

HOW TO START-UP

Doing Business in the Kurdistan Region

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Deloitte in Kurdistan How will you benefit?

Using our expertise to add value and reduce risk

Operating in over 150 countries around the world, Deloitte, the largest professional services firm in the world, is recognized for its talent, scale, position and size. Our firm brings the experience that you require to mitigate the risks and challenges that your business might face in Kurdistan. We have a deep understanding of the local statutory accounting and tax compliance requirements; accordingly, many of the world's largest companies operating in the Region rely on our know-how.

Knowledge and value

Our team has extensive working knowledge of Kurdistan's investment and regulatory climate. We are well placed to provide support with regards to accounting, corporate income tax, and social security filing obligations, and to create lasting value. With such full-time dedicated resources on the ground in our Erbil office, Deloitte's practice in the Kurdistan Region blends global knowledge and local expertise, a factor which we believe sets our firm apart.

Deloitte's Kurdistan practice provides comprehensive and integrated solutions

Deloitte is among the region's leading professional services firms, providing audit, tax, consulting, and financial advisory services through 26 offices in 15 countries in the Middle East, with uninterrupted presence since 1926. Deloitte has a legal entity registered in Erbil with dedicated resources on the ground available to meet with clients of the public and private sectors locally and to liaise with regulatory and tax authority personnel as required.

Commitment to being at the fore of supporting our clients

As you grow your business in Kurdistan, we will be available to help you every step of the way. We will work with you to ensure that you are kept up-to-date on developments in the Kurdistan Region regulatory and tax areas.

With a globally connected network of member firms, Deloitte brings world-class capabilities and high-quality service to clients, delivering the insights they need to address their most complex business challenges.

Deloitte's professionals are unified by a collaborative culture that fosters integrity, outstanding value to markets and clients, commitment to each other, and strength from cultural diversity. They enjoy an environment of continuous learning, challenging experiences, and enriching career opportunities. Deloitte's professionals are dedicated to strengthening corporate responsibility, building public trust, and making a positive impact in their communities.

Understanding local requirements is key to success

In a raw and lucrative market such as the Kurdistan Region of Iraq, there are definite opportunities; hence, patience and local relationships are essential ingredients to a successful entry.

The Kurdistan economy is heavily reliant on oil revenues, but recognizing that oil export receipts cannot keep pace with spending for reconstruction, the Kurdistan Regional Government introduced new legislations in an effort to attract private sector and foreign investment. These new measures are meant to boost Kurdistan's economy driving non-oil GDP up.

The primary beneficiaries are many industry sectors including, but not limited to: construction and construction materials, branded consumer goods, healthcare, technology & electronics, retailing, financial services and capital markets.

This start-up guide is designed to walk a new entrant through the key steps in setting up a business in Kurdistan. Please note that this guide is general in scope and should not be relied upon as legal, tax or other professional advice specific to your industry, country of origin and business structure. Subsequent changes in or to the foregoing (for which Deloitte shall have no responsibility to advise readers) may result in the information provided by Deloitte being rendered invalid.

We would like to thank Hannouche Associates for providing the legal section of this guide. We hope that you will find this to be informative and your experience here in Kurdistan enjoyable and rewarding.

Respectfully,

Ayad Mirza,
Country Managing Partner,
Iraq Deloitte & Touche Management Consulting, WLL

Choice of entity and legal business structure

Iraq's Companies Law 21 (of 1997) as amended in 2004, which is adhered to in Kurdistan allows for several types of legal business structures. Principally these include joint stock companies, limited liability companies, joint liability companies, sole proprietorships, and branch offices.

As a general rule, a foreign company that is "carrying on business" in the Kurdistan region of Iraq is required to establish a legal presence in the region (e.g. company, branch office, etc.). While there is no specific definition as to what constitutes "carrying on business", typically an obligation would arise when the company obtains premises (including rented premises), retains personnel on a more than temporary basis, or in general, enters into agreements meant to be directly performed in the region.

