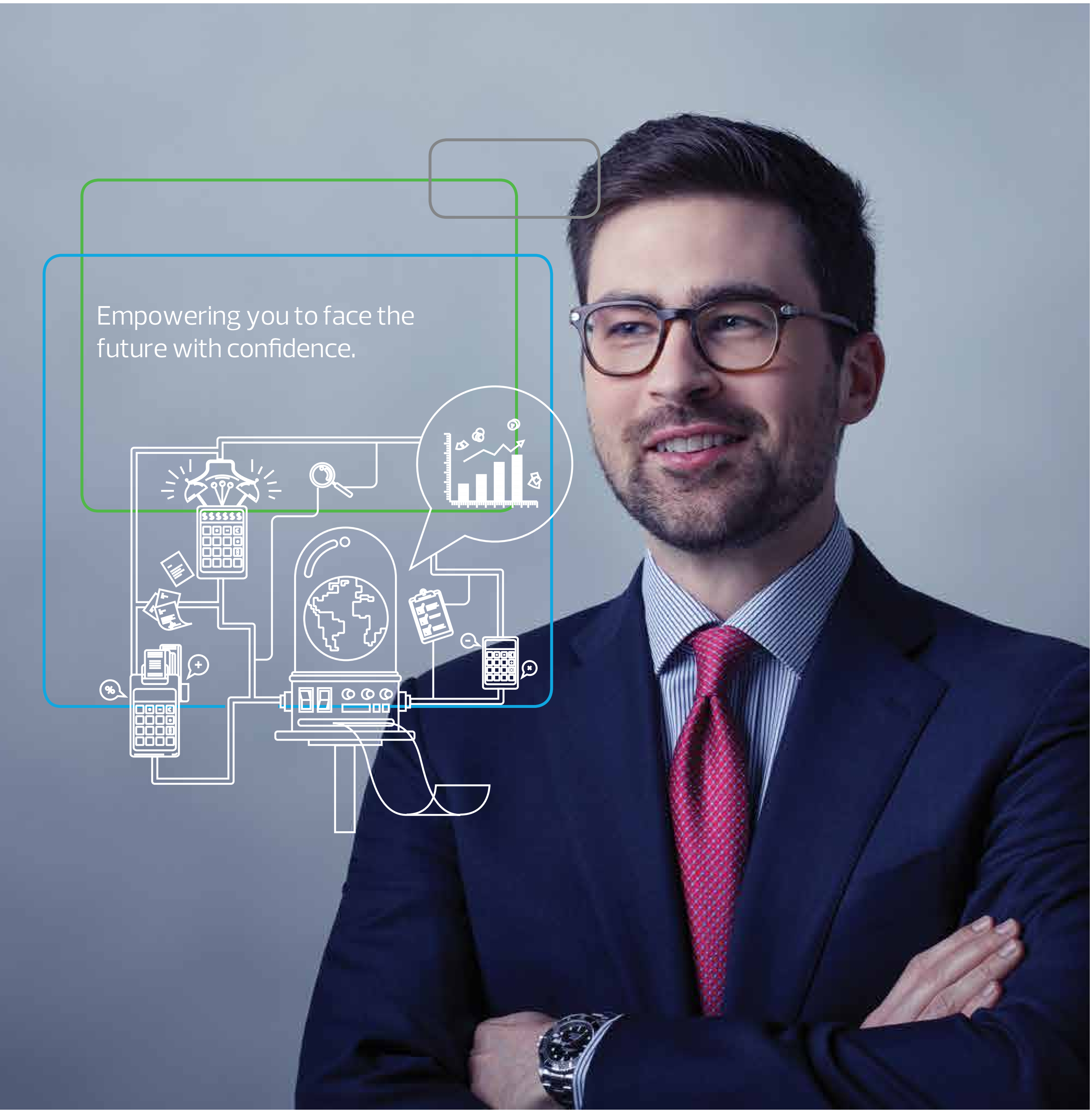

KUWAIT TAX GUIDE

THE POWER OF BEING UNDERSTOOD
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PREFACE

This publication "Kuwait Tax Guide" has been prepared by RSM Albazie & Co. The information in this publication has been obtained from tax laws, circulars, executive rules, instructions, tax treaties and based on current practices followed by the State of Kuwait Tax Department. It has been written to provide a summary of the State of Kuwait taxes, which are subject to changes at any time.

