KUWAIT BUSINESS PROFIT TAX

SUMMARY & INSIGHT OF THE DRAFT LAW

7 December 2024

KUWAIT DRAFT BUSINESS PROFIT TAX LAW

The unofficial draft of the much-anticipated Kuwait Business Profit Tax ("**BPT**") Law was recently published by various local Kuwaiti news agencies. Based on the copy of the draft law published by Aljarida on 6 December 2024, we have summarized below the key aspects of the draft BPT law. *Source: Aljarida*

The draft BPT law is planned to be applied in two phases. Firstly, effective 1 January 2025, Kuwaiti Multinational Enterprises ("MNEs"), and permanent establishments of foreign MNEs with an annual revenue above Euro 750 million will be subject to 15% BPT. Additionally, and when applicable, a *Supplementary Tax* will be imposed on such entities if the Effective Tax Rate ("ETR") is below the global minimum tax rate of 15% as per Pillar Two rules.

Secondly, effective 1 January 2027, all other legal persons including natural persons that carry out *activities* will be subject to BPT. A generous tax exemption is available if the turnover does not exceed KD 1.5 million (approx. USD 4.9 million).

DETAILED ANALYSIS

Taxable Persons

The draft law adopts the principles of tax residence and introduces a definition of a permanent establishment ("PE"). The following are deemed to be taxable persons ("Taxable Persons"):

a) Legal persons resident in Kuwait.
b) Natural persons resident in Kuwait who carries out commercial or investment activities.
c) PE of a foreign entity.

Legal and natural persons resident in Kuwait are taxable on their worldwide income, whereas PEs of foreign entities are taxable only on their Kuwait income. Taxable Persons with an annual turnover not exceeding KD 1.5 million is exempt from BPT.

Legal Persons

The draft law subjects all forms of entities incorporated under Kuwait Companies Law of 2016 to the BPT law, in addition to any authority, public institution, fund, or any legal person established under any law or decision. Further, unincorporated partnerships are generally within the scope of the BPT Law.

Natural Persons

A natural person becomes subject to BPT law if he/she carries out activities through a sole proprietorship, clinic, offices or any other form.

The term "activities" is defined as activities of commercial or investment nature such as the trading of goods, provision of services, agency, brokerage, property developments, speculative tradeing, use of movable and immovable properties, etc. Income from employment is outside the scope of the BPT.

Tax Residency Criteria

A legal person is deemed to be a tax resident of Kuwait if it is incorporated in Kuwait or is effectively managed in Kuwait. A natural person becomes a tax resident of Kuwait if he / she has a permanent place of abode in Kuwait or stays in Kuwait for a period greater than 183 days during a taxable period.

KEY HIGHLIGHTS:

- **1 January 2025**: 15% BPT on MNEs in addition to a Supplementary Top-Up Tax under Pillar Two rules.
- **1 January 2027**: 15% BPT on all other Taxable Persons.
- No indication whether the Supplementary Tax will include IIR, QDMTT and/or UTPR.
- **WHT** at 5% on certain payments to non-residents. Dividends from listed shares are exempt from WHT.
- Tax rate for Kuwait-Saudi neutral zones activities is reduced to 30% of which 50% is payable in Kuwait.
- Taxable Persons with annual turnover not exceeding KD 1.5 million (approx. USD 4.9 million) are exempt from BPT.
- Natural persons are taxable if they carry out commercial or investment activities.
- Availability of foreign tax credits as well as participation exemption provisions to limit double taxation.
- Losses can be carried forward for up to 5 years

Tax Rates

a) 15% business profit tax is proposed to be applied on profits of Taxable Persons, unless exempted.

b) Additionally, MNEs in-scope for Pillar Two will be subject to a Supplementary Tax in Kuwait if the ETR as per Pillar Two rules is below 15%. *See below for more details.*

c) Entities operating in the Neutral Zone of Kuwait - Saudi Arabia will be subject to a flat tax rate of 30% of which 50% will be payable to Kuwait. However, such entities will need to prove that the remaining 50% of the taxes were paid to the tax authority in Saudi Arabia otherwise the entire 30% will become payable in Kuwait.

Proposed Implementation Dates

Effective 1 January 2025: Kuwaiti MNEs and PEs of foreign MNEs, with an annual revenue exceeding Euro 750 million (approx. KD 240 million) will be subject to 15% BPT. Additionally, and where applicable, a Supplementary Tax will be imposed on such entities if the ETR is below the global minimum tax rate of 15%.

Effective 1 January 2027: All other legal persons as well as natural persons carrying out activities will be subject to BPT.

Entities In-scope for Supplementary Tax

Unless specifically excluded, MNEs with consolidated revenue above Euro 750 million, and operate in Kuwait and outside Kuwait, will be subject to a Supplementary Tax if the ETR, according to Pillar Two rules, is below 15% to reach an ETR of 15%.

The draft BPT law incorporates the Pillar Two model rules ‘by reference’ and indicates that the mechanics of the Supplementary Tax will be provided in the executive regulations. It is unclear whether Kuwait will adopt Income Inclusion Rules (“IIR”) and / or a Domestic Minimum Top-Up Tax (“DMTT”). Our understanding is that Kuwait will not adopt Undertaxed Profits Rule (“UTPR”), at least in the initial stage.

