Setting up your Business in Kuwait
Issues to consider

Kuwait presents a huge business opportunities for foreign companies. The foreign company needs to have a basic knowledge of the business community in Kuwait and the Kuwaiti legal system to be effective and successful. The first decision for any business is the type of business structure to establish, Knowledge of the basic rules and regulations and practices, basic awareness of the laws governing its operations and last but not least, to understand how to resolve legal disputes if they arise

However there are a number of issues which you must consider when you are looking to set up your business in Kuwait. This document takes you through some of the common questions we come across and gives you practical information about the issues you need to consider.

What type of Business Structure should we use?

There are advantages and disadvantages to all of them, and there is no one correct answer, it's all dependent on your specific business circumstances and needs. A brief overview of the main structures is below:

Establishment (a branch of your overseas business)

Establishment of a branch of your overseas business through Sponsorship of a registered Kuwaiti merchant. (Kuwaiti agent).

- Not a separate legal entity but an extension of the overseas parent company
- No limited liability or ring-fencing of the Kuwait operations
- If you have a permanent establishment in Kuwait then profits from this PE are liable to Kuwait Corporation tax
- Must file **parent company accounts**, prepared under Kuwait Company Law, at Companies House for public inspection, even if these are not made publically available overseas
- The agency agreement should be registered with the Commercial Agencies Department at the Ministry of Commerce and Industry.

A Joint Venture

- 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.
- Joint ventures are simple contracts that require no formal establishment procedures
- Joint ventures established by contractual agreements do, however, provide the parties wishing to conduct business in Kuwait with more flexibility in their arrangements than the establishment of a company.

- Joint venture agreements are more common in relation to a specific project that has a limited term.

Limited Liability Company ("WLL")

- Both foreign individuals and corporate bodies may establish this type of entity.
- A Kuwaiti must own at least 51% of the WLL shareholding.
- Is simple to form and takes approximately three months to incorporate.
- 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.
- No restriction on distribution of profits, but at least 10% must be transferred to a statutory reserve until it totals at least 50% of the capital

Closed Joint Stock Company ("KSC Closed")

- A closed Kuwaiti joint stock company (KSC Closed) is the other type of company open to Non-Kuwaiti entities.
- 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 concerned authorities.
- The incorporation of a KSC Closed may take up to six months.
- Tax is levied on the profits made by the foreign company as a shareholder in KSC Closed Company.
- Subject to the 1% contribution to the Kuwait Foundation for the Advancement of Science.

Foreign Direct Investment Law No. 116 of 2013

- 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.

In general, registration with the tax department requires that, a registration application must be completed, signed and submitted along with the several documents such as:

- The Articles of Association and any amendments thereto.
- The agency contract.
- The agency registration certificate.
- The company's addresses both within the State of Kuwait and abroad
- The exemption certificate.
- An authorization letter duly signed by an authorized signatory of the company.
    - In addition the company can obtain a taxation card by filing a taxation card registration application and submit the following documents:
- The Articles of Association and any amendments thereto.
- The agency contract.

How much Corporation Tax will the business pay?

Current Corporation Tax rates in Kuwait are:

Tax rate (%)	
Flat rate	15%

Current Corporation Tax rate in Kuwait is a flat rate of 15% of net taxable income. Capital gains are not separately taxed. These are included as part of the business income. Capital gains shall be estimated for fixed assets only in the case of submission of insufficient documents.

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.

Losses can be carried forward for a maximum of three years .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 instalments. In case an extension is granted, tax has to be paid fully at the time of filing the tax declaration. 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. However, there will be delay fines due to the revised filing.

Under certain circumstances the tax department has the right to assess the tax on a deemed profit basis.

The final payment to the contractor or subcontractor is required to be withheld until the contractor or subcontractor settles their tax liabilities and obtains a certificate in this regard from the tax department. The final payment withheld should not be less than 5% of the total contract. In practice, contractors withhold 5% of all payments made. The payments to subcontractors will be disallowed as a cost in case 5% retentions are not withheld.

Profits from the neutral zone are taxed at different rates than operations conducted within the State of Kuwait.

What if we use Kuwait to set up our holding company?

Kuwait's tax legislation means that it is a very attractive place to set up a holding company.

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

Foreign registered partnerships are deemed to be "Foreign corporate bodies" and are taxable accordingly. All foreign companies carrying on operations in the neutral zone are liable to income tax under Income Tax Law No. 23 of 1961.In practice, income tax authorities consider any income earned from the State of Kuwait as liable to income tax even if the foreign company does not have a permanent establishment or place of business in the State of Kuwait.

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.

What if we make cross-border transactions between group companies?