While the utmost care has been taken in compiling this publication, its contents are not intended to be a substitute for professional advice nor to serve as a basis for formulating business decisions. This publication is therefore intended for information purposes only and RSM Albazie & Co. accepts no liability what so ever for any direct or consequential losses arising from its use or for any errors or omissions contained herein. Readers must seek professional advice regarding specific issues before making any decision.

This publication reflects information current at 30 November 2015.

OUR FIRM

RSM Albazie & Co., originally the Kuwaiti Auditing Office Bader Al-Bazie & Co., Was founded in 1963 by Mr. Bader Al-Bazie who was granted Auditor Registration Number 1A. The firm has grown to become one of the leading professional services firms in the State of Kuwait by providing outstanding service to clients.

RSM International is a network of independent accounting and consulting firms with more than 730 offices in over 110 countries around the world and over 37,500 professionals to serve the client's needs.

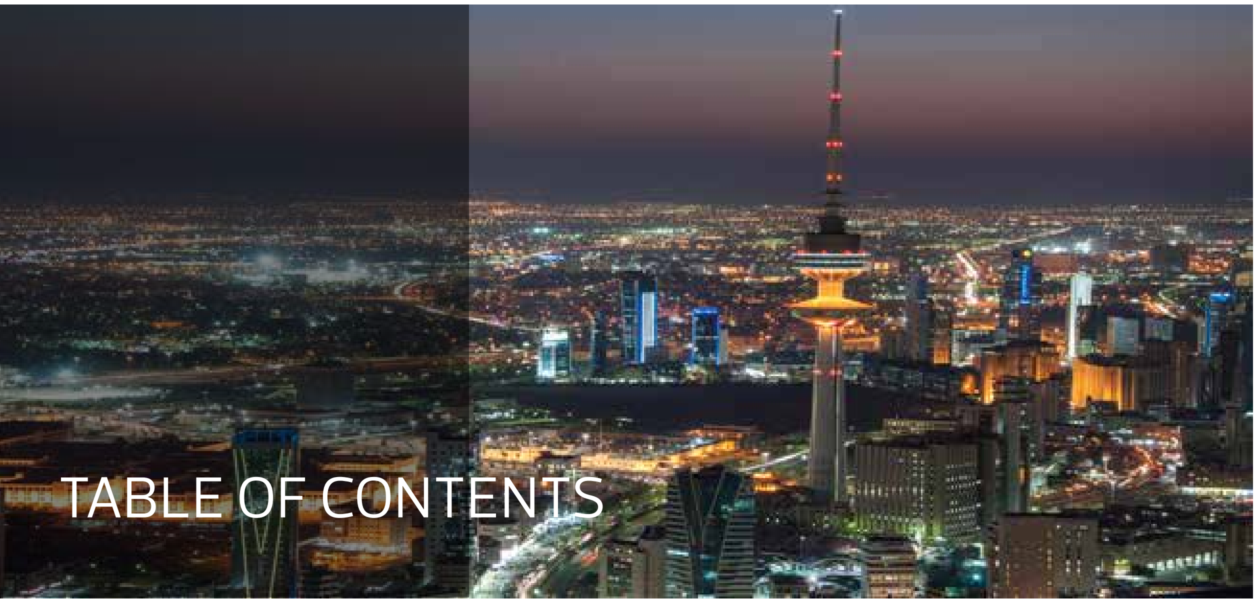
The firm currently employs over 180 dedicated professionals. The staff composition, with service duration of between one to over 40 years, reflects our firm's policy of blending fresh thoughts and ideas with years of sound experience. The firm has ten partners and a number of executive managers, directors and principles with a diverse range of experience in the US, Canada, the Middle East and India to serve our clients.

