

The background of the slide features a photograph of two men in business attire. On the left, a man with short brown hair, wearing a dark blue suit, white shirt, and black tie, is looking towards the right with a serious expression. On the right, a man with a beard, wearing a white thobe and ghutra, is gesturing with his right hand while speaking. They appear to be in an outdoor setting with greenery and a building in the background.

KUWAIT

Executive Regulations on
Pillar Two Rules Issued

03 July 2025

Kuwait

Executive Regulations on Pillar Two Rules

On 29 June 2025, Kuwait's Ministry of Finance (MOF) issued the much-anticipated Executive Regulations for Law No. 157 of 2024 (the Regulation), which governs the taxation of multinational enterprise (MNEs) groups operating in the country. The Regulations aim to interpret and clarify the provisions of the law, define procedures and implementation mechanisms, and provide a clear understanding for all relevant parties.

As background, Law No. 157 of 2024 applies to MNEs operating in Kuwait with annual consolidated revenues of EUR 750 million or more in at least two of the four preceding fiscal years (revenue threshold) based on the consolidated financial statements of the ultimate parent entity (UPE). The law, which aims to ensure that MNEs pay tax at an effective tax rate of 15% on their Kuwait profits, introduced a domestic minimum top-up tax (DMTT) that is aligned with the Pillar Two Model Rules. To provide certainty to taxpayers and enhance consistency with the Model Rules, Article 116 of the Regulations require the Regulations to be applied and interpreted in line with the Model Rules and consolidated commentary.

The Regulations address topics such as taxable and excluded entities, permanent establishments, elections, computation of the top-up tax, safe harbours, restructuring, registration and other compliance requirements, administrative penalties and disputes resolution mechanisms. Notably, the Regulations do not include tax retentions obligations on taxable entities. This publication summarizes the key features of the Regulations.

Revenue Threshold

The Regulations provide details on how revenue should be determined for the purpose of assessing whether the revenue threshold is met. For example, the Regulations specify that revenue from ordinary business activities, net gains from investments and revenue from excluded entities should be included in the revenue test.

If consolidated financial statements have not been prepared, a deemed consolidation approach applies. The Regulations also address special rules with respect to short or long tax periods, newly created groups and proportional adjustments.



Kuwait

Executive Regulations on Pillar Two Rules (continued)

Taxable Entities

Subject to any exclusions provided in the law, all entities incorporated or effectively managed in Kuwait and permanent establishments (PEs) in Kuwait of nonresident entities that are members of an MNE group are taxable, as are joint venture entities in Kuwait where the UPE of an MNE group holds a direct or indirect ownership interest of 50% or more. The Regulations define a JV as an entity whose financial results are reported by the UPE under the equity method of accounting, provided the UPE holds directly or indirectly 50% or more of the JV.

The Regulations confirm that minority-owned subgroups and minority-owned constituent entities (MOCEs) are also taxable. MOCEs are entities that are consolidated but the UPE holds a controlling interest of 30% or less.

The Regulations make it clear that there are no exclusions for investment entities (a policy choice to exclude them as permitted for DMTT jurisdictions under the Pillar Two rules).

Where an entity is deemed taxable, the top-up tax is imposed on the entire taxable profit irrespective of the controlling interest percentage held by the UPE in that entity. Tax is payable along with the tax return - no advance payment required.



Excluded Entities

The following entities are not taxable provided they satisfy certain conditions in the Regulations:

- ▶ Governmental entities;
- ▶ Non-profit organizations;
- ▶ International organizations;
- ▶ Pension funds;
- ▶ Investment funds that are UPEs; and
- ▶ Real estate investment vehicles that are UPEs.

A government entity that carries out a trade or business is not excluded and, therefore, must adhere to the compliance requirements.

Sovereign Wealth Fund

The Regulations clarify that a sovereign wealth fund that fulfills certain conditions is not to be treated as a member of a group and its revenue is excluded for the purpose of determining the revenue threshold of a group in which it has an ownership interest.

Kuwait

Executive Regulations on Pillar Two Rules (continued)

Permanent Establishment

The Regulations provide details on the various types of PEs for Kuwait domestic tax purposes which include a place of business PE, a construction PE, a service PE and an agency PE. A nonresident entity with operations in Kuwait is also deemed to have a PE in Kuwait if the income from such operations is tax exempt in its home country and in Kuwait (i.e., a stateless PE).

Exclusions from a place of business PE are provided in certain cases provided the overall activities are of preparatory or auxiliary nature.

The Regulations include provisions from the BEPS multilateral instrument to address contract splitting and commissionaire arrangements.

A person is deemed to be a dependent agent if the person acts exclusively or almost exclusively for the benefit of the nonresident or is not deemed independent based on the legal and economic circumstances.

Interestingly, a service PE may be created if the “activity” in Kuwait exceeds six months irrespective of whether the nonresident is actually present in Kuwait.

