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Business Advisory Services & Training W.L.L. | الاستشارات الاقتصادية والادارية والتدريب ذ.م.م.  
An independent member of Baker Tilly Int'l. | عضو مستقل في بيكر تلي العالمية

## Doing Business in Kuwait

Prepared by:  
Global Consultants Co. W.L.L., an independent member of Baker Tilly International.



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## PREFACE

This guide has been prepared by Global Consultants Co. W.L.L., an independent member of Baker Tilly International. It is designed to provide information on a number of subjects important to those considering investing or doing business in Kuwait.

Baker Tilly International is the 8th largest network in the world by combined fee income and is represented by 126 independent firms in 93 countries, with over 21,900 staff worldwide. Its member firms are high quality accountancy and business services firms, all of whom are committed to providing the best possible service to their clients, both in their own marketplace and across the world.

This guide is one of a series of country profiles compiled for use by Baker Tilly International member firm's clients and professional staff. Copies may be obtained from Global Consultants Co. W.L.L. or any of our international member firms.

Doing Business in Kuwait has been designed for the information of readers. Whilst every effort has been made to ensure accuracy, information contained in this booklet may not be comprehensive and readers should not act upon it without seeking professional advice. The information given is current at the time of going to press. Up-to-date advice and general assistance on Kuwaiti matters can be obtained from Global Consultants Co. W.L.L., whose contact details are provided at the end of this booklet.





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## 1. INTRODUCTION

### 1.1 *Geography and Climate*

A member of the Cooperation Council for the Arab States of the Gulf, formerly named and still commonly called the Gulf Cooperation Council (GCC), Kuwait is situated on the northwest corner of the Arabian Gulf, between Saudi Arabia in the south and Iraq in the north. It covers a land area of approximately 18,000 sq km.

Kuwait City, the capital, lies on the northern coast of Kuwait Bay and is provided with natural protection by the sea.

The country is almost entirely flat desert, gradually rising away from the sea to its highest point of approximately 300 meters above sea level.

Kuwait is known for its hot, dry, desert climate throughout the year. In summer (April to October) the average temperature is 44 °C, although it can reach as high as 51 °C, often accompanied by sandstorms.

Winter (November to February) is short but mild with temperatures ranging from highs of 18 °C to lows of zero. Autumn and spring are short seasons; occasional rain falls only in the winter months.

### 1.2 *Religion*

Islam is the country's official religion, which does not contradict in any way with freedom of worship. Religion structure is as follows: Muslim 85% (Sunni 70%, Shia 30%), other (includes Christian, Hindu, Parsi) 15%

### 1.3 *Language*

Arabic is the official language of Kuwait. However, English is widely understood and used in commercial circles.

Kuwaitis use a dialect that has its own linguistic characteristics and is the everyday colloquial language used. It is close to formal Arabic.

### 1.4 *Population*

In 2008, the population reached 2,691,158 includes 1,291,354 non-nationals, as follow Kuwaiti 45%, other Arab 35%, South Asian 9%, Iranian 4%, other 7% .





Age structure of the Population is as follows: 0-14 years: 26.4% (male 361,150/female 348,518) , 15-64 years: 70.7% (male 1,219,075/female 683,587) & 65 years and over: 2.9% (male 49,163/female 29,665) (2009 est.)

Most of the population resides in Kuwait City and its suburbs, particularly in places that overlook the coast of the Arabian Gulf.

### 1.5 Government and Political System

Kuwait is a hereditary emirate. For nearly 250 years it has been governed in unbroken succession by a member of the Al-Sabah family, who arrived in Kuwait in the 17th century from the central part of what is now Saudi Arabia.

In 1961 Kuwait gained full sovereignty from the United Kingdom. Treaties that had established a special relationship between the two countries were abrogated at that time.

The present Emir is H.H Sheik Sabah Al-Ahmad Al-Jaber Al-Sabah, who has ruled since 2005. The Crown Prince is H.H. Sheik Nawwaf Al-Ahmad Al-Jaber Al-Sabah; the Prime Minister is H.H Sheik Nassir Al-Muhammad Al-Ahmad Al-Sabah. Succession alternates between the families of Jaber and Salem.

### 1.6 Currency

The Kuwaiti currency is the Kuwaiti Dinar (KD), which is divided into 1,000 units known as fils. The KD is freely convertible.

### 1.7 Time

Kuwait is three hours ahead of Greenwich Mean Time (GMT). The country does not observe daylight saving time. Time differences and flying times from Kuwait to some major world cities are as follows:

City	Time difference	Flight time
Hong Kong	+5	10
London	-3	7
Los Angeles	-11	18
New York	-8	14
Singapore	+5	7
Sydney	+7	18
Tokyo	+6	16





## 1.8 Business Hours

A five-day working week is normal in Kuwait. Public services and schools are closed on Friday and Saturday.

The following are the normal business hours:

- Ministries: 7:00am to 2:00pm (April through October) or 7:30am to 2:30pm (November through March) from Sunday through Thursday
- Oil companies: 7:00am to 3:00pm from Sunday through Thursday
- Banks: 7:30am to 2:30pm from Sunday through Thursday
- Business sector: eight hours between 8:00am and 5:00pm from Sunday through Thursday (often with a one-hour lunch break, which is the main meal of the day) and 8:00am to 1 :00pm on Thursday
- Shops: 9:00am to 1 :30pm and 4:00pm to 9:00pm from Sunday through Thursday

## 1.9 Public Holidays

The Government and companies generally follow the Gregorian calendar. The Islamic calendar is seldom used for business purposes, but it does determine certain religious holidays.

The following are the dates of the secular holidays in Kuwait as per 2009.

- 1 Jan** New Year's Day.
- 25 Feb** National Day.
- 26 Feb** Liberation Day.
- 9 Mar** Mouloud (Birth of the Prophet).
- 20 Jul** Al-Esra Wa Al-Meraj (Ascension of the Prophet).
- 21 Sep** Eid al-Fitr (End of Ramadan).
- 28 Nov** Eid al-Adha (Feast of the Sacrifice).
- 18 Dec** Islamic New Year.





