Supplementary Tax on the Multinational Group of Entities (DMTT)

(Decree No. 157 of 2024)

State of Kuwait

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Foreword

- In November 2023, the State of Kuwait joined the Comprehensive Framework of the Organization for Economic Cooperation and Development (OECD), as it approved its two-pillar reform. To date, more than 140 countries have signed, including Gulf Cooperation Council, on this international tax reform.

- As part of this two-pillar reform, the Organization for Economic Co-operation and Development (OECD) launched a tax called Global Minimum Tax (GMCT) to ensure payment by major Multinational Entities (MNEs) for a tax of not less than 15% on taxable income in each country in which it operates.

- To demonstrate the State of Kuwait's international commitment to global cooperation and its keenness to promote fair and equal opportunities in the field of international taxation, the Kuwaiti Ministry of Finance, Kuwait has introduced the Supplementary Domestic Minimum Top-up Tax (DMTT), which is in line with the guidelines of the Organization for Economic Cooperation and Development (OECD).

- The new law will come into effect from the first of January 2025 and will only apply to multinational entities (entities that operate in more than one country or jurisdiction) operating in Kuwait and whose annual global revenues exceed €750 million. The implementation of this initiative aims to ensure that multinational entities pay the minimum tax of 15% on taxable income generated in Kuwait, which could have been collected by other jurisdictions, thus avoiding revenue leakage.

- The new tax will replace all existing taxes (national labor support tax, zakat, split neutral zone tax, foreign corporate income tax) on eligible multinational entities (MNEs).

- This publication highlights and outline the significant aspects of Kuwait issued Decree No. 157 of 2024 issuing the Tax Law on the Multinational Entities Group (“the Law”) which implements DMTT that is aligned with OECD Pillar Two Global Anti-Base Erosion Model Rules (“the GloBE Rules”).

- The executive regulation of this Law is expected to be issued by a decision of the Minister within six months from the first of January 2025. It is expected that the upcoming executive regulation shall detail out and further specify rules, controls and terms and conditions, necessary for implementation of various provisions of this Law, including the tax registration and tax filing requirements and its mechanisms.

- The new tax regulations on MNEs’ are complex, which will involve multifaceted calculations, recognizing potential gaps, updating existing systems, demand for specialized staff and enhancing existing compliance processes. In-scope MNEs should prepare for increased compliance, and it would require extensive coordination from various teams within the MNE’s comprising the international and local tax, legal, compliance and finance teams of MNE’s.

Highlights on the Significant Aspects and Key Provisions of Law No. 157 of 2024 – Tax Law on the Multinational Entities Group (MNE's) (DMTT)

Applicability

Effective Date:

Tax periods beginning on or after 1 January 2025.

Non-Applicability of Existing Laws for MNEs:

The following will not apply to MNEs:

1. Income Tax Decree No. 3 of 1955, as amended.
2. Law No 23 of 1961 on Partitioned Neutral Zone of State of Kuwait and Kingdom of Saudi Arabia.
3. Law No 19 of 2000 on National Labor Support: Paragraph (1) of Article (12) and Paragraph (2) of Article (14).
4. Law No 46 of 2006 on Zakat.

Initial Registration for MNEs with Tax Administration:

Within nine months from effective date, i.e. 30 September 2025.

Executive Regulations:

Executive regulations for this Law will be issued within six months from the date of publication of the Law in Official Gazette, i.e. 30 June 2025.

Tax Period:

12 months according to the accounting year of ultimate parent company and as notified to tax administration. Otherwise, calendar year, if not notified.

In-Scope and Excluded Entities

Entities Subject to Tax:

All of the following shall be subject to taxation:

1. Any entity in the State of Kuwait that is a member of the multinational entity group, whether it is an ultimate parent entity or a participating entity.
2. Any joint venture or its affiliated entity in the State of Kuwait, if the joint venture has a share owned by (50%) or more by multinational entity group or if the total revenues of the joint venture and its affiliated entities have reached or exceeded the revenue threshold.
3. An entity not affiliated with any country or jurisdiction that carries out an activity in the country, i.e. stateless entities.

