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Doing business guide
Understanding Iraq's tax position

In the Middle East
since 1926

Contents

Country - overview

- The macroeconomic outlook in Iraq is expected to improve due to increased oil prices, and growing investments in public and private sectors.
- Higher oil prices have improved the budget deficit of 9% of the GDP in 2016 to a surplus of 1.2% in 2017. Iraq's GDP growth is estimated to increase from 1.9% in 2018 to 6.2% in 2019 due to increase in oil prices and oil production.
- However, given that oil production is only expected to increase marginally in future years, Iraq is currently looking to diversify its economy and decrease its dependence on oil. Iraq's five-year National Development Plan focuses on increasing the non-oil revenue from the services, manufacturing, construction, water and electricity production, and agriculture sectors to achieve economic growth.
- Improving infrastructure in the energy and power sectors is expected to be key in improving economic growth and attracting private sector investment. The Government of Iraq has identified US$ 4.6 billion urgent spending needs in the power sector, representing nearly a quarter of all priority spending, and is committed to reforming the electricity sector, supported by the World Bank.
- Whilst reconstruction efforts have been slow due to political uncertainity post the May 2018 elections, with the establishment of a new government, it is anticipated that restoring basic services and developing critical infrastructure will be prioritised.

Government

Government	
Government type	Federal Parliamentary Republic
Chief of State	Barham Salih, President
Head of Government	Adil Abdul al-Mahdi, Prime Minister
Legal system	Mixed legal system of civil and Islamic law
Administrative divisions	18 governorates (muhafazat, singular—muhafazah (Arabic); parezgakan, singular—parezga (Kurdish)) and one region; Al Anbar; Al Basrah; Al Muthanna; Al Qadisiyah (Ad Diwaniyah); An Najaf; Arbil (Erbil) (Arabic), Hewler (Kurdish); As Sulaymaniyah (Arabic), Slemani (Kurdish); Babil; Baghdad; Dahuk (Arabic), Dihok (Kurdish); Dhi Qar; Diyala; Karbala'; Kirkuk; Kurdistan Regional Government; Maysan; Ninawa; Salah ad Din; Wasit

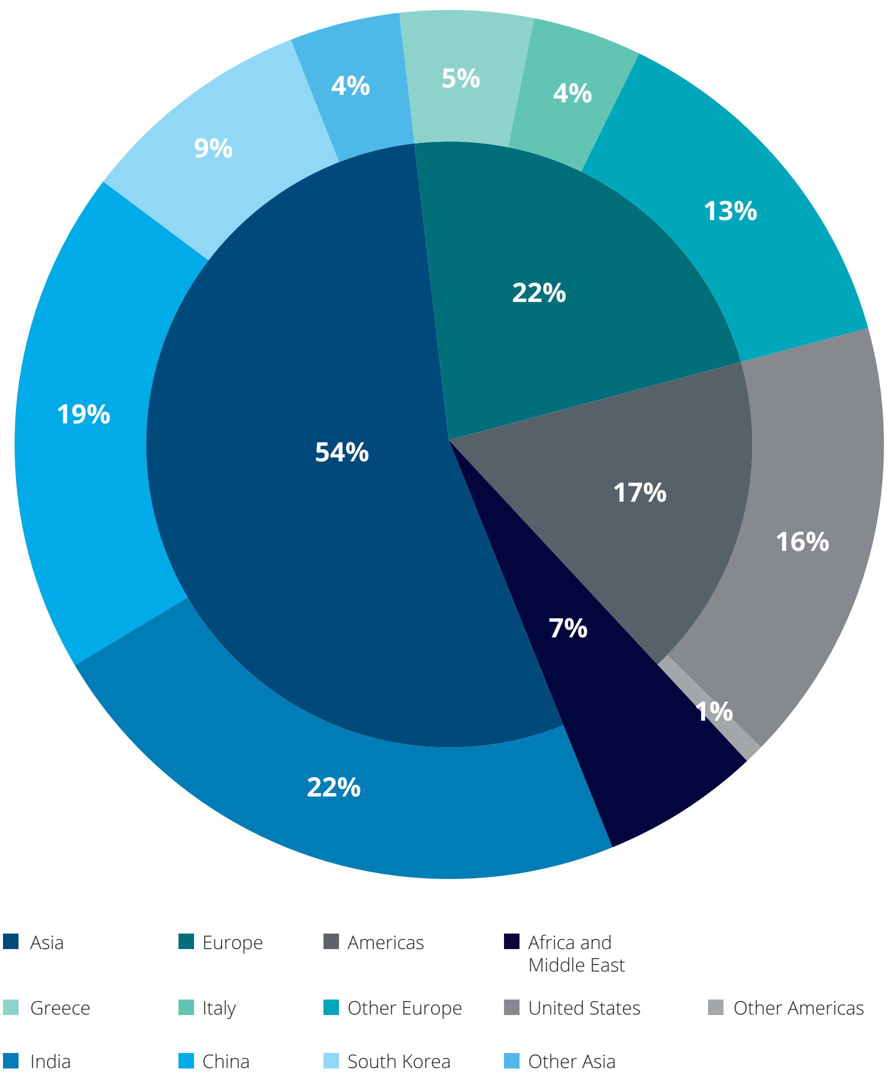
Source: Central Intelligence Agency Factbook, The Economist Intelligence Unit