## 2. BUSINESS IN KUWAIT

### 2.1 *Entering the Kuwaiti Market*

Articles 23 and 24 of the Kuwaiti Commercial Code state the basic premise for doing business in Kuwait. Article 23 provides that non Kuwaitis cannot engage in commerce in Kuwait without having a Kuwaiti partner whose equity holding is at least 51 %. Article 24 provides that a foreign company cannot establish a branch in Kuwait and that it may not engage in commercial activities in Kuwait except through a Kuwaiti agent.

In an effort to attract foreign investment, Kuwait's Parliament passed Law NO.8 Regulating Foreign Capital Direct Investment in Kuwait. This law creates an exception to the general rules under which foreign investors conduct business in Kuwait by permitting up to 100% foreign ownership of business entities in certain approved sectors.

A foreign person or entity may enter the Kuwaiti market and conduct business in the following ways:

- Entering into a joint venture agreement
- Appointment of a local commercial agent
- Appointment of a commercial representative.

### 2.2 *Establishing a Kuwaiti Company*

Kuwaiti law permits foreign persons or entities to establish a permanent presence in Kuwait by forming and investing in the following Kuwaiti entities:

- Companies with limited liability
- Closed joint stock companies
- Public joint stock companies.

#### 2.2.1 *Companies with Limited Liability (WLL)*

Both foreign individuals and corporate bodies may establish this type of entity. However, Article 191 of the Companies Law provides that a Kuwaiti must own at least 51 % of the WLL shareholding. A WLL is simple to form and takes approximately three months to incorporate. It provides the limited liability shield and is non-taxable since Kuwait has no individual income tax and its corporate tax applies only to non-Kuwaiti corporate bodies.





### 2.2.2 Closed Joint Stock Company (KSC Closed)

A KSC Closed (or a KSC(c)) is the other type of company open to non-Kuwaiti entities. Articles 68 and 94 of the Companies Law provide for this type of company as an exceptional kind of Joint stock company. The general rule is that the shareholders of joint stock companies must be Kuwaiti nationals. As an exception, foreigners may own 49% of the share capital of a KSC Closed after obtaining the approval of the relevant authorities. The company's objectives cannot be banking or insurance. The incorporation of a KSC Closed may take up to six months.

The limitation in using this form of business is that over and above the tax levied on the profits made by the foreign company as a shareholder in the KSC Closed, the KSC Closed is itself subject to the 5% contribution to the Kuwait Foundation for the Advancement of Science.

### 2.2.3 Public Joint Stock Company

In June 1999 Kuwait passed a law regulating foreign investment. In 2000, Kuwait passed Amiri Decree No. 20 permitting non-Kuwaitis to own shares in publicly traded shareholding companies for the first time. Pursuant to this law, the Minister of Commerce and Industry is to issue the implementing regulations setting forth the restrictions and conditions of this right, including the maximum amount of shares non-Kuwaitis may hold and the corresponding rights of the holder.

## 2.3 Joint Ventures

Joint ventures are simple contracts that require no formal establishment procedures (Article 57 of the Kuwait Companies Law).

A joint venture company does not have a legal personality and may not transact business in its own name (Article 59). The joint venture may transact business with third parties only through one venturer, who is personally liable for the transactions they enter into with third parties. The transacting venturer's liability to third parties is unlimited. The liability of a non-transacting venturer is limited to their share in the joint venture. If the transacting venturer is a non-Kuwaiti, then the Kuwaiti venturer in the company must guarantee them in that transaction. If the joint venture deals with third parties in its own name, the effect would be to expose all the joint venturers to unlimited joint and several liability, whether or not they were personally involved in the transaction.





## 2.4 Commercial Agency

Law No. 36 on the Regulation of Commercial Agencies and the Kuwaiti Commercial Code, Articles 260-296 regulate commercial agencies. Non-Kuwaitis may not act as commercial agents in Kuwait (Article 1 of Law No. 36), and those who violate the rule are subject to three months imprisonment and/or a fine (Article 10 of Law No. 36).

The relationship between the Kuwaiti agent and the foreign principal must be direct. Article 2 of Law No. 36 provides that commercial agencies are not enforceable unless registered on the Commercial Register.

The Code sets out the general rules governing commercial agencies and the types of commercial agencies.

The first type is a contracts agency (Article 271 of the Kuwaiti Commercial Code). In a contracts agency, the local agent, by virtue of a contract, undertakes to promote the principal's business on a continuous basis in the territory and to enter into transactions in the name of the principal in return for a fee. The contract must be in writing and must include the territory covered, the agent's fee, the term, the product or service subject of the agency and any relevant trademarks. The term of the contract must be at least five years if the agent is required to set up showrooms, workshops or warehouse facilities.

The second type of agency is a distributorship, under which the local agent is the distributor of the principal's product in a defined territory in return for a percentage of the profit (Article 286 of the Kuwaiti Commercial Code). Distributorships are governed by the same general rules as contract agencies if the distributor is the sole distributor for the whole country. These rules provide protection to both types of agents:

- Commercial agencies must be registered in order to be enforceable
- Kuwaiti law is the governing law in matters pertaining to public policy
- The principal may not terminate the agreement without proving breach of contract by the agent, otherwise the principal is liable to pay compensation to the agent
- The principal may not refuse to renew the agency agreement when it expires without paying the agent equitable compensation for nonrenewal if the agent proves that he committed no breach and that his activities led to the successful promotion of the principal's products
- The agency may sue both the principal and any new agent the latter may appoint in Kuwait if the termination is proven to be the result of their concerted action.

The third type of commercial agency is the commission agency, which





is provided for in Articles 287-296 of the Commercial Code. In this type of agency, the agent enters into contracts in their own name. The principal's name may not be disclosed without their permission.