Iraq's Companies Law 21 (of 1997) as amended in 2004, which is adhered to in Kurdistan, provides for several types of legal business structures. Principally these include joint stock companies, limited liability companies, joint liability companies, sole proprietorships, and branch offices.

Below we set out to list some of the more important legal requirements and practical guidelines necessary to set up the two most prevalent legal structures in Kurdistan: Limited Liability Companies and Branches of Foreign Entities.

1. Registering a new Limited Liability Company (LLC)

1.1 Legal requirements

- A corporate name must be reserved at the local Chamber of Commerce.
- An application form must be completed.
- Articles/Memorandum of association must be drafted and signed.
- For each corporate shareholder: a certificate of incorporation; articles of association/charter, last filed financial statements and a power of attorney in favor of a Kurdistan region lawyer is to be signed by the authorized signatory of the corporate shareholder.
- For each individual shareholder: a

passport copy and/or other local identifications, and a power of attorney in favor of a Kurdistan region lawyer to be signed by all individual shareholders.

- A copy of the leased premises' contract in the Kurdistan region.
- Evidence of residency of proposed managing director in the Kurdistan region.
- A minimum share capital for an LLC of 1 million IQD must be fully paid up prior to completion of the registration process (oil services companies shall have a minimum share capital of 2 billion IQD).
- An LLC must have one managing director and must appoint a statutory accountant and a statutory lawyer. The latter two must be Iraqi nationals while the managing director could be a foreign national.

1.2 Practical guidelines

- Incorporation time: 15 – 20 business days.
- An LLC can be wholly owned by a foreign citizen or a foreign entity.
- The maximum number of shareholders is 25.
- An LLC may engage in any activity other than banking, financial investments and insurance.
- An LLC is required by law to hold two General Assembly meetings per year.
- An LLC is allowed to own real property even if wholly owned by a foreign citizen or a foreign entity.
- An LLC incorporated in the Kurdistan region cannot operate in Federal Iraq.
- An LLC incorporated in the Kurdistan region can open a branch in Federal Iraq.
- An LLC is subject to the classification requirements of the Ministry of Planning when such classification is required to enter into a certain contract or tender.

- An LLC can own a motor vehicle but its foreign shareholders cannot own such vehicles in their own names unless they hold a one year residency permit.
- An oil services LLC needs to win a contract with an operating oil company in order to be granted the preapproval of the Ministry of Natural Resources on its incorporation.

1.3 Foreign entity as a shareholder

In case the LLC will be partially or wholly owned by a foreign entity, the latter must have been incorporated for more than one year. The documents below are to be provided by the foreign entity. All documents must be translated to Arabic and certified at the Iraqi embassy in the entity's home country:

- Articles of Association
- Certificate of Incorporation
- Last filed financial statements
- Resolution to own an LLC in the Kurdistan Region

2. Registering a branch of a foreign company

2.1 Legal requirements

- An application form must be completed.
- Certificate of Incorporation of the Parent Company registering the branch office.
- Articles of Association/Charter of the Parent
- Company and a Resolution to open a branch in the Kurdistan region of Iraq.
- A Power of Attorney from the branch director and authorized signatory in favor of a Kurdistan region lawyer to undertake registration procedures.
- A copy of the leased premises' contract in the Kurdistan region.
- Evidence of residency of proposed managing director in the Kurdistan Region.
- All documents must be translated to Arabic and certified at the Iraqi embassy in the entity's home country.
- A branch must have one managing director and must appoint a statutory accountant and a statutory lawyer. The latter two must be Iraqi nationals while the managing director could be a foreign national.