Economy - overview

Oil and Gas

- Iraq's economy is largely dependent on the oil and gas sector. Oil accounts for 65% of the GDP, 92% of the central government revenue and almost 100% of the country's exports.
- The country's oil reserves are the fifth-largest in the world. However, infrastructure bottlenecks pose a major threat for capacity expansion in Iraq.
- Iraqi oil output would likely average 4.50-4.55 million bpd till June 2019, when the latest round of the OPEC mandated production cuts comes to an end. With capacity additions planned from 2020, oil output is expected to surpass 5 million bpd in 2021.
- As of 2018, Iraq has total proven natural gas reserves of around 135 trillion cubic feet, the 12th largest in the world.
- Approximately 75% of the gas reserves are associated with oil and the majority of the natural gas is flared due to insufficient infrastructure. Majority of the natural gas produced in the country is utilized for electricity generation. South Oil Company is in the process of constructing gas processing facilities that are expected to commence production in 2019 and 2020. Iraq is committed to eliminating routine natural gas flaring by 2030.
- In October 2018, a decree transferring the ownership of nine state-owned oil companies from the oil ministry, to the newly-formed National Oil Company was issued. However, following the formation of the government, this has been put on hold.

Iraq's crude oil exports in 2017



Source: US Energy Information Administration

Iraq's five-year National Development Plan focuses on increasing the non-oil revenue from the services, manufacturing, construction, water and electricity production, and agriculture sectors to achieve economic growth.

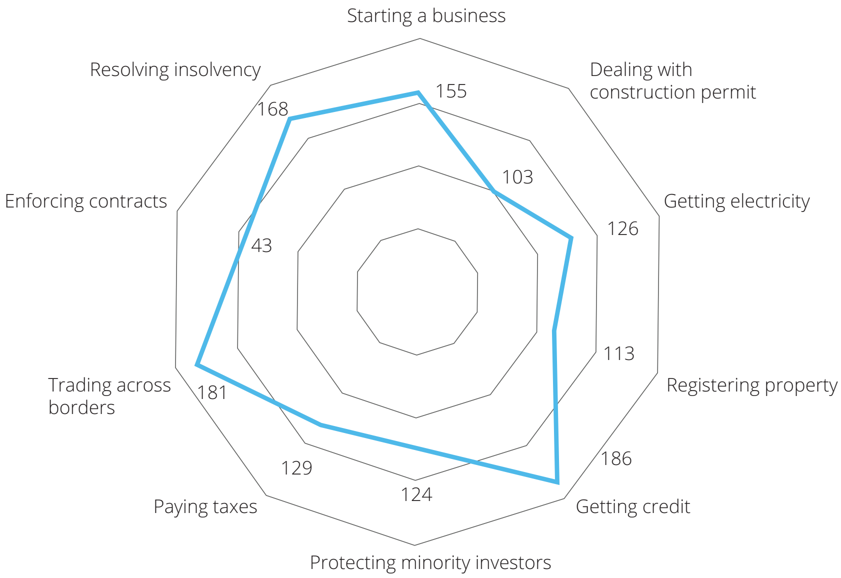
Doing business in Iraq

Indicators for starting a business in Iraq

Indicators	Iraq	MENA	OECD
Procedures (number)	**8.0**	7.2	4.9
Time (days)	**26.0**	20.5	9.3
Cost (% of income per capita)	**38.8**	22.6	3.1
Paid-in min. capital (% of income per capita)	**16.6**	8.1	8.6

