

Oil and Gas Tax Guide for the Middle East 2015

*A quick guide
to oil and gas
tax regimes
in some of the
Middle East's
fastest growing
countries.*



Foreword

We are proud to present you with the first edition of our Oil and Gas Tax Guide for the Middle East. Our PwC oil and gas country specialists have provided up to date information on the oil and gas fiscal and regulatory regimes, as well as significant developments for 8 of the key Middle Eastern countries. Tax is a key commercial consideration of any business, especially those in an industry where the outlook is uncertain and unpredictable.

The oil and gas industry is currently extremely volatile and companies operating in this sector often require significant advice regarding tax liabilities and fiscal requirements. With regulatory authorities constantly changing the tax landscape, it is essential any business operating in the Middle East is up to date on tax law changes, new incentives and Government policies. In this guide we have covered the key taxes, laws and authorities to consider.

Whether you are starting up in the Middle East, or continuing operations, PwC can provide expert advice and information for your business and business ventures. If you have any further questions or require detailed advice, please reach out to the country contacts provided in each country summary.

We hope you find this publication useful and informative and we look forward to receiving your comments, contributions and feedback



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Country profile

Oil and hydrocarbon exploration and refining in Bahrain is carried out almost solely by companies wholly owned by the government. Petroleum production and refining accounts for 20% of Bahrain's Gross Domestic Product, 70% of Bahrain's export receipts and over 80% of government revenues. The first oil well in Bahrain was discovered in 1931 and to date the country has 125m barrels of proven reserves and produces around 60,000 bpd. It is expected that the oil price during the year of 2015 will likely exacerbate Bahrain's budget deficit.

Fiscal regime

In Bahrain, there are no corporate taxes with the exception of companies undertaking extraction and refining activities. Companies which are engaged in these activities are subject to tax at the rate of 46% and the definition of oil extraction and refinement services is considered to be broad. There are no special provisions or laws applicable to unconventional oil or gas.

Regulators

The key regulators in the oil and gas industry include:

- National Oil & Gas Authority (NOGA);
- Bahrain Petroleum Company (BAPCO); and
- The Ministry of Finance (for taxation issues).

Forms of contracts

In recent years, companies operating in oil and hydrocarbon extraction have generally been wholly owned by the government and the contracts for which the services are provided are not made public.

Taxation regime

There are no taxes in Bahrain on income, sales, capital gains, or estates, with the exception, in limited circumstances, of local and foreign businesses (including branches

Bahrain

of foreign companies) with operate in the oil and gas sector or derive profits from the extracting or refining of hydrocarbons in Bahrain. For such companies, a tax rate of 46% is levied on net profits for each tax accounting period, irrespective of the tax residence of the taxpayer.

Deductions

All taxes and duties not imposed by the Bahrain income tax law, including customs duties, may be deducted from taxable income as stipulated in Bahrain's income tax law.

The law generally allows deductions for all costs associated with taxable activities in Bahrain, such as the cost of production, refinement, remuneration of employees associated with these taxable activities (including social insurance and pensions paid for the benefit of these employees), and other operational losses.

All reasonable and justifiable costs of production and exploration of products sold during the relevant taxable year are deductible for tax purposes, provided that these expenses have not been deducted elsewhere in calculating net taxable income.

Depreciation and depletion

Tax deductions may be claimed for reasonable costs for depreciation, obsolescence, exhaustion, and depletion incurred during the taxable year for properties used by the taxpayer in a trade or businesses from which income, taxable under the income tax law, is derived. Generally, such amounts may be claimed on a straightline basis over the estimated remaining useful life of the properties, unless otherwise approved by the Minister of Finance.

Net operating losses

Unutilised losses may be carried forward and deducted up to the equivalent to the net income in future years as defined by the Bahrain income tax law. Carry back of losses is not permitted.

Compliance Requirements

Tax period

A company's accounting period should normally follow the calendar year (i.e. 1 January to 31 December).

Tax returns

There is no provision in the law regarding the due date for the filing of the annual income tax statement. However, an estimated income tax statement must be submitted by the taxpayer to the Ministry of Finance on or before the 15th day of the third month of the taxable year. Where applicable, a taxpayer may also be required to file an amended estimated income tax statement quarterly thereafter, unless a final income tax statement has been approved. The tax return must be prepared by approved accountants.

Tax payments

Taxes (based on the initial estimated tax statement filed) are payable in 12 equal monthly instalments. Payments are due starting on the 15th day of the fourth month of the taxable year. Income tax as per the subsequent amended estimated income tax statements or the final income tax statement will form the basis of tax payments for the remainder of the 12 monthly instalments. The final payment is due on the 15th day

of the third month after the end of the taxable year or the date the final income tax statement is filed, whichever is later.

Any excess income tax paid will be credited and used in the first invoice for income tax following the establishment of the credit by the Minister.

Statute of limitations

The Income Tax Law No. 22 of 1979 does not specify any statute of limitations.

Incentives in the oil and gas industry

There are no tax incentives in Bahrain. There is also currently no legislation regarding foreign tax relief in Bahrain.

Withholding tax

There is no withholding tax on the payment of dividends, interest, or royalties in Bahrain, however Bahrain has entered into 49 double taxation treaties.

Capital gains tax (CGT)

There is no CGT in Bahrain.

Thin capitalisation and Transfer Pricing

Thin capitalisation:

There are no thin capitalisation rules in Bahrain.

Transfer Pricing:

There are no transfer pricing rules in Bahrain. In practice, however, transactions between related parties should take place at arm's length.

Indirect Taxes

Goods and services tax (GST)

There is no goods and services tax in Bahrain except for sales tax on gasoline at 12% and hotel, short-term lease apartment rents and certain restaurants which are subject to 5% tourism levy on gross income.

Value-added tax (VAT) and excise duty

There is no VAT system in Bahrain.

Customs Duties

Customs duty is the only indirect tax imposed in Bahrain.

As a member of the Gulf Cooperation Council (GCC), the Bahraini government follows the Unified Customs Act of the GCC. A uniform customs duty (generally 5%) applies to most imports originating from outside the GCC.

Bahrain

Payroll taxes

Social security contribution

The rates applicable for social security contributions¹ under the Social Insurance Law are as follows:

Employee	Employer	Employee
Bahraini	12%	7%
Non-Bahraini	3%	1%
GCC nationals**	9% – 15%	5% – 9.5%

Training levy

A training levy is imposed on companies with more than 50 employees which do not provide approved training to their employees. The applicable rate is 1% for Bahraini and 3% for non-Bahraini employees, based on their monthly salaries.

Others

Municipality taxes

There is a 10% municipality tax levied on the rental of commercial and residential property to expatriates.

Stamp duty

Stamp duty applies to the transfer and/or registration of real estate only and is levied at 2% on the sales proceeds. However, the rate is reduced to 1.7% if the real estate property is registered within the first two months upon finalising in the notary.

Oil and gas Services companies

Companies providing services to the oil and gas industry are likely to be subject to tax at the rate of 46% based upon the broad interpretation of 'exploration and refining' activities. Again, recently the oil and gas industry (production and services) has been dominated by wholly owned government entities with little to no foreign participation.

¹ Figures are computed on the basis of the employee's monthly salary up to a maximum of BHD 4,000 (i.e. if salary higher than BHD 4,000: the contributions are computed only up to BHD 4,000).**GCC national's social security contribution varies depending on nationality.

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Country profile

Brief history on oil and gas developments

Between 1963 and 1976, Egypt applied the “Tax & Royalty Agreements”. In this type of agreements, royalty and taxes were paid as a percentage of the oil explored.

From 1976 until present: “Production Sharing Agreements” were used instead of the Tax & Royalty Agreements.

In this type of agreements, part of the explored and produced oil is called “Recovery Oil”. The foreign investor takes 100% of this recovery oil to recover the costs incurred by him during the exploration phase.

The other part is called “Profit Oil” and is divided between the foreign investor and the Egyptian General Petroleum Corporation (EGPC).

In this type of agreements, EGPC pays the taxes and the royalty on behalf of the foreign investor.

Fiscal regime

In Egypt, there are no special laws / Acts governing petroleum activities. There are also no special articles for oil and gas in the Egyptian Income Tax Law. However, each single concession agreement is signed based on a special law that is issued for each agreement after obtaining parliamentary approval.

This law overrides the domestic law when calculating taxable profits.

Egypt

The petroleum operations in Egypt are classified as the upstream, midstream and the downstream operations.

The upstream industry:

Explores and produces crude oil and natural gas. The upstream is sometimes known as the exploration and production (E&P) sector.

The Downstream Industry:

The downstream oil sector is a term commonly used to refer to refining of crude oil and selling and distribution of natural gas and products derived from crude oil.

The Midstream Industry:

The midstream industry processes, stores, markets and transports commodities such as crude oil and natural gas. Midstream operations are usually included in the downstream category.

Please note that the upstream industry pay bonuses called “Signature and production bonuses” that are payable to the government for each of the respective Petroleum Concession Agreements.

Regulators

The key regulators in the oil and gas industry include:

- EGPC: The Egyptian General Petroleum Corporation
- Egyptian Tax Authority: for the taxation issues.

Forms of contracts

In Egypt, there is only one type of contract / concession agreement; that is the profit sharing agreement as described above.

Royalty

In the concession agreements, royalties for the upstream activities are borne by EGPC. Generally, the royalty is calculated at a flat rate of 10%. However, the rate may differ depending on each agreement.

Taxation regime

As mentioned, the royalty and taxes in the upstream activities are borne by EGPC. The corporate income tax rate is 40.55% and the royalty rate is set in the concession agreement (generally 10% but could variant).

The EGPC is the final bearer of the tax burden. Under the concession agreements, corporate tax due is paid by EGPC after grossing up the taxable base.

Exploration entities calculate the corporate income tax due from EGPC’s assessable income, and they have the calculations reviewed and confirmed by the EGPC. The EGPC then pays the taxes directly to the tax authority. This is also the case for all active concession agreements.

Accordingly, the tax return prepared by the exploration entity should be reviewed, approved and signed by the EGPC.

For the midstream and the downstream activities, as per the new amendments made to the Egyptian income tax law and that came into force on 21 August 2015, the tax rate is 22.5%. The 5% surtax that was introduced in 2014 is now abolished as per the latest amendments.

Compliance Requirements

Tax returns and payments

For the upstream activities, the foreign investor provides EGPC with a draft tax return for review and approval within 30 days before the due date for submitting the return to the tax authority.

EGPC provide its approval / response within 15 days and after such approval is obtained, the investor is required to submit the return to the tax authority by the end of April of each year, or within four months from the end of the fiscal year.

For the midstream and downstream activities, the investor (service provider) is required to submit the return directly to the tax authority by the end of April of each year, or within 4 months from the end of the fiscal year.

Penalty

There is a penalty for failure to file the tax return to the tax authority by the due date.

Incentives in the oil and gas industry

Upstream activities:

Capitalized Exploration expenditure is deductible for income tax purposes. Based on the provisions of the concession agreements and pending approval of the EGPC, capitalized exploration expenses are amortized over a period defined in the concession agreement.