Excluded Entities:

The following entities, whether Kuwaiti or non-Kuwaiti, are excluded from taxation:

1. Government entities.
2. Non-profit organizations.
3. International organizations.
4. Retirement (pension) funds.
5. Investment fund that is an ultimate parent entity.
6. Real estate investment vehicle that is an ultimate parent entity.
7. Any entity, except for the retirement services entity, directly owned by at least (95%) by one or more of the entities mentioned above in point (1) to (6) and operates exclusively or semi-exclusively to hold assets or invest funds for the benefit of any of these entities.
8. Any entity, except the retirement services entity, directly owned by at least (85%) by one or more of the entities mentioned above in point (1) to (6), provided that most of its income is from dividends or gains or losses of ownership rights, which are excluded from the calculation of net income or loss.

However, the revenue of the Excluded Entities is to be included in the revenue threshold test of the MNEs

Tax Computation

Tax Rate (TR):

Tax shall be imposed on the taxpayer at a rate equal to the difference between the Minimum Tax (MT) i.e. 15% and the Effective Tax Rate (ETR) if it is less than 15%.

i.e. TR *[Top-up Tax Rate]* = MT minus ETR

Effective Tax Rate (ETR):

Effective tax rate is calculated on the basis of the total modified included taxes for the taxable entities within the group divided by the total of their net income or loss.

In computing ETR, each of the investment entities, participating entities owned by the minority and entities not affiliated with any country of jurisdiction are excluded.

i.e. ETR = Total Modified Included Tax *[Adjusted Covered Tax]* for all taxable entities divide by their Total Net Income or Loss *[GloBE Incomes or Losses]*
(The executive regulations will specify controls and conditions for how to calculate ETR)

Entity Income (EI) *[Financial Accounting Net Income]*:

The income of the taxable entity shall be determined from the financial statements on the basis of all revenues and expenses, including transactions with the other group members.

i.e. EI *[Financial Accounting Net Income]* = Income or Loss of an Entity as per financial statement, before making consolidation adjustments to eliminate intra-group transactions.
(The executive regulations will specify controls and rules in this regard)

Net Income or Loss of an Entity (NI/LE) *[GloBE Income or Loss]*:

The net income or loss of the taxable entity for the tax period shall be based on its income from its financial statements after making following all adjustments:

- Excluding income resulting from distributions of dividends on shares or shares.
- Excluding gains or losses on equity, including capital gains or losses on shares or shares.
- Excluding revenue resulting from the assignment of debts of the taxable entity.
- Excluding income resulting from international maritime transport and shipping activity

i.e. NI/LE *[GloBE Income or Loss]* = EI minus certain exclusions mainly dividends, equity and capital gains or losses, revenue of debt releases and international transportation and shipping income.
(The executive regulations will specify rules, ratios, conditions and controls in this regard)

Income Exclusion on the Basis of the Essence of the Activity (IEBEA) *[Substance Base Income Exclusion]*:

The income excluded on the basis of the essence of the activity of the taxpayer for the tax period shall be according to the sum of the following:

1. Total payroll costs incurred with a maximum of (9.6%) and a minimum of (5%) of payroll costs.

2. The average value of tangible assets at the beginning and end of the tax period, with a maximum of (7.6%) and a minimum of (5%) of the book value of those assets.

IEBEA *[Substance Base Income Exclusion]* = 9.6% - 5% of total payroll cost, and 7.6%-5% of the average book value of the tangible assets
(The executive regulations will specify controls and conditions in this regard).

Taxable Income (TI) *[Excess Profit]*:

The taxpayer's taxable income shall be calculated on the basis of the total net income or loss of the taxable entities within the group, minus the income excluded on the basis of the essence of the taxpayer's activity.

i.e. TI *[Excess Profit]* = NI/LE of taxable entities *[GloBE Incomes or Losses]* minus IEBEA *[Substance Base Income Exclusion]* i.e. 9.6% - 5% of total payroll cost, and 7.6%-5% of the average book value of the tangible assets.