## 2.5 Commercial Representatives

A commercial representative is a Kuwaiti individual or entity engaged by a foreign company pursuant to a contract called a Commercial Representation Agreement to represent its business interests in Kuwait.

The scope of authority of a commercial representative is usually more limited than the authority granted to an agent. A commercial representative may be paid a set fee on a regular basis, a commission or a percentage of profits. The duties and obligations of commercial representatives are governed by Articles 297-305 of the Commercial Code.

In executing documents on behalf of the foreign company, the commercial representative must sign their name as well as the name of the foreign company, and indicate that they are a commercial representative.

A foreign company is liable for all of the commercial representative's actions and liabilities, so long as they are conducted or incurred within the scope of representation.

Unlike an agency agreement, a commercial representation agreement cannot be registered with the Ministry of Commerce and Industry.

## 2.6 Contribution to The Kuwait Foundation for the Advancement of Science (KFAS)

KFAS was established to provide aid and assistance to science students and researchers for their education and training and for scientific research and development in general. Article 6 of the Memorandum of Association of KFAS provides that a source of KFAS's funding shall be from the payment by all Kuwait Share holding Companies (KSC) of 1% of such companies' net profits to KFAS.

While, as a legal matter, a KSC is not strictly speaking obliged to pay 1% of its net profits to KFAS (under Article 48 of the Kuwaiti Constitution, taxes may be levied only by a duly promulgated law), it has become the general and accepted practice in Kuwait for KSCs to make such payments.

## 2.7 Public Sector Procurement





Procurement by the Kuwaiti Government and its agencies is regulated by Law No. 37 (modified by Law Nos. 13 and 31) concerning Public Tenders (the Public Tenders Law). The Public Tenders Law provides that any procurement made by the Kuwait Government with a value in excess of KD 5,000 must be conducted through the Central Tenders Committee and in accordance with its procedures in order to ensure competitive pricing.

Article 5 of the Public Tenders Law provides that a tenderer for government contracts must be:

- A Kuwaiti merchant, individual or company registered in the Register of Commerce at the Chamber of Commerce and Industry of Kuwait. The bidder may be a foreigner if they have a Kuwaiti merchant acting as a partner or agent pursuant to a deed duly executed by a notary, provided the Central Trading Committee shall set down a specific regulation for the participation of the foreign company in the tenders of large works
- Registered in the Classification List of Contractors and Suppliers. Thus, a foreign entity may act as a government contractor only through a Kuwaiti entity in which it has an ownership interest, or by acting directly but with the assistance and support of a Kuwaiti agent or commercial representative.

There are two important exceptions to the application of the Public Tenders Law:

- Ministry of Defense (MOD) procurement. The Public Tenders Law does not apply to the procurement of military items for the MOD and security forces. 'Military materials' are broadly defined by Kuwaiti law to include land, sea and air weapons, spare parts, military communications, detection equipment and related systems (strategic military procurement).

There are no comprehensive laws or regulations that govern strategic military procurement by the MOD. Instead, the MOD has developed internal policies and procedures for such procurements, and such policies and procedures are not available to the public. In general, such policies are more flexible than those of the Public Tenders Law in an effort to accommodate the MOD's specialized needs with respect to strategic military procurement

- Other specialized procurement. Kuwait government agencies may request permission of the Central Tenders Committee to conduct particular tenders outside the Public Tenders Law. However, such tenders are relatively rare.





### 3. ENTRY VISAS AND WORK PERMITS

#### 3.1 Entry Visas

Non-GCC nationals who wish to enter Kuwait must obtain a valid entry visa before arriving in the country. Travelers arriving in Kuwait without a visa are placed on the next flight out of the country. An entry visa permits a maximum stay of one month; extensions are difficult to obtain. Heavy fines are imposed for a breach of this one-month period.

Visas are issued for business purposes or to visiting relatives. Kuwait does not issue tourist visas.

#### 3.2 Work Permits

Employers are responsible for obtaining work permits for their foreign employees. Employers must obtain a permit from the Ministry of Social Affairs and Labor and send it to the foreign employee before they enter Kuwait. The employee normally collects the work permit from the Kuwaiti embassy in their home country. The employer must undertake to engage the foreign employee only in the job specified in the work permit.

Work permits are usually issued for up to three years and may be renewed for similar periods at the request of the employer.

Kuwait does not impose any restrictions on the employment of women. Opportunities for such employment are limited, and lie primarily in the teaching and medical professions, and in secretarial work.

#### 3.3 Residence Permits

On arrival in Kuwait, a person must apply to the Immigration Department for a residence permit, which is usually arranged within two months of arrival. A person holding a residence permit may exit and re-enter Kuwait freely without obtaining an exit visa.

Permanent residents in Kuwait must obtain an identity card (Civil ID), which they must carry at all times. A Civil 10 may be obtained from the Public Authority for Civil Information. Foreigners resident in Kuwait are also advised to register with their embassies.





## 4. TAXATION

### 4.1 Introduction

In an apparent effort to attract foreign investment to and stimulate commerce within Kuwait, The Kuwaiti National Assembly approves a bill that was subsequently issued by the Amir of Kuwait Sabah Al-Ahmed Al-Jaber Al-Sabah in January 2008 as Law No. (2) of 2008 concerning the amendment to certain provisions of Kuwait Income Tax Decree No. (3) of 1995. On 20th July 2008, the Ministry of Finance issued the regulations implementing the New tax regime.

As a general rule, individuals (Kuwaiti or foreign nationals) are not subject to taxes on income. Also, Kuwaiti companies are not subject to taxes on income. A foreign company engaged in commercial activities in Kuwait (in a direct or indirect way) is subject to income tax. Corporate income tax is not levied on the income of companies incorporated in the Gulf Cooperation Council (GCC) countries from their operations in Kuwait.

### 4.2 Sources of Tax Law

Law No. (2) of 2008 concerning the amendment to certain provisions of Kuwait Income Tax Decree No. (3) of 1995. Taxation in Kuwait is governed by the Tax Decree (Decree No.3 of 1995) and various tax treaties with foreign countries covering income. The Tax Decree is supplemented by several directives issued by the Director of Income Taxes.

