

Issues and Requests Relating to Foreign Trade and Investment - Kuwait

	Category	No	Issue	Issue Details	Requests	References
9	Restrictive Export/Import Trade, Duty, and Customs Clearance	(1)	Mandatory Pre-Shipment Inspection	- Upon Customs Clearance, Pre-Shipment Inspection Certificate (SASO, Saudi, KUSO, Kuwait) issued by a third party institution is required, however, it is extremely expensive. Moreover, the details of inspection items frequently change.	- The countries requiring Pre-Shipment Inspection Certificate are small in number. It is requested that GOJ approach GOK toward abolishment of Pre-Shipment Inspection Certificate requirement.	- Unified Customs Law & Explanatory Note
		(2)	Legalisation Required on Shipping Documents	- Concerning shipping documents such as invoices, GOK requires legalisation with extraneous additional cost and lead-time.	- It is requested that GOK abolishes the burden described in the left column.	- Unified Customs Law & Explanatory Note
		(3)	Radiation Inspection	- GOK requires radiation inspection on each steamer originating from Japan, forcing unnecessary cost for compliance.	- It is requested that GOK cuts down the cost described in the left column.	- Import Law
14	Taxation Systems	(1)	Inadequate Provisions as to "Taxable Income attributable to Permanent Establishment"	- In January 2009, agreement in principle on tax treaty between Japan and Kuwait was reached, and in February 2010, the contents of tax treaty were disclosed. However, as to taxable income, it merely states: "taxable income attributable to permanent establishment". Thus, in the context of turnkey work such as plant construction in Kuwait, imported equipment manufactured outside Kuwait could be regarded as taxable in Kuwait. In light of the prevailing circumstances in Kuwait, certain countries including Switzerland, Germany, Italy, the Netherlands, and India expressly stipulate in the tax treaty, "Taxable income attributable to permanent establishment is restricted only to the activity in the country where construction of the object article takes place". Consequently, these countries stand in a better bargaining position in international tender for plant construction, etc. ROK concluded tax treaty with Kuwait since a long time ago. However, it did not include the provisions relative to definition on taxable income attributable to permanent establishment. As a result an ROK enterprise has faced problems with the Kuwait taxation authorities and the bilateral talk takes place on the revision of the tax treaty, according to information source.	- Before the Japan/Kuwait tax treaty enters into force, it is requested that GOJ carefully takes corrective actions as necessary. In addition, in negotiating new tax treaty or its revision with other countries, it is requested that GOJ: -- gathers information from private business sectors already entering the countries, -- listens to the experts' advice, and -- researches/grasps fully the special characteristics of the individual negotiating countries.	- Japan-Kuwait Tax Treaty
		(2)	Irrational Retention System	- In a construction project (under the all in contract, including procurement of design, equipment and materials, and construction) for petro-refinery, petro-chemical, natural gas treatment, liquid natural gas (LNG) plant, etc., taxation authorities enforces retention system, whereby pending acquisition of no objection certificate, and tax clearance certificate (so	- It is requested that GOK refrains from applying the retention system described in the left column.	