Kuwait follows internationally recognised **Transfer Pricing** (TP) rules where cross-border trading and financial transactions between affiliated entities have to be conducted on an arm's length basis. The price and terms should be the same as if the transactions had been between completely independent parties. For instances, materials imported from head office, the allowable cost should not exceed 85% of the revenues. Materials imported from affiliates, the allowable cost should not exceed 90% of the revenues. Materials imported from third parties; the allowable cost should not exceed 95% of the revenues. In case material revenues cannot be identified, then the same ratio of material cost to total cost will be considered as material revenue to total revenue. In case of a contract where value of revenues from supply of materials is not specified in the contract, then material revenues is determined in the ratio of material cost to total cost as follows:

$$\text{Material revenues} = \frac{\text{Material Cost}}{\text{Contract Cost}} \times \text{Contract Revenue}$$

Typical transactions between affiliated entities that are covered by TP regulations are:

- Sale and purchase of goods
- Provision of management services
- Property rental charges

- Transfer of intangible assets e.g. trademarks, patents
- Sharing of knowledge, expertise, business contacts etc.
- Provision of financial support e.g. inter-group loans and charging a “market” interest on loans

However even if an entity is exempt from the Kuwait’s transfer pricing regime it may fall under the scrutiny of the other international tax jurisdictions where it transacts. There may also be other tax regulations which ensure transactions are undertaken at a commercial value.

What Employment Taxes and Social Security will need to be paid?

Customs tariff of 5% on CIF invoice price subject to certain exceptions.

Kuwait Shareholding Companies are required to contribute 1% of net profits after transfer to the statutory reserve and the offset of losses brought forward to Kuwait Foundation for the Advancement of Sciences (KFAS) which supports scientific progress.

National Labour Support Tax Laws (NLST) requires that all companies listed in the State of Kuwait Stock Exchange pay 2.5% tax of their 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 as a contribution to support and encourage Kuwaiti Nationals to work in non-governmental institutions (Private Sector).

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

Social insurance for Kuwaiti employees is payable by both employer and employee based on the employee’s salary (up to a ceiling of KD2,250 per month approximately $ 6,650).

The 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.

Non-Kuwaiti employees are entitled to end of service benefits in accordance with the State of Kuwait labour law.

Interest: Interest paid to banks outside the State of Kuwait is disallowed unless it can be proved that the loan was used to finance working capital. Interest paid to banks in the State of Kuwait will be allowed as a deduction provided the loans are used for working capital purposes and not for acquiring fixed assets. Interest paid to an agent is disallowed. Commission paid to a foreign bank to issue a letter of guarantee from a local bank is allowed if it is related to a taxable project in the State of Kuwait.

What is Value Added Tax (VAT) and should the business be registered?

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

Can we provide Share option plans to our staff?

Many companies see Share Option plans as being an important way of attracting, motivating and retaining key staff.

Kuwait has just introduced share option plans into the new company's law which might give tax benefits to employees and employers alike but it is often possible to adapt an overseas stock option plan to fit into the Kuwaiti law.

However this is a very technically complex area and careful planning needs to be undertaken as soon as share option plans are being considered for implementation in Kuwait.

How else can we compensate our employees?

Kuwait has a very comprehensive range of compensation and benefit options available for companies to offer their employees.

Pensions, private medical insurance, life and disability cover are now commonplace benefits provided by many Kuwait businesses to their workforce.

Flexible benefit packages are also gaining in popularity, giving employees options on how they wish to "spend" their benefits allowance; which can range from "purchasing" additional holiday entitlement to obtaining full family medical cover.

Some practices followed by the tax department

Payroll Expense: end of service benefits are allowed as a deduction on actual payment basis and limited to the amount of benefits payable under the labour law, any excess will be disallowed even if such amounts are contractually agreed.

End of service payment: leave salary is allowed as a deduction on an accrual basis. The amount should not exceed the amounts specified under the labour law. Amounts paid in excess will be disallowed even if such amounts are contractually agreed.

Bonus: salary of three months will be allowed. The employment contracts should specify the payment of a bonus and the company should have achieved profits in the year in which the bonus is paid. Bonus paid outside Kuwait will be disallowed.

Social Security: social security paid outside Kuwait in excess of 10% of salary will be disallowed. Further, it should relate to manpower working in Kuwait.

Compensations paid to employees working abroad: such as salaries will be allowed only if it can be proven that the work done was directly related to Kuwait's operations and it is not excessive and unreasonable. Salaries paid in cash are disallowed.

To discuss your requirements please contact the International Office on +44 (0) 1245 449266 or email us directly.

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