Tax Losses (All Activities):

Income tax losses may be carried forward for 5 years.

Withholding tax

The upstream activities are exempt from applying withholding tax for what is related to the exploration and production.

For the midstream as well as the downstream activities, withholding tax on payments against services made from a local entity to other local entities is at the rate of 2%.

However, payments made from a resident company to a non-resident company for services will be subject to withholding tax at the rate of 20%. For royalty and interests paid from resident to non-resident, withholding tax of 20% should be deducted.

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However, this rate may be reduced for royalties and interest, or eliminated in case of services, based on a relevant double tax treaty signed between Egypt and the payee's country of residence.

The ministerial decree no. 771 for the year 2009 should be taken into consideration when applying the double tax treaty reduced rate. There are some negotiations regarding that decree and whether it should still apply or the DTT treatment should apply automatically. Accordingly, this is a controversial issue at the moment in Egypt.

There are certain types of services that are exempt from the withholding tax according to the Egyptian Income tax Law as follows:

- Shipping;
- Transport and Freight;
- Direct advertising and merchandizing;
- Insurance;
- Training;
- Participation in the exhibitions and conferences; and
- World stock exchange Introduction.
- Direct advertising and merchandising
- Services related to religious rituals
- Residency in hotels or other places.

Dividends Tax

- A 10% WHT will be imposed on dividends paid by Egyptian companies to resident corporate shareholders. The 10% WHT can be reduced to 5% if both of the following conditions are met:
- The shareholder holds more than 25% of the share capital or the voting rights of the subsidiary company.
- The shares are held for at least two years.
- Profits of foreign companies operating in Egypt through a PE should be deemed to have been distributed as dividends if the profits were not repatriated within 60 days following the PE's fiscal year end.

Shareholders receiving dividends in the form of shares (stock dividends) should not be subject to dividend withholding tax.

Participation exemption

90% of the dividend income received by an Egyptian resident corporate shareholder from a non-resident subsidiary should be exempt from income tax if the following conditions were met:

- The shareholder holds at least 25% of the share capital or the voting rights of the subsidiary company;
- The company holds or commits to hold the shares of the subsidiary for at least two years.

However, dividends received by an Egyptian resident corporate shareholder from another resident subsidiary is not added to the taxable income of the recipient entity

and only the WHT tax applies upon the distribution (i.e. the WHT imposed upon the distribution of the dividends is a final tax based on the latest amendments of the law).

Capital gains tax

Sales of listed shares

According to the new Tax Law entered into force on 21 August 2015, capital gains realized from the sale of listed Egyptian shares by both resident and non-resident shareholders are subject to a 10% withholding tax. However, the application of this tax is suspended for two years, as of the 17th of May 2015 (i.e. the date of the official announcement made by the Cabinet of Ministers regarding this exemption).

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Sales of unlisted shares

According to the new Tax Law entered into force on 21 August 2015, capital gains realized from the sale of unlisted Egyptian shares by both resident and non-resident shareholders are subject to the regular tax rate for corporate shareholders (22.5%) and individual shareholders (progressive rates of up to 22.5%). This is expected to apply to transactions from the effective date of the new Tax Law.

Capital gains realized from shares invested abroad will not be taxable in Egypt for non-resident companies. For resident companies however, capital gains realized from shares invested abroad will be subject to Corporate Income Tax, with a credit to be given for the foreign tax paid.

Concession Agreements

In Egypt, most of the concession agreements provide protection against the taxes applicable to capital gains and dividends. And so the above taxes applicable to capital gains and dividends should not apply. It's worth noting In order for the capital gains tax exemption to apply, the sold asset(s) must be relevant to the activities performed under the concession agreement (which will most likely be the case).

Transfer Pricing and Thin capitalization

Transfer Pricing:

On 29 November 2010, the Egyptian Tax Authority launched the Transfer Pricing Guidelines ("TP Guidelines"). The TP Guidelines are being issued as a series of parts; the first part, which was issued in the final version to the public provides guidance on the arm's-length principle, how to establish comparability, choosing the most appropriate transfer pricing method(s), and documentation requirements. The remaining parts should cover more complex transfer pricing topics, specifically transactions involving intellectual property, intra-group services, cost contribution arrangements, and advanced pricing agreements.

Transfer pricing regulation follow the arm's-length principle, specifying that any transactions between related parties should be at arm's length (i.e. the market value).

The rules do not specify penalties with regard to transfer pricing. However, the law states that the Egyptian tax authorities may adjust the pricing of transactions between related parties if the transaction involves elements that would not be included in transactions between non-related parties, and undelying purpose is to shift the tax burden to tax exempt or non-taxable entities. Where this is the case, the tax authorities may determine the taxable profit using the basis of the neutral price. The acceptable

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methods for determining such neutral price, according to the rule of the law, are as follows:

- Comparative free price same as Comparable Uncontrolled Price method (CUP);
- Total cost with an added margin of profit (same as Cost Plus method); and
- Resale price.

Taxpayers are required to prepare contemporaneous documentation studies to support the arm's-length nature of their controlled transactions. The Egyptian Tax Authority does not require the submission of transfer pricing documentation studies with the tax return; rather, they are required to be available upon request in a tax audit. English Studies are acceptable; however a translation may be requested from the taxpayer.

According to the Egyptian Tax Authority, the TP Guidelines will be used as a practical guide to assist taxpayers and tax inspectors in understanding how to implement and examine transfer pricing transactions. Egyptian TP Guidelines are in line with the OECD TP Guidelines.

Thin capitalization:

Thin capitalization rules are applicable for the midstream as well as the downstream sectors, whereby, interest expense deductions is only allowed if the following conditions are met:

- Debt-to-equity ratio does not exceed 4:1 The Egyptian transfer pricing rules (i.e. arm's-length principle) must be followed (see Transfer pricing in the Group taxation section for more information). In case of a tax audit, if the interest rate cannot be supported by appropriate documentation (demonstrating arm's length), the Tax Authority has the right to adjust this price to arrive at a 'neutral price' and recalculate the taxes due accordingly;
- The interest rate should not exceed twice the discount rate as determined by the Central Bank of Egypt at the beginning of the calendar year in which the tax year ends; and
- The loan should be business related.

Indirect Taxes

General Sales Tax (GST)

The upstream activities

In general (and according to the standard concession agreements), oil and gas exploration entities working in Egypt are exempt from the sales tax on supplies made to them by other suppliers (excluding passenger cars). It is mandated that such supplies are used for exploration and development purposes.

The midstream and downstream activities

Subject to the normal sales tax treatment depending on the services provided. The general sales tax rate is 10%.

Proposed new VAT Law

The tax authorities have announced the intention to introduce a new VAT System. There is no official publication of the new VAT law to date and therefore VAT is not applicable in Egypt.

Under the provisions of the new VAT Law, the standard tax rate is expected to be increased (12% or 14% compared to the current sales tax rate of 10%). The services will become taxable (most services are currently not taxable under the sales tax legislation). Moreover, the threshold for registration of the resident companies is expected to increase. The implementation of the reverse charge (self-assessment mechanism) on certain supplies by non-residents to Egyptian customers. Finally, it is expected that the exemptions under the new VAT law will be fairly limited.

The new VAT law is expected to transform the current GST system (which is partly VAT-like as applicable to goods and partly on selected services) closer to a modern full-fledged VAT system.

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Custom Duties

The upstream activities

These activities are exempt from customs duties and import tariffs on assets and materials used for the production and exploration of oil as per the concession agreement and specifically for what is related to exploration and production activities.

The midstream and downstream activities

They are subject to customs duties and import tariffs on the imported materials and assets and the rate depends on what is imported.

Social Security contributions

Egyptian resident employees are liable to Social Insurance from the age of 18 years.

Expatriate employees working in Egypt are not allowed to subscribe to the Social Insurance scheme, unless:

- a. A treaty exists between Egypt and the employee's country, and it allows him/her to join the social insurance scheme, or;
 - b. The employment contract exceeds one year.
- In both cases, the employee will be expected to join the scheme.
 - The Social Insurance Law covers both Egyptian employees and foreign employees whose countries have treaties with Egypt for reciprocal Social Insurance treatments.
 - Managers of an LLC should contribute into the social insurance system regardless of their nationality.
 - Countries with reciprocal treaties are Greece, Cyprus, Morocco, Libya, Sudan, Jordan, Syria, Iraq, Lebanon, Somalia, and Palestine.

Social Insurance Rates

- Employers and employees are both liable to pay towards social insurance, although it is the responsibility of the employer to remit the amount, and it is calculated by reference to the amounts paid by the employer to the employee.
- The thresholds for calculating social insurance per month are presently EGP 1,012.5 on basic salaries and EGP 1,830 on variable elements. Variable elements include the remainder of the basic salary, if it is in excess of EGP 1,012.5 per month, as well as overtime, bonuses, representation allowances and similar emoluments.

The rates of contributions under the Social Insurance Law are as follows:

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Payment Type	Employer	Employee
Basic Salary	26%	14%
Variable Elements	24%	11%

Payroll contributions

Individuals are taxed on salaries earned from work performed in Egypt, regardless of where the payment is made. Where the salary is earned from an Egyptian entity, the individual recipient is liable to tax regardless of where the service is performed. In general, this tax is withheld at source from payments to Egyptians and foreign nationals working in Egypt. Payments include salaries, overtime, bonuses, fringe benefits, allowances and all other payments and benefits. Where, an annual tax is imposed on the total net income of the resident individuals for income earned in Egypt as well as the income earned outside Egypt for resident individuals whose centre of commercial, industrial or professional activities is in Egypt. Also tax is imposed on the income of non-resident individuals for their income earned in Egypt.

- Employees are taxed according to the following brackets; and are entitled to annual salary tax exemptions (EGP 7,000):
 - EGP 0 - 6,500 0%
 - EGP 6,500 - 30,000 10%
 - EGP 30,000 - 45,000 15%
 - EGP 45,00 - 200,000 20%
 - More than EGP 200,000 22.5%
- Non-resident employees are subject to tax at the same tax brackets mentioned above with also the annual exemption of EGP 7,000.

Property taxes

The upstream activities are exempt from paying property taxes as per the concession agreement.

Real estate tax is applied to all real estates all over the country (including new urban communities and free zones). The implementation of the real estate Law has started to take place on the first of July 2013. However, the valuation of the constructed real estate units has not been tested yet.

- The tax rate is 10% of the annual rental value of the taxable real estates, after deducting the percentage of 32%
- of the rental value (for non-residential real estate units) to account for expenditures including maintenance.
- The annual rental valuation will be estimated by specialized committees. The following factors will be considered upon valuation:
 - Geographic location considering the nature of the district.
 - Standard of building and the quality of the building materials.
 - Facilities available: electricity, water, sewage system, services (medical, social, educational), roads, transportation etc.

Committees, called “assessment committees”, will be formed in every governorate, to be responsible for assessing the rental value of constructed real estate units. The assessment will be based on a qualitative classification of these real estate units according to the above mentioned factors (building standard, the geographical position and the annexed utilities, etc...)

