Domestic Minimum Top-up Tax

Kuwait Tax Alert

January 2025

Introduction

Following our previous alerts, Decree Law No. 157 of 2024 ("DMTT Law") has been published by the Kuwait Government in the Official Gazette. Recent media reports and draft legislation in the public domain had previously expected a broader change to the Kuwait tax landscape, key aspects of which included imposing taxes on all Kuwaiti business from 2027 and withholding taxes replacing tax retentions. The new law specifically introduces the requirement of a Domestic Minimum Top-up Tax ("DMTT"), imposing a minimum 15% tax on multinational enterprises with revenues exceeding EUR 750 Million in line with BEPS Pillar II.

The legislation states that further guidance through Executive Regulations is expected within 6 months. Hence, this alert covers key highlights of the DMTT law, with further updates being issued once taxing mechanism, forms and other tax computation rules are provided through the Executive Regulations.

The current approach removes some of the transition challenges that were arising due to the earlier draft legislation.

Summary of Kuwait DMTT Law:

Category	Details
Key definitions/aspects of the DMTT Law	
Effective dates	The provisions of the DMTT Law come into effect for tax periods beginning on or after 1 January 2025.
Scope	The DMTT Law applies to multinational entities operating in more than one country (even through a Permanent Establishment), including Kuwait, whose total revenues meet or exceed annual revenues of EUR 750 Million in the consolidated financial statements of the ultimate parent entity for at least two of the four tax periods immediately preceding FY 2025. These consolidated financial statements must include all revenues generated by the participating entities under control, including those of excluded entities considered for the purposes of determining whether the revenue threshold is met. The DMTT Law encompasses all activities conducted by these entities within the State of Kuwait, including its rights in the divided zone and the submerged divided zone that contains shared wealth or natural resources. These resources are distributed equally between the State of Kuwait and the Kingdom of Saudi Arabia, according to the boundaries and coordinates established in the agreements and memoranda of understanding concluded between them.

Summary of Kuwait DMTT Law (Contd.)

Category	Details
Income Inclusion Rule	The Income Inclusion Rule allows the parent entity's home country (in this case Kuwait) to collect tax on the difference if participating entities in other countries pay below the 15% minimum tax rate, based on their ownership.
Laws not applicable	Starting from 1 January 2025, the DMTT Law will apply to multinational entities for tax purposes. Consequently, the following decrees and laws will no longer be applicable to these entities: • Corporate income tax law – Decree No. 3 of 1955 and its amendments; • Zakat Law – Law No. 46 of 2006; and • Partitioned Neutral Zone tax law – Law No. 23 of 1961. Law No. 19 of 2000 for National Labour Support Tax (NLST) on Kuwait Shareholding Companies is expected to remain in force with exclusion of Paragraph (1) of Article (12) and Paragraph (2) of Article (14). Therefore, it is expected that Kuwaiti multinational entities that are listed on Kuwait Boursa will not be subject to 2.5% NLST in addition to the DMTT.
Taxable activities/sources of income	Taxable activities include trade in goods, services, industry, profession, craft, agency, brokerage, real estate development, exploitation of movable or immovable properties, speculation, or any activity with a commercial or investment nature.
Tax rate	The tax rate is the difference between the minimum tax rate (15%) and the effective tax rate ("ETR") if it is less than 15%.
Entities subject to tax	The following entities are considered as subject to tax under the DMTT Law: • Any entity in Kuwait that is part of a multinational group, whether it is an Ultimate Parent Entity ("UPE") or a participating entity/Constituent Entity ("CE"). • Any joint venture ("JV") or its subsidiary in Kuwait, if any of conditions are met a) JV has ownership interest of 50% or more by an ultimate parent entity of a multinational group whose revenue excluding the JV has met or exceeding the revenue threshold. b) The total revenues of the JV and its subsidiaries has met or exceed the revenue threshold. The JV shall be considered an ultimate parent entity, and its subsidiaries shall be considered participating entities. • Any entity not subject to any country or jurisdiction that operates in Kuwait i.e., an entity considered a permanent establishment or an entity that passes through income and is not considered an ultimate parent entity.