Tax Due Calculation *[DMTT]*:

The tax on the taxpayer shall be calculated by multiplying the tax rate by the taxable income.

i.e. Tax Due *[DMTT]* = Tax Rate (TR) x Taxable Income (TI)

The tax shall be zero in either of the following two cases:
1. If the income excluded on the basis of the essence of the activity (IEBEA) is equal to or exceeds the total net income of the taxable entities in the group (NI/LE).
2. If the effective tax rate (ETR) is equal to or exceeds Minimum Tax (MT) (15%).

Then, no tax exemptions shall apply to this tax.
(The executive regulations will specify controls and conditions in this regard).

Steps to Compute Tax *[DMTT]*:

Briefly, following Steps should be undertaken for Tax Computation (DMTT) *(which is similar to the OECD Pillar Two Global Anti-Base Erosion Model Rules; BEPS 2.0 GloBE Rules)***:**

Step 1. Determine the **Entity Income**, *i.e. Financial Accounting Net Income.*

Step 2. Determine the **Net Income or Loss of an Entity**, *i.e. GloBE Income or Loss after adjusting certain Exclusion.*

Step 3. Calculate the **Income Exclusion on the Basis of the Essence of the Activity**, *i.e. Substance Base Income Exclusion.*

Step 4. Determine **Taxable Income** for taxable entities, *i.e. Excess Profit is after reducing Substance Base Income Exclusion from GloBE Income or Loss for taxable entities.*

Step 5. Calculate **Effective Tax Rate** for taxable entities, *i.e. Total Adjusted Covered Tax divided by Total GloBE Income or Loss for taxable entities.*

Step 6. Calculate the **Tax Rate**, *i.e. Top Up Tax Rate is after reducing Effective Tax Rate from Minimum Tax.*

Step 7. Calculate the **Tax Due**, *i.e. DMTT after multiplying the Top Up Tax Rate with Excess Profit.*

Related Parties Transactions *[Transfer Pricing]*:

Related party transactions need to be undertaken based on arm's length principles.
(The executive regulations will specify conditions and transfer pricing methods and rules for calculating the arm's length price in this regard)

Exchange Rate:

Conversion from foreign currencies to Kuwaiti Dinar is to be in line with the rates (the average monthly or annual exchange rate) published by the Central Bank of Kuwait.
(The executive regulations will specify conditions in this regard)

Tax Exemption

Minimum Revenue and Income:

The tax due on the taxpayer shall be zero for any tax period, if the following two conditions are met:
1. Average total revenue of the taxable entities in the group and any adjustments thereto is less than 10 million euros or its equivalent.
2. Average total net income of the taxable entities in the group is less than one million euros or its equivalent.

The average is calculated for the aforementioned tax period and the two preceding periods.

The provisions of this article do not apply to the investment entity and the entity that is not affiliated with any country or jurisdiction.

Safe Harbor

Simplified Calculation Method – Safe Harbor:

The taxpayer may follow the simplified calculation method.
(The executive regulations will specify conditions in this regard)

Transition to Exchange Reports between Countries – Safe Harbor:

[Transitional CbCR] The tax due by the taxpayer shall be zero for any tax period beginning on or before December 31, 2026, excluding the tax period ending after June 30, 2028, in any of the following cases:
1. *[De Minimis Test]*: If the following two conditions are met:
   a. Total revenue of the taxable entities in the group is less than 10 million euros or its equivalent.
   b. Total net income of the taxable entities in the group is less than one million euros or its equivalent.

   The total is calculated for the aforementioned tax period, based on the exchange of reports between the State of Kuwait and other States or jurisdictions.
2. *[Simplified ETR Test]*: If the taxpayer's effective tax rate for the aforementioned tax period is equal to or exceeds (16%) for tax periods beginning in 2025 and (17%) for tax periods beginning in 2026, based on the exchange of reports between the State and other States or jurisdictions.
3. *[Routine Profit Test]*: That the taxpayer's profit or loss for the aforementioned tax period is equal to or less than the amount of income excluded on the basis of the essence of the activity as stated in the Law, based on the exchange of reports between the State and other States or jurisdictions.