The annual assessment will be applicable for a five year term. Reassessment procedures will be initiated from one year to three years before the end of each term.

Rental value assessments set by the committees will be communicated to each taxpayer via a written notification “assessment notification” and will be published in the Official Gazette. The taxpayer can appeal on the rental value assessment within sixty days following the date of the publication date.

Factors affecting the taxable amount:

- Market value of the real estate will be estimated as mentioned above by the assessment committees.
- Capital value will be 60% of the market value.
- Annual rental value will be 3% of the capital value.
- Expenditures 32% of the annual rental value estate used for purposes other than accommodation

Method of calculation for real estates used for other than accommodation:

- $\text{Rental value} = (\text{Market value} \times 60\% \times 3\%)$.
- $\text{Taxable amount} = (\text{Rental Value} \times 68\%)$.

Stamp taxes

The upstream activities are exempt from paying stamp taxes as per the concession agreement.

Stamp taxes apply as follows:

- Land registration/property transfers/transfer of deeds (including lease agreements);
- Banking Transactions;
- Insurance Premiums; and
- Payments by Governmental Bodies.

There are two distinct types of tax:

- Nominal Stamp Tax, which is imposed on certain documents, regardless of their value; and
- Proportional Stamp Tax, which is imposed at prescribed rates on the values of certain financial transactions.

Additionally, there are other types of Stamp Taxes, which are levied by the Laws of the Engineering Syndicate and the Technical Syndicate.

The rates of tax differ according to the nature of the document being exercised, and whether it is liable to Nominal or Proportional Stamp Tax.

- The stamp tax on Banks' loan is applicable on the Egyptian banks and the branches of foreign banks in Egypt with the exception to the non-resident Banks.
- The stamp tax is applied on the beginning balance of each quarter during the year, in addition to the amount of utilization (the amount of utilization from the credit facilities balance granted by banks during each quarter).
- It is due to within 7 days following the end of each quarter during the year.

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In addition, specific rates apply for payments made by a Governmental body. These are subject to Stamp Tax at a maximum rate of 2.4% of the amount of the payment.

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Country profile

The oil and gas industry in Iraq

Recent studies have indicated Iraq has one of the largest oil reserves in the world. Conversely, the country only contributes to 4% of global production and produces approximately 4 million bpd. In 2012 Iraq produced less than 3 million bpd and aimed to increase this to 12 million bpd by 2017. However, experts believe this target will not be achieved and it is necessary to employ the use of International Oil Companies (IOCs) with the technology and capabilities to increase production.

Despite these challenges, Iraq is still a land of opportunity for oil and gas companies as the potential is vast, production costs are among the lowest in the world and the Government places heavy reliance on oil revenues. Although the industrial sector provides the highest earnings to the country, it requires heavy investment to achieve Iraq's plans for growth and development.

Oil in Iraq is state owned and IOCs have been awarded technical service contracts since 2008 to increase production. The Ministry of Oil has managed four Licencing Rounds, 15 oilfields and 3 gas fields were awarded to IOCs. The unexplored oil and gas potential will drive more contracts and licences in the near future, while the process takes time, investment should be rewarded.

Brief history of the Iraqi fiscal regime

From 1927 to 1982, Iraq operated under the Income Tax Law No. 52 of 1927 with minor amendments. In 1982 Income Tax Law No. 113 was introduced until the fall of the regime in 2003 where Order No. 37 suspended the tax system for one year.

Order no. 49 of 2004 reintroduced Law No. 113 of 1982 and provided a more favourable tax regime comprising a 15% income tax rate and an increase in tax deductible allowances.

In 2010, the Law of Income Taxation on Foreign Oil Companies Working in Iraq No. 19 came into effect which operates alongside Law No. 113 (as amended in 2003, and as per amendments by the Coalition Provisional Authority "CPA" Orders 37, 49, and 84 of 2004) and levies a tax rate of 35% on income earned in Iraq by Oil companies and their

Iraq

subcontractors. This law was further supplemented by Instruction No. 5 of 2011 and Instruction No.2 of 2013 which are discussed further below.

Regulators

The key regulators in the oil and gas industry in Iraq comprise of the following:

- The Ministry of Oil;
- The Organization of the Petroleum exporting countries (OPEC);
- The Ministry of Finance; and
- General Commission for Taxes.

Current Fiscal Regime

Oil and Gas industry in Iraq from a taxation perspective

There are no special laws governing petroleum activities in Iraq. Oil and gas companies are generally subject to the same tax laws and regulations which govern other industries with the exception of some key considerations discussed below.

The general tax profile of Iraq

The corporate income tax rate in Iraq, for legal persons (excluding partnerships) is 15% at all income levels with no progressive tax scale (excluding the oil and gas sector which attracts a 35% rate). The level of taxation in Iraq is comparable to several countries in the region and worldwide. According to Paying Taxes 2015¹, Iraq is ranked 52nd of 189 economies in the world in terms of the ease of paying taxes.

Iraq applies the “Permanent Establishment” concept in determining whether a business is subject to tax in Iraq. It is important to note that foreign companies may not carry on business in Iraq unless they are registered in accordance to the laws currently in effect in Iraq.

In the absence of a clear definition of the “Permanent Establishment” concept in the Iraqi law, it is necessary to carefully monitor the commercial activities performed in order to ensure compliance with Iraqi registration requirements and other applicable tax rules.

Broadly, one of the key issues in determining when a company becomes taxable in Iraq is whether the foreign company is considered to be doing business “in” or “with” Iraq.

Once it is established that a company is trading “in” Iraq, the company is required to register with the General Commission for Taxes (GCT)). Companies registered with the GCT are subject to corporate income tax in Iraq and are required to file a corporate income tax return.

Under the Tax Law, losses suffered by a taxpayer on some sources of income arising in Iraq (substantiated by legally accepted documents) can generally be deductible against profits arising on other sources. Losses which cannot be settled in this manner, are carried forward and deducted from the income of the taxpayer over five consecutive

¹ Paying Taxes 2015 is a unique study from PwC and the World Bank Group. The study investigates and compares tax regimes across 189 economies worldwide using a case study company, and ranks them according to the ease of paying taxes.

years. However, this is limited to the proviso that losses may not offset more than half of the taxable income of each of the five years, and the loss is from the same source of income from which it is being deducted against.

Key taxation considerations as a foreign investor in the oil and gas sector

Taxation of income

The tax law applicable to foreign oil and gas companies, branches or offices of oil and gas companies, service companies, and subcontractors working in fields of production and extraction of oil and gas and related industries are all subject to a tax rate of 35%, applicable to the income earned in Iraq.

Additionally, it is important to mention that in order to attract more foreign investment all the Iraqi legislators, including the Ministry of Finance (MoF), are focused on improving the investment climate for the oil and gas sector.

Activities within the oil and gas taxation system

In December 2013, the tax authority amended instruction No. 5 of 2011, which regulates the oil and gas sector from a tax perspective, providing additional guidance on the application of the tax system.

The following activities, due to their nature, will be considered to be subject to the oil and gas special instructions:

- Exploration of oil and gas fields and upstream development;
- Seismic survey;
- Wells excavation;
- Reclamation of wells;
- Technical operations related to wells and including the laying down linings, cementing, wells recovery, electrical boring and wells completion;
- Surface installations for the operations of producing and extracting oil, gas and the industries related to them;
- Water injection installations;
- Flow pipes;
- Gas treatment coefficient;
- Cathode protection;
- Engineering examination and quality control related to oil and gas;
- Water well excavation; and
- Activities related to extraction up to the limit at which oil or gas is ready for pumping to exportation outlets.

Revenue and expense accounting considerations

The basis for accounting for and calculating income tax in the oil and gas sector is the “income maturity/accrual date” approach which includes the following features:

- All refundable expenses shall be deemed capital expenses in the first years until the recovery (oil lifting) point is reached;
- Generated revenue will be off-set by the amortisation of capitalised recoverable costs and any difference will be subject to tax whereas the remaining capitalised costs will be carried forward to the next year.

Iraq

Withholding tax system for oil & gas activities

Companies, operating in Iraq within the oil and gas sector, are required to withhold and pay to the GCT certain amounts (discussed below) within 30 days from the date of payment. The withheld amount can be used to offset the corporate tax liability upon finalising the corporate tax assessment.

The withholding mechanism operates as follows:

- Payments to foreign companies by the Iraqi Ministry of Oil (Ministry): The Ministry deducts 35 % of the proceeds due to the foreign companies, their branches, offices and subcontractors. The Ministry transfers the withheld amount to the GCT within 30 days of the date of payment.
- Payments to subcontractors of a foreign company: Foreign companies are required to deduct 7% of payments due to their subcontractors on activities related to oil and gas and transfer it to the GCT within 30 days of the date of payment. Any final payment due to a contractor should only be paid when the sub-contractor obtains a tax clearance. In contrast, for contracts other than for oil and gas activities the rate of deduction is 3.3%.

Compliance

Tax returns and payments

Taxpayers are required to submit a tax return to the tax authorities before the first day of June following the year of assessment and any tax due should be paid within 21 days of the assessment date.

Taxpayers' books and records should be kept in accordance with the uniform accounting system (Iraqi GAAP), in Arabic, and should be maintained for a period of not less than seven years.

Penalties

Penalties are due on unpaid taxes at 5% of the outstanding balance after 21 days. After which another 5% will apply for each 21 days of delay. Interest will accrue from the date the tax is due to be paid.

Withholding taxes

Dividends

There is no withholding tax on dividends in Iraq.

Royalties

There is no withholding tax on royalties in Iraq.

Interest

Interest payments to a non-resident suffer a 15% withholding tax.

The applicable withholding tax rate may be reduced where the recipient is a resident of a country that has a double tax treaty with Iraq. In this regard, currently Iraq has signed 2 double tax treaties with Egypt and Italy.

Whilst, with the exception of interest, Iraq doesn't apply withholding taxes, Iraq does apply a retention system with respect to payments to non-residents who are considered to be trading in Iraq. The retention rate can be as high as 10% of the gross payment.

Thin capitalisation and Transfer pricing

Thin capitalisation

Iraqi tax law does not contain a provision that covers thin capitalisation.

Transfer pricing

The precise meaning of transfer pricing under the Iraqi tax system is unclear from a tax and legal perspective.

Whilst having no specific transfer pricing legislation, Iraq does have a "third party", arm's length provision contained within its tax legislation. Where a non-resident tax payer is engaged in business with a resident and it appears to the Tax Authority that, due to the connection and degree of control between the resident and non-resident, the business relationship is arranged in a manner that leaves no profits to the resident (or less than what is normally expected), then tax shall be assessed on the actual profits of the non-resident and charged to the resident as if the resident is the business agent for the non-resident.

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Other taxes on corporations

Stamp duty

All direct and indirect contracts related to credit facilities and other bank's activities (e.g. letter of credit contracts) are subject to stamp fees at a rate of 0.2% of the contract value.