2.2 Practical guidelines

- Incorporation time: 10 – 12 business days.
- Branches of foreign companies must keep the same name and ownership structure of the parent company.
- The parent company is financially and legally liable for the branch's activities.
- Branches of foreign companies cannot own real property.
- The approval of relevant syndicates for the branch registration is more costly than the same approvals required for the incorporation of an LLC.
- Branches of foreign companies can own a motor vehicle.
- Branches of foreign companies are exempt from the classification requirements of the Ministry of Planning.
- Branches of foreign companies registered in the Iraqi Kurdistan region cannot operate in Federal Iraq.
- The parent company needs to have been incorporated for more than a year in order to be allowed to register a branch in the Kurdistan Region of Iraq.
- A branch of a foreign oil services company is not required to secure a contract with an operating oil company in order to be granted the Ministry of Natural Resources preapproval on its registration.

3. Residency permits

- Locally incorporated LLCs and branches of foreign companies have the same rights regarding residency permits.
- The LLC or the branch, is the only required guarantor for the issuance of residency permits for the company's director, shareholders and employees.
- Individuals entering the Kurdistan region through a visa issued by the Iraqi embassy are not eligible for residency permits.
- The Ministry of Interior issues two types of visas: visit visas and work visas. The latter is the only type of visa enabling the foreign individual to issue a residency permit.

In case the LLC will be partially or wholly owned by a foreign entity, the latter must be incorporated for more than one year.

Branches of foreign companies registered in the Iraqi Kurdistan Region cannot operate in Federal Iraq.

Registered companies and branches of foreign entities are required to make annual corporate tax filings with the Income Tax Directorate (ITD), and make payment of corporation tax, by 30th of June following year-end (Note: the statutory filing deadline is 31 May, but a 1 month extension is in practice applied by the tax authority to all businesses).

Currently, three industrial free zones are under consideration as approved projects by the Board of Investments. They are the Duhok, Erbil and Slemani industrial zones.

4. Import – Export

- All companies are allowed to issue an import/export license.
- The type of products that needs to be imported must be specified in the license application.
- The ports of entry that will be used by the company need to be specified in the license application.
- Once the license is issued, it must be notified to the relevant ports of entry.
- A ceiling for the value of goods imported throughout the year must be specified in the license. Once the limit is reached, imports are suspended until the ceiling is adjusted accordingly.

5. Labor law

- No minimum requirement on the number of local employees in a company is imposed on all types of entities.
- All employment agreements must be either in Arabic or bilingual, with Arabic being the prevalent language.
- No work permits are required for local or

foreign employees. Foreign employees can legally perform their duties based only on their residency permit.

- Legal disputes arising out of the employment relationship fall under the jurisdiction of a special labor court.

6. Free zones

- Currently, three Industrial free zones are under consideration as approved projects by the Board of Investments.
- The Duhok industrial zone is already implemented and more investors are sought to submit proposals for industrial projects. The Erbil industrial zone has reached the final setup stage and soon investors will be requested to submit their proposals for prospective projects. The two Sulemani industrial zones offer great potential for investments; one of the zones is currently being developed, and, master developers are being sought for the other one to propose scenarios of developing the area for industrial projects.

Taxation

As a semi-autonomous Region, the Kurdistan Region has introduced certain tax laws and practices that diverge from the position in Federal Iraq. This section discusses corporate income tax; including issues such as compliance, income tax rate, and loss carry forwards.

Transfer pricing, capital gains, withholding tax, employment tax, social security contributions, VAT/sales tax and import, export and customs duties are also discussed.

1. Corporate tax

1.1 Compliance

- Entities are required to register with the Income Tax Directorate (ITD) in Kurdistan Region for corporate income taxes.
- The Income Tax Directorate (ITD) typically requires Kurdistan entities to complete the tax registration by way of their first corporate tax filing.
- Registered companies and branches of foreign entities are required to make annual corporate tax filings with the ITD, and make payment of corporation tax, by 30th of June following year-end (Note: the statutory filing deadline is 31 May, but a 1 month extension is in practice applied by the tax authority to all businesses).
- The penalty for late filing is currently 10% of the tax due, capped at IQD 75,000 per year.

1.2 Corporate income tax rate

- The current corporate income tax rate for all industries is a flat rate of 15%.
- According to the tax law, if supporting books and records are maintained, corporate income tax should be calculated based on the net accounting profits per audited financial statements.
- In the absence of audited financial statements and supporting documentation, it is not uncommon for the ITD to assess corporate income taxes based on pre-determined industry sector deemed profit schedules.