Our tax services in the State of Kuwait Include:

- Advance tax planning and implementation.
- Audit of financial statements for tax purposes.
- Preparation, review and filing of tax declarations and identification of tax exposures prior to filing the tax declarations.
- Attending tax inspections, obtaining tax assessments, assisting in the tax objection and tax appeal process and assisting in the settlement of taxes.
- Obtaining tax clearance letters from the Ministry of Finance.

For further information please contact:

RSM Albazie & Co.
Arraya Tower 2, Floors 41 & 42
Abdulaziz Hamad Alsaqar St., Sharq
P.O. Box 2115, Safat 13022, State of Kuwait
T +965 22961000
F +965 22412761
E: tax@rsm.com.kw www.rsm.global/kuwait



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A. HOW TO DO BUSINESS IN THE STATE OF KUWAIT

Foreign entities have the following options to carry out business in the State of Kuwait:

- Through the sponsorship of a registered Kuwaiti merchant (Kuwaiti agent).
- Through a joint venture.
- Through WLL or KSC Companies.
- Through Foreign Direct Investment Law No. 116 of 2013.

Sponsorship or Agency Agreement

A foreign company can operate in the State of Kuwait through an agency agreement. Under this arrangement, a Kuwaiti merchant or a Kuwaiti entity must be appointed as an agent of the foreign entity. The agency agreement has to be drafted, setting out the authority and responsibility of the Principal (foreign entity) and the Kuwaiti agent. Under the sponsorship arrangement, the business is carried out in the name of the Kuwaiti agent. It is normal for the Kuwaiti agent to provide local support including fulfilling the local regulatory requirements and arranging for work permits. The agency agreement should be registered with the Commercial Agencies Department at the Ministry of Commerce and Industry.

Joint Ventures

A Joint Venture may be formed by two or more persons, who are jointly and severally liable. Its objectives, terms and conditions are usually set out in its Joint Venture agreement. A Joint Venture agreement shall be binding on the joint venture partners and is not binding on third parties.

WLL or KSC Companies

Limited Liability (WLL) Companies require a minimum of 51% of Kuwaiti shareholding and a minimum of two partners. The partners can either be individuals or legal entities. Husband and wife are considered as one partner.

Kuwaiti Shareholding (KSC) Companies require a minimum of five shareholders. Capital requirement is based on the nature of the company's activities. KSC Companies are permitted to be listed in the State of Kuwait Stock Exchange subject to fulfilling the rules and regulations of the State of Kuwait Stock Exchange.

Foreign Direct Investment Law

The Foreign Direct Investment Law No. 116 of 2013 allows the following forms of investment:

- A Kuwaiti Company incorporated with foreign shareholding may be as high as 100% of the capital.
- A branch of a foreign company.
- A representation office to carry out studies and surveys.

A direct investment and promotion authority has been formed to oversee the application and implementation of this law and its executive regulations.

B. INCOME TAX LAWS AND PRACTICES IN THE STATE OF KUWAIT

1. Who is liable for income tax?

Only foreign companies operating in the State of Kuwait are subject to income tax as per Income Tax Decree No. 3 of 1955 as amended by Law No. 2 of 2008, which virtually considers all activities to be subject to income tax in the State of Kuwait.

Companies that are incorporated in GCC countries and fully owned by GCC citizens are not subject to income tax.

In case where a foreign company operates in the State of Kuwait through a joint venture or consortium partner as a shareholder in a limited liability company (WLL) or a closed shareholding company (KSC), then only the foreign company's share of profits earned is subject to income tax.

All foreign companies carrying on operations in the neutral zone are liable to income tax under Income Tax Law No. 23 of 1961.