   The provisions of this article do not apply, if an entity that is not affiliated with any State or jurisdiction or groups of multinational entities owned by several entities is not included in the exchange report between the State of Kuwait and other States or jurisdictions or if the mutual report between the State of Kuwait and other States or jurisdictions is not qualified as specified by the Executive Regulations.

(The executive regulations will specify conditions in this regard)

Initial International Activity:

The taxpayer shall have a zero value during the initial phase of international activity if taxpayer is part of a group of multinational entities that meet the following conditions:

- MNEs' has entities located in no more than six States or jurisdictions including the State of Kuwait.
- The total net book value does not exceed 50 million euros for the tangible assets of all entities located in all States or jurisdictions, other than the State or jurisdiction in which the MNE's has the highest value of tangible assets when the rules of the Second Pillar are applied to that group for the first time.
- None of the ownership shares in the entities located in the State of Kuwait are held by the parent entity that applies the Income Recognition Rules.

The above shall not apply to any tax period that begins after the expiry of five tax periods from the first day of the first tax period in which the multinational entity group was subject to the rules of Pillar Two. i.e. Tax relief for up to five years is available to MNEs'

(The executive regulations will specify rules, provisions and conditions in this regard)

Taxpayer’s Obligations

Registration and Deregistration:

- Tax registration must be done within 120 days from the date of becoming taxable.
- Notify the tax administration within 120 days from the date of change of any activity or registration data.
- Request for deregister within 120 days from the date of complete ceasing of activity.

(The executive regulations will specify mechanism of registration and deregistration, method of notification in this regard)

Filing of Tax Declarations and its Due Date:

Tax declarations to filed along with the financial statements audited by audit firm approved by MOF within 15 months from the end of tax period.

(The executive regulations will specify procedures, documents and controls related to the tax declarations)

Amendment to Tax Declaration Filed:

Amended tax declaration can be filed on discovering of oversight or omission, material error in computing or accounting mistake, within five years from the date of end of deadline of submitting the original tax declaration, provided no tax assessment order is issued.

Payment and Refund of Tax:

Taxes are to be paid along with and within the legal deadline of filing the tax declaration. Overpaid or excess paid taxes are eligible for a refund after settling any outstanding amounts owned.

Retention of Records:

Books, records, documents and information for preparing the financial statements and determining the taxable income to be retained for 10 years from the date of the end of the tax period to which it relates. Any violation in this regard gives the tax administration the right to assess the tax based on any data available with them.

Examination and Tax Assessment

Tax Examination:

Tax declarations shall be examined in accordance with the rules and executive regulations and may be conducted through a sample.

Tax Assessment:

Tax declaration filed is considered as tax assessment unless tax administration amends it or determines it on an estimated basis. Tax administration has the right to reassess and issue the amended assessment order on discovering of error in computing the previous assessment or omission of any income within the statute of limitation.
(The executive regulations will specify rules and procedures in this regard).

Tax Avoidance:

Any agreement or deal shall not be taken into account, if the objective of it is to reduce, postpone or exempt the tax.
(The executive regulations will specify conditions and controls in this regard).

Objection to Tax Assessment:

Objection can be filed within 60 days from the date of notification of assessment order along with reasons of objections and supporting documents. The tax administration must decide and respond to it within 90 days of the objection filed. Implicit rejection is considered if there is no response from tax administration within 90 days.

Appeal on Objection:

Appeal can be filed to Tax Grievance Committee (TGC) within 60 days from the date of explicit or implicit rejection of objection. The Tax Grievance Committee must decide on grievance within 90 days on appeal filed and this period may be extended upto 365 days based on request of taxpayer or tax administration.

Judiciary - Competent Court:

Either taxpayer or tax administration can file an appeal to Competent Court within 60 days from the date of notification of decision of Tax Grievance Committee or from the expiry of period for considering the grievance without deciding on it.