### 4.3 Tax Authority

The Director of Income Taxes administers the tax law in Kuwait.

### 4.4 Filing, Payment and Assessment Procedures

The Gregorian calendar year, which ends 31 December, is generally used for Kuwaiti tax purposes, but a taxpayer may request in writing to prepare financial statements for a year-end other than 31 December. For the first or last period of trading or carrying on a business, the taxpayer may be allowed to file a tax declaration for a period of up to 18 months. For this purpose, the formal approval of the Director of Income Taxes should be obtained well in advance.

A tax declaration must be filed on or before the fifteenth day of the fourth month

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following the end of the tax period (for example, 15 April in the case of a 31 December year-end). Tax is payable in four equal installments on the fifteenth day of the fourth, sixth, ninth and twelfth months following the end of the tax period. In exceptional cases, an extension of up to 75 days may be granted for the purpose of filing audited accounts. Consequently, for companies with a 31 December year-end an extension may be granted until 30 June. If such an extension is granted, no tax payment is necessary until the declaration is filed, and payment must then be in one lump sum and not in installments. The tax is payable in KDs with a certified cheque drawn on a Kuwaiti bank.

The tax declaration, supporting schedules and financial statements, all of which must be in Arabic, are to be 'reported on' by a Kuwait-based accountant who is registered with the Ministry of Commerce and Industry (that is, the accountant indicates that the tax declaration is in compliance with the tax law and prepares an audit report).

#### A. Taxes payable

Federal taxes and levies

##### Corporate taxation:

The Tax Decree of 1955 (Amiri Decree No 3 of 1955) as amended by Law No 2 of 2008 and the Executive Byelaw issued by the ministerial order No 29 of 2008 governs taxation in Kuwait along with various tax treaties with a number of foreign nations. These decrees are supplemented by Directives issued by the Director of Income Taxes. Under the above, foreign companies described in the decree as 'bodies corporate' which carry on business or trade in Kuwait are taxable.

The term 'bodies corporate' refers to an association that is formed and registered under the laws of any country or state and is recognized as having a legal existence entirely separate from that of its individual members. Partnerships fall within this definition. No income tax is imposed on companies incorporated either in Kuwait or in other Gulf Cooperation Council (GCC) countries and wholly owned by nationals of Kuwait or other GCC countries. The members of GCC are Bahrain, Kuwait, Oman, Qatar, Kingdom of Saudi Arabia and United Arab Emirates. Under Law No 19 of 2000, a 2.5% tax is imposed on the annual net profits of Kuwaiti companies listed on the Kuwait Stock Exchange as National Labour Support Tax.

Foreign companies can carry on business in Kuwait either through an agent or joint venture or as a minority shareholder in a locally registered shareholding company. Tax is levied on the foreign company's share of the profit plus any amounts receivable for interest, royalties,

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commissions, technical services, management fees etc. Upon commencement of business, foreign companies are required to register themselves with Director of Income Taxes within 30 days and apply for a Tax Card. A taxpayer may follow one calendar year comprising 12 consecutive months as the first accounting period. For the first and last accounting periods, it is possible to obtain approval for a period shorter or longer than 12 months up to a maximum period of 18 months.

A tax declaration is to be submitted in Arabic to the Director of Income Taxes in a specified format, accompanied by audited financial statements and other specified documents. The Director of Income Taxes requires that the declaration and the supporting statements are certified by an accountant in practice in Kuwait who is also registered with the Ministry of Commerce and Industry.

If a foreign company has more than one activity in a similar line of business in Kuwait, either directly or indirectly through subsidiary companies, income from all activated is to be aggregated for tax purposes.

**Taxation  
Dividends**

Dividends paid by investment fund managers or investment trustees to foreign companies are subject to a 15% tax, which must be held at a source and forwarded to the Kuwait tax department as an advance payment of the tax due on such dividends.

**Capital Gains**

The applicable flat tax rate is **15%** on taxable income. However, no tax is payable if the taxable income is below KD 5,250. It is possible to pay the tax due in four equal installments if not paid as one deposit together with the Tax Declaration.

**Capital Gains**

The applicable flat tax rate is **15%** on taxable income. However, no tax is payable if the taxable income is below KD 5,250. It is possible to pay the tax due in four equal installments if not paid as one deposit together with the Tax Declaration.

**Losses**

Business losses can not be carried forward for more than three years.

**Rate**

Under the new tax law, a flat rate of 15% applies (instead of a range of 0% to 55% )





### Social Security

Social security for Kuwaiti employee is payable by both the employer and the employee based on the employee's salary (up to a ceiling of KD 2,500 Per month) the contribution rates are 11% and 7% of the employee's salary for the employer and employees, respectively.

### Personal taxation:

- There is no personal income/wealth tax in Kuwait.
- Social Security Kuwaiti employees must contribute 7 % of salary to the Public Institution for Social Security, the employer also contributes 11%.

## B. Determination of taxable income

Tax liabilities are generally computed on the basis of profits disclosed in audited financial statements adjusted for tax depreciation and other deductions of all expenses and costs spent on realizing such income. The tax inspector has a right to disallow any expenses that are deemed excessive on inspection conducted during assessment.

### Gross income:

Gross Income will include:

- a. income derived from rendering of services in Kuwait
- b. Income from leasing of property located in Kuwait
- c. Income from operating any manufacturing, industrial, or commercial enterprise in Kuwait
- d. Income from purchasing and selling property, goods and maintaining a permanent office in Kuwait where contracts of purchase and sale are executed
- e. Income earned from selling, renting etc any trade mark, design or copyright
- f. Profits from disposal of assets
- g. Commissions from representation or brokerage
- h. Profits from any contracts performed in Kuwait.

### Deductions:

Tax Depreciation: The permissible rates of depreciation, applied using the straight-line method, include 4% a year for building, 20% for plant and machinery, 15% to 20% for motor vehicles and 15% for office furniture.





