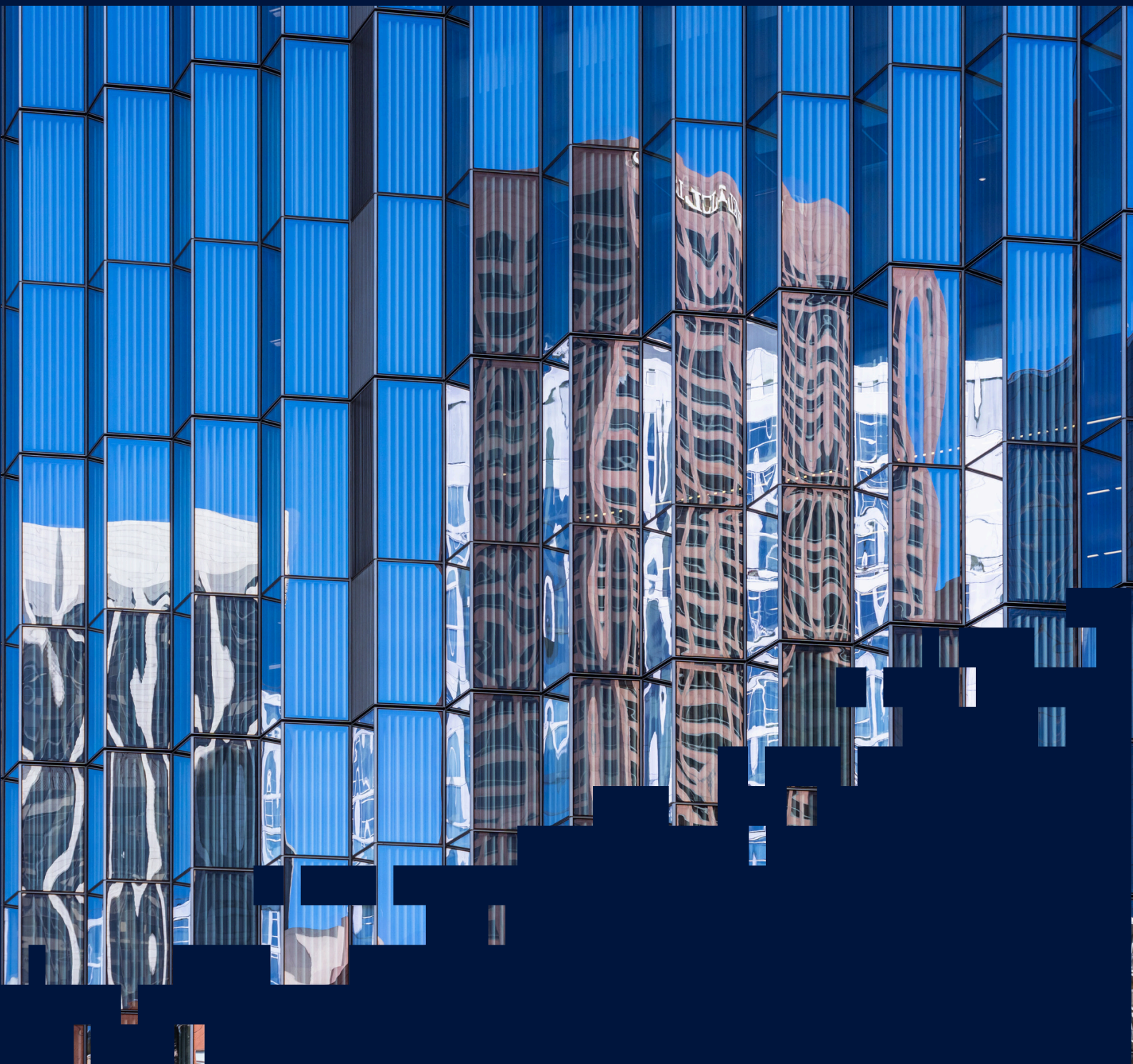


TAX ALERT

RSM Kuwait's Tax Alert on Kuwait's Tax Law on Multinational Enterprise Groups (Decree No. 157 of 2024)





Historical Context

In October 2021 almost 140 countries agreed to the Organisation for Economic Cooperation and Development's (OECD's) plan to implement a 15% Global Minimum Tax (GMT) on large multinational enterprises via a Two Pillar Solution.

These countries constituted the Inclusive Framework (IF). Kuwait joined the IF on November 15, 2023, and aimed to implement Pillar Two from January 1, 2025.

On December 30, 2024, Kuwait enacted the Tax Law on Multinational Enterprise Groups (Decree No. 157 of 2024 and also referred to as the "Law").

This is our Tax Alert on the Law in which we briefly discuss some of the more important provisions of the Law.

Tax Alert



Please note that the Executive Regulations to the Law have not been issued yet. These Regulations will provide further details relating to most of the questions below.