Transfer tax

There are no restrictions or taxes on transferring funds into or out of Iraq.

Property Taxes

A basic tax of 10% is assessed on the annual revenue for all real estate and is collected from the real estate owner or the long-term lessee (five years). In cases where the owner or long-term lessee cannot be located, the person occupying the real estate will be assessed. Note that the annual revenue for each real estate is discounted by 10% for expenses and maintenance before assessing the tax on that real estate.

Personal income tax / social security considerations

Salaries, wages and allowances of Iraqi and foreign personnel working in contracted foreign companies, branches, offices and subcontractors shall be subject to the direct deduction tax, "personal income tax", regardless of whether such amounts were received inside or outside Iraq. Personal income tax rates range between 3% and 15% based on the individual taxable income (bracket rules are applied).

With respect to social security contributions, employers are divided into a number of categories, from which their contribution percentage is determined. Employers that are categorised as "prime" contribute at the higher rate 25%, whereas the remaining

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categories contribute at a lower rate 12%. Employee contribution remains the same at 5% irrespective of the category of employment they fall within.

The categorisation of each employer is subject to the discretion of the social security department. The criteria for the determination is not crystallised in the law; however, in practice, the social security authorities make their determination based on the business sector the employer is involved in, with oil and gas related industries attracting the higher rate 25%.

Oil and gas services companies

Oil and gas services companies, working in fields of production and extraction of oil and gas and related industries are all subject to a tax rate of 35%, applicable to the income earned in Iraq.

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K

Country profile

Brief history on oil and gas developments

Kuwait has one of the largest oil reserves globally. Its proven oil reserves exceed 100bn barrels (6-7% of the world's total) and the country produces around 2.9m bpd. The oil and gas sector accounts for approximately 60% of Kuwait's gross domestic product.

In 1973, the issuance of Law No. 19 of 1973 for maintaining the petroleum resources, paved the way for the sharing agreement signed on 29 January 1974 between the government of the State of Kuwait and BP Kuwait Ltd and Gulf Kuwait.

In 1975 a decree was issued to separate the Ministry of Oil from the Ministry of Finance in order to nationalise oil production and to sign the agreement for the control of the State of Kuwait over its oil resources. Following this decree, Kuwaiti corporations such as Kuwait National Petroleum Company (KNPC) and Gulf Petroleum Industries Company (GPIC) were established to focus on petroleum markets being marketed locally. The industry grew from a local perspective until August 1990 when the Iraqi invasion on the State of Kuwait took place, adversely impacting the production and development of the oil and gas industry.

After the liberation of Kuwait in 1991, the oil and gas industry in Kuwait operated through structures that included both local and foreign companies. Such contracts in 1995 were greatly criticised by the National Assembly and the Kuwait Supreme Petroleum Council which, due to constitutional restrictions, limited foreign control on natural resources including oil.

In 1999 a new variation service type contract was introduced known as the operating service contract, which retained control of ownership in line with the constitutional

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provisions, limiting foreign companies to the scope of performance of services with stringent terms.

The Enhanced Technical service contract was introduced in 2010 which gave foreign companies more incentives allowing them to share in the development of gas fields through long term agreements up to a term of 60 years. However, such projects were later halted by the Kuwaiti Parliament which led to the development of the Oilfield Service Contract in 2013.

In order to promote the development of the industry and to encourage investment by foreign companies Kuwait has introduced incentives, through the Kuwait Direct Investment Promotion Authority and the Public Private Partnership Law, as recent as 2013-2014/2015.

Fiscal regime

Kuwait has no special tax laws or regulations governing petroleum activities and there are no special articles governing oil and gas in the Kuwaiti Income Tax Law except for the compliance requirement of companies operating in the Partitioned Neutral Zone (PNZ) which is governed under a separate Law No. 23 of 1961.

The new Tax Law No.2 of 2008 (updating the old Law No. 3 of 1955) provides for a flat rate corporate income tax rate of 15% on all types of business activity inclusive of oil and gas industry activities. Companies, which are registered in Kuwait or the Gulf Cooperation Council (GCC) countries and are wholly owned by Kuwait / GCC nationals, are not subject to income tax.

Kuwait has entered into 62 double tax treaties for the avoidance of double taxation. In practice, however, the wide interpretation of taxing provisions in the Kuwait tax law tends to create dispute on the application of the treaty benefits.

Joint Venture Agreements

In Kuwait, there is no specific tax treatment applicable to Joint venture (JV) operations. However, only foreign JV partners will be subject to tax since JVs are unincorporated enterprises. Since there is no precise treatment of such structures in the domestic tax law, JVs are dealt with on a case by case basis by the Department of Inspection and Tax claims (DIT).

Regulators

The key regulators in the oil and gas industry are:

- Kuwait Petroleum Corporation (KPC);
- Kuwait National Petroleum Company (KNPC);
- Kuwait Oil Company (KOC);
- Ministry of Oil (MoO); and
- Ministry of Finance (MoF) through the DIT for the taxation issues.

Royalty

There is no royalty fee applicable in Kuwait. However, there can be assignment fees for back to back contracts which local companies assign to a contractor for the entire scope of works and charge according to an agreed rate as per the terms and conditions of the contract.

Taxation regime

A foreign corporate body is any association formed and registered under the law of any country or state (other than Kuwait) which has a separate legal existence from that of its shareholders/members. Kuwait-registered companies are not subject to corporate income tax. However, any foreign corporate body with a shareholding in a Kuwait-registered company (undertaking business in Kuwait) is subject to corporate income tax. For the purposes of this law, GCC residents and entities wholly owned by GCC residents are treated similar to Kuwaiti business entities.

The government of Kuwait does not implement a taxation regime especially designed for the oil and gas industry, but rather the general tax laws apply.

Corporate Income Tax

Corporate Income Tax in Kuwait is governed by the Kuwait Income Tax Decree No. 3 of 1955, as amended by Law No. 2 of 2008 (effective for fiscal periods commencing after 3 February 2008), the Executive Bylaw and Executive Rules.

In line with Article 1 of the Decree, any foreign entity “*carrying on trade or business in Kuwait*”, should submit tax declarations in Kuwait and pay tax on profits earned from such operations. The Kuwait tax law provides for a flat corporate income tax rate of 15%.

As per the Kuwait Tax Law, any foreign corporate body that undertakes activities in Kuwait or earns any income from Kuwait, is considered subject to Kuwait corporate income tax. The taxability of a company is determined based on the source of income rather than whether the company has a taxable presence or permanent establishment in Kuwait.

In practice, the Decree and the Tax Law are applied to the foreign corporate bodies and their proportionate shareholding in the local and GCC entities operating in Kuwait.

Income tax is applied on business profits (revenue – expenses) after considering the common adjustments for tax purposes. The expenses and costs may be allowed provided these can be considered as:

- capitalise for realisation of business-related income;
- capitalise and supported with documents; and
- capitalise to the taxable period.

Further, certain specified allowable expenses include, but are not limited to, the following:

- Raw materials, consumables and services necessary for the objectives of business;
- Paid salaries, wages and service indemnity;
- Prescribed donations or gifts (limited to certain percentages);

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- 1% of the direct revenues realised in Kuwait for incorporated bodies which are partners in Kuwaiti companies; and
- Depreciation of assets used in the business according to the rates stated in Article 4 of the Executive Bylaws of Law No.2 of 2008 and range from 4 – 33.3%.

Expenses and costs incurred by incorporated bodies which are not related to the taxable business in Kuwait or are not necessary for generating profit shall not be deducted including, but not limited to the following:

- Personal and private expenses;
- Disciplinary penalties;
- Indemnified losses; and
- Provisions and reserves (unless specifically stipulated in the Executive Rules and Regulations).

Where the corporate body has incurred losses for the taxable period, such losses shall be carried forward for a maximum of up to 3 years, subject to prescribed conditions.

Where the entity is operating in Kuwait through an agency agreement, a maximum of 2% of the revenue of the respective fiscal period can be declared as deductible expense for agency commission fees.

The Partitioned Neutral Zone (PNZ) governed by Law No. 23 of 1961

The PNZ is an area between the border of Saudi Arabia and Kuwait which was undefined when the border was originally established. When oil was discovered in the PNZ negotiations commenced and an agreement was ratified in 1970 which partitioned the area.

In practice a foreign company operating in the PNZ is considered to be taxable in accordance with Law No. 23 of 1961 whereby the tax liability is computed as follows:

Taxable profit range	Applicable tax rate
0 – KD 500,000	20%
Over KD 500,000	57%

In principle, as the offshore area in the PNZ has now been formally divided between Saudi Arabia and Kuwait, activity in PNZ should only be subject to tax in the territory where the work is implemented. However, in practice, the DIT computes tax on the total income of the tax payer and expects that 50% of such tax should be settled in Kuwait as such contracts are handled by the DIT in Kuwait on a case by case basis. The matter is still under dispute between the DIT and the Saudi Tax Authority and no formal guidance has been issued in this regard.

Oil and gas services companies

Companies providing oil and gas services are taxed on the same basis as those undertaking exploration and production activities. There is only one applicable tax rate in Kuwait of 15% and the same rules apply to both types of company.

Compliance Requirements

Registration

A foreign company operating in Kuwait is required to register with the Department of Submission and Tax Planning (DSTP) within 30 days of signing any contracts with its contract owner in Kuwait.

Submission of Tax Declaration

Foreign companies are required to submit their tax declaration on an annual basis within three and half months from the selected year end date.

Depending on the way the tax payer keeps their books of accounts for the Kuwait operations, either of the two methodologies can be used for filing the tax declaration:

- **Actual basis:** Any foreign corporate body carrying on business in Kuwait should comply with the tax law by submitting a tax declaration and paying tax on profits earned from such operations in Kuwait. The law requires that the tax declaration should be prepared from book of accounts kept for Kuwait activities and supported by audited financial statements in line with the tax accounting requirements of the KTA as mentioned above. The accounts should be audited by an auditor registered with Ministry of Commerce and Industry (MoCI) and approved at the MoF.
- **Deemed profit basis:** Where the taxpayer has failed to keep proper books of accounts for Kuwait activities or the nature of business is such that it is impossible to keep separate books of accounts regarding the Kuwait activities and produce the type of supporting information normally required by the DIT, the DIT sometimes accepts the tax declaration on a deemed profit basis. Under the deemed profit method, the taxpayer prepares the tax declaration reporting revenue earned during the year and estimating a profit for the Kuwait activities based on a percentage of revenue earned.

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Payment of Tax

Tax is payable in four equal instalments on the 15th day of the fourth, sixth, ninth and twelfth months following the end of the tax period. If an extension is approved by the DIT, all of the tax is payable upon the expiration date of the extension. Failure to file or pay the tax on time attracts a penalty of 1% of the tax liability for every 30 days of delay or part thereof.

Inspection

Following the submission of the tax declaration, there is a detailed tax inspection process, where the DIT examines the supporting documents to the tax declaration. The tax assessment is usually raised on the taxpayer setting out revised basis assessed by the DIT. Any additional tax as per the tax assessment should be settled within thirty days of the date of the tax assessment. In the case of deemed profit basis of filing, the DIT inspects the supporting documents for revenue and accordingly, assesses on the estimated profit dependent of the line of business activity the company is involved in.