2. What types of operations are considered taxable?

- Any activity or business wholly or partially executed in the State of Kuwait, whether the contract has been concluded inside the State of Kuwait or abroad, as well as the income realised from the supply and sale of goods or from the provision of services.
- The amounts earned on selling, leasing or granting of franchise rights for utilising any trademark, design, patent, copyrights, or other corporate rights, or relative to Intellectual Property rights in consideration for using any copyright for literary, technical or scientific works of whatsoever form.
- Commissions due or emerging from representation or commercial brokerage agreements, in whatever form, monetary or in kind.
- Profits resulting from any industrial or commercial activity in the State of Kuwait.
- Profits realised from the disposal or sale of an asset, or a part thereof, or assignment of property to third parties or other disposals, including disposal of shares in a company whose assets are principally formed from immovable funds available in the State of Kuwait.
- Income resulting from money loans inside the State of Kuwait.
- Profits resulting from the buying and selling of property, goods, or the rights related thereto in the State of Kuwait, whether these rights are associated with a material asset or moral rights, including the right to mortgage and the right to franchise.
- Establishment of a permanent office in the State of Kuwait where sale and purchase contracts are concluded. It represents the place of work where activity is carried out or contracts are concluded, whether such place belongs to the taxpayer, or the tenant who leases from a third party or it is to be carried out at third party place of work in the State of Kuwait.
- Profits resulting from leasing of any property, including movable and immovable property, used in the State of Kuwait.
- Profits resulting from the provision of services, including the consideration for administrative, technical or consulting services, or the contracts to be wholly or partially performed in the State of Kuwait, whether the contract is concluded inside the State of Kuwait or abroad.
- Profits resulting from doing business in the State of Kuwait Stock Exchange Market, whether the same are directly made, through portfolios or investment funds.

3. Is it necessary to register with the tax department?

Registration with the tax department is mandatory within 30 days from the date of signing the contract in the State of Kuwait or from the date of starting activities.

4. Can the company choose any accounting period?

Yes, the company is free to choose any accounting period, however, they need to apply and obtain an approval from the tax department. The period must exceed six months, but may not exceed 18 months.

5. What types of accounting records need to be maintained?

Under Law No. 2 of 2008, anybody corporate that is subject to tax in the State of Kuwait is required to maintain separate books of accounts in respect of its operations in the State of Kuwait. The resolution requires that the following books of accounts and records be maintained by such body corporate:

- General journal.
- Inventory sheets.
- General ledger.
- Expenses' analysis journal.
- Stock records (showing the quantities and values of materials received, materials issued and party or project issued to.)

In practice, the tax department expects to verify the revenues and costs disclosed in the tax declaration with a detailed general ledger together with original vouchers and supporting documents, including cash and bank statements. Computer-based accounts are accepted by the tax department.

6. How is taxable income computed?

Taxable income is derived by deducting all costs, expenses and losses incurred in connection with carrying on trade or business in the State of Kuwait from gross revenue, and after adjustment for certain costs such as provision for staff indemnities, depreciation as per tax rates, head office administrative overhead allowance etc.

Records must be certified by a certified accountant approved by the tax department. In practice, the tax department requires the tax declaration and financial statements (which must be in Arabic) to be certified by an accountant operating in the State of Kuwait who is registered with the Ministry of Commerce and Industry.

Taxable profit on the foreign shareholder's participation in local companies is determined as its share of taxable profit, whether distributed or not, plus any management fees etc. paid to the foreign shareholder.

7. What is the applicable tax rate?

Tax is applied at a flat rate of 15% of net taxable income. Earlier to 2008, tax rates were progressive between 5% to 55%.

8. What are the depreciation rates?

Depreciation rates are applied to cost and computed on a straight-line basis as follows:

Asset type	Annual depreciation rate
Buildings	4%
Prefabricated buildings	15%
Office furniture and tools	15%
Equipment and machinery	20%
Drilling equipment	25%
Electric and electronic devices	15%
Computers and accessories	33.3%
Software	25%
Vehicles	20%
Trucks and lorries	15%
Buses	20%

9. How are losses treated?

Losses can be carried forward for a maximum of three years; first year losses are carried forward to offset profits of the second year, the remaining losses are carried forward to offset profits of the third year. The balance loss cannot be carried forward beyond the third year.

