

# CLIENT ALERT

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## Kuwait Implements New 15% Minimum Corporate Tax for Multinational Enterprises

Written by Aisha AlNesef, Roger Phillips and Bashayer AlTuwais

### ***Introduction***

With the recent announcement of new corporate taxation, Kuwait has taken initial steps to align with the Organization for Economic Cooperation and Development (**OECD**) and its initiative to standardize corporate tax rates and curb tax evasion worldwide.

This initiative, known as Pillar Two, mandates that large multinational enterprises (**MNE(s)**) are subject to a minimum tax rate of 15% (**Minimum Tax Rate**). As part of the OECD/G20 Inclusive Framework on Base Erosion and Profit Shifting (**BEPS**)—which includes over 140 countries—Kuwait has now passed Decree Law No. 157 of 2024 on the Issuance of the Tax Law on Multinational Group Entities (**MNEs Tax Law**), introducing in Kuwait effective on 1st January 2025, a mandatory Minimum Tax Rate.

### ***Awaiting Further Details By Way of Executive Regulations***

The implementation and further detail of requirements underpinning the MNEs Tax Law has still to be clarified through formal issuance of implementing regulations (**Executive Regulations**) by the Ministry of Finance's Department of Income Tax (**DIT**) when further directives and guidance is expected. Although scheduled for issue of such regulations in 6 months, it is too soon to say when such regulations will be issued. Accordingly, it is not yet possible to state definitively how the DIT or the Kuwait Courts may implement the MNEs Tax Law.

### ***Application of the MNEs Tax Law***

The MNEs Tax Law applies to MNEs with consolidated global operations which include activities in Kuwait and that report annual revenues of at least Euros 750 million (approximately Kuwaiti Dinars 250 million) (**Minimum Revenue Threshold**). This revenue threshold must be met in the consolidated financial statements of the ultimate parent company of the MNE for at least two of the previous four tax periods.

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## **Effective Tax Rate**

The actual tax will be at a rate equal to the difference between the Minimum Tax Rate and an effective tax rate (**Effective Tax Rate**), provided the latter is less than 15%. The Effective Tax Rate is determined by dividing the total adjusted taxes paid by the MNE group's taxable entities by the group's net income or losses. This calculation excludes the income or losses from (a) investment entities, (b) minority-owned entities, or (c) non-taxable entities operating outside the scope of the MNEs Tax Law.

## **Taxable Entities, Permanent Establishments and Exemptions**

### Taxable Entities

- All Kuwait-based entities that are part of a MNE, whether as a parent company or a subsidiary.
- Joint ventures or partnerships in Kuwait, provided they either have (a) an MNE owning at least a 50% share, or (b) revenues meeting or exceeding the specified Minimum Revenue Threshold.
- Entities situated in non-tax jurisdictions engaging in business activities within Kuwait.

### Permanent Establishments

The MNEs Tax Law applies to MNEs which are either resident in Kuwait, or non-resident entities, but where they have a deemed 'permanent establishment' in Kuwait. Under MNEs Tax Law, permanent establishments potentially include the following:

- *Physical locations: Offices, branches, factories, workshops, warehouses, stores, and administrative headquarters, mines, oil or gas wells, quarries, or any other place of extraction of natural resources.*
- *Project sites: Construction, assembly, or installation sites, including any supervisory activities, provided these sites or projects last more than six months within a twelve-month period.*
- *Service provision: The furnishing of services, including consultancy services, by an MNE through employees or other personnel, provided that such activities continue for more than six months within any twelve-month period.*
- *Agents: This will be further defined in the Executive Regulations.*

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## *Exempted Entities*

Government entities, non-profit organizations, international organizations, pension funds, certain investment and real estate vehicles, and other entities specified in Article 4 of the MNEs Tax Law.

## *Previous Tax Laws*

There are exemptions from the application of previous tax law to MNEs that are subject to the MNEs Tax Law including Decree No. 3 of 1955 on the Kuwaiti Income Tax Law and Law No. 46 of 2006 concerning Zakat and the Contribution of Public and Closed Shareholding Companies to the State Budget.

