

INTRODUCTION

Background:

- 1) The State of Kuwait is a country in the northern corner of the Arabian Gulf. Its natural resources are dominated by its huge oil resources, which are estimated to last for 100-150 years at current lifting rates. Associated gas resources are also substantial but the search for non-associated gas has so far only revealed more oil.
- 2) The Population in mid 1994 was approximately 1.3 million of whom about half were Kuwaiti citizens.
- 3) Petroleum production is the most important industry; Kuwait has more than 90% of the world's proven reserves of petroleum.
- 4) The unit of currency is Kuwaiti Dinar (KD), divided into 1,000 fils. There are no foreign exchange regulation in Kuwait.
- 5) Kuwait has an official stock market which lists only Kuwaiti companies from other Gulf Cooperation Council (GCC) States. Access to the exchange is restricted to Kuwaiti GCC Nationals.
- 6) This papers prepared to help the investors and others to know some information about the investment and taxation in the State of Kuwait, but not indented to be advice on any particular matter. If you need any details or clarification you can contact:-

The Ministry of Finance
Tax Department
P.O. Box No. 9 Safat 13001
Kuwait.

DOING BUSINESS IN KUWAIT

- 1) The various types of business structure which can be established in Kuwait are regulated by the commercial companies law 15 of 1960. Many other important particularly for foreigners are also to be found in the Commercial Law of 68 of 1960.
- 2) The Companies Law requires all Kuwaiti business structures except joint ventures to have at least 51% Kuwaiti participation as a general rule.
- 3) The Commercial Law provides that the foreigners may only trade in Kuwait through a business structure in which at least 51% of the capital is Kuwaiti. However, the foreigners who wish to trade without setting up a Kuwaiti business structure, the alternative is to appoint an agent.
- 4) The general rule, the participation of foreigners in Kuwait is limited to 49%.

- 5) The joint venture is the only form of doing business in which Kuwaiti participation is necessary. Nevertheless, a Kuwaiti is required to guarantee transactions undertaken by a foreign partner to joint venture.
- 6) Industry Law 6 of 1965 offers various incentives which are normally granted to new manufacturing. These incentives are :-
 - (a) Tax holidays of upto 10 years
 - (b) Loans from the Bank of Kuwait at low rates
 - (c) The provision of land at a nominal rent from Kuwait Municipality in certain specified industrial area; and
 - (d) Duty-free importation of machinery, equipment and spare parts and raw material and semi-finished products for manufacturing purposes.

This law makes it compulsory to have a permit from the Minister of Commerce and Industry before setting up an industrial enterprise or changing its capacity, location or business.

- 7) According to the law concerning public tenders which regulates public tenders for contracts involving the public sector, foreign companies may bid through a Kuwaiti service agent.
- 8) There are no restrictions on the repatriations of profits or capital in Kuwait.

II - OFFSET PROGRAM

- 1) The counter trade offset program applies to all overseas bidder intending to participate in contracts with the Kuwaiti Government for the supply of goods and services amounting to one Million KD or more in a fiscal year, either as Prime Contractor or as Sub-Contractor.
- 2) The Council of Ministers were informed of the final results of the special Counter Trade Offset Program study - which prepared by a working team from the Ministry of Finance and others - at their meeting (No. 92/31) held on 26.7.92, and issued decision (No. 694) that expressed agreement with the results of this study as per the principles and recommendations regarding the determination of the frame work and rules pertaining to the Offset Program of the State of Kuwait.

Program Objectives:

- To provide necessary contributions in the areas of management, technology and investment
- To promote and stimulate the private sector
- To contribute to the Government policy towards privatization
- To undertake investment projects in the fields of education and scientific research
- To develop Kuwaiti national human resources and
- To participate in foreign aid program of the State of Kuwait

The General Principles:

1- Offset obligation a percentage of the contract value

Binding Government, foreign companies or national companies acting as agents for foreign companies to invest 30% of supply contracts, onshore or offshore.

2 - Time Periods:

An 8 year period wherein the contractor shall perform 50% of his obligation within the first four (4) years.