**Business Expenses:** For expenses to be deductible, they must be incurred in the generation of income in Kuwait. Such expenses must be supported by adequate documentary evidence. Such expenses include:

- Salaries, wages and end of service benefits
- Taxes and fees except Income Tax
- Grants, donations and subsidies paid to licensed Kuwaiti public or private agencies
- Expenses of Head Office.

The following expenses are normally disallowed for tax purposes:

- Personal or private expense or any other expense not related to business
- Criminal penalties
- Reimbursable Losses
- Provisions as opposed to accruals are not accepted for tax purposes. Thus terminal benefits are only deducted when paid out and debts are only being written off for tax purposes once they are proved irrecoverable
- Interest is accepted if it is paid directly by the branch to a bank in Kuwait and is reasonable in relation to the activities of business in Kuwait
- Salaries paid outside Kuwait to staff working abroad, except where the contract specifically requires technical work to be performed abroad
- Transfer pricing of materials and equipment imported. The tax authorities deem the following profit margins for the imported materials:
  - imports from head Office: 10% to 15% of related revenue
  - imports from related parties: 6.5% to 10% of related revenue
  - imports from third parties: 3.5% to 6.5% of related revenue.

The deemed profit as above is normally subtracted from the cost of materials and equipment claimed in the tax declaration.

**Head Office Overheads:** The tax authorities allow the following deductions from income as a contribution towards expenses incurred by the head office of a foreign company:

- for contractors and consultants operating through an agent: 1.5% of revenue, reduced by any amounts paid or payable to sub-contractors
- for foreign companies participating with Kuwait companies in the execution of a contract: 1% of the foreign company's share of the contract revenue reduced by amounts paid to sub-contractors
- for insurance companies: 1.5% of the net premiums
- for banking Institutions: 1.5% of direct revenue realized in Kuwait.



Corporate Presence/ Industry Sector	Contractors and others operating through an agent	Foreign companies being shareholders in a Kuwaiti Company	Insurance Companies	Banking Institution
% direct revenue realized in Kuwait	1.5 %	1 % of share of direct revenue	1.5 %	1.5 %
1. additions				
collected additions	N/A	N/A	☑	N/A
2. Deductions				
Sub-contracting costs	☑	☑	☒	☑
Compensating Costs	☑	☑	☒	☑
Design costs	☑	☑	☒	☑
Design costs (excl. those of head office)	☑	☑	☒	☑
Reinsurance premiums	N/A	N/A		N/A

**C. Foreign tax relief**

No specific unilateral measures exist for the avoidance of double taxation but, if taxable income has suffered foreign tax, that foreign tax will usually be allowed as a deduction from income.

**D. Withholding tax**

There are no withholding taxes in Kuwait. There are, however, retentions made on payments due to foreign companies until such time as they satisfy their Kuwait customer that they have dealt with their Kuwaiti tax obligations. Under Ministerial Order No 44 of 1985, all government departments, public bodies and privately owned and government owned companies are required to withhold final payments due to entities, which should not be less than 5% of the total contract value, until such entities present a tax clearance from the DIT. Failure to comply with these rules could result in disallowance of the related contract costs by DIT.





## E. Other taxes

- All entities operating in Kuwait are required to withhold 5% of total contract value from a contractor or subcontractor until the contractor or subcontractor settles his tax liabilities with the Kuwaiti Tax Authorities and obtain a certificate from the tax authorities.
- KFAS was established to provide aid and assistance to science students and researchers for their education and training and for scientific research and development in general. Article 6 of the Memorandum of Association of KFAS provides that a source of KFAS's funding shall be from the payment by all Kuwait Shareholding Companies KSCs ( listed and closed ) of 1 % of such companies' net profits to KFAS.

While, as a legal matter, a KSC is not strictly speaking obligated to pay 1 % of its net profits to KFAS (under Article 48 of the Kuwait Constitution, taxes may be levied only by a duly promulgated law), it has become the general and accepted practice in Kuwait for KSC's to make such payments.

- Kuwait Shareholding Companies listed on the stock exchange KSE are required to contribute 2.5 % of net profits to the **National Labor Force Fund**.
- Kuwaiti Shareholding Companies (both listed and non listed, but excluding government companies) are required to pay 1% of net profit for **Zakat** or **contribution** to the state's budget. The company has an option whether to consider the 1 % as Zakat or the contribution to the state's budget.
- **Inheritance and gift taxes** Not applicable

## G. Tax treaties

Kuwait has entered into tax treaties with several countries (more than 40 tax treaties in force) for avoidance of double taxation. Kuwait is a signatory of the Arab Tax treaty and the GCC Joint Agreement, both of which allow for avoidance of double taxation in most areas. Comprehensive double taxation treaties are available with Austria, Belarus, Belgium, Canada, China, Cyprus, Croatia, Ethiopia, France, Germany, Hungary, Indonesia, Italy, Jordan, Korea, Lebanon, Mauritius, Mongolia, Netherlands, Pakistan, Poland, Romania, Russia, Serbia and Montenegro, Singapore, Switzerland, Syria, Tunisia, Turkey, Ukraine and United Kingdom. With Algeria and South Africa, treaties are under finalization. Kuwait has also concluded limited double taxation agreements in respect of income arising from international sea and/or air transport with several countries.





## H. Proposed amendments to tax law

Statutory approval of the new Law is obtained.

## I. Tax incentives

Kuwait has a number of tax incentives as follows:

- a. Leasing and Investment Companies Law No 12 of 1998 allows the formation of investment and leasing companies having their principal place of business in Kuwait, with Kuwaiti or foreign shareholders. The law grants a five-year tax holiday to non-Kuwaiti founders and shareholders of such companies, beginning on the date of establishment of the companies.
- b. Direct Foreign Capital Investment Law (DIFCL) No 8 of 2001 provides a tax holiday up to ten years with respect to non-Kuwaiti shareholders shares of the profits from the qualifying projects. An additional tax holiday for a similar period is granted for further investment in an already approved project.
- c. Businesses set up in the Kuwait free trade zone for carrying on specified operations are exempt from taxes on operations conducted in the zone and foreign entities can own 100% of such businesses.
- d. Kuwait has begun to use build, operate, and transfer (BOT) method in respect of some large infrastructure projects. Tax and tariff concessions may be built into a BOT contract.

