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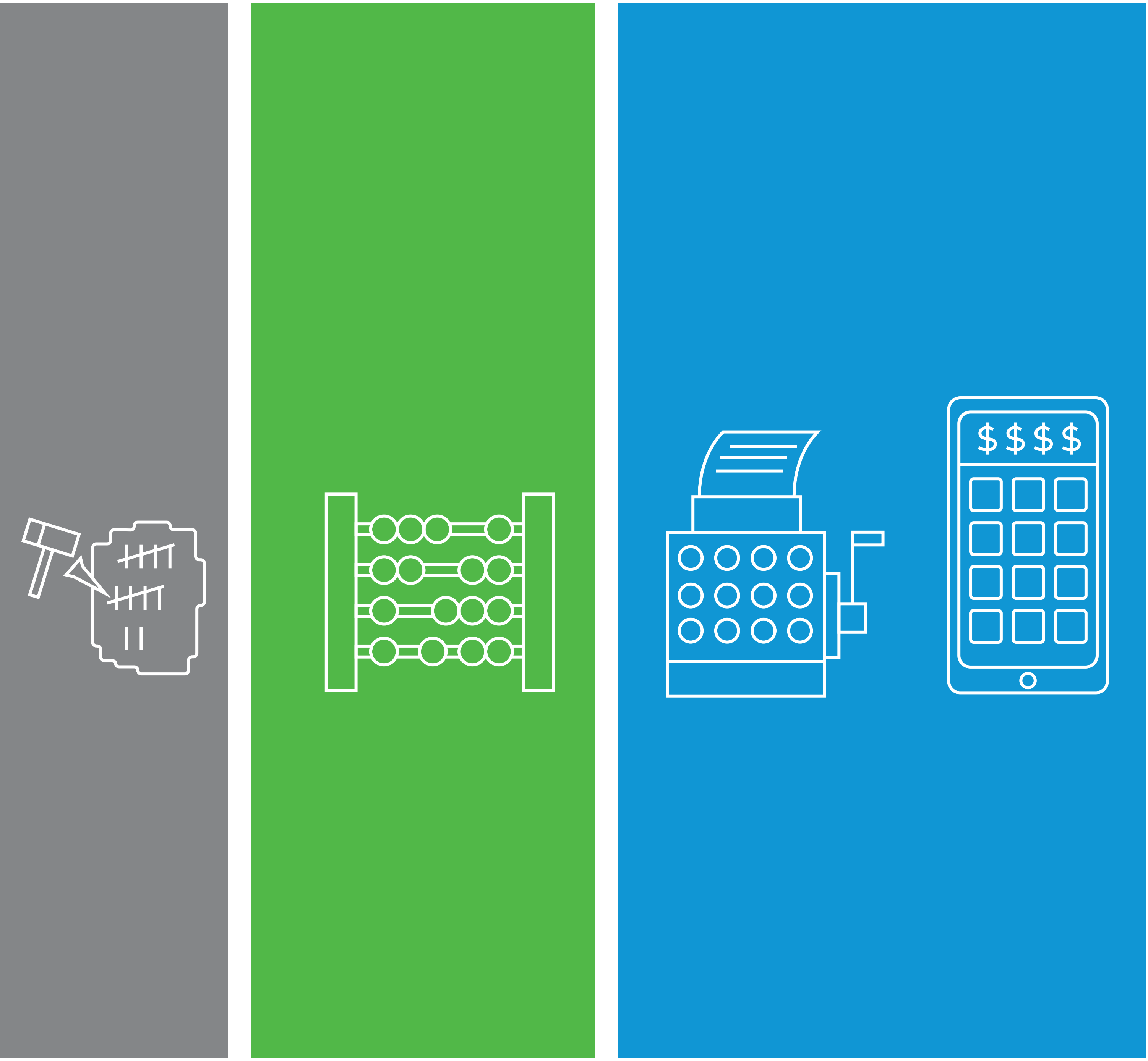
# KUWAIT TAX FLASH

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## Income Tax Retentions

- Under Article 37 of Law no. 2 of 2008, all ministries, authorities, public institutions, companies and private entities or natural persons that are contracted with any foreign corporate body, whether through contracts, agreements or any transactions, shall retain 5% of the contract, agreement or transaction value or from each payment to the corporate body.

  These retentions shall not be released unless tax clearance letter or no objection letter received from the Tax Department to release these tax retentions.

- Amounts withheld with these bodies shall be considered in trust for the interest of the State Public Treasury until settlement of tax due.

  The payments to subcontractors will be disallowed as a cost in case 5% retentions are not withheld. Additionally, under Article 39 of Law no. 2 of 2008, the Tax Department has the right to request through a letter to transfer the 5% retained by all the ministries, Government and private companies in connection with settlement of taxes due from foreign entities.

### Example:

Recently one of our clients did not withhold 5% on couple of payments to their subcontractor. However, our client has withheld 5% on the total contract value for the next year. The tax inspector has issued a tax assessment and disallowed those payments even though our client has followed the tax law by withholding 5% of the total contract value. Upon filing an objection and appeal, the appeal committee agreed with the tax inspector and disallowed the payments to subcontractors that were made without 5% tax retention.

### Conclusion:

It is advisable that all taxpayers to withhold 5% on all payments to their subcontractors (not just from the final payment as the practice used to be prior to 2008).

## National Labor Support Tax Law (NLST)

National labor support tax law (NLST) was introduced to support and encourage Kuwaiti Nationals to work in non Governmental institutions (Private Sector). This law was enacted through Law No. 19 of 2000 which came into effect from May 21, 2001 and amended through Ministerial Resolution No. 24 of 2006. NLST law is applicable to all companies listed in the Kuwait Stock Exchange, except GCC companies who do not have operations inside the State of Kuwait.