1.3 Loss carry forwards

Kurdistan Income Tax Law No. 26 of 2007 and its subsequent amendment Law No. 20 of 2011 are both silent about loss carry

forwards, but in accordance with Iraqi Income Tax Law No. 113 of 1982 as amended in 2003:

- Losses incurred during the year may be carried forward for a maximum of five consecutive years, to be offset against profits generated from the same source as the original loss.
- Up to 50% of the taxable income in a year may be sheltered by brought forward tax losses.
- To the extent that an entity is loss making, the tax authority may seek to assess the entity on a deemed profits basis, which would effectively disregard any losses incurred in the current year and deny the entity of tax relief for carried forward losses in future periods.

2. Transfer pricing

- There are no formal transfer pricing rules in Kurdistan Region.
- The tax authority, however, reserves the right to adjust transactions, for tax purposes, which they consider not to be at arm's length.

3. Capital gains

- There is no separate capital gains tax regime in Kurdistan Region.
- Gains and losses realized by a Kurdistan entity on disposal of non-current assets is classified as ordinary income and is subject to corporate income tax at the applicable corporate income tax rate.
- The tax law does not specifically provide for a tax on gains realized by a non-resident. However, there are provisions included within the tax law which the tax authority could use to seek to assess tax on a gain realized from the disposal by a non-resident of Kurdistan assets.

4. Withholding tax

- In practice, there is no withholding tax on dividends.
- A tax of 15% should apply to payments of interest to non-residents but this is not always consistently applied.
- The Kurdistan Region does not currently impose withholding taxes on service payments.

The current income tax rate for all industries is a flat 15% calculated based on the net accounting profits per audited financial statements; however, it is not uncommon for the ITD to assess corporate income taxes based on pre-determined industry sector deemed profit schedules.

The Kurdistan Region does not currently impose withholding taxes on service payments and dividend payments.

Employees working in the Kurdistan Region are subject to personal income tax at a rate of 5% on their income in excess of IQD 1,000,000 per month.

5. Employment tax

- Entities registered in Kurdistan Region must register with the ITD for employment taxes with respect to their employees working in Kurdistan.
- Employment tax filings are due annually by 30th of June following year-end.
- Employees working in the Kurdistan Region are subject to personal income tax at a rate of 5% on their income in excess of IQD 1,000,000 per month.
- Social security contributions withheld from the employee are deductible when calculating taxable income.
- Both foreign and local Iraqi national employees are assessed tax on the same basis.

6. Social Security contributions

- All employers operating in the Kurdistan Region are required to remit Social Security and Pensions Contributions (SSPC) for their employees in the Kurdistan Region.
- There are two components to the SSPC: Employees are required to contribute 5% of their monthly salary. The employer deducts at source this amount from the employee's salary.
- Employers are required to pay 12% of the

salary in respect of their employees working in the Kurdistan Region of Iraq.

- Exemptions are available to foreign nationals working in the Kurdistan Region if covered in their home country and proof of coverage is documented with the social security office.
- Such proof must be authenticated by the Iraqi embassy in the country where the foreign employee resides.

7. VAT/Sales tax

- There is currently no VAT or sales tax levied on goods or services in the Kurdistan Region.

8. Import, export and custom duties

- Under Iraq domestic legislation, customs duty on goods brought into Iraq is generally 5% of the CIF value of the goods imported.
- Customs duty exemptions may be available for goods and equipment imported in connection with upstream oil and gas activity, or goods imported on a temporary basis.

Investment Law

Law No 4 of 2006, Law of Investment in the Kurdistan Region (the "Investment Law") provides for tax incentives and exemptions for foreign investors in the Kurdistan Region who are involved in certain qualifying projects.