As per circular No 50 of 2002, issued by the DIT regarding treatment of exempted companies, the exempted companies shall, however, comply with the provisions of submission of tax declaration, inspection and assessment procedures like other companies in order to be eligible for exemption.

### 4.5 Appeals

The tax law does not provide for an appeals process, and consequently the civil courts must resolve any dispute between a taxpayer and the Director of Income Taxes. In practice, however, virtually all assessments are agreed through negotiations.

### 4.6 Filing Requirement

The tax declaration for each taxable period must be submitted within 3 ½ months of the end of the taxable period. A foreign entity can request and extension of up to 30 days for filing the tax declaration. Tax must be paid in **four** installments on the 15<sup>th</sup> day of 4<sup>th</sup>, 6<sup>th</sup>, 9<sup>th</sup> and 12<sup>th</sup> month following the end of the tax year.

**No** tax payment is necessary until the declaration is filed **if** an extension is granted. However, payment must then be made for the first and second

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installment.

#### 4.7 Tax Audits

Accounting records should be maintained in Kuwait, and it is normal practice for the tax authorities to insist on inspecting the books of account (which may be in English) and supporting documentation before approving the tax liability. A tax audit may take place a considerable amount of time after the relevant tax year.

#### 4.8 Penalties

In the event of failure to file a declaration or pay the tax on the due date, a penalty is payable equal to 1 % of the tax for each 30 days or fraction thereof during which the failure continues.

#### 4.9 Statute of Limitations

The tax law does not contain any specific provisions regarding the statute of limitations for tax matters. The relevant law is the Civil Code (Law No. 67). This law states that no claim for taxes or other annual charges due to the State may be enforced after a period of five years. It is unlikely, however, that the passage of five years after a failure to file a tax declaration or pay taxes will exonerate the taxpayer from claims for income tax because the taxpayer remains obliged to file a tax declaration and pay taxes.

#### 4.10 Value Added Tax (VAT)

There is no VAT or sales tax in Kuwait.

#### 4.11 Source of tax law

- Amiri Decree No. 3 of 1995.
- Law No. 2 of 2008 amendment of the Amiri Decree No. 3 of 1995.
- The supplementary resolutions and circulars
- Law No. 19 of 2000 relating to National Labour support Tax,
- Law No. 46 of 2006 regarding Zakat and Contribution to the state's Budget.





## 5. FOREIGN DIRECT INVESTMENT (FDI)

### 5.1 Law No. 8/2001 Regulating Direct Foreign Capital Investment in the State of Kuwait

The above law regulates the flow of FDI into the State of Kuwait. The Council of Ministers determines the economic activities and projects that the foreign investor is allowed to undertake within the State of Kuwait in conformity with the State general policy and approved economic development plans.

A license is issued to the foreign investor for undertaking an economic activity or project by the Minister pursuant to the Investment Committee's recommendation, and following the approval of the relevant authorities.

License applications must be decided within a maximum period of eight months from the date of submission. Where rejected, the decision must be justified in writing.

A license may be given by order of the Minister upon the recommendation of the Investment Committee to incorporate Kuwaiti companies where the share of foreigners therein shall be 100% of their capital in accordance with the conditions and circumstances placed by the Council of Ministers.

### 5.2 Foreign Capital Investment Committee (FCIC)

The FCIC has been formed under the chairmanship of the Minister. Committee members include experts representing the private sector as well as representatives of the Kuwait Chamber of Commerce and Industry.

FCIC is engaged in the following:

- Studying applications for investment and submitting recommendations thereof
- Promoting investment opportunities available in the country and taking the initiative to solicit foreign investments
- Granting privileges to encourage foreign investors and the Kuwaiti private sector to make investments in accordance with Article No. 13 in coordination with the relevant authorities, with an emphasis on encouraging the Kuwaiti private sector
- Facilitating the enterprise's license and registration procedures and eliminating obstacles
- Imposing a method for monitoring, following-up and assessing the performance of foreign investments in the country, with a view to identifying any hurdles facing such investments and surmounting them
- Investigating the complaints raised by foreign investors and other concerned

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parties as a result of implementing the provisions of this law, and submitting its reports thereon to relevant authorities

- Imposing the penalties stipulated in Article No. 15
- Preparing draft regulations required for the implementation of the stipulations of this law
- Considering matters referred to it by the Minister in respect to the implementation of the provisions hereof
- Preparing periodic statistical reports on foreign investment activities, as well as an annual report on licensed investment projects together with indicating obstacles facing the entry of foreign investments into the country and ways to remedy the same. Such reports are submitted to the Council of Ministers within a period not exceeding the end of March of every year.

### 5.3 Foreign Investment Capital Office (FICO)

The FICO has been set up to act as the executive staff of the Foreign Capital Investment Committee.

FICO receives license applications, completes them in conjunction with the concerned authorities, conducts the required studies and submits suggestions to be placed before the Investment Committee for a decision within a grace period not exceeding four months from the application date.

FICO acts on all matters related to foreign capital investment, particularly:

- Informing international markets about the enterprises placed for investment and highlighting the benefits enjoyed by the foreign capital investment in the country
- Providing all necessary information, clarifications and statistics requested by foreign investors
- Following-up execution of licensed enterprises and eliminating the obstacles and difficulties which may confront such enterprises
- Coordinating with the relevant authorities to facilitate a foreign investor's entry and residence in the country as well as foreign dealers having business connections with them.

### 5.4 Secured Guarantees for Foreign investment

Foreign enterprises licensed under the provisions of the law may not be confiscated or nationalized.