Losses cannot be carried forward if:

The taxpayer ceases activities in the State of Kuwait. The business is deemed to be ceased if it does not have revenues from its core activities. A compulsory period of cessation can be excluded in the case of force majeure or emergencies.

- Change in the legal structure of tax. (Foreign entity is liquidated / changed its legal form).
- Merger with, or acquisition of, the taxpayer by another company.

10. What are the due dates for filing declaration and payment of taxes?

The tax declaration of each taxable period is required to be submitted within three and a half months of the end of the taxable period. It is possible to seek an extension for up to 60 days in the filing of the tax declaration. It is at the discretion of the Director of Income Tax to grant an extension. Taxes have to be paid in four equal installments as follows:

- 1st installment – within three and a half months of the year end;
- 2nd installment – within five and a half months of the year end;
- 3rd installment – within eight and a half months of the year end; and
- 4th installment – within eleven and a half months of the year end.

In case an extension is granted, tax has to be paid fully at the time of filing the tax declaration.

11. Is it possible to obtain an extension for filing a tax declaration?

Yes, it is possible to obtain an extension for submitting a tax declaration. However, an application must be filed with the tax department no later than one and a half months following the end of the financial year stating the reasons for such an extension. The extension is granted for up to 60 days and may only be granted if the application is deemed reasonable by the tax department.

The tax department may decide on the extension request within 30 days of submitting the application. In case of approval, the extension period shall not exceed 60 days and taxes must be paid in one lump sum. No reply from the tax department to the corporate body request shall be considered an implicit refusal of the request.

12. Are there any penalties for delays in filing declarations and payment of taxes?

Any delay in submission of the tax declaration is subject to tax penalties at the rate of 1% of the assessed tax for each 30 days delay or part thereof. Additionally, a penalty is charged for any delay in payment of tax, at the rate of 1% of the assessed tax for each 30 days delay or part thereof.

In the case of a tax assessment not disputed by the taxpayer, any additional tax must be paid within 30 days from the date of tax assessment. Failure to settle within 30 days will result in additional penalties at 1% for each period of 30 days or fraction thereof.

Revenues shown but not taxed in the declaration are covered while computing delay penalties i.e. in the case of revenues not disclosed or revenues disclosed in the tax declaration but taxes not paid on such revenues, these will be subject to a 1% of tax on revenues not taxed or disclosed, in case the tax department taxes such revenues subsequently.

13. Is it possible to file a revised tax declaration?

Yes. It is possible to file a revised tax declaration to correct an error; provided the original tax declaration was filed before the due date and a tax assessment is not issued for that year and obtained prior approval. However, there will be delay fines due to the revised filing.

14. What are the new tax inspection/ assessment procedures?

As per circular 1 of 2014, tax inspection procedures are as follows:

- Companies that have obtained tax assessment for the year 2009 or thereafter shall prepare a draft assessment for the tax declaration filed based on the disallowances made in the prior year tax assessment. This draft assessment shall be submitted within three months from the date of filing the tax declaration.
- If the tax payer follows this procedure then the tax assessment shall be issued soon upon submission of the draft tax assessment except in cases where more verification is needed.
- For companies that have filed a tax declaration at 30% or more deemed profit basis as per the prior year tax assessment, then a tax inspector shall finalise the tax assessment soon, except in cases where more verification is needed.
- For all companies and for those companies which did not receive 2009 tax assessment, they must go through a detailed field tax inspection of the tax payer's books and records with their supporting documents for all the years for all the companies without exception.

Based on the findings from the tax inspection, a tax assessment shall be issued.