Summary of Kuwait DMTT Law (Contd.)

Category	Details
Exempt entities	The following entities, **whether Kuwaiti or non-Kuwaiti**, are not subject to tax: 1. Government entities. 2. Non-profit organisations. 3. International organisations. 4. Pension funds. 5. Investment funds that are the main parent companies. 6. Real estate investment instruments that are the main parent companies. 7. Any entity, except pension services entities, that is at least 95% owned by one or more of the above entities and operates mainly to hold assets or invest funds for their benefit. 8. Any entity, except pension services entities, that is at least 85% owned by one or more of the entities listed in points 1 to 6, provided most of its income comes from dividends or equity gains or losses, which are not included in the calculation of net income or loss.
Permanent Establishment ("PE")	A Permanent Establishment is the place through which a non-resident entity conducts its activity in the state, wholly or partially, including the following cases: • The **establishment's premises**, whether related to the management headquarters, branch, store, office, factory, workshop, sales outlets, warehouse, mine, oil or gas well, quarry, or any other place for exploring, extracting, and exploiting natural resources. • A **construction** site, installation project, assembly, or related supervisory activities, provided that this site, project, or activities continue for more than six months within any twelve months. • Providing **services** by the non-resident entity, provided that the activities of this type continue within the state for a period or periods totaling more than six months within any twelve months. • The **agent** according to the conditions and controls specified by the Executive Regulations. Any place of work other than the cases mentioned in the previous items, through which the non-resident entity conducts operations in the state, shall be considered a permanent establishment, provided that the income attributed to these operations is exempt from tax in the state or the jurisdiction of the non-resident.
Compliance procedures and computation of DMTT	
Registration/ de-registration requirements	Taxpayers must register with the tax administration within 120 days of becoming subject to tax. They must notify the tax administration of any changes in their activity or registration data within 120 days. Deregistration is required within 120 days of completely ceasing activity or losing the conditions for being subject to tax. For the year 2025, registration deadline for multinational enterprises has been extended up to 30 September 2025.
Filing deadlines	Tax returns must be submitted within 15 months from the end of the tax period.
Tax filing requirements	Tax returns must include financial statements audited by an audit office accredited by the Ministry of Finance and be submitted within the specified deadlines.
Entity income	The income of the entity subject to tax shall be determined based on the financial statements on the basis of all revenues and expenses, including transactions with other group members.

Summary of Kuwait DMTT Law (Contd.)

Category	Details
Net income or loss for the entity (Globe Income)	The net income or loss for the entity subject to tax is determined based on its financial statements after making specific adjustments. These adjustments include excluding income from dividends or shares, equity gains or losses from shares, revenue from waiver of debt from entity subject to tax, and income from international maritime transport and shipping activities. The Executive Regulations will specify the detailed rules and conditions for these adjustments.
Excluded income based on the substance of the activity	Excluded income for the taxpayer is calculated based on the substance of the activity and shall be total of following or Substance based Exclusion (SBIE): • Total **salary** costs incurred, with a maximum of 9.6% and a minimum of 5% of the salary costs. • The average value of **tangible assets** at the beginning and end of the tax period, with a maximum of 7.6% and a minimum of 5% of the book value of those assets.
Calculation of taxable income (Excess Profit)	Taxable income for the taxpayer is calculated by subtracting the excluded income based on the substance of the activity (SBIE) from the total net income or loss of the entities subject to tax within the group (Globe Income).
Covered and Adjusted Covered Taxes	Taxes recorded in the financial accounts of the entity from its income or profits, or its share of the income or profits of an entity in which it holds an ownership interest, paid to the state or any other country or jurisdiction, and the tax is not considered covered tax. The Adjusted Covered Tax is covered tax according to tax costs calculated on an accrual basis, or losses, included in the taxpayer's financial statements during the tax period, and any adjustments specified by the Executive Regulations.
Calculation of tax	The tax is calculated by multiplying the tax rate by the taxable income. The tax will be zero in either of the cases: • The excluded income based on the substance of the activity equals or exceeds the total net income of the entities subject to tax in the group. • The effective tax rate (ETR) is equal to or exceeds 15%. The legislation clearly states that no tax exemptions apply to the DMTT Law.
Computation	I Compute ETR for Kuwait CE = *Amount of Adjusted Covered Taxes/GloBE Income* 2 Where ETR is below minimum rate of 15%, compute Top-up tax rate: Top Up Tax rate = *Minimum tax rate (15%) – ETR in 1 above* 3 Top Up Tax payable : *Excess profit of Kuwait CEs x Top-up Tax Rate in 2 above*
Related party transactions/ transfer pricing	Transactions between related entities must adhere to the arm's length standard, meaning they should be conducted under conditions that would occur between unrelated entities in similar circumstances. If this standard is not adhered to, the tax administration has the right to determine net income based on the arm's length standard.