Expropriation may only be made for public interest in accordance with the laws applicable and against a compensation equivalent to the enterprise's real economic value at the time of expropriation. Such value is assessed according to the economic





situation prior to any threat of expropriation. Compensation must be paid without delay.

### 5.5 Entitlements

- In accordance with law and license stipulations, the foreign investor has the right to transfer their investment in full or in part to another foreign investor, to a national investor or relinquish it to their national partner in the case of a partnership
- Where a foreign investment is transferred in part or entirely to another foreign investor, the latter shall substitute the former to the extent of the ownership transferred to them by the former
- The foreign investor has the right to transfer abroad their profits, capital and compensation
- Non-Kuwaiti employees in the enterprise may also transfer their savings and dues abroad.

### 5.6 Privileges and Obligations of Foreign Investment

The Investment Committee may grant foreign investments all or part of the following privileges:

- Exemption from income tax or any other taxes for a period not exceeding ten years from the start of the operation of the enterprise, as well as exempting every new investment in the same enterprise from such taxes for a period equivalent to that granted to the original investment when the enterprise was established
- Benefits from the privileges supplied under double taxation avoidance agreements, as well as investment encouragement and protection agreements
- Total or partial exemption from customs duties on the following imports:
  - Machinery, equipment and spare parts required for construction, expansion and development
  - Raw materials, semi-processed goods, wrapping and packaging materials and such other materials required for production purposes
- Allotment of land and real estate required for investment purpose in accordance with the applicable laws and regulations
- Recruitment of the required foreign labour in accordance with the laws and regulations applicable in the country.

Granting the privileges indicated above is dependent on the economic development plans as well as the number of Kuwaiti employees in the enterprise.

The foreign investor must undertake to protect the environment, comply with the





public order and morality as well as instructions relating to security, public hygiene and third party safety.

## 6. OFFSET PROGRAMME

### 6.1 Introduction

The Government of the State of Kuwait purchases large amounts of goods and services from foreign contractors. As a direct result of these purchases, economic benefits accrue to households and businesses in the countries in which the foreign contractors procure materials and produce the goods and services. The most important of these benefits is long-term economic development through job creation and capital accumulation.

It is the desire of the Government of the State of Kuwait that these long-term economic benefits be shared on a more equitable basis between Kuwait and the foreign countries. The Government has decided that the best way to achieve this more equitable sharing is through a Counter-Trade Offset Programme (the Offset Programme), which promotes the expansion of the Kuwaiti private sector through long-term, mutually beneficial, collaborative business ventures between the foreign contractors and Kuwaiti businesses, entrepreneurs and private citizens in general.

The Offset Programme, established by Decision No. 694/1994 , amended by order 13/2005,, requires all foreign contractors who meet certain criteria to participate in the Programme.

The guidelines issued by Ministry of Finance for the Offset Programme define the terms 'offset obligation' and 'foreign contractor' in Article NO.4. Offset obligations are triggered when the single cumulative value of supply contract(s) awarded to a foreign contractor is equal to or greater than KD 1 million. The offset obligation is effective as of the signature date of the supply contract and is equal to 30% of the monetary value of the said supply contract. 50% of the offset obligation must be completed in the first four years and 100% within eight years.

Foreign contractors are defined as business entities having all of the following characteristics:

- The entity does not exist or operate under Kuwait laws as per the Ministry of Commerce and Industry, Department of Corporations
- The entity has been awarded, as either prime contractor or subcontractor, a supply contract by the government or any of its public sector institutions
- The goods and/or services to be provided under the supply contract are defined as foreign produced under Kuwaiti law
- Kuwaiti business entities acting on behalf of foreign businesses that are formed to circumvent the Offset Programme will be deemed foreign contractors.





## 6.2 The Offset Programme Objectives

The Offset Programme aims to:

- Promote mutually beneficial, collaborative business ventures between Kuwaiti nationals and foreign contractors with an emphasis on investments in the Kuwait private sector
- Achieve sustainable economic benefits, including those of increasing export sales of locally-produced goods and services and substituting foreign-produced goods by domestically-produced ones
- Enhance the ability of the Kuwaiti private sector to sustain high-technology industries through the expansion and creation of educational and training opportunities available to Kuwaiti nationals both locally and abroad
- Facilitate the transfer of state-of-the-art technology to the Kuwait private sector
- Support the Foreign Aid Programme of the State of Kuwait.

## 6.3 Economic Development

Collaborative business ventures will be evaluated for their ability to further capital accumulation and to promote economic development in the State of Kuwait. Particular attention will be given to the business' ability to generate foreign income through export sales and income transfers from abroad, promote development and financing through internal fund generation, and substitute domestically produced goods and services for imported ones.

## 6.4 National Manpower

The creation of skilled jobs for Kuwaiti nationals is a high priority of the Government and the ongoing education and training of Kuwaiti nationals for all levels of employment is a key objective of the Offset Programme. Personnel policies and human resource programmes should support the development of an experienced, competent and highly-skilled Kuwaiti labour force.

## 6.5 Technology Transfer

The transfer of technology appropriate for Kuwait is a primary objective of the Offset Programme. Knowledge intensive activities are the focus for the development of new manufacturing and service industries. These transfers can be achieved through various activities, such as the capitalization of certain technical skills and knowledge, license arrangements and the assignment of highly-skilled technical experts to the businesses that are established. The technology transferred must be updated on an

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ongoing basis in order to stay abreast of the latest technological developments and innovations and thereby maintain a competitive business base.

### **6.6 Kuwait National Offset Company**

Incorporated in 2006, to implement the offset program within the Country's overall strategy through establishing viable business ventures between foreign offset obligors & Kuwaiti investors granting mutual benefits to both, and fostering Kuwait sustainable economic growth.