15. What are the objection/appeal procedures?

If the tax assessment is not acceptable to the taxpayer, the taxpayer has the option to file an objection within 60 days from the date of the tax assessment letter. If the tax issue is not satisfactorily resolved within 90 days of raising the objection letter, the taxpayer has the right to have their case heard by the Tax Appeal Committee. The tax appeal has to be filed within 30 days from the date of the tax department's letter in response to the tax objection or, in the case of no response from the tax department, the tax appeal has to be filed within 30 days after the end of the 90 day period from the date the objection letter was filed. If the taxpayer is not satisfied with the outcome of the Appeal Committee's decision, they then have the right to pursue their tax dispute through civil courts for adjudication within 60 days from the date of rejection by the Tax Appeal Committee decision.

16. When may the tax department re-issue the tax assessment?

The tax department shall have the right to re-issue the tax assessment to the taxpayer in respect of the previously assessed years in the following cases:

- If the tax department discovered information related to the revenues of the taxpayer not disclosed by the taxpayer.
- If the taxpayer uses a means of fraud, including:
  - To conceal information or mention untrue information, either in the return or in the papers submitted to the tax department in respect of specifying the taxable income.
  - To fabricate accounts, books, records or documents, destroy or conceal the true part thereof.
  - To conceal one taxable business or more.

However, such re-assessment has to be done within five years from the date of discovering such information.

17. Are there any statutes of limitations?

Under Article 41 of Law No. 2 of 2008, the tax authorities have the right to collect taxes up to five years after the submission of the tax declaration or upon notifying the company through a tax assessment. Under Article 441 of the Civil Law, any claims for taxes shall not be entertained after the lapse of five years. The same period applies for tax refunds as well.

18. When may the tax department issue a deemed profit tax assessment?

Under the following circumstances the tax department has the right to assess the tax on a deemed profit basis:

- Non availability of documents in support of accounts, or a large gap in them, or inconsistency of the documents with the records.
- Not declaring taxable revenues in a tax declaration, which has a material impact on the business results.
- The auditor has substantial reservations about the accounts of the corporate body.
- Substantial weakness of the internal control system.
- Tax declaration does not include the required attachments, in accordance with Article 13 of the regulations.
- Non compliance of the corporate body with the provision of the necessary books and records for inspection after determining two appointments via official letters.

19. Are there any withholding taxes?

Under Rule 9 of the executive bylaws, investment companies and banks that manage portfolios or funds or act as custodians, are required to deduct 15% of dividends and profits of foreign companies and deposit them with the tax department within 30 days of the date of deduction together with a listing of all amounts deducted against each company separately.

20. What are tax retentions? What if the tax retentions are not withheld?

- Under article 37 of law no. 2 of 2008, all ministries, authorities, public institutions, companies and private entities or natural persons that are contracted with any foreign corporate body, whether through contracts, agreements or any transactions, shall retain 5% of the contract, agreement or transaction value or from each payment to the corporate body.

  These retentions shall not be released unless tax clearance letter or no objection letter received from the tax department to release these tax retentions.

- Amounts withheld with these bodies shall be considered in trust for the interest of the State Public Treasury until settlement of tax due.

The payments to subcontractors will be disallowed as a cost in case 5% retentions are not withheld. Additionally, under article 39 of law no. 2 of 2008, the tax department has the right to request through a letter to transfer 5% retained by all the ministries, government and private companies in connection with settlement of taxes due from foreign entities.

21. Can tax retentions be released against a bank guarantee?

The tax department may accept a bank guarantee and issue a release of retentions letter. The company must submit an application and obtain prior approval; however, the following conditions must be satisfied:

- Contract has been completed.
- Tax declaration has been submitted and has been pending for tax inspection for more than one year.

