

Kuwait has entered into comprehensive treaties for Avoidance of Double Taxation with a number of countries. Such treaties over-ride the provisions of the local tax law. As a result, foreign companies benefit from beneficial provisions in the treaties which are not present in the local tax law.

As part of our endeavor to highlight key matters to the attention of German companies, we present below in this newsletter a summary of the important clauses of the Avoidance of Double Taxation Treaty between the State of Kuwait and the Federal Republic of Germany.

**Coverage (Article 2 of the tax treaty):**

***Germany***

The treaty covers:

- Income tax
- Corporate tax
- Capital gains tax
- Trade tax

***Kuwait***

- Corporation tax
- Contribution to KFAS
- Tax of religious nature (Zakat)

**Permanent Establishment (PE) (Article 5 of the tax treaty):**

- Fixed place of business (branch, office etc.) through which the business of the enterprise is carried on wholly or partly.
- A building site or construction or installation project constitutes a PE only if it lasts for more than 9 months. Supervisory/consultancy services excluded.
- Person acting on behalf of companies (dependent agents) to conclude contracts in the name of enterprise deemed to have PE unless such activities are of preparatory and auxiliary nature.

**Income from immovable property (IP) (Article 6 of the tax treaty)**

- Income derived by a resident one state from the letting of IP situated in the other state would be taxed in the other state.

**Business profits (Article 7 of the tax treaty)**

- Profits of an enterprise are taxed only in the generating state. If the enterprise carries on business in other state through permanent establishment (PE), it is taxable in the other state to the extent of profit attributable to PE in that state.
- PE expenses are deducted wherever incurred.
- No profits are attributed to PE deriving from mere purchase of goods or merchandise for the PE. i.e., profits earned by an enterprise on supply are taxable only in state where the enterprise is resident.
- Design expenses incurred outside the state where construction activity is carrying on shall also be exempt.

**Shipping & Air transport (Article 8 of the tax treaty)**

- Taxed only in the state where effective management of the enterprise is situated.

**Dividends (Article 10 of the tax treaty)**

- Dividends are taxed in the state where the company paying dividends is a resident and according to the laws of that state. The total tax on dividends shall not exceed 5% of the amount of

dividends paid if recipient owns more than 10% of the capital of the enterprise, and the tax on dividend shall not exceed 15% of the dividend in other cases.

**Interest (Article 11 of the tax treaty)**

- Interest means income from debt-claims, government securities, bonds, or debentures.
- Interest arising in a state and paid to a resident of other state, are taxed in that other state.

**Royalties (Article 12 of the tax treaty)**

- Royalties arising in a state and paid to a resident of other state, are taxed in that other state.
- However, royalties can also be taxed in the state in which they arise, and according to the laws of that state. The tax charged shall not exceed 10% of the gross amount of such royalties.

**Capital gains (Article 13 of the tax treaty)**

- Gains derived by a resident from immovable property in the other state, are taxed in that other state.
- Gains arising from sale of shares in a company or other movable property of the company are taxed in the state where the company's assets and property are located.
- Gains from alienation of any other property are taxed in the state where the seller is resident.

**Independent personal services (Article 14 of the tax treaty)**

- Income derived by a resident of a state, is taxable in that state unless he has fixed base available in the other state.

**Government service (Article 19 of the tax treaty)**

- Remuneration paid by a state to an individual is taxed in that state unless he is a national of the other state or was a resident of the other state before rendering the services.

**Relief from double taxation (Article 24 of the tax treaty)**

- For Kuwait : taxes paid in GERMANY are allowed as deduction from taxes payable in Kuwait
- For GERMANY: taxes paid in Kuwait are allowed as credit against taxes payable in GERMANY (subject to certain conditions)

**Entry in to force (Article 29 of the tax treaty)**

- In Kuwait and Germany with effect from 18 May 1999.

**Practical application highlights**

Based on our experience, we highlight below the treatment followed by the Kuwait tax authorities of certain items of revenues and expenses for which relief is available in the treaty:

**1. Material costs**

If materials are supplied by a German company in connection with Kuwait operations, then revenue from such material is not subject to tax in Kuwait. However, the German company is required to declare the amount claimed as exempt in the tax declaration. The tax authorities review the amount claimed as exempt in detail before approving the exemption.

**2. Design costs**

Design costs incurred in Germany are also not subject to tax in Kuwait. Treatment followed by the tax authorities is similar to the treatment of materials described above.

**3. Head office overheads**

Head office administrative overheads are allowed as a deduction at actuals provided that such overhead costs are charged as per international practice and proved with supporting documents.

**4. Royalties**

Royalties are subject to tax at 10% on the gross amount of such royalties.

**If you require further information, please contact:**

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