Summary of Kuwait DMTT Law (Contd.)

Category	Details
Safe harbour/zero tax applicability	
Minimum revenue and income	The due tax on the taxpayer will be zero for any tax period if: • The average total revenues of the entities subject to tax in the group are less than EUR 10 Million or its equivalent. • The average total net income of the entities subject to tax in the group is less than EUR 1 Million or its equivalent. These averages are calculated for the tax period mentioned and the two preceding periods. This article does not apply to investment entities and entities not subject to any country or jurisdiction.
Safe harbour by simplified calculation method	Taxpayers may use a simplified calculation method if it results in a tax value of zero, these rule will be clarified through the Executive Regulations.
Transitional safe harbour for exchange of reports between countries	The due tax on the taxpayer will be zero for any tax period starting on or before 31 December 2026, excluding the tax period ending after 30 June 2028, in any of the cases: 1. The total revenues of the entities subject to tax in the group are less than EUR 10 Million or its equivalent and The total income of the entities subject to tax in the group is less than EUR 1 Million or its equivalent. 2. The effective tax rate for the taxpayer is equal to or exceeds 16% for tax periods starting in 2025 and 17% for tax periods starting in 2026. 3. The profit or loss of the taxpayer is equal to or less than the excluded income based on the substance of the activity. The above shall be computed based on the exchange of information under the country-by-country reporting (CBC) between Kuwait and other country. The above would not apply to i) entities not subject to any country or jurisdiction ii) where the CBC report does not include information about these entities iii) the report is not qualified as per the rules defined in the Executive Regulations
Initial phase of international activity	The tax on the taxpayer will be zero during the initial phase of international activity if the multinational entities group meets the following conditions: • It has **members located in no more than six countries** or jurisdictions, including Kuwait. • The **total net book value of tangible assets does not exceed EUR 50 Million**, except for the country or jurisdiction with the highest value of tangible assets when these rules are applied first time. • No ownership interests are held in the entities located in Kuwait by the parent entity, that applies the income inclusion rules. This provision does not apply to any tax period starting after five tax periods from the first tax period in which the group was subject to the Pillar II rules.

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Summary of Kuwait DMTT Law (Contd.)

Category	Details
Tax audits and other aspects	
Tax audits	Tax returns are examined according to rules and executive instructions issued by the tax administration. Examination may be conducted through sampling.
General anti-avoidance rules ("GAAR")	The tax effects of any agreement or transaction will be disregarded if **its main purpose is to reduce, defer, or exempt from tax**. Instead, the tax assessment will be based on the true commercial or economic substance of the agreement or transaction.
Tax evasion	Penalties for tax evasion include imprisonment for up to three years and fines up to three times the evaded tax. In cases of recidivism within five years, the penalties increase to imprisonment for up to five years and fines up to five times the evaded tax. The Public Prosecution is responsible for investigating and prosecuting tax evasion crimes, and **settlements can be made by paying due taxes, administrative fines, and a fine equal to the evaded tax**.
Legal action	Tax administration employees, appointed by the minister, will have the authority of judicial seizure officers. They can enter premises where taxpayers conduct activities or keep records, inspect these locations, and seize evidence of tax violations. They may also seek police assistance if needed.
Exchange rate	The exchange rate for foreign currencies will be converted to Kuwaiti Dinars based on the average monthly or annual exchange rate announced by the Central Bank of Kuwait

