Kuwait: Kuwait Direct Investment Promotion Authority issues mechanism for granting tax exemption

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In brief

The New Direct Investment Law (Law No. 116 of 2013) was introduced with an intention to attract foreign investment in Kuwait by providing them income tax and custom duties exemptions in addition to other non-tax benefits. The Kuwait Direct Investment Promotion Authority ("KDIPA") in coordination with the Ministry of Finance (Tax Department) has issued a detailed mechanism for the granting of an income tax exemption through its Decision No. (16) of 2016 dated 12 January 2016 ('Decision'). While the tax benefit was earlier based on a tax holiday up to 100% of the taxable profits, KDIPA has now linked the tax benefits to performance of the investor in relation to the tax exempted activity based on the prescribed criteria and an assigned multiplier factor (percentage/value). The mechanism also provides for a 10 year tax exemption from the effective start date of the operations. The Decision also provides the process of qualifying as an eligible investor/activity and also the process for obtaining an annual Tax Exemption Certificate.

In detail

Eligibility process for claiming exemption

- As part of the process for obtaining the Investment license from KDIPA, the investor has to submit an application along with a business study of the concerned project/activity in Kuwait and other information and documents, as per the prescribed guidelines.
- This application also provides for the ability to request a tax exemption, along with the expected date of commencement and date of effective operating of the investment entity/activity.
- In addition to the approval for granting an Investment License, the KDIPA shall examine the application and business study and issue its decision on whether the activity is eligible for a tax exemption. The KDIPA will also notify the Kuwait Tax Authority about its decision to grant exemption to the investor in relation to the eligible activity.
- The tax exemption can be provided to foreign investor for a new project or for expansion of an existing project, subject to any conditions set forth by KDIPA. In case the investor is engaged in multiple activities, the exemption shall be granted only in respect of activity which has been approved by the KDIPA and the investor will be required to maintain separate books of accounts for such activity.
- While the tax benefit was earlier based on granting a tax holiday for up to 10 years based on taxable profits, the KDIPA has now changed the basis of computing the tax benefits and provided a detailed methodology for granting the tax exemption for eligible investor/activity.

The Methodology of Granting Tax Exemption

The Investment entity (i.e. Project or Activity which has been granted an investment license by KDIPA) has to follow the prescribed methodology in order for the foreign investor(s) to avail itself of the tax exemption for a period of 10 years from the date of effective operations of the activity.

While KDIPA has been in discussion for past several months with various stakeholders on the criteria for claiming the tax exemption, the formal guidelines have been announced in coordination with the Ministry of Finance to provide the mechanism to the Investor.

The mechanism provides for linking the tax exemption with the performance of the investment entity over the 10 year period. To evaluate the performance of the investment entity, three main criteria have been identified, namely: Transfer of Technology, Creating Jobs for National Labour and Stimulating the Local Market.

The three main criteria have been divided into seven sub-criteria and a multiplier factor (ie. a number, percentage or value) has been assigned to each sub-criteria in order to compute the tax exemption value. The performance criteria along with their allocated multiplier are explained below:

First Criteria: Transfer of Technology

The tax exemption value under this criteria will be calculated on the basis of value of advanced equipment imported (including cost of freight, transport and custom clearances) into Kuwait. The multiplier (percentage/value) for calculating annual benefit is 20% of the value of advanced equipment. Hence, the annual value of exemption granted will be 20% of the value of equipment imported into Kuwait divided by 10 years in equal amounts.

Second Criteria: Job creation & Training national labor

The value of annual tax exemption under this criteria will be aggregate for the following three sub criteria:

a. Total expenditure on salaries of national labor multiplied by 5. In other words, 5 times the salary cost paid to Kuwaiti employees;

b. Total expenditure on trainings of national labor multiplied by 10 (i.e., 10 times the total cost of trainings incurred on Kuwaiti employees.

c. Total number of national labor in excess of number stipulated as per council of Ministers Decision No. 1028 of 2014, multiplied by 60,000 (i.e., KD 60,000 for every additional Kuwaiti employee over and above the minimum prescribed Kuwaiti labour force for the particular industry)

Third Criteria: Utilization of local product & services

The value of tax exemption under this criteria will be twice the amount of expenditure incurred by the investment entity on three sub criteria, namely, rental of premises, value of contracts with local suppliers and value of inputs used from local sources.

Calculation of net taxable income

The amount of tax exemptions calculated under each of the above criteria multiplied by the assigned multiplier factor will be aggregated and shall be reduced from the tax base (or taxable income) to arrive at the figure of net taxable income.

If the tax exemption value granted to the investment entity is higher (or equal) than the value of tax base (or total taxable income) then the exemption will be restricted to the value of tax base and no carry forward shall be allowed for excess exemption.

The process

The Decision provides for the compliance process in order to avail the tax exemption which is detailed below:

- The investment entity shall register its licensed investment activity with the Kuwait Tax Authority and abide by the provisions of Kuwait Tax Laws, rules and regulations.
- The investment entity shall notify its effective operation starting date to KDIPA within 30 days of start of operations.
- The investment entity should maintain annual calculation of tax exemption along with supporting documents and obtain a Tax Exemption Report from a licensed Auditor. The Auditor shall prepare, verify and report the value of tax exemptions and issue the 'Tax Exemption Report'. The said Report should also be filed by the investment entity along with the Tax Declaration to the Kuwait Tax Authority.
- Upon request of the investment entity, KDIPA shall issue an annual Tax Exemption Certificate following the verification and validation of the Tax Exemption Report and issue a copy of Tax Exemption Certificate to Kuwait Tax Authority. However, there is no timeline prescribed for applying or issuing the Tax Exemption Certificate.

The takeaway

While there are areas where clarification is still required from the KDIPA, the issuing of its formal Decision on the mechanism for granting the income tax exemption is a welcome move which will provide greater clarity and certainty for the foreign investors to plan their tax affairs and take an informed decision when investing in Kuwait.

The notable areas requiring clarification include: the time frame for issuing the Tax Exemption Certificate; the criteria for deciding the effective date of operations; and whether the rental expenses include the rental cost of all the premises including head office and factories, and the basis of assessing the cost/value of imports in the case of specialised equipment.

Let's talk

For a deeper discussion of how this issue might affect your business, please contact:

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