Penalty

According to Article 34 of the Executive Bylaws of Law No.2 of 2008 a penalty of 1% is calculated, for every 30 days or fraction thereof, in the following cases:

- Delay in the submission of the tax declaration, from the due date for its submission until the date of its submission, based on the tax due shown in the assessment;
- Failure to submit the tax declaration from the due date for its submission until the date of the assessment based on the tax due shown in the assessment;

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- Delay in settlement of the tax instalments as per the tax declaration, from the due date for payment of each instalment, until the date of settlement, based on the instalment amount; and
- Delay in settlement of the tax due as per the final tax assessment after thirty days of being notified of the assessment, the response to the objection, the Tax Appeals Committee's decision or the final court ruling until the date of settlement.

Objection Process

If a company disagrees with an assessment issued by the DIT, the company should submit an objection within 60 days from the date of the assessment. The DIT is required to resolve the objection within 90 days of the filing of the objection, after which a revised tax assessment is issued by the DIT. Upon issuance of a revised tax assessment, any additional tax is payable within 30 days. If the DIT issues no response within 90 days of filing the objection, this implies that the taxpayer's objection has been rejected. The taxpayer may appeal the assessment with the Tax Appeals Committee.

Incentives in the oil and gas industry

Tax Losses (All Activities)

Tax losses may be carried forward for 3 years, provided that none of the following situations arise in the fiscal period following the period in which the loss was recorded:

- The tax declaration does not include any revenue from the business activities of the taxpayer in Kuwait;
- Change in the legal structure of the taxpayer;
- Merger of the taxpayer with another entity;
- Liquidation or ceasing of the activities of the taxpayer in Kuwait; and/or
- There is no option to carry back tax losses.

Foreign tax credit

Foreign taxes paid to a country with whom Kuwait has a Double Tax Treaty may be eligible for credit to the maximum of the Kuwaiti tax that would have been payable on such income.

Kuwait Free Trade Zone

Businesses set up in the Kuwait Free Trade Zone (KFTZ) which carry on specified operations are exempt from corporate and personal taxes on operations conducted in the zone. Foreign entities can own 100% of such businesses. Currently, the government of Kuwait has stopped issuing KFTZ licenses.

Foreign Direct Investment Law

The Kuwaiti Public Authority has introduced a new law to increase the Foreign Direct Investment (FDI) in Kuwait. Previously Law No. 8 of 2001 was regulated through Kuwait Foreign Investment Bureau (KFIB). In order to enhance the FDI progress, KFIB was replaced with the Kuwait Direct Investment Promotion Authority (KDIPA), which is essentially created with the same mandate as the KFIB however with heightened structures that are more flexible, approachable and efficient.

KDIPA issued Executive Rules to Law No. 116 of 2013 through Ministerial order no. 502 of 2014 setting guidelines for foreign investors for projects under the FDI. The order specifies the criteria which must be fulfilled to apply for a license under the Law and provides a number of benefits to the entity including:

- Tax holiday for a period up to 10 years;
- Custom Duties exemption;
- Allocation of land and real estate;
- No limited quota on foreign expats working under the project; and/or
- 100% foreign shareholding.

However, the following investments in the oil and gas industry do not qualify for the incentive:

- Extraction of crude petroleum;
- Extraction of natural gas;
- Manufacture of coke over products; and
- Manufacture of gas; distribution of gaseous fuels through mains.

Public Private Partnership (PPP) Law

In line with the FDI Law, another form of investment has been invited in Kuwait through the PPP Law. The purpose of this Law is for potential investor(s) to implement a project of strategic importance to the national economy, while allowing the investor to make profits from the operations for a specified term. The Law further provides general guidelines on project procurement procedures to obtain necessary approvals, details relating to incorporation of the Project companies, and information related to investment terms and transfers of the project to the State.

The PPP Law, now provides opportunities for project companies to be foreign owned; enabling foreign investors to have equal opportunities for business, alongside their Kuwaiti counterparts. The provisions of the PPP Law provide that if the total cost (capital expenditure) of a PPP project is expected not to exceed KWD 60 million, a successful investor can hold the entire share capital of the project company.

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Withholding taxes

Treatment of dividends is not specifically addressed in the amended tax law or in its bylaws (except for dividends listed on the Kuwait Stock Exchange (KSE)).

Apart from the withholding tax on dividends arising from securities listed on the KSE, there are no other withholding taxes in the domestic law. However, the tax treaties apply varying interest, royalty and dividend withholding tax rates and it is unknown how or if the Kuwaiti government will require for these rates to apply to foreign companies.

There is also mechanism of tax retention applied in Kuwait through which government bodies and private entities are required to retain the final payment due to a contractor or subcontractor until presentation of a tax clearance certificate from the MoF confirming that the respective company has settled all of its tax liabilities. The final payment should not be less than 5% of the total contract value.

Capital gains tax

Capital gains on the sale of assets and shares by foreign shareholders are treated as normal business profits and are subject to tax at a 15% rate. In cases where the DIT is unable to identify the actual gain or loss on a sale of asset it deems a capital gain in the range of 20% fully subject to tax.

Kuwait

Thin capitalisation and Transfer Pricing

Thin capitalisation

There are no specific thin capitalisation rules in the Kuwait tax law. The DIT will generally accept the interest deduction, provided the following conditions are met:

- Supporting documentation is available;
- Interest is paid to a financial institution; and
- The loan has been used to fund Kuwait operations.

However, the DIT has the authority to adjust the tax treatment on a case-by-case basis. Interest payments to an agent of a foreign company or to the foreign head office for any loan are not considered as tax deductible expense.

Transfer Pricing

There are no transfer pricing rules in Kuwait, any affiliate transaction should be conducted on an arm's length basis.

The deduction of head office expenses (the overhead or the indirect expenses) is limited to 1.5% of the company's Kuwait revenue after deducting the subcontractors shares (if any).

The direct costs allocated by the head office (e.g. supply of goods, design and consultancy costs) are regulated as follows:

For goods costs incurred outside Kuwait:

Goods or materials supplied by	Maximum allowable costs as a percentage of revenue
Head office	85%
Affiliated companies	90%
Third parties	95%

For design costs incurred outside Kuwait:

Design work executed by	Maximum allowable costs as a percentage of revenue
Head office	75%
Affiliated companies	80%
Third parties	85%

For consultancy costs incurred outside Kuwait:

Consulting work executed by	Maximum allowable costs as a percentage of revenue
Head office	70%
Affiliated companies	75%
Third parties	80%

In case there is no separate revenue for the consultancy, design, or goods work, although the nature of the contract requires the existence of consultancy work, the following formula shall be applied:

Consultancy, design, or goods revenue = (consultancy, design, or goods costs / total direct costs) x contract revenue.

Indirect Taxes

Custom Duties

Customs duty is the only indirect tax imposed in Kuwait. There is no value added tax.

As a member of the GCC, the Kuwaiti government follows the Unified Customs Act of the GCC. A uniform customs duty (generally 5%) applies to most imports originating from outside the GCC.

Payroll taxes and social security contributions

Individuals are not subject to taxes in Kuwait and there are no social security obligations for expatriate workers. However, for foreign employees, it is generally necessary to make terminal indemnity payments calculated at 15 days' pay-per-year for the first three years of service and 2/3 month's pay-per-year thereafter.

For Kuwaiti employees, contributions are payable monthly by both the employer and employee under the Social Security Law. The employer's contribution is 11.5% and the employee's is 8% of monthly salary, up to a ceiling of 2,750 Kuwaiti dinars per month. Benefits provided include pensions on retirement and allowances for disability, sickness, and death.

In addition to the above contributions, effective from 1 January 2015, the employee's contribution under the Social Security Law increased by 2.5% of the monthly salary up to a ceiling of 1,500 KD per month.

Others

Zakat

Zakat is imposed on all publicly traded and closed Kuwaiti shareholding companies at a rate of 1% of the companies' net profits.

Contribution to the Kuwait Foundation for the Advancement of Sciences (KFAS)

All Kuwaiti shareholding companies are required to pay 1% of their net profits as per their financial statements, after their transfer to the statutory reserve and the offset of loss carry forwards, to the KFAS, which supports scientific progress.

National Labour Support Tax (NLST)

As per the law, Kuwaiti companies listed in the KSE are required to pay an employment tax of 2.5% of the company's net annual profits.

The purpose of the NLST law is to encourage the national labour force to work in the private sector by closing the gap in salaries and benefits between public and private sectors.

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Country profile

Oman is the largest oil and natural gas producer in the Middle East which is not a member of OPEC. With reserves of 5bn barrels and 1m bpd, Oman is highly dependent upon the hydrocarbons sector. Revenues from oil and natural gas accounts for approximately 50% of Oman's gross domestic product.

Oman's proximity to the Arabian Sea and Gulf of Oman gives it access to some of the most important energy corridors in the world, enhancing its position in the global energy supply chain. Oman is capitalising on this strategic location by building a world-class oil refining and storage complex near Duqm, a port which lies outside the Strait of Hormuz.

Fiscal regime

Oman's current corporate tax law, Income Tax Law no, 28/2009, is supplemented by secondary legislation, issued in 2012 by executive regulations. The main elements of the Oman fiscal regime as it applies to oil and gas production is determined based on the concession agreement in place. Oil and gas companies enter into Exploration and Production Sharing Agreements (EPSAs) with the Government, which govern the profit oil after allocating cost oil. Key elements of EPSAs include

- Corporate income tax rate of 55% (see also below);
- Bonuses;
- Capital allowances are not applicable for EPSAs; and
- Investment incentives (dependent on the concession agreement in place).

Oman

Corporate income tax

Oman applies an income tax rate of 12% to all businesses. An Omani company is subject to tax on its worldwide profits, whereas a foreign company is subject to tax on Omani-sourced income only. A flat rate of 12% applies to company with taxable profit of OMR 30,000 or over.

However, oil and gas production companies suffer tax in Oman at a rate of 55% on their taxable income. Taxable income is will be calculated with regard to the EPSA terms agreed in the concession. Standard features of EPSAs include, but are not limited to the following:

- Agreement that expenses for exploration, production and related activities are fully funded by the concession holder, not the Government;
- Determination of the Government shares in production;
- Production sharing depends on production for the period, based on prices which will be determined by the Government;
- Initially cost oil is determined. This is the portion of produced oil that is applied on an annual basis to recover defined costs under the EPSA. A cap may or may not be placed on the level of cost oil available to the company;
- Remaining oil is profit oil and is shared by the concession holder and the Government in accordance with the terms of the EPSA;
- Dependant on the EPSA, the following payments may be made to the government:
 1. Discovery bonus
 2. Rental payments
 3. Renewal bonus
 4. Signature bonus on signing the EPSA
- A tax rate of 55% applies to income derived from the sale of petroleum by companies engaged in oil and gas exploration. The taxable income is determined as follows:
 5. $TI = NI + (55\% \times TI)$, where TI = taxable income and NI= net income determined as the market value of oil or gas extracted, less recoverable costs;
- The Government settles the company's tax liability from the Government's share of production, implying that the company does not settle any tax. The share of profit oil allocable to the company is considered net of taxes;
- The tax authorities issue a tax receipt and tax certificate for taxes that apply to the company, albeit the tax has been paid from the Government's proportion of oil profit;
- Under the terms of the standard EPSA, if assets qualifying for cost recovery are sold, the proceeds are remitted to the Government;
- If an interest in an EPSA is sold or transferred, this is treated as the disposition of the property of a permanent establishment and is subject to 12% corporate income tax on any gain.