Law No 4 of 2006, Law of Investment in the Kurdistan Region (the "Investment Law") provides for tax incentives and exemptions for foreign investors in the Kurdistan Region who are involved in certain qualifying projects. The Investment Law sets out specific projects which are considered to qualify for an investment license. In general, projects involving vital sectors, such as electricity, agriculture, health and environment, infrastructure and education, etc. qualify as eligible projects.

1. Key provisions of the Investment Law

According to the Investment Law, projects which qualify for an investment license (and which have obtained the requisite

approvals) should benefit from:

- Total ownership of project land allowed, except investors may not own land containing oil, gas or mineral resources.
- Full repatriation of project investment and profits.
- A foreign investor shall be entitled to send his capital back abroad upon winding up or disposal of the Project without prejudice to applicable laws and regulations regarding taxes and customs.
- Exemption from the following taxes:
 - » All non-custom taxes and duties for a period of ten years from the date production commences or the date services are offered.
 - » Custom duties on imports of spare parts up to 15% of project cost.

- » Custom duties, taxes, import licenses on imported vehicles, equipment, instruments, etc, provided they are imported within two years of approval by the Investment Commission Chairman.
- » Custom duties and taxes on imports of linens, carpets, furniture and other renovation items once every three years for hotels, hospitals, universities, schools, and tourist institutions.
- » Custom duties for five years on imports of raw materials for production.
- Employment of foreign workers provided no capable Iraqis are available. Foreign workers may repatriate earnings.
- Equal treatment of foreign investor and capital as national investor and capital.
- An investor may transfer his investment totally or partially to another foreign or to a national investor, or may assign the project to his partner with the approval of the board.
- Services provided by the Kurdistan Regional Government to the boundary of the project, such as water, electricity, sewage, public roads, telecommunications, etc.
- Foreign or domestic insurance and additional incentives for projects in “less developed areas” and “joint projects” between Kurds and foreigners.
- Protection under the Supremacy of Kurdistan Law (Art. 115 of Iraq’s Constitution) whenever there is any contradiction between this law and “other relevant laws,” the provision of this law shall be applicable.
- An investor’s initiative and technical know-how are protected under this law and any person, by virtue of his post, who discloses any information, will be punished.
- Health and environment.
- Science and technology research, and information technology.
- Modern communication and transport.
- Banks, insurance companies, and other financial institutions.
- Infrastructure projects, including construction, reconstruction and housing projects, roads and bridges, railways, airports, irrigation and dams.
- Free zones, modern commercial markets, and relevant advisory services.
- Education at all levels, within the framework of the educational policy of the Region.
- Any project in any other industry which the council agrees is covered by the provisions of this law.

3. Licensing procedures

In order to avail of the provisions of the Investment Law, the Kurdistan entity is required to obtain an investment license in respect of the specific project. The following are necessary procedures when submitting a request:

- The entity is required to submit an application to the Board of Investment accompanied with documentation that would assist in obtaining the exemption e.g. description of the project, copy of the contract (if available) and a summary of how the project would contribute to the development of the Region.
- The board will have to decide on the application within 30 days from the date of fulfillment of the technical, legal, and economic conditions and requirements.
- The board shall then consult with competent authorities on the advantages of issuing the license and such authorities will give their viewpoint for the acceptance, rejection or amendment request within 30 days from the date of the board’s referral of the application to them.
- If the application is rejected, the applicant may raise an objection to the president of the council within 15 days from the date of the rejection notice.
- The president of the council will have to respond within 30 days and his decision shall be conclusive.

In order to avail of the provisions of the Investment Law, the Kurdistan entity is required to obtain an investment license in respect of the specific project.

2. Eligible projects

The provisions of this Law shall apply to the projects approved by the board in one of the following sectors:

- Manufacturing industries, electric power and related services.
- Agriculture, whether crop growing farms or animal farms, forestry and related services.
- Hotels, tourist and recreational projects, funfairs, and amusement parks.

Full repartition of project investment and profits is allowed and upon liquidation or disposal of the project, a foreign investor shall be entitled to send his capital abroad.

