

# **PROTOCOL**

**BETWEEN**

**THE GOVERNMENT OF THE REPUBLIC OF AUSTRIA**

**AND**

**THE GOVERNMENT OF THE STATE OF KUWAIT**

**AMENDING THE AGREEMENT BETWEEN THE GOVERNMENT OF THE REPUBLIC OF AUSTRIA AND THE GOVERNMENT OF THE STATE OF KUWAIT FOR THE AVOIDANCE OF DOUBLE TAXATION AND THE PREVENTION OF FISCAL EVASION WITH RESPECT TO TAXES ON INCOME AND CAPITAL AND FOR THE FOSTERING OF ECONOMIC RELATIONS, SIGNED AT VIENNA ON 13 JUNE 2002**

The Government of the Republic of Austria and the Government of the State of Kuwait,

Desiring to conclude a Protocol amending the Agreement between the Government of the Republic of Austria and the Government of the State of Kuwait for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income and capital and for the fostering of economic relations, signed at Vienna on 13 June 2002 (hereinafter referred to as “the Agreement”);

Have agreed as follows:

## **Article 1**

The existing preamble of the Agreement shall be replaced by the following preamble:

“The Government of the Republic of Austria and the Government of the State of Kuwait,

Desiring to further develop their economic relationship and to enhance their cooperation in tax matters,

Intending to eliminate double taxation with respect to taxes on income and on capital without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third States),

Have agreed as follows:”

## Article 2

Subparagraph b) of paragraph 3 of Article 2 (Taxes Covered) of the Agreement shall be deleted and replaced by the following subparagraph:

“b) in Kuwait:

- (1) the income tax according to Decree No. 3 of 1955 as amended by Law No. 2 of 2008,
- (2) the tax according to Law No. 23 of 1961 of the Neutral Zone;
- (3) the tax according to Law No. 19 of 2000 on National Labour Support and Encouraging them to Work in Non-Governmental Bodies;

(hereinafter referred to as “Kuwaiti tax”).”

## Article 3

Subparagraph b) of paragraph 1 of Article 4 (Resident) of the Agreement shall be deleted and replaced by the following:

“b) in the case of Kuwait, an individual – including a Kuwaiti national – who is domiciled in Kuwait and a company which is incorporated in Kuwait.”

## Article 4

Paragraph 1 of Article 10 (Dividends) of the Agreement shall be deleted and replaced by the following:

“(1)

- a) Dividends paid by a company which is a resident of a Contracting State to a resident of the other Contracting State may be taxed in that other State.
- b) However, dividends paid by a company which is a resident of a Contracting State may also be taxed in that State according to the laws of that State, but if the beneficial owner of the dividends is a resident of the other Contracting State, the tax so charged shall not exceed 10 per cent of the gross amount of the dividends.
- c) Notwithstanding the provisions of sub-paragraph b), dividends paid by a company which is a resident of a Contracting State shall be taxable only in the other Contracting State if the beneficial owner is:
  1. that other State itself, a political subdivision or local authority thereof or a Government Entity, or
  2. a company (other than a partnership) which holds directly at least 10 per cent of the capital of the company paying the dividends.

The competent authorities of the Contracting States shall by mutual agreement settle the mode of application of these limitations. This paragraph shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.”

## **Article 5**

Paragraph 3 of Article 23 (Elimination of Double Taxation) of the Agreement shall be deleted and replaced by the following:

“3. In the case of Austria, double taxation shall be avoided as follows:

a) Where a resident of Austria derives income or owns capital which may be taxed in Kuwait in accordance with the provisions of this Agreement (except to the extent that these provisions allow taxation by Kuwait solely because the income is also income derived by a resident of Kuwait or because the capital is also capital owned by a resident of Kuwait), Austria shall allow:

1. as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in Kuwait;
2. as a deduction from the tax on the capital of that resident, an amount equal to the capital tax paid in Kuwait.

Such deduction in either case shall not, however, exceed that part of the income tax or capital tax, as computed before the deduction is given, which is attributable, as the case may be, to the income or capital which may be taxed in Kuwait.

b) Where in accordance with any provision of this Agreement income derived or capital owned by a resident of Austria is exempt from tax in Austria, Austria may nevertheless, in calculating the amount of tax on the remaining income or capital of such resident, take into account the exempted income or capital.”

## **Article 6**

Paragraph 1 of Article 25 of the Agreement (Mutual Agreement Procedure) shall be deleted and replaced by the following:

“1. Where a person considers that the actions of one or both of the Contracting States result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those States, present his case to the competent authority of the Contracting State of which he is a resident or, if his case comes under paragraph 1 of Article 24, to that of the Contracting State of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.”

## Article 7

Article 26 (Exchange of Information) of the Agreement shall be deleted and replaced by the following:

### “Article 26

#### Exchange of Information

1. The competent authorities of the Contracting States shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting States, or of their political subdivisions or local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting State shall be treated as secret in the same manner as information obtained under the domestic laws of that State and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to, the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions.

3. In no case shall the provisions of the preceding paragraphs be construed so as to impose on a Contracting State the obligation:

- a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting State;
- b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting State;
- c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information the disclosure of which would be contrary to public policy (ordre public).

4. If information is requested by a Contracting State in accordance with this Article, the other Contracting State shall use its information gathering measures to obtain the requested information, even though that other State may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting State to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting State to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.”

## Article 8

The following new Article 27A (Entitlement to Benefits) shall be inserted into the Agreement immediately after Article 27:

“Article 27A

### Entitlement to Benefits

Notwithstanding the other provisions of this Agreement, a benefit under this Agreement shall not be granted in respect of an item of income or capital if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principle purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Agreement.”

## Article 9

A new Paragraph 8 shall be added to the existing Protocol of the Agreement signed in Vienna on 13 June 2002:

### **“8. Application of domestic legislation implementing the GloBE Model Rules in either Contracting State:**

It is understood that nothing in this Agreement prevents a Contracting State from applying its domestic legislation on the minimum taxation on MNEs that is enacted by that Contracting State in conformity with the Qualified IIR or Qualified UTPR of the Pillar Two Global Anti-Base Erosion Model Rules.”

## Article 10

1. This Protocol shall be subject to ratification in accordance with the constitutional requirements of the two Contracting States and the instruments of ratification shall be exchanged as soon as possible.
2. The Protocol shall enter into force on the first day of the third month next following that in which the exchange of instruments of ratification takes place and shall have effect:
  - a) in respect of taxes withheld at source, for amounts paid on or after the first day of January of the calendar year next following that in which the Protocol enters into force;
  - b) in respect of other taxes, for taxable periods beginning on or after the first day of January of the calendar year next following that in which the Protocol enters into force.

This Protocol shall form an integral part of the Agreement and be terminated at the time of termination of the Agreement.

IN WITNESS WHEREOF the undersigned, duly authorised thereto, have signed this Protocol.

DONE in duplicate at Vienna, on this 17<sup>th</sup> day of June 2025, corresponding to this day of 21<sup>st</sup> day of Thulhija 1446 H, in the German, Arabic and English languages, each text being equally authentic. In case of any divergence of interpretation, the English text shall prevail.

**For the Government of the  
Republic of Austria:**

Barbara Eibinger-Miedl

**For the Government of the  
State of Kuwait:**

Talal Sulaiman Al-Fassam