## ***Ongoing Compliance Obligations***

MNEs must meet certain tax compliance obligations to:

- Register with the DIT within 9 months of the enactment of the MNEs Tax Law.
- Register with the DIT within 120 days of becoming liable for taxation. Any changes to registration details must also be reported within the same timeframe.
- Submit tax declarations within 15 months following the end of the relevant tax period.
- Pay taxes within the same timeframe as the submission of tax declarations.

## ***Penalties for Non-compliance***

There are various administrative monetary fines for late submissions, late declarations, late payment, incorrect filings and failures to register or update information, some of which may reach up to 25% of the final tax value. The MNEs Tax Law also provides for an offense of tax evasion with an imprisonment of up to three years and fines up to three times the value of the imposed tax.

## ***Transitional Reporting Guidelines***

For fiscal periods commencing on or before 31 December 2026, and concluding no later than 30 June 2028, zero tax liability applies if:

- The applicable MNE group's total revenue and income are below Euros 10 million and one million respectively, as verified through international reporting exchanges.



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- The Effective Tax Rate is at least 16% in 2025 and 17% in 2026, as confirmed through international reporting exchanges.
- Profit or loss is equal to or less than the excluded income as referenced in Article 10 of the MNEs Law.

These transitional guidelines do not apply to (a) MNEs not affiliated with any state or jurisdiction; or (b) to MNEs not included in international reporting exchanges; or (c) in instances where the exchanged report between the state and other states or jurisdictions does not meet the standards set out in the Executive Regulations.

## ***Transfer Pricing***

The MNEs Tax Law provides for the principles of transfer pricing in certain circumstances with confirmation that transactions with 'related entities' must be at 'arm's length'. The Executive Regulations will clarify the definition of related entities and the methods and rules that must be used to apply the arm's length principle.

## ***Tax Objection and Appeal Procedures***

The MNEs Tax Law provides an appeal process and establishes a Tax Grievance Committee with regard to DIT administration. It is expected that the Executive Regulations will provide further guidance.

## ***Initial observations and Looking Ahead***

The MNEs Tax Law is expected to be only a first step in Kuwait's reform of its broader tax law. In a recent statement by the Ministry of Finance, it is expected that the MNEs Tax Law will be implemented on 20 Kuwaiti companies, 25 GCC companies and 255 foreign companies. Further, a comprehensive new tax law is expected to be published in 2025/2026, and with opportunity for inclusion of certain key provisions to provide more conformance of the Kuwait tax system with international best practices. This may include provisions already anticipated in the MNEs Tax Law.

In particular, the following provisions would be welcomed:

- A definition of permanent establishment such as that provided in the MNE's Tax Law and following the definition in the OECD Model Tax Convention.
- A definition of arm's length principle and the introduction of transfer pricing methods and rules that follow the OECD methodologies and guidelines.

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- Clarification on how business profits are to be attributed to a permanent establishment in line with the OECD Model Tax Convention.
- Introduction of withholding tax applied on cross-border payments such as dividends, interest and royalties, and the removal of the current 5% retention.
- A clear appeals process and the establishment of an independent Tax Grievances Committee established under the MNE's Tax Law.

The implementation of the MNEs Tax Law marks a significant reform in Kuwait's tax policy, reflecting its commitment to global tax initiatives and best practice. It is crucial for affected MNEs to understand these changes and prepare for compliance to mitigate potential tax risk for their operations.

## ***ICB Assistance***

ICB continues to monitor closely the ongoing developments towards implementation of the MNEs Tax Law, including its Executive Regulations and DIT practice with particular interest in keeping our clients updated accordingly. We intend to issue further briefings and alerts concerning news and developments with further detail on areas of particular interest as and when we have further information.

In the meantime, if you would like any further assistance or clarifications with regard to understanding of the MNEs Tax Law or this alert, please feel free to contact ICB by email to the contacts below.

ICB is dedicated to wherever possible updating and assisting our clients through these changes, addressing any interest or concerns related to the new tax landscape.

## ***Contact Information***

Ms. Aisha AlNesef, Managing Partner – [aisha.alnesef@icbkuwait.com.kw](mailto:aisha.alnesef@icbkuwait.com.kw)

Mr. Roger Phillips, Partner – [roger@icbkuwait.com.kw](mailto:roger@icbkuwait.com.kw)

Ms. Bashayer Altuwais, Senior Associate – [bashayer.altuwais@icbkuwait.com.kw](mailto:bashayer.altuwais@icbkuwait.com.kw)