The regulations set out PE definitions in line with the Model Rules. Where there is an applicable tax treaty in force between the Kuwait and the residence country, the PE definition in the treaty will apply.

Nonresident entities, including those involved in distributorship arrangements, may need to assess the impact of the broad PE definitions and conditions in the Regulations.

Financial Accounts

The Regulations use the terminologies found in the Model Rules. Pillar Two “income or loss” is determined based on the financial accounting net income or loss (FANIL) after certain adjustments.

Unless an exception applies, taxable entities must prepare standalone IFRS-compliant financial statements, subject to fulfilling certain conditions. If the conditions are not fulfilled, the information used to prepare consolidated financial statements may be followed. In all other cases, the FANIL may be determined under an approved accounting standard or authorized accounting standard based on criteria to be issued by the MOF.

Adjustments to Determine Pillar Two Income or Loss

The Regulations provide a comprehensive list of tax adjustments that are required to be made to FANIL to arrive at the constituent entity’s (CE’s) Pillar Two income or loss. The adjustments include almost all relevant adjustments found in the Model Rules and Administrative Guidance issued by the OECD.

Elections

The Regulations include all the relevant one-year and five-year elections mentioned in the Model Rules and Administrative Guidance.

Kuwait

Executive Regulations on Pillar Two Rules (continued)

Covered Taxes

The following items are not covered taxes for Kuwait DMTT purposes:

- ▶ Tax accrued by a parent entity under a qualified income inclusion rule in another jurisdiction;
- ▶ Tax accrued by a CE under a qualified DMTT in another jurisdiction;
- ▶ Taxes attributable to an adjustment made by a CE as a result of a qualified undertaxed payment rule;
- ▶ Tax imposed law No.157 of 2024;
- ▶ A disqualified refundable imputation tax;
- ▶ Taxes paid by an insurance company in respect of returns to policyholders;
- ▶ Contributions made to an entity that does not meet the definition of a general government; and
- ▶ Amounts accrued relating to other domestic tax laws, which are no longer applicable to the taxable entities, (such as Zakat, national labour support tax and corporate income tax).

The Regulations also include detailed rules for the allocation of cross-border taxes. Except in certain cases, tax recorded in the financial accounts of a main entity located in Kuwait and attributable to a PE outside Kuwait should not be allocated to the main entity.

Tax Computations

Taxable entities must determine the effective tax rate (ETR) for the group entities in Kuwait. Unless otherwise specified in the Regulations, the ETR is calculated for all the taxable entities as Adjusted Covered Taxes / Net Pillar Two Income. This is then deducted from the minimum rate of 15% to arrive at the top-up tax percentage. Importantly, when calculating the ETR, the adjusted covered taxes and Pillar Two income are not reduced for any minority interest. Certain entities such as JVs, MOCEs, Investment Entities and stateless PEs are required to compute their ETR separately from the rest of the group members located in Kuwait.

To arrive at the taxable profit, the net Pillar Two income is reduced by the amount of the substance-based income exclusion (SBIE). The top-up tax percentage is then applied on the taxable profit. In certain cases, an adjustment may be needed to compute an additional current tax.

Substance-Based Income Exclusions

The top-up tax percentage is applied to the net Pillar Two income less an amount given for the SBIE. The amount of SBIE is based on a predefined percentage of the carrying value of tangible assets and payroll costs.

The Regulations include specific rules about which tangible assets and payroll costs are deemed eligible and there are specific rules dealing with cases where the tangible assets or employees are located in Kuwait for less than 50% of the time.

Kuwait

Executive Regulations on Pillar Two Rules (continued)

Appointed Constituent Entity

One entity must be appointed to act on behalf of the MNE group members in Kuwait for all DMTT-related matters. This entity will be responsible for filings and tax correspondence with the MOF. If the UPE is based in Kuwait, it must serve as the appointed CE.

Tax Registration

The Regulations provide guidance on registration requirements. Taxable entities located in Kuwait that are part of a covered MNE group must register as a group for DMTT purposes and each taxable entity must get registered within 120 days of becoming subject to the law. A relief is provided for the first tax period beginning on or after 1 January 2025 where the registration is due by **30 September 2025**.

Excluded entities may voluntarily register. Once a taxable entity is registered, if the consolidated revenue of its group subsequently falls below the revenue threshold, a notification must be filed with the MOF for five consecutive tax years.

Registration forms have been published on MOF Portal. For BDO clients, our team will be in touch to support.

Tax Returns

The appointed CE is required to file one tax (DMTT) return on behalf of the taxable entities of the group for each period even if no tax is due. The deadline for filing is 15 months after the end of the relevant tax period. The tax return must be audited by an approved audit firm. Kuwait has opted for a single DMTT return for all taxable entities of an MNE group including JVs.

Kuwait-parented groups maybe requested to file a Globe Information Return (GIR). We understand that executive rules maybe issued to specify from which year this will be required.