Final Tax:

The tax liability becomes final in various cases, viz., 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 TGC’s decision as stated above, an agreement is reached with the taxpayer regarding tax debts in accordance with the terms and conditions stated in executive regulations.

Seizure of assets:

The tax administration can request the Enforcement Department at the Competent Court to secure a taxpayer's movable assets if the tax liability is at risk. This attachment can be lifted if the taxpayer provides sufficient guarantees or if the tax administration requests it to be lifted.

Fines and Penalties

Delay in Filing of Tax Declaration:

Fine of atleast KD 1,000 (minimum penalty) or

- 5% of tax, if delay in tax declaration filing is = < 30 days.
- 10% of tax, if delay in tax declaration filing is > 30 days and = < 90 days.
- 15% of tax, if delay in tax declaration filing is > 90 days and = < 365 days.
- 20% of tax, if delay in tax declaration filing is > 365 days and before the date of assessment order.

Non-Filing of Tax Declaration:

Fine of atleast KD 5,000 (minimum penalty) or 25% of tax as per assessment order.

Delay in Payment of Tax:

Fine of 1% of tax due for every 30 days or part thereof from legal deadlines.

Filing an Incorrect Tax Declaration:

If the tax assessed exceeds 10% of the declared tax, a 25% fine on the difference applies. However, the fine is reduced to 10% of the difference for self-corrections and before being identified by tax administration.

Administrative Violation:

Fine of KD 3,000 in any of the following:

- Failure to register within deadline.
- Failure to notify the tax administration of any changes in the registration or activity data within the deadline.
- Failure to submit any documents or information requested by the tax administration within a maximum period of 30 days from the date of its request.
- Preventing or obstructing the employees of the tax administration from performing their duties.
- Failure to keep and retain the records and accounting books for 10 years from the date of the end of the tax period.

Disclosure of Confidentiality:

Fine of KD 5,000 in case who disclose any information related to taxpayers, in circumstances other than those permitted by law.

Tax Evasion:

Individuals involved in tax evasion will face punishment of imprisonment for = < 3 years and fine = < 3 times of evade tax, or either of these two. In the event of recurrence of tax evasion within 5 years, then the individual will face the punishment of imprisonment for = < 5 years and fine = < 5 times of evade tax, or either of these two.

Tax Evasion Crimes:

Criminal proceedings are initiated only upon the request of the Minister or his delegate. The tax administration may reach a settlement in these crimes in return for paying the taxes and administrative fines due and a fine equivalent to the evaded tax. In the event of recidivism, the settlement shall be in return for paying the taxes and administrative fines due and a fine equivalent to twice the evaded tax. Settlement needs to be approved by the Minister or his delegate.

Judicial Police:

The employees of the tax administration who are designated by a decision issued by the Minister, shall have the status of judicial police.

Statute of Limitation:

- The right of the tax administration to claim the tax debt shall lapse after ten years, from date of filing tax declaration, or from date of expiry period for filing the tax declaration on failure to file it or from date tax administration become aware of data and activities that are undeclared by taxpayer.
- The statute of limitation expires in cases of various acts, including issue of tax assessment order, filing of objections or appeal, issue of appeal decisions, etc.
- The right of the taxpayer to request a refund of the overpaid tax amounts lapse after five years from the date on which the right to refund occurred.

Significant Definitions

Multinational Entity Group:

Any group that is present, even through a permanent establishment, in more than one country or jurisdiction of which the State of Kuwait is one, and whose total revenues have reached the revenue threshold.

Revenue Threshold:

The annual revenues of the Multinational Entity Group that are equal to or exceed 750 million euros (approximately 240 million KD) in the consolidated financial statements of the Ultimate Parent Entity for at least two tax periods out of four tax periods immediately preceding the tax period.
It implies that MNE Groups are in scope if the revenue in their Consolidated Financial Statements exceeds EUR 750 million. The test is based on the two of the four Fiscal Years (Tax Period) immediately preceding the tested Fiscal Year (Tax Period).