## 7. DISCLOSURE LAW

In August 1996, the Government passed Law No. 25 regarding the disclosure of commissions in connection with government contracts. This law effectively requires full transparency and accountability in all government contracts in excess of KD 100 million in value. The law, which applies to all transactions entered into by the Kuwaiti Government or its agencies, requires a stipulation by the contracting party as to whether it has paid or will pay a commission of any kind to a disclosed or concealed intermediary. Additionally, the law imposes an obligation on both the payer and the payee to disclose, in a separate declaration, the amount of the commission, the type of currency, and the place and manner of the commission. The sanctions for non-disclosure or misinformation range from civil and criminal penalties equal to the value of the payment to imprisonment. However, it is important to remember that full compliance does not necessarily exonerate the parties in the event that the payment in question constitutes a violation of any other Kuwaiti law.





## 8. INTELLECTUAL PROPERTY

Kuwait is a member of the World Trade Organization and a signatory to the Agreement on Trade Related Aspects of Intellectual Property Rights. As such, it is under an obligation to pass intellectual property laws meeting the minimum standards for the protection and enforcement of intellectual property rights set forth in this agreement. Kuwait is also a member of the World Intellectual Property Organization.

Law No.4 governs patents in Kuwait. In order to obtain patent protection in Kuwait, the inventor must first register the patent with the Patents Office at the Trademark Control Department of the Ministry of Commerce and Industry (Article 4). The law permits foreigners who are nationals of or live in countries that give Kuwait reciprocity, as well as companies and other juristic personalities, to register patents in Kuwait (Article 5). Once registered, the owner of the patent is vested with the right to use that patent by any means for 15 years from the date of the application (Articles 10 and 12). The patent may be renewed for an additional five-year term (Article 12).

Similarly, industrial designs must be registered in the Industrial Designs and Models Register and an application for registration is to be submitted to the Trademark Control Department (Articles 36 and 37). The registration is valid for five years and renewable for two additional consecutive terms (Article 42).

The Commercial Code (Law No. 68 for 1980) governs trademark registration and the penalties for infringement. Any person may apply to have their trademark registered at the Register of Trademarks (Article 64). Once the application is approved, the trademark will be protected for ten years, and may be renewed for a similar term (Article 77).

Law No. 64 governs copyrights and provides copyright protection and penalties for copyright infringement.





## 9. AUDIT AND ACCOUNTING REGULATIONS AND PRACTICES

KSCs, KSC(c)s and WLLs are required by statute to have an annual audit. The auditor must be independent of the company being audited and must be registered with the Ministry of Commerce and Industry, Publicly traded companies are required to be audited by two separate firms acting as joint auditors,

The Law of Commercial Companies requires the auditor's annual report to include the following information:

- Whether the auditor has obtained the information that the auditor considered necessary for the satisfactory performance of their duties
- Whether the balance sheet and the profit and loss account are in agreement with the actual state of affairs of the company, whether they contain all information that is required by law and the articles of the company and whether they give an honest and clear view of the true financial standing of the company
- Whether proper books of account have been maintained by the company
- Whether the stock taking (that is, the inventory of assets) has been properly conducted
- To the extent such information was available to the auditor, whether any violations of law or of the articles of the company that materially affected the business of the company, or its financial standing, occurred during the fiscal year, and whether any such violations are continuing
- For KSCs only, whether the information contained in the report of the board of directors is in agreement with the books of the company,

Foreign contractors must support their income tax filings by providing audited financial statements of their Kuwaiti operations,

### 9.1 Accounting Profession

The Kuwait Association of Accountants and Auditors is the local professional body of accountants; it has approximately 530 members.

Under Law No.5, which governs the auditing profession, registered auditors must be natural persons and Kuwaiti nationals, pass an examination and meet other requirements. About 90 individuals are qualified to practice. Registered auditors are permitted to undertake consulting work.

The Kuwait Association of Accountants and Auditors is a member of the International Federation of Accountants (IFAC), which is responsible for issuing international standards on auditing.



The State Audit Bureau, an independent government agency, is responsible for monitoring state revenues and expenditures, and carries out audits of the records of all ministries and public establishments, even though some of those organisations also have independent auditors.

## 9.2 Financial Reporting and Auditing

### 9.2.1 Statutory Requirements

#### 9.2.1.1 Books and Records

All business enterprises must maintain adequate financial records, which need not be maintained in Arabic.

Ministerial Order No. 206 specifies the books and records to be maintained by a foreign body corporate subject to the provisions of the Tax Decree. In practice, this includes all foreign companies and partnerships doing business in Kuwait. Under the order, the following books and records are required:

- General journal
- Inventory sheets
- General ledger
- Expense analysis journal
- Stock record.

The books of account of a taxpayer, or those of a Kuwaiti-registered company in which the taxpayer is a minority shareholder, are invariably subject to a tax audit by the Department of Income Taxes before a tax assessment is finalized.

#### 9.2.1.2 Method of Accounting

The accrual method of accounting is required for financial accounting purposes in Kuwait. However, provisions are not allowed for tax purposes.

#### 9.2.1.3 Financial Statements

The financial statements, which must be in Arabic, consist of the balance sheet and income statement, the directors' report and the auditors' report. The names of the directors and auditors of KSCs must be published in the Official Gazette. This requirement does not apply to KSC(c)s.

KSCs and KSC(c)s must submit audited financial statements in Arabic within three months of the company's year-end.





WLLs must submit their audited financial statements to the Ministry of Commerce and Industry within ten days of the annual general meeting. Although WLLs are required by law to hold at least one general meeting of shareholders each year, in practice they often do not comply with this rule.

### 9.3 Source of Accounting Principles

KSCs, KSC(c)s and WLLs must comply with the standards promulgated by the International Accounting Standards Board (IASB).

### 9.4 Financial Reporting

KSCs and KSC(c)s must submit audited financial statements within three months of the company's year-end to the Ministry of Commerce and Industry and the general meeting of shareholders. A representative of the Ministry of Commerce and Industry is required to be present at the annual general meeting. Publicly traded companies must also submit audited financial statements to the Kuwait Stock Exchange within three months of the company's year-end.



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