Premier Brains
Business Advisory Services

Kuwait Tax Law

Below is a summary of Kuwait business related laws and more importantly the CIT law which applies to Non-GCC companies.

Kuwait Business Environment:

The Kuwaiti business regulations allow foreign companies to operate under one of the following options of legal identities. Below is a briefing summary of the specs of such options:

- Limited Liability Company (W.L.L.):
  - The easiest option to set up a legal entity in Kuwait and the most commonly used.
  - As the name says, partners shall only be responsible for their shares in the capital of the entity and their respective liability is capped to the limit of their shares.
  - W.L.L. requires a minimum of 51% Kuwaiti shareholding.
  - W.L.L. is required to report annual Statutory financial statements based on International Financial Reporting Standards (IFRS). If the W.L.L. contains a foreign corporate body as a partner, the profits attributable to such foreign partner will then be subject to Corporate Income Tax (CIT) and be duly reported to KTA.

- Kuwaiti Shareholding Company (K.S.C.):
  - K.S.C. requires longer time to set up compared to a W.L.L.
  - K.S.C. requires a minimum of 51% Kuwaiti shareholding.
  - K.S.C. is required to report annual Statutory financial statements based on International Financial Reporting Standards (IFRS). If the K.S.C. contains a foreign corporate body as a partner, the profits attributable to such foreign partner will then be subject to Corporate Income Tax (CIT) and be duly reported to KTA.

- Sponsorship Agreement:
  - A Kuwaiti entity is appointed as an agent/sponsor of the foreign entity. In this option, a Kuwaiti partner is not required and the foreign company can operate lawfully while paying a certain sponsorship fee to the agent/sponsor instead of sharing profits with a partner.
  - A commercial agency is not valid prior to its registration with the Ministry of Commerce and Industry, which is to be finalized within 3 months of the appointment of a local agent.
  - Various laws and regulations protect commercial agents in Kuwait and any unlawful termination of the agency agreement can result in the agent seeking compensation through court proceedings.

Kuwait Tax Law:

- There is no personal income tax applicable in Kuwait.
- The only type of tax applicable to foreign companies in Kuwait (till date) is the Corporate Income Tax (CIT) which is governed by Law No. 3 of 1955 and got amended by Law No. 2 of 2008.
- Companies from Gulf Cooperation Council (GCC) are not subject to CIT.
- CIT rate is a flat rate of 15% of the taxable income. Please note that the taxable profit, which is calculated, based on the tax law (tax accounting framework) can be different from the normal accounting profit since accounting standards of recognizing revenues and expenses are different from an accounting framework to another.
- As per the Kuwaiti tax law, tax is triggered based on certain activities no matter if the taxpayer has a permanent establishment in Kuwait or not. Such list of activities is set in a generic manner to ensure taxability is triggered once a company generates revenue from inside Kuwait by any mean of business operations.

CIT Cycle:

- Tax Registration:

  1. A foreign company is required to register with Kuwait Tax Authority (KTA) within 30 days of signing a business contract or commencing operations.
  2. Your company will be required to select a fiscal year with a maximum of 18 months starting from the date of signing the contract.
  3. Registration documents will require a company submit a copy of the business contract, agency agreement (if applicable), articles of association of the foreign corporate body owning the taxable party operating in Kuwait, and other registration applications to be filled and signed to provided KTA with all necessary information for their records.

- Tax Filing:

  1. A tax declaration is required to be submitted within three and half months from the end of the taxable period.
  2. In the event of missing the tax filing deadline, two kinds of penalties will apply:
     - Filing delay penalty; and
     - Tax payment delay penalty.
  3. A tax declaration should normally reflect a full income statement prepared based on the accounting treatments stipulated in the tax law and its executive rules.
  4. Along with the tax declaration, taxpayers are required to submit financial statements and other supplementary information according to the tax law.

- Tax Inspection:

    1. Following the tax filing, the Department of Inspection and Tax claims (DIT) will conduct a tax inspection of the company's reported revenue and expenses figures in the tax declaration. Normally some adjustments will apply resulting in a different taxable profit and hence a different tax liability. Upon finalization of the tax inspection, the DIT will issue a tax assessment showing the adjustments and the amended tax liability.