Source: Doing Business Report Iraq 2019, World Bank Group

Iraq's ranking on doing business parameters in 2019



Source: Doing Business Report Iraq 2019, World Bank Group.
Note: A total of 190 economies were considered in the study for rankings

Procedures for starting a business in Iraq

Number	Procedure	Time to complete	Associated cost
01	Reserve a unique company name at the Baghdad Chamber of Commerce	1 day	IQD 250,000
02	Reserve a unique company name at the Federation of Chambers of Commerce	1 day	IQD 250,000
03	Hire a lawyer to draft articles of association	1 day	About IQD 1,500,000
04	Deposit the initial capital at a commercial bank and obtain proof thereof	2 days	IQD 5,000 – IQD 25,000
05	Apply for registration at the Companies Registry	15 days	IQD 250,000 - 350,000
06	Obtain the registration certificate	1 day	Included in procedure 4
07	Make a company seal	2 days	IQD 20,000
08	Register employees for social security	3 days	IQD 20,000

Source: Doing Business Report Iraq 2019, World Bank Group

Entering the market

Types of legal entity

As a general rule, any non-Iraqi company which is "carrying on business" in Iraq is required to establish an Iraqi legal presence (e.g. company, branch office). Whilst there is no specific definition of what constitutes "carrying on business" in Iraq, typically an obligation would arise when a company obtains premises (including rented premises) in Iraq, or retains personnel on a more than temporary basis. Penalties may apply in respect of failure to register the enterprise.

There are a number of principal business entities in Iraq, including joint stock company, limited liability company, joint liability company, sole owner enterprise and branch office. In practice, the most common form of entities for foreign investors are the Limited Liability Company (LLC) and branch office. There are currently no restrictions on foreign ownership of an Iraqi LLC. Therefore, a foreign investor can hold 100% of the share capital of an Iraqi LLC under Iraqi company law.

Further to the issue of New foreign branches regulation No.2 of 2017, it is now possible for entities that do not have contracts with the government to register a branch in Iraq.

It is difficult to predict the time taken to register a legal entity in Iraq, but a time frame of 6 to 12 months would be typical. It is generally faster and more straightforward to register a branch of a foreign company than an LLC in Iraq.

Permanent establishment

Iraq's income tax law does not recognize the concept of permanent establishment. However, Iraq broadly takes a territorial approach to taxation. In addition, contracts with non-residents are also specifically covered by Instructions No. 2 of 2008 (the "Instructions"), which broadly set out tests to define whether the non-resident is "trading with" or "trading in" Iraq. In summary, "trading with" Iraq should not result in an Iraq tax liability, whereas "trading in" Iraq will.

"Trading with" vs. "Trading in" Iraq

Broadly, a non-resident would be considered to be "trading in" Iraq when contracts are concluded in Iraq, payments for the services are made into an Iraqi bank account, or services are physically provided in Iraq. Critically, this may also include cases in which services are provided through a business agent or subcontractor in Iraq.

A contractor "trading in" Iraq will need to register a legal entity in Iraq, register for tax purposes and submit annual corporate income tax filings. Information on the contract should strictly be sent to the tax office, in order for the tax office to determine whether the contractor is liable for tax, i.e. whether the contract is considered to be "trading in" Iraq, and therefore whether retentions should be made on payments under the contract.

As the Instructions are currently drafted, there is no de minimis time limit for provision of services in Iraq – therefore strictly as little as one day spent working in Iraq should be considered to be "trading in" Iraq, and therefore give rise to an exposure to tax in Iraq.

Taxation in Iraq

Residence

An entity is resident if it is incorporated under the laws of Iraq or has its place of management and control in Iraq. An entity is non-resident if it does not meet the criteria for a resident entity.

Tax administration

The main source of tax law in Iraq is the Federal Income Tax Law No.113 of 22 November, 1982, as amended in 2003 (the "Federal Income Tax Law").

The tax authority in Federal Iraq is the General Commission for Taxes (GCT). Recently, the Large Taxpayer Department (LTD) has been set up within the GCT to deal with the branches of foreign companies.