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			<u>called notice of completing tax payment obligations), the taxation authorities retains a portion (5% in Kuwait and 3% in Qatar) of the contract amount, giving rise to disbenefit of time in regard to capital fund collection.</u>		
	(3)	The Broad Scope of Object of Taxation	- <u>In a plant export contract (all in contract for design, procurement of equipment and materials and construction), the total contract amount is taxable. Consequently, all services rendered abroad (for example, in Japan and third countries) are taxable in Kuwait. On the other hand, ROK and some other countries successfully negotiated tax free treatment on services rendered abroad, placing Japan in less favourable position for plant export from Japan in competing against ROK and other countries for which tax is exempted.</u>	- <u>In a plant export contract (all in contract for design, procurement of equipment and materials and construction), it is requested that all services rendered abroad (for example, in Japan and third countries) are not taxable in Kuwait.</u> - <u>It is requested that GOJ negotiates with GOK to incorporate into the tax treaty a provision that expressly deducts income attributable to the permanent establishment (PE) only to the portion constructed in the country in concern (Kuwait), to ensure that Japanese enterprises may compete on an equal footing with other countries, such as ROK.</u>	
16	Employment	(1) Adverse Effect of Sponsorship Requirement	- <u>It takes unnecessarily long time for acquisition of work visa or area restricted pass, as it requires a sponsor's intervention. In addition, frequent changes in regulations and handling methods at the window make the acquisition procedures cumbersome.</u>	- <u>It is requested that GOK:</u> -- <u>to abolish sponsorship requirement,</u> -- <u>to clarify provisions of administrative regulations and to enforce thoroughly.</u>	- Company Act - Labour Laws, etc. relative to the Sponsorship System
17	Implementation of Intellectual Property Rights ("IPRs")	(1) Assumption of Cost Incurred for Disposal of Counterfeit Goods	- While GOK works for eradication of counterfeit goods, copy goods, etc., GOK compels authorized importers' assumption of the costs incurred for storage, transportation, and destruction.	- It is requested that GOK takes steps to strengthen: -- legislation for executing IPRs, -- clampdown at Customs, -- introduction of import injunction measures and their facilitation against counterfeit goods, and -- alleviation of the cost assumption on authorized importers relative to confiscated counterfeit goods.	ACTA-Anti-Counterfeit ing Trade Agreement (ACTA) of October 2010

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23 Inefficient Administrative Procedures, Regimes and Practices	(1)	Nebulous Offset Programme	- Relative to tender on public work project, other than oil and gas, contractor's satisfaction of offset obligation is mandatory requirement. It has a negative aspect of interfering with the competitive tender from having to satisfy the counter-trade offset requirement directly unrelated to the project itself.	- It is requested that GOK discontinues the offset programme.	- Law Concerning the Counter-Trade Offset Program - Kuwait Offset Programme
	(2)	Adverse effect of Commercial Distributor Scheme	- <u>For import of equipment and materials from abroad, appointment of 100% local enterprise as commercial distributor is a mandatory requirement. It is quite possible that a fair and competitive procurement is interfered with.</u>	- <u>It is requested that GOK takes steps to repeal the commercial distributor scheme.</u>	Commercial Code on Commercial Distributors
	(3)	Complex Acquisition Procedures for Licences and Approvals	- <u>Hardly any coordination seems to exist by and among Ministries and Agencies so that in many cases contractors need to intercede over the complicated issues between the Competent Authority that issues Licences and Approvals and another Competent Authority acting as Contractor.</u>	- <u>It is requested that Ministries and Agencies streamline their internal adjustments as necessary.</u>	
	(4)	Ministries and Agencies' Paucity in Observance of Contract Terms	- <u>On a governmental project involving construction work, payment for 30% of the contract amount has delayed beyond the due date, while on a large project, the government compelled monetary burdens upon the contractor over an extended period. On the part of the party to the contract, namely, the government, absence of the spirit for observing the contract terms was noticed on some occasions, so that on another case where performance under the contract came to a standstill for reason of the government, the purchaser, the contractor was forced to absorb the burden in effect.</u>	- <u>It is requested that GOK takes steps to:</u> -- <u>deregulate the contract terms (particularly, the terms of payment), and</u> -- <u>observe thoroughly contract terms on the part of the governmental institutions.</u>	
	(5)	Restricted Debiting of Headquarters Expenses	- <u>In a construction project (under the all in contract, including procurement of design, equipment and materials, and construction) for petro-refinery, petro-chemical, natural gas treatment, liquid natural gas (LNG) plant, etc., in regard to debiting sales expenses arising individually per project, headquarters' general & administrative expenses, and engineering department's indirect expenses, taxation authority in Qatar allows maximum 3%, and in Kuwait 3.5% over the [sales amount less external purchase amount] and in Oman 3% over the sales amount or 3% over the headquarters sales and administrative expenses. In the process of performance in individual projects, while headquarters' and indirect departments' supports are indispensable, personnel cost and expenses for supporting the project, by far, exceed the foregoing deemed amounts.</u>	- <u>It is requested that GOK allows debiting the cost incurred for individual projects on account of sales, general and administrative expenses, engineering (manufacture) department indirect expenses, at the level reflecting the real accrual of expenses.</u>	