22. Are there any double taxation treaties signed by the State of Kuwait?

The State of Kuwait has signed and ratified double taxation treaties with the following countries:

Albania	Hungary	Portugal
Algeria	Hong Kong	Romania
Armenia	India	Russia
Austria	Indonesia	Serbia and Montenegro
Azerbaijan	Iran	Seychelles
Belarus	Ireland	Singapore
Belgium	Italy	Slovakia
Benin	Japan	South Africa
Bosnia and Herzegovina	Jordan	Spain
Brunei	Kenya	Sri Lanka
Bulgaria	Korea	Sudan
Canada	Laos	Switzerland
China	Latvia	Syria
Croatia	Lebanon	Thailand
Cyprus	Luxembourg	Tunisia
Czech Republic	Malta	Turkey
Denmark	Malaysia	Ukraine
Djibouti	Mauritius	United Kingdom
Egypt	Moldova	Uzbekistan
Ethiopia	Morocco	Venezuela
France	Netherlands	Vietnam
Georgia	Pakistan	Yemen
Germany	Philippines	Zimbabwe
Greece	Poland	

23. What are the advantages and disadvantages of double taxation treaties?

The main advantages of double taxation treaties are that:

- Short-term projects, for a period from six months to one year, depending on the double taxation treaty, are not liable to income tax.
- All expenses pertaining to State of Kuwait projects are allowed even if these are incurred outside the State of Kuwait provided these expenses are charged in accordance with international practice.
- Profits made merely out of supply of materials are not taxable.
- Dividend, interest, royalties are subjected to lesser tax rates in certain countries with which the State of Kuwait has signed a double taxation treaty.

The main disadvantages of double taxation treaties are that:

- For exempt companies and companies claiming double taxation treaty benefits, 20% of indirect expenses (general and administrative expenses) are disallowed, treating such costs as they are related to exempt revenues.
- In a case where the exempted company incurs loss, such loss canot be carried forward after the exemption period.
- In the case of companies claiming double taxation treaty benefits, a portion of direct cost, agent's commission head office expenses are disallowed as they are related to exempted revenues.

24. Is it necessary to file a tax declaration even if the company is exempt under the double taxation treaty?

Yes. The exempt corporate body must submit a tax declaration with its attachments and shall commit to all the procedures of the inspection and assessment to determine the exempt tax amount.

If the corporate body's account for one of the exempt years ends with a loss, it shall not be carried forward to the period subsequent to expiry of the exemption period.

25. Can the tax department ignore any tax agreements?

Under Article 44 of Law No. 2 of 2008, tax authorities have the right to revoke any agreement or procedure intended for tax avoidance.

26. Are there any tax holidays?

- Under the Foreign Direct Investment Law No. 116 of 2013, the Direct Investment Promotion Authority grants the following incentives and exemption:
- Ten year tax exemption.
- Whole or partial exemption of customs duties.
- Allotment of land.
- Allows recruitment of foreign labour.
- Even if exemption is granted under Law No. 116 of 2013 the foreign entity will be required to submit a tax declaration.
- Under Law No. 12 of 1998, foreign shareholders of investment and leasing companies are not subject to tax for five years from the date of formation of such companies.
- As per Ministerial Decision No. 3 of 1989, any company fully owned by citizens of the Gulf Cooperation Council (GCC) states and registered in a GCC country should be treated like a Kuwaiti Company and hence not subject to Income tax in the State of Kuwait.
- The State of Kuwait has established a Free Trade Zone. This zone is situated in the Shuwaikh port area. It permits 100% foreign ownership, and other benefits include exemption from income tax and customs duties. Foreign investors can obtain a license for trading, manufacturing and service activities within the Free Trade Zone.

27. How are neutral zone operations taxed?

Profits from the neutral zone (the shared marine area between the State of Kuwait and the Kingdom of Saudi Arabia) are taxed as per Law No. 23 of 1961 at the following rates:

Taxable income		Percent-age	Marginal relief applicable up to
Exceed-ing	Not ex-ceeding		
KD	KD	%	KD
-	500,000	20	930,232
500,000	-	57	

Marginal relief is applicable for foreign companies operating only in the neutral zone.

Marginal relief cannot be used if the foreign company has operations in both the State of Kuwait and the neutral zone.