- Companies which have been listed in Kuwait Stock Exchange during the year, must file and pay the due NLST only form the date of listing.
- Companies which have been delisted or have requested to be delisted from Kuwait Stock Exchange shall file tax declarations and settle the due NLST until the date of delisting as per the provisions of this law.
- These companies shall resume submitting tax declarations and settle the due tax when listed again in Kuwait Stock Exchange.

### Example:

A Kuwaiti shareholding company has been listed in July 7th 2007, has filed the tax declaration and paid the due taxes starting from the listing date. Ministry of Finance has accepted the company's declaration filed only from the listing date.

### Conclusion:

Company listed during the year can file and pay taxes only from listing date not on the full year. Also if the company is delisted, then it shall be liable to file and pay NLST till the date of delisting on a pro rata basis.

## ZAKAT Law

Zakat law was introduced to encourage Kuwaiti closed and listed shareholding companies to pay Zakat duty and thereby make a contribution to the state budget. This law was enacted through Law No. 46 of 2006 which came into effect from December 10, 2007. Zakat law is applicable to all Kuwaiti closed and listed shareholding companies excluding companies owned by the Government and foreign companies that are subject to the Decree No. 3 of 1955.

- Kuwaiti closed and listed shareholding companies who are partially owned by the Government are not exempt from Zakat Law, and will be fully liable.
- If the Kuwaiti closed and listed shareholding company is fully owned by the Government or incorporated by specific law, then it will be fully exempted from Zakat Law.
- Kuwaiti closed and listed shareholding companies who are partially owned by foreign companies that are subject to the Decree No. 3 of 1955 are exempted to the extent of their ownership.

- Gulf companies who operate in the State of Kuwait are requested to file Zakat declaration and pay the due Zakat to the extent of their operations inside Kuwait only.

**Example:**

A Kuwaiti shareholding company is 51% owned by a Governmental authority. At the time of filing and paying the due Zakat, the company claimed exemption for the Government ownership of 51%.The Ministry of Finance has amended the company's tax declaration and imposed tax on the whole company.

**Conclusion:**

Companies which are fully owned by the Government or incorporated by specific laws are exempt from filing and paying Zakat. IF such company is partially owned by other investors, then the company, as a whole, becomes liable to file and pay Zakat.

## Foreign Account Tax Compliance Act (FATCA)

- FATCA is the U.S Foreign Account Tax Compliance Act that has been enacted by the U.S Government in 2010, which calls for all Foreign Financial Institutions (FFIs) worldwide to enter into an agreement with the U.S tax authority (The Internal Revenue Service "IRS") to identify, document and report information about financial accounts held by U.S taxpayers (citizens or residents), or by foreign entities in which U.S taxpayers hold a substantial ownership interest.

- This act aims to address the perceived tax evasion by U.S tax payers through the use of accounts maintained with Foreign Financial institutions outside U.S.

- The U.S Government represented by Department Of Treasury entered into agreements with governments around the world (Inter-Governmental Agreement "IGA") including State of Kuwait represented by Ministry of Finance, which entrusted the regulatory authorities to monitor the compliance of financial institutions with the FATCA Law and requirements.
- The regulatory authorities in the State of Kuwait represented by the Central Bank of Kuwait and the Capital Market Authorities, issued instructions to their regulated entities to comply with the requirements of the agreements signed with the U.S Government regarding FATCA.

- Ministry of Finance issued Ministerial Order No.(48) of 2015 to implement the initial guidelines instructions to implement FATCA Law requirements in State of Kuwait, in which :

1. All Financial institutions must comply and report as per the requirements of FATCA and provide the due care while reviewing and indentifying the U.S accounts , in which the information pertaining to those accounts will be transferred to Kuwait Ministry of Finance which in return will transfer the required information to the Internal Revenue Service "IRS".

2. For the purpose of complying with the agreement requirements, all financial institutions subject to the scope of implementing the FATCA Law according to the FATCA Agreement , shall comply with the following procedures:

   a) Classifying of the financial institution according to the FATCA Agreement.
   b) Registering the financial institutions in the website of the IRS and obtain a Global Intermediary Identification Number "GIIN".
   c) Determine the clients' accounts that meet the definition of the American account subject to notification requirements.
   d) Take the necessary measures towards concerned clients according to what is specified in the Agreement for current and new clients.
   e) Adopt notification procedures as specified in the Agreement in XML format "Extensible Markup Language" according to report scheme requirements issued by FATCA.
   f) The Financial Institutions subject to the FATCA Law must appoint an audit firm certified by the Coordination Committee to conclude on the compliance with the government agreement on "FATCA" and to submit its annual certificate on the validity of the procedures and mechanisms used by the Financial Institution in this regard.
   g) Take all necessary steps, policies and procedures to implement the Ministry of Finance reporting and compliance mechanism.

3. Financial Institutions subject to the FATCA shall assign a responsible official (RO) to ensure the implementation of all FATCA requirements by the financial institution, and specify another employee to carry out the financial institution's compliance responsibility in implementing FATCA requirements during the absence of the RO.

More detailed instructions will be provided soon by Ministry of Finance with more guidelines and specific details on how to communicate data electronically.

This tax flash is a periodical publication that has been prepared by RSM Albazie & Co. Kuwait. The information in this publication has been obtained from current laws, executive regulations, current practices and their amendments issued and followed by tax department.

While utmost care has been taken in compiling this publication, its content is not intended to be a substitute for professional advice or to serve as a basis for formulating business decisions.

Each issue of this flash will include certain high lights from the income tax law, National labor support tax law (NLST), Zakat law and other related interesting topics.

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