Entities Excluded from Supplementary Tax

Inline with Pillar Two rules, the following entities are excluded from the Supplementary Tax obligations:

a) Government entities
b) Not-for-profit organizations
c) International organizations
d) Pension funds
e) Investment fund or real estate fund that is the Ultimate Parent Entity of the MNE

Entities Exempt from BPT

Based on the draft BPT law, exemptions from BPT is available to the following:

a) Entities wholly owned by the Kuwait government.
b) Kuwaiti not-for-profit entities
c) Taxable Persons whose turnover does not exceed KD 1.5 million in the taxable year.

The above exempt parties may continue to have a tax filing obligations where the tax would be nil. Entities not fully owned by the Kuwait government are expected to be taxed on 100% of its profit.

Income Exempt from BPT

The proposed BPT includes a participation exemption provision to eliminate double taxation. Dividends and capital gains received from a participating interest in a resident or non-resident legal person are exempt, provided certain conditions are met. Further, income derived by a Non-Resident Person from operating aircraft or ships in international transportation could also be exempt, subject to meeting certain criteria.

Computation of Taxable Income under BPT

The taxable income will be determined based on the actual revenue of the taxpayer and after deducting actual expenses necessary for the business activities such as cost of goods, services and depreciation, subject to limits that will be specified in the executive regulations.

The draft law does not provide for any thin capitalization rules but maybe provided for in the executive regulations.

Withholding Tax (WHT)

The draft BPT law provides for a 5% WHT on the following types of payments made to non-residents that do not have a PE:

- Interest
- Royalties
- Dividends (except for dividends of shares listed on Kuwait Stock Exchange)
- Services including technical, consulting and administrative
- Lease of movable and immovable properties
- Payments for the activities of an athlete or artist
- Certain insurance premiums

Interaction between BPT and existing tax laws in Kuwait:

As per the draft BPT law, the below existing tax laws are not expected to apply to MNEs, effective 1 January 2025:

- Income Tax Decree of 1955 as amended by Law No. 2 of 2008 (Income Tax)
- Law No. 46 of 2006 concerning Zakat and Contributions to the State’s Budget (Zakat)
- Tax provisions of National Labor Support Tax Law No. 19 of 2000 (NLST)
- Neutral Zone Law No. 23 of 1961 (Neutral Zone Law)

Further, it is proposed that the above laws will be repealed from 1 January 2027.

Based on the above, we understand that Kuwait MNEs will not be subject to Zakat or NLST from financial years beginning on or after 1 January 2025. Notably, the obligation to contribute towards Kuwait Foundation for Advancement of Sciences (KFAS) will continue to exist, as applicable. Foreign MNEs with a PE in Kuwait will not be subject to the current Income Tax from financial years beginning on or after 1 January 2025. Instead, the above groups will be subject to BPT and Supplementary Tax, when applicable.

Compliances and Other Matters

- Tax declaration for BPT must be filed by the 6th month following the end of the taxable period. For MNEs with a 31 December year end, the first BPT declaration would be due in June 2026.
- Tax declaration for the Supplementary Tax must be filed by the 15th month following the end of the taxable period. The first declaration would be due March 2027 for MNE with a 31 December year end.
- Advance quarterly tax payments will be required for certain large taxpayers based on a profit threshold that will be determined in the executive regulations. Transitional rules provide for the above to be enforced from financial years beginning on or after 1 January 2026.
- The draft law includes anti-avoidance rules to prevent tax avoidance practices.
- The tax authority will have the right to amend profits arising out of related party transactions based on arm's length principle. The executive regulations will specify rules for this.
- Foreign tax credits will be available subject to meeting certain conditions.
- Losses can be carried forward for up to five years. However, only 75% of the taxable income can be offset against brought forward losses - a similar approach to the corporate tax rules in the UAE.

Next Step?

The above comments are based on the draft BPT law as published in local newspaper Aljarida. The draft law may undergo changes. Once the BPT law is officially published, we expect executive regulations to be issued to clarify certain aspects of the law. Impacted businesses will need to monitor the Kuwait tax developments closely.

BDO Comments

The proposed BPT law aims to align Kuwait tax regime to international tax standards. Once approved, the proposal will help reduce any potential tax revenue loss because of the implementation of Pillar Two in various jurisdictions across the globe. The proposed tax will assist in generating additional non-oil revenue, inline with Kuwait vision 2035.

The tax exemption based on a generous KD 1.5 million annual turnover threshold will come as a much-welcomed relief for SMEs. Kuwaiti entities and taxable natural persons exceeding the above threshold will be hit the hardest. Foreign entities operating in the neutral zones of Kuwait-Saudi Arabia maybe seen as the winners in this tax proposal (currently taxed at rates of 20% - 57%).

This proposed tax reform will bring a significant shift to Kuwait tax landscape and will put local and foreign companies on a level playing field. Entities doing business in or with Kuwait should carry out an assessment to understand the impact. Please feel free to contact us should you have any questions or require any assistance.

Please note that the above comments are based on the draft law, and the provisions of the final law could be different. Once the final version of the law is issued, our team will issue a further update.

FOR MORE INFORMATION:

RAMI AL-HADHRAMI

Partner - Tax & Regulatory Services
Phone : +965 2295 7592
Email : rami.alhadhrami@bdo.com.kw

FAISAL AL-SAQER

Director – Tax & Regulatory Services
Phone : +965 2295 7593
Email : Faisal.alsaqer@bdo.com.kw

JINO GEORGE

Senior Manager - Tax & Regulatory Services
Phone : +965 2295 7590
Email : jino.george@bdo.com.kw

KETAN PURI

Senior Manager - Tax & Regulatory Services
Phone : +965 2295 7594
Email : ketan.puri@bdo.com.kw

www.bdo.com.kw