1. What is the effective date of the law?

The law comes into effect for tax periods beginning on or after **January 1, 2025**

2. To whom does the law apply?

The Law contains numerous definitions and exceptions but it mainly applies to Multinational Enterprise Groups (MNE Groups). These are defined as Groups:

- (a)** Which are located in or operate in **more than one country** including Kuwait and
- (b)** Which have a consolidated revenue at the Ultimate Parent Entity (UPE) level of Euro 750 Million (approximately KD 240 million at current exchange rates) or more in at least two of the four immediately preceding tax periods.

A Group includes

- (a)** All entities the assets, liabilities, income, expenses and cash flows of which are included in the consolidated financial statements of the UPE (or excluded from these financial statements only on the grounds of size, materiality or that the entity is held for sale), and
- (b)** Permanent Establishments (PEs also referred to as "branches") of an entity, located in a jurisdiction other than the jurisdiction of the entity.

3. How does the law define a PE?

The definition of a PE follows the usual definition contained in the OECD Model Convention. In addition, a service PE is also included, if activities within Kuwait continue for a period of more than 6 months during any 12-month period. The presence of an Agent in Kuwait may also create a PE, provided that the conditions which shall be specified in the Executive Regulations are met.

Furthermore, the Law provides that where a non-resident entity conducts operations in Kuwait and the activities do not fall within the above definition of a PE, those operations shall be deemed to constitute a PE, if the income generated from them is not taxed in the country of the head office.

4. Which entities are taxable?

Any entity or PE of an MNE Group which is located in Kuwait, and any stateless entity which conducts a business activity in Kuwait is taxable under the Law. A joint venture and its subsidiaries located in Kuwait are also taxable under the Law, if certain conditions are met.



5. Which entities are excluded from taxation?

The following Kuwaiti and non-Kuwaiti entities are excluded from taxation under the Law:



(a) Government entities



(b) Non-profit organisations



(c) International organisations



(d) Pension funds



(e) An Investment fund that is a UPE



(f) A Real estate investment vehicle that is a UPE



(g) Any entity

(except a pension services entity) where at least 95% (or 85%) of the value of the entity is owned by any of the entities in (a) to (f) above and certain other conditions are met.

6. When will the executive regulations be issued?

The Law states that the Executive Regulations shall be issued by a ministerial resolution within **six months** of the Law's publication in the official gazette. The Executive Regulations shall contain the detailed rules to interpret and implement the Law.

7. Are there any safe harbours?

Yes, the Law provides for several Safe Harbours which would result in no additional tax being payable by the taxpayer. These include the following:

(a) Where the average aggregate revenues and net incomes of all the taxable entities of the group is below certain specified amounts

(b) A Simplified Computation Safe Harbour which shall be described further in the Executive Regulations

(c) A Transitional Country-by-Country Reporting (CbCR) Safe Harbour, and

(d) An Initial Phase of International Activity Safe Harbour



8. Which tax and other laws shall cease to apply to taxable entities?

The Law states that the following existing laws shall cease to apply to taxable entities from 1 January 2025:

- Corporate Income Tax Decree No. 3 of 1955
- Corporate Income Tax in the Neutral Zone Decree No. 23 of 1961
- National Labour Support Tax Decree No. 19 of 2000 (Articles 12(1) and 14(2)), and
- Zakat Decree No. 46 of 2006

The Law also provides a Substance Based Income Exclusion (SBIE) equal to the sum of:

- (a) A maximum of 9.6% and a minimum of 5% of the taxpayer's payroll costs, and
- (b) A maximum of 7.6% and a minimum of 5% of the average carrying value of eligible tangible assets at the beginning and end of the taxable period.

The taxpayer's taxable income shall be the aggregate of the net income or loss of all the taxable entities of the group, less the SBIE.

No additional top-up tax shall be payable by the taxpayer where either:

- (a) The taxpayer's ETR is equal to or greater than 15% or
- (b) The SBIE is equal to or greater than the net income or loss of all the taxable entities of the group

In all other cases, the additional top-up tax shall equal

$(15\% - \text{the taxpayer's ETR}) \times (\text{Taxpayer's Taxable Income as computed above})$

9. What tax does the law seek to impose on taxable entities?

Where the actual effective tax rate (ETR) of a taxable entity is less than 15%, the Law imposes a top-up tax on the taxable entity equal to the difference between an ETR of 15% and the actual ETR.

The ETR of a taxable entity shall be computed as:

$$\frac{\text{Total Adjusted Covered Taxes of the Taxable Entity}}{\text{Net Total Income or Loss of the Taxable Entity}}$$

The above ETR should not include items relating to investment entities, minority-owned constituent entities and stateless entities.

The Net Total Income or Loss of the Taxable Entity shall be based on the entity's financial statements, but shall exclude:

- (a) Income from dividends or interest
- (b) Equity gains or losses
- (c) Gains from the waiver of the taxable entity's debts, and
- (d) Income derived from international maritime transportation and shipping activities.

10. Are there any transfer-pricing regulations under the law?

Yes, the law requires that transactions between related parties should be undertaken at an arm's length.