3- Penalties:

6% in case of violating the obligation arising from the program

4 - The contract value

The 30% offset obligation is binding for foreign companies with supply contracts valued at KD 5/- (five) million and above. As for contract valued between 5 (five) million and KD 1 (one) million, it is possible to establish an investment fund in order to fulfil the offset obligation, each investment fund operating being made separately or as a grouped operation, within one fiscal year (12 months)

5 - Legislation:

Foreign companies will be exempted from the income tax on profits by benefiting from existing double taxation agreements with the State of Kuwait and, this exemption will also supply to foreign partners shares in local companies.

Examples of activities that could be approved under the Offset Program:

- ◆ Direct and indirect investments in local industry, inside and outside of Kuwait, that will provide economy to the State of Kuwait
- ◆ Possible assistance in the Foreign Aid Program on a case-by-case, at the request of the State of Kuwait
- ◆ Assistance in obtaining access for Kuwaiti business to markets and activities that would otherwise be closed to Kuwait and that provide economic benefits to the State of Kuwait
- ◆ Investment in Kuwaiti Investment funds that provide essential capital which especially supports the developments of Kuwait's industrial sector, privatization, import substitution, export activities and the social welfare of the State of Kuwait
- ◆ Marketing and promotion services provided abroad to open new markets to Kuwaiti industry
- ◆ Capital investment to finance viable Kuwaiti companies inside and outside of Kuwait
- ◆ The technology transferred must be consistent with the objectives pursued by the offset program

- ◆ Training activities related to research, development and production design, and
- ◆ Research and development program which enhance Kuwaiti industry through the creation of new activities or the strengthening of existing activities

Counter trade offset program Executive Office : (CTOP)

Packages are evaluated, approved and monitored by the (CTOP) Executive Office; if you need more details can contact on this address : -

Ministry of Finance
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III - TAXATION

Introduction:

- 1- Kuwait Income Tax Decree No. 3 of 1955 is the only direct tax in Kuwait, and there is no taxes whatsoever on individual income except for the social insurance premium, in addition a 4% standard rate of Customs Duty is imposed on the CIF value of imported goods.
- 2- A higher duty applies to certain items when local production is able to meet up 40% of demand, for instance:

- Turbans, towels, bed linen	10%
- Carpets, mquettes, tents	15%
- Cement	15%
- 3- There is no liability to income tax arises on foreigners whose activity is confined to exporting goods to Kuwait and there is no duties on exports

Corporate Income Taxation:

The taxation of income in Kuwait is governed by a Decree No. 3 of 1955. According to Article 1 of this Decree a tax is imposed on every "body corporate, whenever incorporated, carrying on trade or business in Kuwait. The term "body corporate" includes any corporate carrying on trade or business in Kuwait either directly or through an agent, and also includes any body corporate carrying on trade or business in Kuwait as an agent for others.

The income tax is computed by applying the relevant rate to whole taxable income in accordance with the bracket which the income falls, the rates of tax are :

Exceeding K.D.	But not exceeding K.D.	The Percentage shall be K.D.
---	5,250	Nil
5,250	18,750	5
18,750	37,500	10
37,500	56,250	15
56,250	75,000	20
75,000	112,500	25
112,500	150,000	30
150,000	225,000	35
225,000	300,000	40
300,000	375,000	45
375,000	----	55

In the computation of income, the following items, wheresoever incur shall be allowed as deduction :-

- (a) The cost to the taxpayer of goods sold, services rendered by the taxpayer in connection with the carrying on the trade or business in Kuwait.
- (b) Expenses which accrue against or are paid by the taxpayer (exclusive of the amounts mentioned in Article 1 which accrue to or are received by the Ruler and of amounts which are capital expenditures) in the taxable period in connection with the carrying on of trade or business in Kuwait, including without in any way limiting the generality of the foregoing expenses of exploration drilling or development of petroleum or other hydrocarbon properties; administrative overhead and establishment expenses contributions and remunerations or rewards for services rendered by others, whether they accrue or are paid directly to the persons rendered the services or to other persons in respect of insurance, pension or other plans established for the benefit of the persons rendering the services.
- (c) A reasonable amount in each taxable period for the exhaustion, depreciation and obsolence during that taxable period of properties used in carrying on the trade or business in Kuwait. In respect of the properties specified in sub-joined table, the reasonable amount, on a twelve month basis, shall in the absence of proof to the contrary, be percentage specified in the table of their values as defined in the Article (4) of the decree, save that no decreases shall be made for amounts allowable in previous periods for exhaustion, depreciation and obsolence :-