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Penalties applicable to taxpayers subject to DMTT Law	
Delay penalties	Fines for late submission of tax returns are as follows with the minimum fine being KD 1,000 before the issuance of the tax assessment: **No. of days delayed** — **Percentage of final tax value** 30 days or lower — 5% More than 30 days and up to 90 days — 10% More than 90 days and up to 365 days — 15% More than 365 days — 20% A fine of 25% of the final tax value, with a minimum of KD 5,000, is imposed if the taxpayer does not submit the return until the date of issuing the tax assessment. *Fine for late settlement of taxes:* • A fine of 1% of the unpaid tax will be imposed on the taxpayer for every 30 days, or part thereof, if the tax is not paid by the deadline. This fine will start from the day after the deadline. *Fine for submitting an incorrect tax return:* • If the taxpayer submits an incorrect tax return and the difference between the final tax and the tax from the return exceeds 10%, a fine of 25% of this difference will be imposed. If the taxpayer corrects the error before it is discovered by the tax administration, the fine will be reduced to 10%.
Administrative violations and related penalties	Fines for various administrative violations include KD 3,000 for the following: • failure to register within the deadlines, failure to notify the tax administration of changes in registration data or activity, failure to provide requested documents or information within 30 days, preventing or obstructing tax administration employees from performing their duties, and failure to retain records and accounting books for the specified period. A fine of KD 5,000 is imposed for disclosing taxpayer information without legal authorisation.
Route for contesting tax assessments	
Objections/ appeals	• Taxpayers can object to tax assessments within 60 days of notification. • The tax administration must respond within 90 days. If no response is given, the objection is considered implicitly rejected. • Taxpayers can further contest the tax assessment to the Tax Complaints Committee within 60 days of the rejection. • The committee must decide within 90 days, extendable up to 365 days. • Both the tax administration and the taxpayer can appeal the committee's decision to the competent court within 60 days.

Summary of Kuwait DMTT Law (Contd.)

Category	Details
Retention of documents	Taxpayers must retain books, records, documents, and information necessary for preparing financial statements and determining taxable income for **ten years** from the end of the tax period. Failure to do so allows the tax administration **to assess tax on an estimated basis and impose fines**.
Statute of limitations	The right of the tax administration to claim **tax debt expires after ten years** from the date of submitting the tax return or from the end of the legally specified period for submission. The limitation period is interrupted by various actions, including notification of assessment letters, submission of objections, and payment demand letters. The taxpayer's **right to request a refund** of excess tax amounts paid **expires after five years** from the date of the right to a refund.

Whilst further clarity on the DMTT Law is expected to be obtained once the Executive Regulations (Bylaws) are issued by the Government within the next 6 months, there are certain key items which need to be considered by taxpayers:

- The DMTT Law specifically excludes applicability of the current domestic corporate income tax law, it appears for current tax years, in most cases the Kuwait ETR will default to 0% and the top-up tax rate will effectively be 15%
- While the DMTT Law covers the definition of IIR, it is yet to be seen in the Executive Regulations as to how this would be applied, if at all.
- The application of tax retentions on revenue payments from Kuwait-based customers and the payments to beneficiaries is still open to interpretation, which we expect should be clarified in the Executive Regulations.
- Multinational entities that do not have a CE in Kuwait and continue to have Kuwait sourced income would potentially continue to be taxable under the current income tax law. This is an area which we expect to be clarified by the Kuwait Tax Authority.
- The application of tax credits granted to foreign multinational enterprises under the Kuwait Direct Investment Promotion Authority (KDIPA) for reduction of taxes may not be applicable if they are subject to the DMTT Law. We would expect KDIPA/Kuwait Tax Authority to clarify the position of tax credits for the period commencing on or after 1 January 2025.

Recommendations for Next Steps

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

01. Review and Assess Impact

- Conduct a comprehensive review of the DMTT Law to understand if your group would be in scope and subject to the DMTT Law.
- Assess the implications on your business operations.
- 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 DMTT 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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