

Kuwait introduces regulations for new tax regime for foreign companies

Introduction

In an apparent effort to attract foreign investment to and stimulate commerce within Kuwait, the Kuwait National Assembly approved a bill that was subsequently issued by the Amir of Kuwait Sabah Al-Ahmad Al-Jaber Al-Sabah in January 2008 as Law No. 2 of 2008 Concerning the Amendment of certain Provisions of Kuwait Income Tax Decree No. 3 of 1955 (New Tax Regime). On 20 July 2008, the Ministry of Finance issued the regulations implementing the New Tax Regime.

New Tax Regime

With the exception of companies that are incorporated in any of the other GCC countries and are wholly owned by GCC citizens and GCC companies that are in turn wholly GCC-owned, all foreign companies carrying on business or trade in Kuwait are taxed on income earned with respect to their activities (which includes direct revenues realised in addition to passive income) in Kuwait (Taxable Activities).

The New Tax Regime abolishes the regressive tax regime that resulted in the net income of foreign companies being taxed at rates up to 55 per cent, and replaces the phased rates with a flat tax rate of 15 per cent (the Flat Rate). The Flat Rate applies to income earned by foreign companies in Kuwait.

Taxable income

Categories

The following categories of income are subject to the Flat Rate: (1) the portion of net profits of a foreign company operating within or outside Kuwait which is connected with, or related to, its operations in Kuwait; (2) the allocable portions of the net profits of a Kuwaiti company that are proportionate to the shareholding interest of shareholders that are foreign companies; and (3) the portions of net profits of an ad-hoc joint venture attributable to the performance by venturers that are foreign companies.

Types

Taxable income includes Kuwait-sourced income from trade, business, dividends, interest, discounts, rents, royalties and premiums, as well as other gains or profits of an income or capital nature.

Taxable Activities

The Flat Rate applies to net income (i.e., after deduction of related and permitted expenses or costs, including head office expenses and the depreciation of assets, in accordance with the New Tax Regime and as further elaborated below) earned by foreign companies in Kuwait on Taxable Activities. The following are some examples of taxable activities:

- contracts that have been performed fully or partially in Kuwait;
- the sale, lease, or exploitation of any trade mark, patent, or copyright;



- commissions;
- income generated from commercial or industrial business;
- the exchange of assets;
- income from the lending of funds;
- the sale or purchase of real estate (including in connection with the opening or closing of a permanent office) and the exercise of rights affecting real estate (for example, the exercise of a lien);
- the rental of property and the providing of services (including the provision of technical or management services); and
- income from trading stocks on the Kuwait stock market, whether directly or through mutual funds.

The New Tax Regime also provides that losses incurred by foreign companies may be set off against past profits for a period of up to three years.

Depreciation rates

The depreciation rates indicated are applied to assets including the following:

Type of asset	Annual depreciation rate (%)
Buildings	4
Machines and equipment	20
Drilling equipment	25
Electrical and electronic devices	15
Shipping and transportation vehicles	15

Note: An application may be made to the Department of Income Tax (DIT) to calculate the depreciation rate to be applied in a particular circumstance which is not in line with the prescribed rate. Such an application must be made 90 days prior to submission of a company's tax declaration.

Allowable head office expenses

These are calculated as follows:

Corporate presence/ Industry sector	Contractors and others operating through an agent	Foreign companies being shareholders in a Kuwait company	Insurance companies	Banking institutions
% direct revenue realised in Kuwait	1.5%	1% of share of direct revenue	1.5%	1.5%
1 Additions				
Collected Commissions	N/A	N/A	✓	N/A
2 Deductions				
Sub-contractor costs	✓	✓	X	✓
Incidental revenues	✓	✓	X	✓
Compensating costs	✓	✓	X	✓
Design costs (excl. those of the head office)	✓	✓	X	✓
Reinsurance premiums	N/A	N/A	✓	N/A

Other income sources

Capital gains

What constitutes profits is not clarified under the New Tax Regime, and therefore it is not possible to say with certainty the extent to which capital gains (being a form of profit) are taxable in Kuwait. We note that there is uncertainty regarding the tax treatment of capital gains on profits of foreign companies arising out of their trades of shares of companies listed on the Kuwait Stock Exchange. Kuwait Government officials previously indicated that the New Tax Regime would be interpreted and enforced to eliminate taxation on such profits. This position is unclear at present and will undoubtedly be a subject of discussion with the DIT going forward.

Undistributed/distributed profits

A foreign company shareholder of a Kuwait company is liable for the tax on its allocable share of the Kuwaiti company's net profits regardless of distribution.

Obligations

Under the New Tax Regime, foreign companies engaged in Taxable Activities must:

- 1 notify the DIT of prescribed particulars within 30 days from the commencement of an activity or signing of a contract – there is a similar requirement to notify the DIT of any change that may affect a foreign company's tax obligations;
- 2 hold a valid tax card;
- 3 keep books and records in the prescribed manner; and
- 4 submit a tax declaration on or before the 15th day of the 4th month after the tax year end, although it may be possible to extend this deadline.

Foreign companies already operating within Kuwait, as well as those that are considering investing in Kuwait, should carefully consider the impact of the New Tax Regime.

For additional information and advice on how this change may affect your business, please contact a member of the Kuwait Denton Wilde Sapte team listed below:

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