The tax rate shall be computed on the total income (full revenues from the neutral zone as well as the State of Kuwait operations, if any). The appropriate tax rate shall then be imposed and only 50% of this tax is payable in the State of Kuwait.

If the company incurs a profit in one region and a loss in another region, then taxes are computed in accordance with the law of each region. The losses incurred in one region can be set off against future profits of the same region.

28. Are there any other taxes or duties in the State of Kuwait?

Customs duties

The six Gulf Co-operation Council (GCC) states comprising Saudi Arabia, the State of Kuwait, Bahrain, Qatar, Oman and the UAE announced the formation of the Customs Union with effect from 1 January 2003 eliminating customs duties for trade within GCC states as well as removing regulations and procedures which restrict trade within the GCC. The new Customs Union results in unified customs duties.

The GCC states have approved a unified customs tariff of 5% on CIF invoice price subject to certain exceptions.

Contribution of the State of Kuwait Foundation for the Advancement of Sciences (KFAS)

Kuwait Shareholding Companies (KSC) and Kuwait Shareholding Companies (Closed) [KSCs(C)] are required to contribute 1% of net profits after transfer to the statutory reserve and the offset of losses brought forward to KFAS which supports scientific progress.

National Labour Support Tax Laws (NLST) and practices

The law was proposed to support and encourage Kuwaiti Nationals to work in non governmental institutions (Private Sector). The law was enacted through Law No. 19 of 2000 which came into effect from 21 May 2001. It has been amended through Ministerial Resolution No. 24 of 2006. In addition, tax department has issued detailed executive rules and regulations.

NLST law is applicable for all companies listed in the State of Kuwait Stock Exchange, NLST is computed at 2.5% of annual net profit before the Board of Directors' remuneration, contribution to the State of Kuwait Foundation for Advancement of Sciences, donations, grants, Zakat and NLST.

Zakat law and practices

This law was proposed to encourage Kuwaiti closed and listed shareholding companies to Zakat duty & contribution in the state budget; it was enacted through Law No. 46 of 2006 which came into effect from 10 December 2007. The executive regulations for this law have been issued through Ministerial Resolution No. 58 of 2007. In addition, tax department has issued detailed executive rules and regulations.

Zakat law is applicable for all kuwaiti closed and listed shareholding companies, Zakat is computed at 1% of annual net profit before Board of Director's remuneration, contribution to Kuwait Foundation for Advancement of Sciences, donations, grants, Zakat and National Labour Support Tax (NLST).

Personal taxation

There is currently no tax on the personal income of individuals including the salary income of employees.

Stamp duty, Property tax, and VAT/Sales tax

There is no stamp duty, property tax, VAT or sales tax in the State of Kuwait.

Social insurance

Social insurance for Kuwaiti employees is payable by both employer and employee based on the employee's salary (up to a ceiling of KD 2,250 per month). The contribution rates for social insurance are 11% and 7% of the employee's salary for employer and employee respectively, required to be deducted by the employer and paid monthly.

End of service benefits

An employee who resigns with less than three years' services is not entitled to indemnity. One who resigns with more than three years but less than five years service is entitled to 50% indemnity. If the period of service more than five years but less than ten years, the workers is entitled to 2/3rd indemnity, and if the period of service exceed 10 years, the worker is entitled to full indemnity. However, employees who are made redundant (irrespective of length of service), who reach retirement age, who are disable at work, or who die, are entitled to full indemnity. A woman who gets married while she is an employee and who resigns within a year of marriage, is entitled to full indemnity.

Offset program No. 9 of 2007

The offset program is suspended temporarily.

RSM Albazie & Co.

Arraya Towe 2, Floors 41 & 42 , Abdulaziz Hamad Alsaqar St.,
Sharq, P.O. Box 2115, Safat 13022, State Of Kuwait

T: +965 22961000 F: +965 2241261

W: www.rsm.global/kuwait

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