Group:

Any entity that takes one of the following two forms:

1. Entities related through ownership or control, provided that all assets, liabilities, income, expenses and cash flows of such entities are included in the consolidated financial statements of the Ultimate Parent Entity or excluded therefrom based on size or materiality or that entity is held for sale.
2. An entity located in a country or jurisdiction and has one or more permanent establishments located in other countries or jurisdictions, provided that this entity is not part of the related entities.

Implies that it is present in more than one country or jurisdiction through Subsidiary, Branches, Permanent Establishments or similar form of presence.

Entity:

Includes the companies; any agreement that does not take one of the forms of companies and the persons who concluded it are responsible for the obligations arising from it (i.e. including partnership or trust); any public authority, institution, fund, or any legal person.

Resident Entity:

An entity if it is incorporated in the country or if the main, effective or actual place of management is in the country.

Ultimate Parent Entity:

The entity within the multinational entity group that owns directly or indirectly a controlling stake or stakes in another entity or entities and is not subject to the control of any other entity within the group, or the main entity that is not part of another group except for sovereign funds.

Participating Entity:

Any entity that is a member of a group, and any permanent establishment of a main entity in accordance with the controls and conditions specified by the executive regulations.

Main Entity:

An entity participating in the group that has permanent establishments, and its financial statements include the income or loss of its permanent establishments.

Related Entities:

Entities that have a common relationship with each other or with another entity, or if the entity has a significant or controlling influence over the other, or two or more entities under common control.

Activity:

Any trade in goods, services, industry, profession, craft, agency, brokerage, real estate development, exploitation of movable or immovable property, speculation, or any activity of a commercial or investment nature.

Tax:

The supplementary tax on the Multinational Entity Group, imposed under the provisions of this Law.

Minimum Tax (MT):

15%

Modified Included Tax:

[Adjusted Covered Tax] The tax included according to the tax costs calculated on the basis of accrual, or losses, included in the taxpayer's financial statements during the tax period, and any amendments thereto, in accordance with the controls and conditions specified by the executive regulations.

Second Pillar:

A global measure within the project to combat tax base erosion and profit shifting, issued by the Organization for Economic Cooperation and Development (OECD), which stipulates a minimum tax rate imposed on a group of multinational entities. Pillar 2 aims to ensure that multinational entities pay a minimum level of tax wherever they operate. It is commonly known as “BEPS 2.0”.

Income Inclusion Rule (IIR):

A tax mechanism defined by Pillar 2 to grant the State of Kuwait or jurisdiction in which the parent entity is located the right to collect the difference in taxes below the minimum tax paid by participating entities in other states or jurisdictions, in proportion to its ownership interests in those entities.

Permanent Establishment:

A permanent establishment is stated as the premises through which a non-resident entity carries out its activity in the country, in whole or in part, including the following:

- the premises, whether it is related to the place of the management, administration, branch, store, office, factory, workshop, sales outlets, warehouse, mine, oil or gas well, quarry, or any other place for exploration, extraction and exploitation of natural resources.
- the construction site, construction project, assembly, installation, or supervisory activities related to this site or project, provided that this site, project or those activities continue for a period exceeding six months within any twelve months.
- providing services by the non-resident entity, provided that activities of this type continue within the country for a period or periods totaling more than six months within any twelve months.
- An agent in accordance with the terms and conditions specified in the executive regulations.
- any place of business other than those referred to in the above, through which the non-resident entity carries out operations in the State of Kuwait, shall be deemed a permanent establishment, provided that the income attributed to these operations is exempt from tax in the country or the jurisdiction of the non-resident.

Important Disclaimer

All information contained in this document is summarized based on recently published Law (Decree No. 157 of 2024 issuing the Tax Law on the Multinational Entities Group) on 31 December 2024. The executive regulation of this Law is yet to be published, and it is expected that it will provide more clarity on various provisions of this Law. The information provided in this document is based on the best available information and for general guidance purposes and does not constitute any opinion from us. Also, please note that Kuwait Authorities can change their practices at any time without notifications and therefore a formal discussion is necessary with the relevant authorities in person before taking key business decisions.

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