	<u>Percentage</u>
Building, such as offices, dwellings, stores, hospitals and clubs	4
Roads and bridges	4
Tanks, pipelines, jetties and wharves	5
Office furniture and equipment	15
Plant, machinery and equipment other than that indicated below	10
Motor cars and motor cycles	33 1/3
Lorries and trailers	25
Marine craft	7 1/2
Aeroplanes	25
Drilling and clean-out tools	33 1/3

Services replacement plant (including constructions and road-making equipment, workshops and equipment, handling equipment and sundry others)	25
Service station buildings and driveways	10
Servicing, greasing and other service station equipment	15
Carts	20
Refining plants, pipelines (within refinery) and small tanks	10

- (d) Losses sustained in the taxable period in connection with the carrying on the trade or business in Kuwait and not compensated for by insurance or otherwise, including, without in any way limiting the generality of the foregoing bad debts losses arising out of claims for damages against the taxpayer, and losses resulting from damage to or the destruction or loss of stock in trade or any property used in the carrying on of trade or business in Kuwait.

Tax Administration:

The normal taxable and accounting period is the Gregorian calendar year, but the Director of Income Taxes may authorize a company to use a different period not exceeding 18 Gregorian calendar months. Such authorization may be subject to conditions regarding the rate of tax applicable. Every body corporate subject to the Income Tax Decree is required to maintain the following books and records :-

- (a) Journal books
- (b) Inventory books
- (c) General Ledger
- (d) Subsidiary ledger for general expenses
- (e) Materials register showing the amount and quantity received and issued or the name of the project for which it was issued.

The tax payer can use a computerized accounting system which provides the required accounting information provided he informs the Ministry in advance.

A company which has income over 5,250 K.D. and which is subject to tax must file an income tax declaration by the 15th day of the 4th month following the end of the taxable period in question. The tax declaration and supporting financial statements must be certified by an accountant practicing in Kuwait and registered with the Ministry of Commerce and Industry. Strictly speaking, the tax payable is due in 4 instalments on the 15th day of the 4th, 6th, 9th and 12th months following the taxable period. In practice, however, the tax department often expects to receive the full amount of tax due when the declaration or paying tax may be granted if the tax payer shows it to be necessary. A fine is payable of 1% of the outstanding tax for each 30 days or part of 30 days that the tax or declaration is overdue, unless there is reasonable cause of the delay.

In practice the Income Tax Department insists on inspecting the accounting records and making any necessary adjustments before agreeing the tax liability.

Once a tax payers final tax liability has been settled he is given a tax clearance certificate. By virtue of Ministry of Finance Circular 16 of 1979 all Government departments and public and semi-public bodies must withhold the greater of the final payment and 5% of the total contract price due to foreign companies under any contract until the company produces a tax clearance certificate. Ministerial Order No. 44 of 1985 extended this obligation to withhold at least 5% of the contract

price to all companies carrying on business in Kuwait who have contracted or sub-contracted work to other firms.

On long-term contracts tax is assessed on progress billings for work performed less the cost of work incurred.

Withholding Taxes:

There are no withholding taxes

Consumption Taxes:

There are no consumption taxes

Special Tax Treatment:

The Ministry of Commerce and Industry has a discretion to grant tax holidays for up to 10 years.

Avoidance of Double Taxation:

- (1) No specific unilateral measures exist for the avoidance of double taxation, but if taxable income has suffered foreign tax, that foreign tax will probably be allowed as a deduction from income.
- (2) Kuwait has concluded the following double taxation treaties:-

Treaty with	Concerning Taxes on	Date of Conclusion
China (P.R)	Income and capital	25th Dec. 1989
Cyprus	Income and capital	15th Dec. 1984
France	Income and Inheritance	7th Feb. 1982
Germany (Fed. Rep.)	Income and capital	4th Dec. 1984
Italy	Income and capital	17th Dec. 1987
Romania	Income and capital	25th July 1992

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