The tax authority in the Kurdistan Region is the Income Tax Directorate (ITD). The ITD has established a Large Taxpayer Department to look after the companies classified as "large taxpayers". The tax year in Iraq is the calendar year*.

As a general rule, any non-Iraqi company which is "carrying on business" in Iraq is required to establish an Iraqi legal presence - i.e. a company or a branch office.

Taxable income

Taxable income is broadly total income less allowed deductions. Taxable income generally includes all income from whatever source. The Federal Income Tax Law provides that expenses incurred in generating taxable income during a period should be deductible in calculating taxable income.

Article 2 of the Federal Income Tax Law defines types of income which are subject to tax in Iraq. According to Article 2, the following types of income are included as taxable:

- Profits from commercial activity or from activity having a commercial nature, vocations and professions, including contracts, undertakings and compensation for non-fulfilment thereof if not for making good a loss sustained by the taxpayer;

* As a semi-autonomous region in Northern Iraq, the Kurdistan Region has introduced certain laws and practices which differ from the position in Federal Iraq. Throughout this guide, we have provided our comments with respect to Federal Iraq, unless otherwise noted. Where the position in Kurdistan Region differs materially from that in Federal Iraq, we have noted this.

- Interest, commissions, discount and profit arising from trading in bonds and securities;
- Rental of agricultural land;
- Salaries, pensions, bonuses, wages of specified work in a limited period of time, allowances of workers including payments in cash or allowances for the taxpayer against his services, such as housing, food and accommodation; and
- Any other source not exempted by law and not liable to any tax in Iraq.

Article 8 of the Federal Income Tax Law sets out certain expenses which are specifically allowed as deductions in calculating taxable income. As a general principle, it is stated that all expenses incurred by the taxpayer in order to produce income during the year shall be deducted in calculating taxable profits. Any deductions which are claimed should be supportable by appropriate documentation and it is common for the authority to request any supporting documentation that they consider is necessary to gain comfort with respect to the financial statements and tax calculation. In practice, the GCT frequently reverts to a deemed profit basis of assessment, by applying a percentage to the entity's turnover to arrive at a deemed profit which is then subject to corporate income tax at the applicable rate. The GCT has produced internal guidance which sets out deemed profit rates for certain industries, which is typically updated on an annual basis. We would note that the internal guidance issued by the GCT is not legislation, and accordingly should not be legally binding on the tax authority or taxpayer.

The percentage to be applied to the entity's revenue can vary, depending on the specific industry and activities performed, but a percentage of around 20-25% would be typical. This deemed profit approach is typically more likely to be adopted by the GCT where the entity is loss-making, or where the audited UAS financial statements indicate low profit margins.

There is currently no de minimis time limit for provision of services in Iraq - therefore strictly as little as one day spent working in Iraq may give rise to an exposure to tax in Iraq.

Article 5 provides that "tax shall be imposed on income of the Iraqi person resident which arises inside or outside Iraq, regardless of the place of receipt." "Person" in this context refers to both natural persons and legal persons (i.e. companies, branches of foreign companies, etc.).

Tax is also imposed on the income of a non-resident which arises in Iraq even if it is not received in Iraq.

Basis of taxation

Entities registered in Federal Iraq are required to prepare annual financial statements, which should be prepared in Arabic and in accordance with Iraqi Uniform Accounting Standards (UAS). According to the tax law, if supporting books and records are maintained, corporate income tax should be calculated based on the accounting profit as per the taxpayer's Iraqi UAS financial statements.

Withholding tax

Iraq has a complex legislative framework with respect to withholding tax and tax retentions. In practice, there are few final withholding taxes, however specific focus should be given to contracts which fall within the scope of Instructions No. 2 of 2008, concerning contracts with foreign parties, and Instructions No. 5 of 2011, for upstream oil and gas contracts.

Dividends

In practice, there is no withholding tax on dividends.

Interest

A tax of 15% applies to payments of interest from an Iraqi LLC or branch to a non-Iraq resident (e.g. the foreign parent company or non-resident bank).

Rents and royalties

There is no specific legislation that addresses withholding tax on payments for royalties. However, there are provisions in the tax law which the tax authority could use to argue that such payments should be taxable in Iraq i.e. if the income is considered to be "income arising in Iraq." To the extent that payments for management fees, technical services, rent etc. are made by the Iraqi entity to a foreign entity, there is a risk that the tax authority could argue that such payments are subject to tax in Iraq, on the basis that they relate to "income arising in Iraq." In practice, the tax authority generally defers to the legislation regarding tax retentions and we note our comments below in this respect.