- Objections and Appeals:

    1. If the taxpayer disagreed to the basis of the assessment, an objection can be filed within 60 days form the assessment date. If the objection result is still not satisfactory to the taxpayer, an appeal can filed. Please note that settlement of tax per assessment, filing an objection and filing an appeal are all milestones that have their due dates. We will be pleased to elaborate more on such due dat3s upon request.

- No Objection Letter (NOL) and Tax Clearance Certificate (TCC):

    1. Upon finalization of the tax position and settlement of all tax and penalties due (if any), a taxpayer will be able to obtain a TCC from KTA proving finalization of the tax cycle for a specific fiscal year. Similarly and upon request, KTA will issue NOL addressed to your company's contract owner (KOC) authorizing them to release the tax retention held by KOC related to the fiscal year for which your company has closed the tax cycle.

Tax Retention Rules:

As per the Ministerial Order No. 44 of 1985 and according to Articles 36-39 of the Law No. 2 of 2008, a significant emphasis is put on tax retention. We strongly recommend you to strictly adhere to the tax retention rules in all payments made by your company in order to avoid any negative consequences that may affect your company's tax efficiency. Upon your request, we can share with you more detailed information on the penalties and additional tax liability a company will be responsible for in case of not complying with the tax retention rules.

According to the law, all companies and public bodies shall retain 5% from the contract value or from payments made to any company or a subcontractor a taxpayer engaged with.

Such retention should continue to be held by your company until the vendor officially submits the NOL or submits an official certificate from KTA confirming that they are not taxable.

We would like to affirm the importance of adhering to the tax retention rules on all your company's transactions and please let us know anytime if you have any doubts and we will be pleased to assist you anytime.

Foreign Direct Investment Law (FDI):

In a serious attempt from Kuwait government to promote foreign investment and transfer knowledge/technology into Kuwait market, Kuwait has released Investment Law No. 8 of 2001, which was then updated by Law No. 116 of 2013 that promotes foreign investment in the State of Kuwait and allows foreign investors to own up to 100% of business in some sectors. Further significant benefits are granted to those companies licensed under FDI to stimulate value addition to the local market and foster competition as well. The government body regulating FDI is Kuwait Direct Investment and Promotion Authority (KDIPA). KDIPA is high profile governmental authority with very well educated employees and an ambitious leadership.

- Steps of obtaining a license:

    1. **Submitting the concept pape**r: The concept paper is a basic introduction of your company's business model and how much the company is willing to invest into Kuwait with a brief summary of the value your company can add to Kuwait. Once the concept paper is approved, the next step will be as follows;

    2. **Submitting the business plan**: The business plan is a detailed document of your company's business in Kuwait including investment value, existing and potential projects, number of Kuwaitis expected to be hired, number of Kuwaitis expected to be officially trained, technology and value of technology expected to be transferred to Kuwait, how your company will able to stimulate the local market through CAPEX and OPEX on local suppliers and service providers. By looking into evaluating your company's business plan, KDIPA decides on whether the company is eligible for license or not.

    3. **Obtain the commercial license from Ministry of Commerce and Industry (MOCI).** KDIPA will give the support needed on this stage to make sure MOCI procedures go smooth.

    4. **Obtain the investment license from KDIPA.**

- <u>Benefits of being licensed under FDI:</u>
  - Owning up to 100% of the entity without a need to have a partner or an agent.
  - Tax exemption (credit basis): tax credit is computed based on the company's quantifiable contribution of four elements:
    - Job creation for Kuwaitis.
    - Training of Kuwaitis.
    - Technology transfer.
    - Stimulation of local content (local market)
  - Customs exemption: the custom exemption shall be in full or partial. If a custom exemption is granted it will be based on an official certificate given by KDIPA which will be biding for all relevant governmental bodies without any further approvals required.
  - Free transfer of capital, earnings, and easy exit plan.

- <u>License and tax credit based on scoring system:</u>

The incentives are granted based on a scoring system as shown below:

- Below 59%: License is rejected.
- 60%-70%: Only License is granted.
- 70%-80%: license and one incentive chosen by the investor will be granted.
- 80%-100%: license and all incentives will be granted.

Hope this document can serve as a good informative introduction for your company's business in Kuwait and we will be pleased to assist you with any of your company's tax and business matters in Kuwait.

Best Regards,

Premier Brains Business Advisory Services.