11. What immediate steps are taxpayers required to take now?

The Law requires a taxpayer to register within 120 days of becoming subject to the Law and prescribes a penalty of **KD 3,000** if the taxpayer fails to register within this deadline.

However, the Law also provides that MNE groups which are subject to the Law have a grace period until **September 30, 2025**, to register with the tax administration.

We expect that the Executive Regulations shall contain further details relating to Registration and once taxpayers have determined that they are subject to the Law, the immediate first step should be to register with the tax administration before **September 30, 2025**.

12. How long is the taxable period?

The Taxable Period shall be a **12-month** period based on the accounting year of the UPE.

13. When is the first tax declaration due?

The tax declaration needs to be accompanied by the taxpayer's audited financial statements and should be filed within 15 months from the end of the tax period. Thus, for example, if the first tax period ends on **December 31, 2025**, the first tax declaration should be filed on or before **March 31, 2027**.

14. Can taxpayers file an amended tax declaration?

Where the taxpayer detects a material omission or accounting misstatement in the original tax declaration, it may file an amended tax declaration within **5 years** from the due date of the original tax declaration, provided no tax assessment has been issued.

15. When will the tax need to be paid?

The tax due shall be paid within the legally prescribed deadline for filing the tax declaration.

16. For how long do books and records need to be maintained?

The taxpayer is required to maintain the books, records, documents and information required to prepare its financial statements and determine its taxable income for a period of **10 years from the end of the taxable period to which they relate**.



17. How will tax declarations be inspected?

Tax declarations shall be inspected in accordance with rules and instructions issued by the tax administration. These rules may include a sample-based inspection.

18. What is the procedure for assessments, objections and appeals?

The time periods within which taxpayers may object or appeal against tax assessments and those within which the tax administration should respond are summarised below:

	Taxpayer must file within	Tax administration should respond within	No response by the tax administration within the stipulated period results in the
Objection – filed with Tax Administration	60 days from the date of the assessment.	90 days from the date of submission of the Objection.	Implied rejection of the Objection.
Appeal – filed with Tax Appeals Committee (TAC)	60 days from the date of the response/ implied rejection of the Objection.	90 days from the date of submission of the Appeal, extendable by similar additional periods, not exceeding 365 days.	Implied rejection of the Appeal.

The taxpayer or the tax administration may challenge the decision of the TAC before the competent court, within 60 days from the date of the TAC's decision or the expiry of the 365-day period referred to above without a decision being made.

The tax liability becomes final in several cases including where the assessed tax equals the amount stated in the tax declaration or the taxpayer does not object to an assessment or file an appeal or challenge the TAC's decision within the respective sixty-day periods referred to above.

19. What are some of the penalties prescribed in the law?

The delayed submission of each tax return shall attract penalties based on a percentage of the final tax liability as shown below, subject to a minimum penalty of **KD 1,000**:

% of Final Tax Liability	Delay	
	More Than	Equal To or Less Than
5%		30 days
10%	30 days	90 days
15%	90 days	365 days
20%	365 days	But tax return submitted before the issuance of the tax assessment.

However, where the tax return is not submitted before the issuance of the tax assessment, the penalty shall be **25%** of the final tax liability, subject to a minimum penalty of **KD 5,000**.

In addition to the above, the delayed payment of tax shall attract a late-payment penalty of **1% per 30 days** (or part thereof) of the unpaid tax, calculated from the day following the date on which the return should have been submitted.

Moreover, where an incorrect return is submitted and the final tax liability exceeds the declared tax liability by 10% of the declared tax liability, the penalty shall be 25% of the difference. However, where this is voluntarily corrected, this penalty shall be reduced to 10% of the difference.

Various acts including failure to register within the specified deadlines (as mentioned earlier) or to provide any information to the tax administration or failure to maintain the books and records for the 10-year period described above shall result in a penalty of KD 3,000.

Certain specified acts of tax fraud and evasion are punishable by imprisonment for a period of no more than three years and/ or a fine not exceeding three times the tax amount evaded. Where these offenses are repeated within a five-year period, the punishment is increased to imprisonment for a period of no more than five years and/ or a fine not exceeding five times the tax amount evaded.

20. What is the Statute of Limitation?

The Statute of Limitation is ten years from:

- (a) the date on which the tax declaration was filed, or
- (b) if the tax declaration was not filed, the date on which it should have been filed, or
- (c) the date on which the tax administration became aware of relevant information or undeclared activities.

However, many events including the notification of the assessment or the filing of an Objection or Appeal shall have the effect of ending the Statute of Limitation.

Moreover, the taxpayer's right to claim a refund of taxes paid shall cease five years after the date on which the right was initiated.



How We Can Assist

The Executive Regulations are expected to be published by June 30, 2025, and taxpayers are required to register by September 30, 2025, at the latest. The requirements of the Law and Regulations shall be complex and will require taxpayers to plan and prepare on many fronts and in as robust and timely a manner as possible.

At RSM Kuwait we are uniquely positioned to assist our clients in dealing with these requirements. Please contact us in the manner described below.




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