Tax retentions

Instructions No. 2 of 2008 – Contracts between Iraqi and foreign contracting parties

The main provisions regarding tax retentions are set out in Instructions No. 2 of 2008 and subsequent amendments, which require that information relating to contracts with foreign suppliers be disclosed to the GCT in order for the tax office to determine whether the contractor is liable for tax and to confirm the rate of retention.

Retentions of tax on payments for certain contracts must be made by the payer, at various rates up to a maximum of 10% of the gross payments, depending on the nature of the contract/services performed, plus the whole of the final instalment payment.

Tax retentions under Instructions No. 2 of 2008 are not intended to be a "final" withholding tax. Amounts retained on instalment payments should be transferred to the tax authority within a period of 30 days from completion of work. In addition, contracting entities may not pay the final amount to contractors and contracting parties, unless with the written approval of the GCT.

Alternately, where no tax clearance certificate is provided, the party making the payment should be required to withhold 10% of the final instalment payment and remit it to the GCT, before releasing the final payment to the supplier. Tax clearance can strictly only be awarded once the supplier has completed their tax filing obligations and settled any due taxes in Iraq.

Tax retentions are not consistently applied in Kurdistan Region, other than on payments made by the public sector, which often include a 5% tax retention.

Instructions No. 5 of 2011 - Oil and gas contracts

Instructions No. 5 of 2011 and subsequent amendments provide that subcontractors to whom the Oil and Gas Tax Law applies should be subject to retentions of tax on their contract payments at a rate of 7% of the gross amounts, for petroleum contracts and at a rate of 3.3% for non-petroleum contracts.

Iraq has a complex legislative framework with respect to withholding tax and tax retentions. Specific focus should be given to contracts which fall within the scope of Instructions No. 2 of 2008 and Instructions No. 5 of 2011.

The Instructions provide that the entity making the payment should remit the retained amounts to the tax authority within 30 days of making the payment, with the amounts to be held by the tax authority to be reconciled with the contractor's final tax calculation. In addition, the whole of the final instalment payment should be withheld from the contractor until the contractor has completed the corporate tax filing and has obtained a tax clearance.

Tax exemptions

Investment Law No. 13 of 2006

Investment Law No. 13 of 2006 provides for certain tax exemptions and benefits for investing in Iraq. The broad objective of the Investment Law is to promote investment and transfer modern technologies in order to contribute to the development of Iraq and diversification of its economy.
Key highlights are as follows:

- Exemption from 'taxes and fees' for a period of 10 years. The period of the tax exemption can be further increased to a period of up to 15 years at the discretion of the National Commission for Investment, subject to the level of Iraqi participation in the project.
- Investment licences are granted on a project by project basis – rather than to an entity as a whole.
- The investment licence is granted under restricted conditions.

Exemptions typically apply in respect of corporate income taxes only, and employment taxes in respect of individuals working under the project should remain payable.

Cabinet Decision No. 167 of 2010

Cabinet Decision No. 167 of 2010 provides for an exemption from corporate income tax, Iraq reconstruction tax, customs duty and other charges in relation to contracts for projects that contribute to the development of Iraq.

Free zones/neutral zones

The General Authority for Free Zones (GAFZ) was established to manage the free zones in Iraq, and this authority sits within the Ministry of Finance.

Decree No. 170 for the year 1998 was issued on 19 October 1998, to exempt investment projects which are conducted within the free zones, and the capital invested in the free zones, from income tax and stamp duty. According to the decree:

- Investment projects in the free zones and the capital invested in them along with the profits and annual interest will be exempted from income tax and stamp duty or other duties. Goods and materials may be imported into the free

Entities registered in Federal Iraq are required to prepare annual financial statements in Arabic in accordance with Iraqi Uniform Accounting Standards (UAS).

zones free of customs duties. Non-Iraqi employees' income in the free zone is exempt from income tax.
- 50% of the Iraqi employees' income in the free zone is exempt from income tax.

Tax treaties
Iraq has not entered into any material tax treaties with other jurisdictions. There is a treaty of the Arab Economic Union Council, of which Iraq is a signatory; however, we do not see this applied widely in practice.

