inspections	Tax declarations are examined according to the Tax Department's rules and instructions, possibly on a sample basis. A tax declaration is considered a tax assessment unless adjusted by the Tax Department. Any revised tax assessment for a taxpayer is expected to be issued if there is an error in the initial assessment or if there is unassessed income that the Tax Authority becomes aware of within the period under the statute of limitations (i.e. 10 years).
General anti- avoidance rules ("GAAR")	Tax implications of agreements or transactions aimed at reducing, deferring, or exempting tax are not recognized. Tax assessments are based on the actual commercial or economic substance of the agreement or transaction. The Executive Regulation will specify the conditions under which an agreement or transaction is deemed to have the purpose of reducing, deferring, or exempting tax.
Delay penalties	<ul> <li>Delay in Submitting the Tax Declaration</li> <li>Following penalty based on final tax amount is expected to be imposed for late submissions (with a minimum penalty of KD 1,000):</li> <li>5% of the final tax if delayed less than 1 month.</li> <li>10% if delayed between 1 and 3 months.</li> <li>15% if delayed between 3 months and 1 year.</li> <li>20% if delayed more than 1 year but before tax assessment.</li> <li>A 25% penalty, with a minimum of KD 5,000, applies if the declaration is not submitted by the tax assessment date.</li> </ul>



Category	Key Points
Delay penalties (contd.)	<ul> <li>These penalties do not affect late payment penalties.</li> <li>Delay in Paying the Tax Due</li> <li>A 1% penalty on unpaid amounts for every 30 days or part thereof is expected to be imposed:</li> <li>If the taxpayer misses the payment deadline.</li> <li>If the withholding tax agent fails to remit deducted tax.</li> <li>If advance payments are late.</li> <li>Filing an Incorrect Tax Declaration</li> <li>A 25% penalty on the difference if the final tax exceeds the declared tax by more than 10%.</li> <li>Reduced to 15% if corrected voluntarily before detection.</li> <li>These penalties do not affect late payment penalties</li> </ul>
Administrative violations and related penalties	<ul> <li>A fine of KD 3,000 will be imposed for the following violations:</li> <li>Missing registration deadlines.</li> <li>Failing to notify the Tax Department of changes in registration details or activities.</li> <li>Not providing required documents or information.</li> <li>Obstructing Tax Department employees.</li> <li>Not retaining records and accounting books as specified.</li> <li>Violating prohibitions outlined in Article (40) covering "Confidentiality".</li> </ul>
Seizure of assets	The Tax Department can request the Enforcement Department to secure a taxpayer's movable assets if the tax liability is at risk. This attachment can be lifted if the taxpayer provides sufficient guarantees or if the Tax Department requests it.
Tax evasion	Individuals involved in tax evasion face up to 3 years' imprisonment and fines up to 3 times the evaded tax. Repeat offenders within 5 years face up to 5 years' imprisonment and fines up to 5 times the evaded tax. The person responsible for the act of tax evasion in legal entities shall be the legal representative, the responsible partner, the manager, the chairman of the board of directors, the vice-chairman, or the chief executive officer, depending on who exercises actual management, as the case may be. Further details are expected to be issued in the Executive Regulations.



Category	Key Points
Objections/appeals	Taxpayers have the right to object to tax assessments, file complaints, and appeal decisions through the following procedures:
	<ul> <li>Objection to Tax Assessment: Taxpayers can object within 60 days of notification or awareness of the assessment. The objection must include reasons and supporting documents, submitted to the Tax Department, which must respond within 90 days. If no response is given, the objection is considered rejected.</li> </ul>
	• Filing a Complaint: If the objection is rejected, taxpayers can file a complaint with the Tax Grievance Committee within 60 days of notification or awareness of the rejection, or after the 90-day response period lapses. The Committee must decide within 90 days, with possible extensions if approved.
	<ul> <li>Appealing the Committee's Decision: Both the Tax Department and taxpayers can appeal the Committee's decision to the competent court within 60 days of notification or awareness of the decision, or after the complaint period lapses without resolution.</li> </ul>
Retention of documents	The taxpayer must retain books, records, documents, and information necessary for their activity and for preparing financial statements and determining the tax base for 10 years from the end of the relevant tax period.
Statute of limitations	The statute of limitations period is expected to be 10 years from when the return is filed or from the discovery of undeclared income by the Tax Authority.
	The statute of limitations period expires in case of various actions including issue of tax assessment, submission of objection or appeal or issue of appeal decision etc.
	The time period for a refund of overpaid taxes by the taxpayer or withholding tax agent to be claimed shall expire after 5 years from the date when the claim is due.
	The following current tax laws are expected to no longer be valid for the tax period beginning on or after 1 January 2027:
	Corporate income tax law – Law No. 2 of 2008;
Transition from	• Zakat Law – Law No. 46 of 2006; and
current tax laws	<ul> <li>Partitioned Neutral Zone tax law – Law No. 23 of 1961</li> </ul>
	Law No. 19 of 2000 for National Labour Support Tax on Kuwait Shareholding Companies is expected to remain in force with exclusion of Paragraph (1) of Article (12) and Paragraph (2) of Article (14).
Double taxation	The Tax Law allows foreign tax credit, i.e. allowing deduction of foreign taxes paid, not exceeding the amount of tax due in Kuwait on the same income.



#### **Recommendations for Next Steps**

To help manage compliance and explore opportunities for tax efficiencies under the new Tax Law, companies may consider the following steps:

#### **01.** Review and Assess Impact

- Conduct a comprehensive review of the Tax Law to understand its implications on your business operations
- Consider the implications of the supplementary tax (if applicable) and withholding tax on your international transactions
- · Check current contract clauses to understand commercial implications with counterparties
- · Assess the impact on your financial statements and shareholder returns

#### 02. Update Tax Policies

- Revise your tax policies to align with the new tax regulations
- · Review resource requirements within finance and tax functions

#### 03. Enhance Compliance Systems

- Understand what new tools / technology would be required in order to obtain the correct data points for tax filings
- · Update your tax compliance systems and processes to manage timely and accurate tax filings
- Implement robust internal controls to manage the risk of penalties for late submissions, incorrect returns, and other administrative violations.

#### 04. Training and Awareness

- Provide training to your finance and tax teams on the new requirements and compliance obligations
- · Communicate to relevant stakeholders the changes and their responsibilities / accountability

#### **05.** Monitor Regulatory Updates

- · Stay informed about any further amendments or clarifications issued by the tax authorities.
- Regularly review updates to the executive regulations that may affect your tax obligations.

By taking proactive steps, companies can aim to effectively navigate the changes introduced by the new Business Profits Tax Law and safeguard compliance while seeking tax efficiencies. The above steps are of a general nature and are not intended to address the circumstances of any particular individual or entity. It is recommended you reach out to our tax team for a specific review of the impact to your business and the way forward.



If you need further assistance or detailed guidance, please feel free to reach out to our tax team at KPMG.

#### **Reach out to us**



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