It is important to note that while each EPSA will broadly cover the same topics, EPSA's are a negotiated contract between the government and the company. Therefore each EPSA may have different provisions dependent upon the agreements in place.

Oil and gas services companies

Oil and gas service companies with a taxable profit exceeding OMR 30,000 are subject to tax at a flat rate of 12% and are subject to general income tax rules.

Key regulator

The key regulators of the oil and gas industry in Oman include the following:

- Ministry of Oil and Gas;
- Secretariat General for Taxation; and
- Government of the Sultanate of Oman (Partner to the EPSA, however represented by the Ministry of Oil and Gas).

Withholding tax

There is no withholding tax on dividend and interest payments in Oman.

Royalties

Withholding tax at a rate of 10% applies to royalties paid to a foreign person without a permanent establishment in Oman.

Other

In addition to withholding tax on royalties, the following categories of payments attract withholding tax at 10%:

- Management fees;
- Consideration for the use or the right to use computer software; and
- Consideration for research and development.

Oman has entered into 27 double taxation treaties which may apply to reduce or eliminate withholding tax in a particular case.

Thin capitalisation and Transfer Pricing

Thin capitalisation

The Executive Regulations to Oman's income tax law in 2012 introduced thin capitalisation rules (thin cap) to the Sultanate. The regulations allow a deduction for connected party loans which have the following characteristics (provided the interest expense also satisfies the deductibility criteria of general expenses):

- The loan has not been obtained to obtain finance or capitalise a business;
- There is a 2:1 debt-to-equity ratio and related party loans exceeding this ratio may not be deducted in full or part.

The thin cap rules do not apply to foreign PEs. Furthermore, where an interest expense has been incurred by a branch office, this will only be deductible where underlying funds have been borrowed by the Head Office from an unrelated lender, specifically for the benefit of the branch.

Transfer Pricing

Transfer pricing rules follow the arm's-length principle, specifying that any transactions between related parties should be at arm's length (i.e. the market value). However, the law does not specify which methods of determining arm's length pricing are acceptable. In practice, the authorities tend to favour the cost-plus-method.

Oman

The law does not specify penalties with regard to transfer pricing. However, the tax authorities are empowered to disregard or adjust transactions between related parties if the transaction involves elements or terms that would not be found in transactions between non-related parties. If an adjustment affects another Omani taxpayer, the other taxpayer may request a reciprocating adjustment.

The law contains no transfer pricing documentation requirements. However, taxpayers are advised to maintain robust documentation to support pricing on all transactions with related parties.

Indirect taxes

Customs duty is the only indirect tax imposed in Oman. There is no value added tax.

As a member of the Gulf Cooperation Council (GCC), the Omani government follows the Unified Customs Act of the GCC. A uniform customs duty (generally 5%) applies to most imports originating from outside the GCC.

Exemption of customs duties depends on the terms of the relevant EPSA.

Municipal and other taxes

Municipalities may impose consumption taxes on the following income categories:

- | | |
|--|----|
| • Hotels, motels and tourism restaurants | 4% |
| • Electricity bills exceeding OMR 50 per month | 2% |
| • Lease agreements, payable by landlords | 3% |
| • Hotel and restaurant bills | 5% |

Payroll taxes and employee benefits

Social security is governed by the Social Security Law (Royal Decree No. 72 of 1991) which provides that private sector Omani employers must make monthly contributions to PASI (Public Authority for Social Insurance) at the rate of 10.5% of the employee's salary. Employees contribute an additional 8%, including a 1% element as security against occupational injuries and diseases.

Social security contributions do not apply to foreign employees, however, the employer must pay an end of service benefit (EOSB) equal to 15 days basic pay for each of the first 3 years worked and one month's basic pay for each subsequent year.

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Country profile

Brief overview of the oil and gas developments

Qatar is a major hydrocarbon country and a net exporter of oil, gas, liquid fuels and petroleum products. Qatar's reign as a major oil producer began in 1935 with the discovery of the Dukhan onshore field. It has been a member of the Organization of the Petroleum Exporter Countries (OPEC) since 1961. Qatar has proven oil reserves of 25.4bn barrels and production of 1.5m bpd. The oil and gas sector accounts for around 55% of the country's gross domestic product.

Traditionally, exploration and production sharing agreements (EPSAs) were favoured by the State of Qatar, as the mechanism for agreements between the government and oil and gas companies. However, more recent agreements have been drafted as Development and Fiscal Agreements (DFAs).

The principal elements of the fiscal regime for oil and gas companies in Qatar are as follows:

- Generally, corporate Income Tax (CIT) rate at a minimum of 35% is applicable to companies carrying out petroleum operations as defined under Law No. 3 of 2007 whilst income tax generally is governed by Law No 21 of 2009 (Qatar's income tax law)
- Generally, royalty rates are payable on the total sales under a DFA with the rate(s) set by each DFA.
- Generally, bonuses are payable under and development production sharing agreements ("DPSAs") at a signature and based upon production targets. DFAs do not include bonuses.

Fiscal regime

The oil and gas industry (including LNG) is overall regulated by the Natural Resources Law (Law No. (3) Of 2007 regarding the Exploitation of Natural Resources and its

Qatar

Sources). Oil and natural gas, as well as other mineral resources, are the property of the State of Qatar.

The Ministry of Energy and Industry regulates Qatar's policy on oil and gas, subject to the ultimate control of the Emir of Qatar. Qatar Petroleum (as the National Oil Company or NOC) is entrusted with management and development of all of Qatar's hydrocarbon resources. There is little detail in the Natural Resources law as to how this is to be implemented.

The right to explore, develop and produce petroleum was typically granted by way of PSAs with Qatar Petroleum. Qatar Petroleum (and, through it, the Government) would therefore determine the basis on which an entity participates in the Qatari oil and gas (including LNG) industry. Rights are granted to investors through EPSAs or DPSAs (collectively referred to as Production Sharing Agreements – PSAs).

Moreover, joint venture arrangements typically see Qatar Petroleum and an oil and gas company establish a joint venture company. That joint venture company in turn enters into a development agreement with the Government of the State of Qatar. For joint venture companies, especially in LNG projects Qatar Petroleum typically uses DFAs.

Qatar Petroleum signs the agreements on behalf of the state. In order to become effective, they must be approved by a decree of the Emir of Qatar. In general, different authorisations are not issued for different stages of development. The EPSAs and DFAs typically embody the principal authorisations necessary for the exploration, development and production of hydrocarbons. The terms of the PSAs and DFAs are not generally in the public domain.

In recent years, the Qatar government has increasingly drafted the contracts with oil and gas companies in the form of DFAs moving away from the traditional PSAs.

Regulators

The key regulators in the oil and gas industry include

- The Ministry of Energy and Industry;
- The Emir of Qatar;
- Qatar Petroleum;
- The Public Revenue & Taxes Department (PRTD).

Forms of Petroleum Leases

There is no right to lease to a third party. Moreover, subject to the terms of the individual PSAs any transfer of oil and natural gas rights or interests is subject to approval of the state. In addition, the PSA or DFA may contain maximum production levels and other restrictions.

Royalty

Royalty rates are payable on the total sales under a DFA, on a case by case basis, with the rate(s) set by each agreement. The royalties payable under such joint venture

agreements are directly linked to both the production levels and the market rate for the product produced.

Taxation regime

Companies engaged in oil and gas activities will principally be liable to taxation under Qatar's State regime, which is governed by the PRTD. Companies carrying on petroleum operations in Qatar are subject to CIT in accordance with the specific terms of agreements negotiated with the State, which is represented by Qatar Petroleum or under Law No. 21 of 2009 (Qatar's income tax law).

The CIT rate applicable to companies carrying out petroleum activities is generally 35% (or rates ranging from 35% to 55% per specific terms agreed with the State).

The PSA in place will determine the taxable income for tax purposes and will generally include the total revenue received from production less any allowable petroleum costs incurred. Petroleum costs will be outlined in the PSA and will include costs incurred in relation to appraisal, development and exploration. These expenses can be capitalised or written off.

Losses may be carried forward for 3 years but may not be carried back. However, loss carry forward restrictions do not apply to PSAs on the basis the entire cost can be capitalised and carried forward for future recovery against revenues.

PSA operations were previously subject to ring fencing, however recently this has been relaxed to allow revenues and costs, not specified in the PSA, to be included when calculating the taxable income. As a PSA agreement is a negotiation between the Oil Company and Qatar Petroleum, the provisions within the agreement take precedence over the income tax law.

Ring fencing is not applicable to companies operating under DFAs.

Compliance Requirements

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Filing period

- The default tax year end date is 31 December, however, upon request, the PRTD may approve a different year-end date;
- The PRTD may also approve a first accounting period of between 6 to 18 month duration;
- The first accounting period is by default considered to start from the date of commencement of activity.

Filing deadline

Entities taxable in Qatar are required to submit a CIT declaration to the PRTD within 4 months from the end of their accounting period (i.e. for end year 31 December 2015 the filing deadline will be 30 April 2016). However, an application can be submitted requesting the PRTD to extend the filing deadline based on reasonable grounds. An application for such an extension should be made 30 days prior to the expiry of the filing deadline and may be rejected by the PRTD.

Qatar

Tax payments

The tax required to be paid will be based on the submitted tax returns. A receipt of payment should accompany the CIT declaration. Moreover, there is no advance payment of tax in Qatar.

Penalty

The penalty for filing a late tax return is QR 100 per day of delay (capped to a maximum of QR 36,000). A separate penalty of 1.5% of the amount of tax due per month applies for the late payment of tax (capped to a maximum of an amount equal to 100% of the tax paid late).

Incentives in the oil and gas industry

All incentives under DFAs are dependent on the applicant's fiscal negotiations with the government. The typical incentives negotiated between the applicant and the government under the Foreign Capital Investment Law include the following:

- No restriction on repatriation of capital and dividends;
- Feedstock gas or gas reserves at subsidised rates;
- A tax holiday or tax paid "on behalf of" provisions;
- Customs duty exemptions until the start of commercial production; and
- Land lease of 50 years at subsidized rates.

Withholding tax

Law No 21 of 2009 introduced a requirement for all entities registered in Qatar or with a permanent establishment in Qatar to withhold a percentage of certain payments made to non-residents.