Corporate income tax
Registration
Following registration of the LLC or branch of a foreign company in Iraq, the entity is required to register with the GCT in Federal Iraq for corporate tax purposes. In Kurdistan, registration is typically completed for corporate tax at the time of making the first corporate tax filing. i.e. the Kurdish entity will be required to make its first filing for corporate taxes by 30 June following the year-end and it is typical to complete the registration with the tax authority (for all taxes) at that time.

Filing and payment
The tax year in Iraq is the calendar year. Financial statements must be prepared under Iraqi Uniform Accounting Standards (UAS) in Arabic and audited by an accredited Iraqi auditor.

The audited UAS financial statements should be submitted to the GCT, together with the corporate income tax return, by May 31 following the year end, with payment due following the tax authority's assessment of the tax return.

In Kurdistan Region, the audited Iraqi UAS financial statements should be submitted to the ITD, by 30 June following the year end. In addition, Large Taxpayers are required to submit the completed self-assessment corporate tax return.

Electronic payment of taxes has now been facilitated in Federal Iraq. In Kurdistan Region, payments of taxes are still made only through certified cheques issued by government banks.

Tax rate
Under the Federal Income Tax Law, the headline corporate income tax rate is a flat rate of 15%. A separate tax law was passed in March 2010, Law No. 19 of 2010 (the Oil and Gas Tax Law), which applies to upstream oil and gas companies, and supporting industries operating in Federal Iraq.

The Oil and Gas Tax Law provides for an increased corporate income tax rate of 35% on contracts concluded with foreign oil companies and their subcontractors operating in Iraq in the field of oil and gas production and associated industries.

A flat rate of 15% applies to all industries in the Kurdistan Region. At the time of writing, it is not expected that the Oil and Gas Tax Law will be enforced in the Kurdistan Region of Iraq; however, this position should be monitored.

Personal income tax

In Federal Iraq, personal income tax applies on employees' salaries at the following rates:
- Up to IQD 250,000: 3%
- Between IQD 250,000 and 500,000: 5%
- Between IQD 500,000 and 1,000,000: 10%
- Amounts in excess of IQD 1,000,000: 15%

Personal income tax is applicable for both Iraqi residents, and non-Iraqi residents who have Iraq source income. Personal income tax is broadly levied on all employees' income, including basic salary and allowances which are paid in addition to basic salary. Iraq's tax legislation sets out certain exemptions / deductions which are available in calculating taxable income.

In Kurdistan Region, a flat tax rate of 5% is applied to employees' salaries. The Kurdistan Region tax authority generally levies income taxes on basic salary plus any allowances in excess of 30% of the basic salary. Individuals are entitled to a tax-free legal allowance of IQD 1,000,000 per month.

Social security

Social security applies to employees' salaries at the rates of 5% for the employee contribution, and 12% or 25% for the employer contribution. In practice, it is possible to apply for a formal exemption from social security for expatriate individuals who are working in Iraq.

The social security contribution rates in Kurdistan Region are 5% for employees and 12% for employers.

Filing and payment

Employers are required to withhold taxes on behalf of employees and pay the tax to the tax authorities by the 15th day of each month, and to submit annual tax returns on behalf of their employees. The annual employment tax declaration must be made before 31 March of the year following the tax year.

In Kurdistan Region, taxes withheld from the employees should be remitted on a quarterly basis. The withheld taxes along with the quarterly employment tax returns are required to be submitted within 21 days following the end of the quarter. The annual employment tax declaration must be made before 1 March of the year following the tax year.

Social security contributions should be filed by the end of the month following the month in which salaries are paid both in Federal Iraq and Kurdistan Region.

Interest on late paid taxes is applied at a rate of 11% per annum on the amount outstanding in Federal Iraq. In Kurdistan Region, interest on late paid tax is applied at a rate of 1.5% per month.

Late payment of social security contributions attracts a penalty of 2% of the amount of contrbutions due per month of delay.

Visas/work permits/labor laws

Foreign individuals working in Iraq are required to obtain a visa and work permit. The visa requirements in Iraq are subject to change and therefore it is recommended to obtain specific legal/immigration advice in this respect.

In Federal Iraq and Kurdistan Region, personal income tax is applicable for both Iraqi residents, and non-Iraqi residents who have Iraq source income.

