UPDATE ON EXCHANGE OF INFORMATION FOR TAX PURPOSES

OECD Publishes Peer Review Report for Kuwait

On 9 November 2022, the OECD published its Peer Review Report for Kuwait with respect to the Exchange of Information on Request ("EOIR") standard.

The review covered the legal and regulatory framework in Kuwait and evaluated Kuwait's compliance to the requirements of EOIR and wider standards for exchange of information for tax purposes. As per the Report, several deficiencies were found in Kuwait's legal system that restrict the jurisdiction from being able to effectively comply with the standards for exchange of information for tax purposes. This included issues around:

- Limited legislation to capture and update information around beneficial owners
- Lack of legislation granting access power to information to the Kuwait tax department
- Outdated tax treaties that are not aligned with EOIR - 17 tax treaties are outdated
- No penalty regime in place for parties that fail to provide tax information
- Due to laws limitations, and confidentiality of bank and professional secrecy, Kuwait tax department cannot obtain/exchange information with its treaty partners.

Kuwait has been given a period of time to address the limitations in its legal framework, and implement the recommendations issued, to enable it to fully comply with the EOIR standard. The OECD report can be accessed via this link.

BDO Comments

The findings of the Global Forum of OECD are not surprising. Kuwait needs to strengthen regulations around beneficial ownership information and to put in place legislation that grant the tax department the power to access information related to tax investigations. Last year, a draft law for implementing the standards for exchange of information for tax purposes was circulated but was never finalized. BDO had provided insights into the draft law which can be accessed via this link.

Crypto-Assets Reporting Framework ('CARF')

The CARF aims to ensure transparency with respect to crypto-asset transactions in a standardized manner like Common Reporting Standards ("CRS"). This new transparency initiative, developed together with G20 countries, is in light of the rapid adoption of the use of crypto-assets for a wide range of investment and financial uses. Unlike traditional financial products, crypto-assets can be transferred and held without the intervention of traditional financial intermediaries and therefore, many of them remain unregulated.

Additionally, a set of amendments to the CRS was proposed is to bring into scope the new digital financial products, such as Specified Electronic Money Products and Central Bank Digital Currencies. The next steps are as follows:

- The implementation package to ensure implementation of the CARF is ongoing.
- The package will include a framework of bilateral or multilateral competent authority agreements for the automatic exchange of information collected under the CARF and IT-solutions to support the exchange of information.
- Work related to the appropriate mechanisms to automatically exchange information pursuant to the amended CRS is also ongoing.
- timelines for both the CARF and amended CRS will be agreed upon soon.

Insurance Regulatory Unit of Kuwait issues Circular No. 11 of 2022

On 18 October 2022, the Insurance Regulatory Unit ("IRU") of Kuwait issued Circular No. 11 of 2022 for the purposes of the compliance FATCA & CRS requirements by all licensed insurance and reinsurance companies in Kuwait.

As per the Circular, all insurance companies are required provide the FATCA Coordination Committee at the Ministry of Finance ("MOF") with the following:

A: Insurance companies subject to reporting under FATCA & CRS:

- If not already done, register with the MOF for FATCA & CRS purposes.
- If not already done, register on the portal of Internal Revenue Services ("IRS") of the US.
- Comply with the reporting requirements under the Kuwait FATCA & CRS regulations.

B: Exempt Insurance Companies

- Provide a formal notification to the MOF stating the company's exemption status under FATCA & CRS. Copy of such notification should also be forwarded to the IRU.
- If not already done, cancel the FATCA registration on the IRS website.
- Review the FATCA & CRS exemption status on a periodic basis and notify the IRU & MOF when there is a change in the FATCA classification of the Company that makes the Company no longer exempt from FATCA & CRS reporting.

Insurance companies exempt from FATCA & CRS reporting will need to comply with the above notification requirements as soon as possible, if not already done. Such companies will need to put a process in place to carry out a periodic (e.g. annual) review of their FATCA and CRS classification to ensure that they remain exempt otherwise they must comply with the reporting requirements of FATCA & CRS.

We will keep you updated on the developments. Please feel free to contact us should you have any questions or require any clarification.

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