The applicable withholding tax rates are as follows:

- 5% of the gross amount of royalties and technical fees;
- 7% of the gross amount of interest (some exclusions apply), commissions, brokerage fees, director's fees, attendance fees, and any other payments for services carried out wholly or partly in the state; and
- There is no withholding tax on dividends.

Qatar's income tax law contains a number of withholding tax exemptions, including exempting payments for sea transportation of oil, gas and petroleum derivative products from withholding tax.

Currently Qatar has 61 double tax treaties in place, however, in granting tax relief under a DTT, Qatar does not grant relief at source for withholding tax. Instead a system of 'apply and reclaim' is adopted whereby the Qatar principal still has an obligation to deduct withholding tax and the foreign company (e.g. service provider) can subsequently apply to the PRTD for a refund of the withholding tax suffered in accordance with the DTT. The process for seeking a tax refund can be time consuming and requiring the full support and cooperation of the Qatar principal.

A Qatari company which makes the payment to its foreign supplier is required to withhold the tax and remit to the tax department the funds that were withheld by the 16th day of the following month. In the event that the company does not make a

payment to the tax department, the company will be liable for a penalty equal to the amount of unpaid tax due, in addition to the withholding tax. Circular No. 3/2011 confirmed that the requirement to withhold applies to all entities registered in the state of Qatar including government bodies, public authorities and corporations.

The circular also includes an instruction for such entities to refrain from including conditions relating to exemption from income tax or the bearing of its burden by them (e.g. gross-up clauses) unless written approval from the Ministry of Economy and Finance is obtained.

Capital gains tax (CGT)

In the context of capital gains arising to non-residents, to the extent such gains are “Qatar-sourced” these are, prima facie, subject to Qatar income tax. Income arising from the disposal of shares or other capital assets is not within the scope of Qatar withholding tax. If a non-resident derives Qatar-sourced income (including a capital gain), the non-resident should file a corporate income tax return and pay the respective tax at a rate of 10%.

At present no guidance exists in the State of Qatar as to what gains may constitute “Qatar-sourced income”. Possible arguments may exist to challenge whether the item of income or gain is Qatar-sourced such as international case law around ‘profit producing transactions’, however, there is no formal Qatar precedent for such arguments and the Qatar Tax Authority’s views on such arguments are as yet unknown and untested in practice.

Concession Agreements

Rights to oil and gas are granted on the basis of concessions in the form of PSAs or DFAs. Such agreements are generally granted for 25 years and renewable by mutual agreement of the parties.

Thin capitalisation and Transfer Pricing

Thin capitalisation

There are no formal thin capitalisation rules in Qatar; however, there is an anti-avoidance provision in the tax law. This could be used by the PRTD to restrict the deductibility of interest payments by reclassifying loans as equity (e.g. where it considers that the company has too high a debt to equity ratio) or by limiting the permitted interest rate on the loan if it considers that the interest rate is not arm’s length.

Interest paid to a head office or related party may not be deductible for tax purposes and such interest is not subject to withholding tax.

Accounting and tax treatment of finance costs is generally determined in the PSA/ DFA in accordance with the specific agreements underlying the oil and gas projects; however, finance costs are a non-recoverable cost under most PSCs.

Qatar

Transfer Pricing

Qatar's income tax law does not include a specific transfer pricing provision; however, it contains a general anti-avoidance provision.

The finalised executive regulations for the tax law were published on 9 June 2011. They state that the market price in the case of arm's-length transactions should be determined in accordance with the unrelated comparable price method (CUP) (i.e. the price of the service or commodity which would be applied if the transaction was carried out among non-related parties). In cases where the necessary information is not available to apply the comparative free-price method, the taxpayer may apply any of the other pricing methods approved by the OECD.

Under the provision, if it is deemed that the taxpayer has entered into arrangements or has carried out operations or transactions one of the main purposes of which is to avoid the payment of taxes due, the Tax Administration can take all or some of the following actions:

- Apply the arm's-length value to the transaction, resulting in a different value than established by the taxpayer;
- Re-characterise the transaction if the nature of the transaction does not reflect its reality; and
- Adjust the amount of the tax due by the taxpayer or any other person involved in the arrangements, operations or transactions.

Indirect Taxes

General Sales Tax (GST)/Value Added Tax (VAT)

There is no GST or VAT in Qatar.

Customs duties

Customs duty is the only indirect tax imposed in Qatar.

As a member of the Gulf Cooperation Council (GCC) the Qatari government follows the Unified Customs Act of the GCC. A uniform customs duty (generally 5%) applies to most imports originating from outside the GCC.

Qatar grants duty free imports to most national goods originating in other GCC member states, member countries of the Greater Arab Free Trade Agreement ("GAFTA") and Singapore. It is expected that in the near future most goods originating in the European Free Trade Association ("EFTA") countries will also benefit from customs duty exemption when imported into Qatar.

Social Security contributions

Individuals are not subject to tax on their earnings. However, self-employed expatriates will suffer income tax on the profits of their business.

Qatar does not impose a statutory social security contribution on the employee nor the employer. Qatari employees are however, required to make a contribution of 5% of their annual salary to a state pension fund whilst the employer makes a contribution of 10%. Therefore oil and gas companies employing Qatari nationals will be required to make this contribution.

It is also important to note that private sector businesses are required to pay all employees' a termination benefit at the rate of 3 weeks' pay per annum worked.

Oil and Gas services companies

Oil and gas services companies, like exploration and production companies, are subject to tax the rate of 35% (although this can be as high as 55%). The Qatari interpretation of 'petroleum operations' under Law No. 3 of 2007 is very broad and encompasses upstream, midstream and downstream activities.

There is another regime in Qatar, the Qatar Financial Centre (QFC), which is increasingly seen as a viable alternative for doing business in Qatar. QFC license is restricted to service companies whose customers are businesses.

In Qatar, a number of service companies in the oil and gas sector consider the QFC as a commercial platform for doing business in Qatar. However, as the oil and gas sector will involve movement goods, material, equipment and manpower, the QFC may not be accessible for a number of companies wishing to do business in Qatar.

Qatar

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Country profile

Brief history and developments on oil and gas

The Kingdom of Saudi Arabia (KSA) is the largest exporter of petroleum in the world and is regarded as the key swing producer for oil and gas. It possesses about 20% of the world's proven petroleum reserves and plays a leading role in the Organization of Petroleum Exporting Countries. The petroleum sector accounts for roughly 45% of the gross domestic product (GDP), 90% of export earnings and 80% of budget revenues of the country. Recent developments in oil prices had a major impact on the economic activity of the region. IMF speculates that the GDP growth rate in KSA will continue to decrease in the upcoming four years. Consequently, it is expected that global supply of oil will limit Saudi's output of hydrocarbons growth until 2018. As a result, there have been concerns that falling oil prices could result in a fiscal deficit, leading to reduced government spending.

Tax law

The new Income Tax Law of 2004 addresses income tax and withholding tax. The law applies to KSA resident companies (owned by non-Gulf Cooperation Council (GCC) nationals), non-resident companies conducting business in KSA through a Permanent Establishment or a branch and non-resident companies who generate income from KSA sources. Companies having KSA and GCC direct or indirect investors are not be subject to corporate income tax in KSA in respect of the share of the profit attributable to such investors. Instead, it is subject to Zakat on the KSA/GCC shareholder's net worth in the company or share of profit, whichever is higher.

The key taxes in KSA are as follows:

Type	Rates
Corporate income tax	20%
Zakat	2.5%

Saudi Arabia

Type	Rates
Special regimes for oil and gas extraction and refinement minimising activities	85%
Special regimes for Natural Gas Investment activities	30% – 85%
Withholding taxes	5%-20%
Capital Gains Tax	20%
Personal income taxes	N/A
Customs duties	Generally 0% or 5% with some exceptions

Fiscal regime

Saudi Arabian tax applies to companies engaged in the petroleum and natural gas industries.

There are special laws applicable to petroleum and natural gas activities, irrespective of local (KSA and GCC) or foreign ownership.

Oil and gas exploitation activities are governed by terms and conditions set out in a Petroleum Concession Agreement (PCA).

Regulators

The key regulators in the oil and gas industry are:

- Ministry of Petroleum and Mineral Resources of Saudi Arabia; and
- The Department of Zakat and Income Tax.

Forms of contracts

In Saudi Arabia, the only type of contract/concession agreement presently used is the Petroleum Concession Agreement (PCA).

The Saudi Arabian Oil Company (Saudi Aramco) is a 100% government owned entity with the sole right to enter into PCAs with the Saudi government. Other companies (domestic and foreign owned companies) are engaged in the Saudi oil and gas industry as subcontractors and service provider to Saudi Aramco.

Royalty

In the PCA's royalties for hydrocarbon production and Natural Gas Investment activities are set by the Ministry of Petroleum and Mineral Resources of Saudi Arabia and therefore different rates may apply under each PCA.

The holder of a concession right is required to pay royalty as specified in accordance with the PCA. Royalties paid on hydrocarbon production and natural gas investment activities are deductible for tax purposes when calculating the tax base of a company.

Taxation regime

Although the standard Saudi Arabian income tax rate is 20%, income from oil and hydrocarbon productions and Natural Gas Investment activities is subject to different rates.

Income from oil and hydrocarbon production is subject to a corporate income tax at 85% (on the tax base). The tax base is calculated as total revenue less allowable deductions.

Natural Gas Investment Activities

Natural Gas Investment Tax (NGIT) applies to local or foreign companies carrying out activities in the natural gas sector.

NGIT applies at a rate of 30% to 85% and is calculated based on the internal rate of return (IRR) on the cumulative annual cash flows of the tax payer derived from natural gas investment activities. The rate applicable will be 30% if the IRR equals or exceeds 20%.

An NGIT taxpayer must separately file its tax returns for NGIT activities (ring-fencing) from each contract with the government. Where an NGIT taxpayer has activity unrelated to its NGIA, a separate tax returns should be filed.

Oil and gas services companies

Oil service companies (domestic and foreign companies) are subject to the general CIT regime (i.e. 20% tax rate) and/or Zakat (depending on the shareholders' profile, i.e. GCC or non-GCC shareholders).

A company's taxable profits will be determined by reference to tax-adjusted accounting profits (adjusted for disallowed expenses).

Saudi and GCC resident owned companies will not be subject to CIT. Instead, it will be subject to Zakat at a rate of 2.5% of the Saudi/GCC shareholder's net worth in the company or share of profit whichever is higher.

Where a company is owned by both KSA/GCC and non-KSA/GCC interests, the portion of taxable income attributable to the non – Saudi/GCC interest is subject to CIT, and the Saudi/GCC interest will be subject to Zakat.

Deductions

All expenses, paid or accrued, that are necessary and are considered to be in the normal course of the business, should be allowable deductions, provided the expense meets the following conditions:

- It is an actual expense, supported by a verifiable document or other qualifying evidence;
- It is related to the generation of taxable income;
- It is related to the subject tax year; and
- It is of a non-capital nature.

Specific deduction rules and limitations apply to certain type of expenses.