Penalties

Penalties on unpaid or late paid employment taxes for both Federal Iraq and Kurdistan Region are as follows: 5% of the amount outstanding if payment is not made within 21 days of the due date; an additional 5% penalty if the tax still is outstanding after a further 21 days (i.e. 42 days in total).

In the Kurdistan Region, penalties on late filing generally are limited to an amount of 10% of the tax liability, up to a maximum of IQD 75,000 per year. However, this cap of IQD 75,000 does not apply to Large taxpayers.

Indirect taxes

Value added tax

Iraq levies sales tax on certain consumer products, including five-star hotels, phone cards, tobacco and alcoholic beverages.

Stamp duty

Stamp Duty Law No. 71 of 2012 provides that the signing of contracts should be subject to stamp duty at a rate of 0.2%.

In practice, the payment of stamp duty is not common for contracts between private parties, where the contract is not intended to be presented to a court or official office. In such instances, the parties will not pay the stamp duty at the time of signing the contract, but only if it becomes necessary at a later date to either present the document to a court or an official office.

Conversely, for contracts to which the government is a party, stamp duty will typically be paid at signing unless an exemption is relevant.

Customs duty

In January 2018, The Iraq General Commission of Customs (IGCC) announced the unification of the classification of goods into four main categories and the applicable custom duty rates to be between 0.5% - 30%.

Additionally, the IGCC has announced that effective January 2019, customs duty would be levied on all goods imported into Iraq, including those imported by state departments, public and mixed sectors, civil organizations and private parties.

In practice, the application of the customs duty has been largely inconsistent and subject to the discretion of the IGCC.

Other taxes

Real Estate Tax

Law No. 162 of 1959 and its amendments, Law of the Real Estate Tax, provides for a tax on revenue derived from Real Estate in Iraq. According to the Law, a basic tax of 10% is assessed on the annual revenue for all real estate property. The annual revenue for each real estate property is discounted by 10% for expenses and maintenance before assessing tax on it.

Deloitte in Iraq – how can you benefit?

Deloitte Middle East (DME) is committed to providing client insight and delivering thought leadership to help our clients keep abreast of key developments in the tax landscape. Deloitte has been present in the Middle East since 1926, making it the longest standing professional services firm in the region.

DME launched an International Tax Services Center for Excellence in Dubai in 2009. The center offers our clients as well as investors in the region services which include structuring groups with inbound and outbound investments within the Middle East and North Africa. The center leads some of our largest global tax engagements.

DME's practice has been awarded a Tier 1 ranking in tax services for seven consecutive years by the International Tax Review's World Tax Awards. Top tier rankings are provided to firms that have "an international network and leading reputation" which is "reflected in the size and quality of transactions" in the relevant jurisdiction (International Tax Review).

Deloitte has legal entities registered in Baghdad, Federal Iraq and Erbil, Kurdistan Region with dedicated resources on the ground, available to meet with our clients locally and to liaise with regulatory and tax authority personnel as required. Our tax practice is centrally headquartered in Dubai, with dedicated tax professionals available to travel as required to meet with our clients in Iraq and the wider Middle East region.

Using our expertise to add value and reduce risk

We understand the risks and challenges that your business faces in Iraq. We have a deep understanding of the Iraqi accounting and tax compliance process and we manage accounting and audit, corporate income tax, withholding tax, employment tax and social security compliance for some of the world's largest companies operating in Iraq.

Knowledge and value

Statistically, Iraq ranks as one of the most difficult countries in which to complete tax filings. Due to the lack of developed systems and infrastructure in Iraq, the tax compliance process in Iraq is inherently more challenging than in many of the other jurisdictions in which we operate. Our team has extensive working knowledge of the Iraqi investment and regulatory climate, and accordingly will be well placed to provide support with regards to corporate income tax, employment tax and social security filing obligations, and to create lasting value as your business develops its operations in Iraq.

Deloitte has legal entities registered in Baghdad, Federal Iraq and Erbil, Kurdistan Region with dedicated resources on the ground, available to meet with our clients locally and to liaise with regulatory and tax authority personnel as required.

Want to do business in Iraq?

We are here to help.
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We welcome the opportunity to discuss your needs further and provide you with a better understanding of the issues discussed in this material. Please feel free to contact one of our specialists.

The 'Doing business guide' series is supplemented by the **Middle East Tax Handbook**, which provides a summary of basic tax information in a country-by-country snapshot.

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