



**DECREE NO. 6 OF 2024 CONCERNING THE
EXCHANGE OF INFORMATION FOR TAX
PURPOSES IN KUWAIT**

On 14 July 2024, the Kuwait Council of Ministers published Decree No. 6 of 2024 concerning the Exchange of Information for Tax Purposes (“the Law”). The Law puts in place a legal framework for the collection of information required to be reported for tax purposes. It also introduces measures and penalties for noncompliant reporting financial institutions.

The Law should help enhance Kuwait’s implementation of the Automatic Exchange of Financial Account Information (“AEOI”) Standard (including the Common Reporting Standards (“CRS”). Although the CRS was implemented in Kuwait since 16 July 2017, there was no sufficient enforcement framework in place locally.

EFFECTIVE DATE OF THE LAW

The Law is effective from the second day following the issuance of its executive regulations. As per the Law, the Ministry of Finance (“MOF”) is to issue the executive regulations within six months of the issuance of the Law i.e., by 14 January 2025.

KEY HIGHLIGHTS OF THE LAW

- ▶ The Law grants the MOF the right to request and collect, from natural or legal persons in Kuwait, any information or documents required in response to a request from a foreign authority for the purpose of exchange of information for tax purposes. Information requested from such natural or legal persons must be provided within 21 days.
- ▶ Secrecy of client’s information cannot prevent the provision of information requested by the MOF. Article 18 of the Law states that the Law prevails over any other laws in Kuwait in case of any conflict.
- ▶ The Law introduces administrative and financial penalties for noncompliant reporting financial institutions (“FIs”). There are also penalties for natural and legal persons that fail to provide the MOF with any information requested for the purposes of the Law.
- ▶ Reporting FIs must maintain records for a minimum period not less than six years.
- ▶ The Law reiterates the key obligations that financial institutions must meet under the CRS, and previously issued Ministerial Resolutions No. 36 and 46 of 2017, covering the collection of self-certifications from customers, carrying out the required due diligence and reporting.

HOW DOES THE LAW IMPACT FINANCIAL INSTITUTIONS (“FIS”) IN KUWAIT?

FIs in Kuwait have the following obligations under the Law:

- File a report on reportable accounts electronically on annual basis by 31 May of each year, in relation to the previous calendar year. The MOF has the right to extend the reporting deadlines.
- In case of no reportable accounts, a nil report is required to be filed.
- CRS reports must be audited by an approved audit firm. BDO is an approved firm.
- Self-certification forms for CRS must be collected from customers at time of new accounts opening. No accounts should be opened without a self-certification.
- Compliance Officer must be appointed to ensure compliance with the Law and other international agreements for exchange of information for tax purposes.
- Records (physical and electronic) must be maintained for a minimum period of 6 years.
- Comply with the CRS due diligence procedures requirements.

MOF and other regulatory authorities such as Central Bank of Kuwait, and Central Market Authority have the right to review FIs procedures and documents to ensure that FIs are complying with the Law.

DOES THE LAW IMPACT NATURAL AND LEGAL PERSONS (OTHER THAN FIs) IN KUWAIT?

Yes, the Law requires every natural or legal person in Kuwait to provide the MOF with any information requested about a particular taxpayer, in response to a request received by MOF from a foreign tax authority. Information requested by the MOF should be provided within a period of 21 days.

In case of failure to comply with the above or in case of providing incorrect information, penalty between KD 10,000 to KD 20,000 can be levied.

The above obligations will impact various sectors in Kuwait including but not limited to financial institutions, professional services firms, legal firms and insurance companies. Entities may therefore need to revisit their client’s engagements and record keeping policy.



WHAT ARE THE CONSEQUENCES FOR INCOMPLIANT FIs?

In case a reporting FI was found non-compliant to the Law, it could face various measures by the MOF (or other regulatory body in Kuwait) including but not limited to license suspension, license withdrawal, and restriction on the powers of the Board of Directors and management team.

ARE THERE FINANCIAL PENALTIES FOR INCOMPLIANCES?

Yes, the Law introduces a financial penalty in the range of KD 10,000 to KD 20,000 notwithstanding any higher penalty applicable under any other laws in Kuwait. The above penalty could be imposed for any of the following violations:

- Failure by any person to provide timely or accurate information requested by the regulatory authorities.
- Failure by a FI to submit CRS reports or for submitting incorrect CRS reports.
- Failure by a FI to comply with the due diligence procedures required under CRS or the Law.
- Failure by a FI to appoint an approved audit firm to review the CRS reports, to appoint a compliance officer, or to maintain the required records for a period of six years.
- Failure to cooperate with the regulatory authorities in performing their roles or duties under the Law.
- Failure to obtain self-certification forms from customers upon account opening.
- Failure by any person in completing a self-certification form with correct data.
- Failure by the approved auditor in disclosing the violations or the errors in the CRS reports of the FI.
- Failure to comply with the secrecy of the information collected under the Law.

WHY IS THE LAW BEING INTRODUCED NOW

The Law is being introduced to put in place a domestic law to facilitate international agreements signed by Kuwait for the purpose of exchange of information for tax purposes. It will help enhance the effective implementation of the CRS as well as the Convention on Mutual Administrative Assistance in Tax Matters ("MAC") signed by Kuwait in May 2017 and entered into force locally through Law No.76 of 2018.

The Law should address deficiencies previously highlighted by the OECD which included the absence of a domestic law that enforces the CRS requirements, grants the local authority rights to access information, and to impose penalties and strong measures against non-compliant entities and individuals.

WHAT SHOULD IMPACTED ENTITIES DO RIGHT NOW?

All FIs should reassess their classification under FATCA & CRS to ensure that the classifications remain accurate. Reporting FIs should revisit their FATCA & CRS compliance framework to ensure that customer onboarding procedures, due diligence as well as the reporting process are being done accurately. The internal records keeping policy may need to be updated to comply the requirements of the Law.

Since the Law grants the MOF the right to request for any information in relation to a request from a foreign tax authority, entities in Kuwait may need to revisit their client's engagements and put a process in place to timely address any request for information raised by the MOF.

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