Saudi Arabia

Loan charges (interest expenses)

An interest deduction is limited to the lower of the loan charge incurred during the tax year, if related to income that is subject to tax, or the result of the following formula:

The taxpayer's total income from loan charges, plus 50% of (A minus B) as below:

A = income subject to tax other than income from loan charges.

B = expenses allowed under the law other than loan charge expenses.

Tax losses

A taxpayer may carry forward operating losses indefinitely until the cumulative loss is fully offset providing there is no material change of ownership or control of the company. The maximum tax adjusted profits which may be sheltered by losses forward is restricted to 25%. Losses may not be carried back to preceding years.

Compliance Requirements

Tax period

Tax filings are based on the company's fiscal year.

Tax returns

Returns are due to be filed with the Department of Zakat and Income Tax (DZIT) within 120 days of the taxpayer's year-end. Although the system is one of self-assessment, in practice, all tax returns are reviewed in detail by the DZIT. It is common for them to raise queries on tax returns submitted and it may take a number of years to finalise an assessment for a given fiscal year.

Companies owned by Saudis or by Saudis and non-Saudis must file audited financial statements along with the tax return. This filing requirement is not applicable for companies that are 100% owned by non-Saudis, however the DZIT often request to be provide with them.

Tax payments

Final tax due must be paid within 120 days after the taxpayer's year-end.

Three equal advance tax payments are required to be made on the last day of the sixth, ninth and twelfth months for a current tax year, provided that the taxpayer has earned income during the year. Each advance payment is equal to 25% of the amount resulting from the taxpayer's tax liability based on the previous year return minus the withheld tax on reported income, if any.

The taxpayer is not required to make advance tax payments if the result of the calculation is less than SAR 500,000. Late payment of an advance payment is subject to a delay penalty of 1% of the amount due to every 30 days of delay.

Tax audit process

There is no specific audit process followed by the DZIT. However, the key factors the DZIT will consider when selecting companies to audit include the size of the company, the nationality of the companies' shareholders and certain risk assessment measures.

Statute of limitations

The DZIT may, with a reasoned notification, make or amend a tax assessment within five years from the end of the deadline specified for filing the tax declaration for the taxable year, or, at any time, upon written consent of the taxpayer.

The DZIT may make or amend an assessment within ten years of the filing deadline of the tax declaration where a taxpayer has either:

- Not filed its tax declaration; or
- Where it is found that the declaration is incomplete or incorrect with the intent of tax evasion.

A taxpayer may request a refund of overpaid amounts at any time within five years from the end of the taxable year in respect of which the refund arises.

Withholding tax

Payments made from a resident party or a local permanent establishment of a non-resident company to a non-resident party for services are subject to withholding tax. The rates vary between 5% and 20% based on the type of service and whether the beneficiary is a related party.

The withholding tax should be paid within the first ten days of the month following the month during which payment was made. The domestic rates for withholding tax are as below:

Payment type	Rates
Management fees	20%
Royalties or proceeds; payments for technical and consulting services or for international telecommunication services paid to the head office or to related company and any other payments.	15%
Technical and consulting services or international telecommunication services other than payments to the head office or related party, rent, air tickets or air freight and maritime freight; loan charges; insurance or reinsurance premiums	5%

Dividend payments by companies operating in the natural gas, oil and hydrocarbons investment fields are not subject to withholding tax.

Double Tax Treaties

Saudi Arabia has 39 double tax treaties in force. Generally the treaties follow the OECD Model Treaty and may provide certain relief, including withholding on dividends, interest, and royalties. However, the tax treaties are yet to have been effectively tested in Saudi Arabia to their full extent.

Saudi Arabia

Capital gains tax (CGT)

Capital gains are subject to income tax or Zakat, as appropriate, at the normal income tax or Zakat rate. Capital gains realised from the disposal of shares in Saudi stock companies listed in the Saudi market are tax exempt, subject to certain conditions.

Disposal of shares in a Saudi company by a non-resident is subject to CGT in Saudi.

Thin capitalisation and Transfer Pricing

Thin capitalisation

There are no specific thin capitalisation rules in Saudi tax law. A Saudi company may deduct interest payments to affiliates (but the Saudi branch of a non-resident company may not deduct such payments made to its head office), provided that the amount of debt and rate of interest are at arm's length and that the interest deductibility formula is met (see above). A Saudi company may be financed with minimum capital, and there is no limit to the amount of debt that may be used.

Transfer Pricing

The DZIT is currently in the process of developing detailed Transfer Pricing guidelines. Details of the regulations have not yet been published, but they are expected to be in line with international transfer pricing standards.

The DZIT can use the general anti-avoidance provisions in the law to substitute arm's length pricing for related party transactions and documentation is to be presented to the DZIT when requested for scrutiny, to support the expense/income reported by the tax payer.

If the DZIT is not satisfied with the documentation provided, they may:

- Reallocate revenues and adjust expenses if they consider that related party transactions have not been conducted at arm's length;
- Disregard transactions and/or reclassify transactions; and
- Estimate the appropriate tax base and impose penalties.

Indirect Taxes

Value-added tax (VAT)

There is currently no VAT system in Saudi.

Customs Duties

Customs duty is the only indirect tax imposed in Saudi.

As a member of the GCC, the Saudi government follows the Unified Customs Act of the GCC. A uniform customs duty (generally 5%) applies to most imports originating from outside the GCC.

Social insurance tax and Saudisation

Social insurance tax is paid monthly based on:

- basic wages, (cash or in-kind housing allowance);
- commissions (with an upper limit of SAR 45,000 of the aggregate of (i), (ii) and (iii)), is computed at 2% for non-Saudi employees, and is paid by the employer. For Saudi employees, the rate is 22% and is paid by both the employee (10%) and the employer (12%).

Under Saudisation requirements, companies having a workforce of less than 50% of Saudi Nationals have to pay SAR 200 monthly to the Labour Office for each expatriate employee.

The KSA government imposes minimum ratios of Saudi employees which must be maintained. Depending on the percentage achieved, companies are rated by colour from Red to Platinum. The colour rating determines an employer's ability to obtain visas for expatriates. The size of a branch or company and its activity also plays a role in determining how many Saudi nationals the company is required to hire and how many expatriate visas will be available. In practice if the thresholds are not met, inter alia, fines will be issued to the company and the authorities will block any additional visas for foreigners. The company can also be forbidden to provide services to government bodies.

Payroll taxes

Since there is no individual income tax regime in Saudi Arabia, earnings from employment are not subject to income tax. Only the social insurance tax mentioned above is applied on the payroll.

Saudi Arabia

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Country profile

The Constitution of the United Arab Emirates provides a legal and political framework for the operation of the United Arab Emirates as a federation of seven emirates.

The United Arab Emirates (UAE) comprises seven Emirates – Abu Dhabi, Ajman, Dubai, Fujairah, Ras Al-Khaimah, Sharjah and Umm Al-Quwain – located along the southeast coast of the Arabian Peninsula. The federation of seven emirates was created by the constitution of the UAE that came into effect on 2 December 1971.

Since the discovery of oil (Abu Dhabi in 1958), the UAE oil sector has developed rapidly becoming a major oil producing country worldwide. The UAE has some of the largest proven reserves in the world, consisting of 97.8bn barrels with production of around 2.8m bpd. Abu Dhabi has the largest oil reserves of the seven Emirates (over 90% of the Federation's oil and gas reserves), estimated at 92.26 billion barrels.

Although approximately 40% of the UAE GDP is directly linked to the oil and gas output, the UAE has a long-term strategy to diversify the national economy to reduce the dependence from oil revenues through various investments (e.g. infrastructure, financial sector and aviation).

In addition, the UAE is looking into the possibility of introducing a new corporate tax and value-added tax law.

Regulators

The UAE does not have a federal petroleum legislation. In accordance with the UAE Constitution, the petroleum sector is governed at emirate level.

As Abu Dhabi is the most profitable and largest oil producing Emirate, with the biggest oil reserves and the longest history of relationships with foreign oil companies, it is appropriate to concentrate on its legal framework for the development of petroleum resources as representative of the UAE in this respect.

United Arab Emirates

Fiscal regime

In the absence of a federal petroleum tax regime, the legal framework for the petroleum sector is determined by the terms and conditions as negotiated in each concession agreement between the Government (i.e. Supreme Petroleum Council in Abu Dhabi) and the respective foreign oil companies.

In the emirate of Abu Dhabi, the Supreme Petroleum Council has been established (Law No (1) 1988) as the public authority responsible for the petroleum industry in the emirate of Abu Dhabi. The Council formulates and oversees the implementation of Abu Dhabi's petroleum policy.

Taxation regime

There is no general corporate income tax law in the UAE, however each of the seven emirates has established its own income tax decree. In practice, however, these income tax decrees are not enforced with the exception of companies engaged in the upstream oil and gas industry including production and export of petroleum (as stipulated in the respective income tax decree) and branches of foreign banks.

The UAE also does not have a special tax legislation applicable to the oil and gas industry.

The concession agreements refer to the tax rate mentioned in the income tax decree (both Abu Dhabi and Dubai tax decrees has set the tax rate at 55%). However, the final income tax rate applicable to a concession agreement is agreed between the Government and the concession holder on a case by case basis with the minimum tax rate fixed at 55%.

For the purposes of oil and gas, the most relevant law to consider is the Abu Dhabi Income Tax Decree of 1965, as amended¹.

Oil services companies are not covered by the petroleum activities definition of the UAE income tax decrees.

Forms of contracts

The only type of agreement concluded by the UAE is the concession agreement. The concession agreements govern the rights and obligations of each party to the agreement including the exclusive rights of the Oil Company, the period of the contract, applicable tax rate, royalty and all other relevant terms and conditions. The full set of tax provisions and compliance requirements are included in the Fiscal Letter as appendix to the concession agreement.

The concession agreements are not publicly available.

¹ Abu Dhabi Income Tax Decree of 1965 as amended by the Decree of 1966 Promulgating the Amendment of the Abu Dhabi Income Tax Decree 1965, Decree No. (1) of Amending the Abu Dhabi Income Tax 1970, Emiri Decree No. (10) of 1970, and Decree No. (4) of 1971 Amending the Income Tax Decree of 1965.

Royalty

Generally, the royalty rate is 12.5% of the posted price of crude oil produced each year, although the royalty rate could be adjusted depending on the production volume. Royalty payments should be considered as tax deductible expenses.

Withholding tax

The UAE does not levy withholding tax. To date, the UAE has entered into a total number of 63 double tax treaties.

Transfer Pricing and Thin capitalisation

Currently, the UAE does not have any thin capitalisation or transfer pricing rules.

Indirect taxes

Customs duty is the only indirect tax imposed in the UAE. There is no value-added tax.

As a member of the Gulf Cooperation Council (GCC), the UAE government follows the Unified Customs Act of the GCC. A uniform customs duty of 5% applies to most imports originating from outside the GCC.

Payroll tax / Social Security contributions

There are no individual taxes in the UAE, however UAE nationals are required to pay social security contributions of 5% whilst the employer will pay 12.5% or 15%. There are no social security contributions required for expatriates.

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