Safe Harbours

The Regulations provide conditions on CBCR safe harbour eligibility. Further, the criteria that must be met for a taxpayer to benefit from a simplified calculation safe harbour were included, with a view to reducing tax compliance complexity for eligible taxpayers. As the OECD has not yet issued complete guidance in this area, the Regulations indicate that additional rules will be issued for the implementation of such provisions.

Restructuring

In line with the Model Rules, the Regulations introduce specific provisions to address group mergers and demergers, as well as to account for CEs joining or leaving an MNE group. This could have an impact on the computation of the revenue threshold.

Summary of key compliance requirements

- ▶ Tax registration
- ▶ DMTT return
- ▶ GIR for Kuwait Parented group, when requested by MOF.
- ▶ Tax payment along with the return - no advance payment needed
- ▶ Simplified return maybe permitted
- ▶ Transactions with related parties must be at arm's length
- ▶ TP Local & Master file
- ▶ TP disclosure form
- ▶ Notification to be filed in case the revenue of a covered MNE Group goes below the revenue threshold

Kuwait

Executive Regulations on Pillar Two Rules (continued)

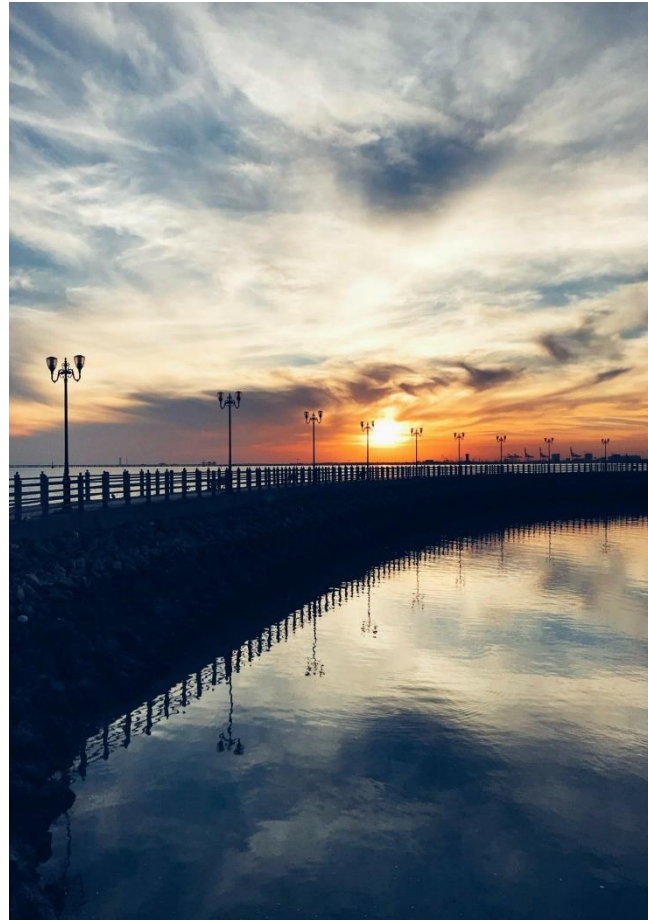
Transfer Pricing Requirements

Transactions between group entities within and outside Kuwait must be on arm's length terms. The Regulations specify that transfer pricing methods must be followed to arrive at the arm's length price. Additionally, each taxable entity must maintain the following documentation:

- ▶ A local file and a master file. Such documentation must be submitted to the MOF within 30 days upon request; and
- ▶ A transfer pricing disclosure form containing at minimum details of related party transactions and the transfer pricing method applied. The form must be filed with the tax return and must be audited by an approved audit firm. Our understanding is that additional rules will be issued by the MOF to provide additional details on the content and format of the form.

Taxpayers will need to undertake a benchmarking analysis to arrive at the arm's length price of related party transactions in order to make the necessary adjustments, where applicable.

Further, the Regulations do not specify any threshold exceeding which the above documentation needs to be maintained. Therefore, the expectation is that the above documents will need to be maintained by each taxable entity.



Next Step

The details included in the Regulations provide sufficient clarity on how the Kuwait DMTT operates. The immediate next steps for potentially affected businesses operating in Kuwait include the following:

- ▶ Assess whether the entity falls within the scope of the DMTT. Foreign MNEs should ascertain whether their business in Kuwait creates a PE.
- ▶ Assess the tax impact and whether it is possible to benefit from any reliefs provided in the Regulations.
- ▶ In case of multiple taxable entities in Kuwait, discuss and appoint one CE to handle the tax compliance for the group.
- ▶ Prepare for tax registration, tax provisioning and subsequent tax compliance. For the 2025 year, the registration is due 30 September 2025.
- ▶ Prepare (or review existing) transfer pricing policies and analyze related party transactions

The new tax rules are complex, will have both short and long-term impacts, and create demands on staff and technology, likely necessitating professional advice. Please contact our team if you require assistance.

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Should you require any assistance, please feel free to contact us

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