Local statutory accounting and auditing requirements

There is a requirement for Iraqi entities to submit annual audited financial statements to the Companies Registrar and General Commission for Taxation. The financial statements must be in Arabic and in accordance with Iraq's Unified Accounting System (IUAS). Strictly, Iraqi corporate law requires that Iraqi entities maintain Arabic accounting books and records inside Iraq.

1. Local statutory accounting requirements

- For companies that maintain an ERP system in a language other than Arabic, all of the General Ledger line item transactions as shown on the ERP system must be translated into Arabic on a monthly basis in compliance with statutory requirements.
- For companies that maintain their books and records under International Accounting Standards, an annual conversion to the Iraq Unified Accounting System is mandatory.

2. Local auditing requirements

- Under Iraqi law, an entity must engage with a local licensed auditor to sign off the audited IUAS financial statements. It is noteworthy to mention that currently, none of the international accounting firms have a local audit license to be able to sign off on the IUAS financial statements.
- The audited financial statements must also be signed off by the company's managing director in the case of an LLC or by the branch manager in the case of a foreign branch.
- A third signature from the company's statutory accountant is required.
- Once signed off, the local licensed auditor and/or the accountant must have the audited financial statements stamped by the Institute of Accountants and Auditors.

- Typically, five originals are needed:
 - » Two original copies to be kept by the company
 - » One original copy to be kept by the local auditor
 - » One original copy to be submitted to the Companies Registrar on or before April 30th following year-end
 - » One original copy to be submitted to the General Commission for Taxation on or before June 30th following year-end

3. Brief history of Iraq's Unified Accounting System

- Work on the Unified Accounting System in Iraq started in April 1979 by the establishment of a committee which was formed by representatives of various governmental institutions and accounting experts.
- The aim was to establish a Unified Accounting System for the government directed economy at that time to facilitate more accurate decision making and firm financial control.
- The final version of the guide to the Unified Accounting System was presented in March 1981.
- The primary objective of the Unified Accounting System is to provide a standardized and uniform chart of accounts that is rigorously applied and used across various industries.
- It provides for a rigid numbering scheme for asset accounts, liabilities, equity, revenue and expenditure accounts and for multiple sub-accounts per category.
- It also provides for unified depreciation methods and tables by industry sector and asset type. The financial statement presentation follows that numbering scheme and provides for a uniform design to all financial statements with extensive statements, analysis and tables to support every single line.

There is a requirement for Iraqi entities to prepare annual financial statements in Arabic and in accordance with the Iraq Unified Accounting System (IUAS).

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- 4. IUAS manual and guide**
- The Unified Accounting System (UAS) manual consists of the following main chapters:
 - » The general framework of the chart of accounts
 - » Explanations of the chart
 - » Handling of transactions
 - » Accounting books
 - » Financial reporting
 - » Guide to depreciation and amortization schedules
 - » Costing in light of the UAS
 - » Budget planning
 - » National accounts
 - » Mechanization of UAS
- The guide to Unified Accounting System includes the basic forms of the financial statements that are believed to satisfy the needs of all users:
 - » The balance sheet
 - » Manufacturing, trading, profit and loss, and appropriation account
 - » Profit and loss account for completed contracts
 - » The statement of current operations
 - » The statement of the total added value
 - » The statement of the distribution of total added value
 - » The accompanied detailed statements (disclosures and footnotes)

This guide has been written in general terms and therefore cannot be relied on to cover specific situations; application of the principles set out will depend upon the particular circumstances involved and we recommend that you obtain professional advice before acting or refraining from acting on any of the contents of this guide. Deloitte, Deloitte & Touche (M.E.) and Deloitte & Touche Management Consulting, WLL would be pleased to advise readers on how to apply the principles set out in this guide to their specific circumstances. Deloitte, Deloitte & Touche (M.E.) and Deloitte & Touche Management Consulting, WLL accept no duty of care or any liability for any loss occasioned to any person acting or refraining from action as a result of any material in this guide.

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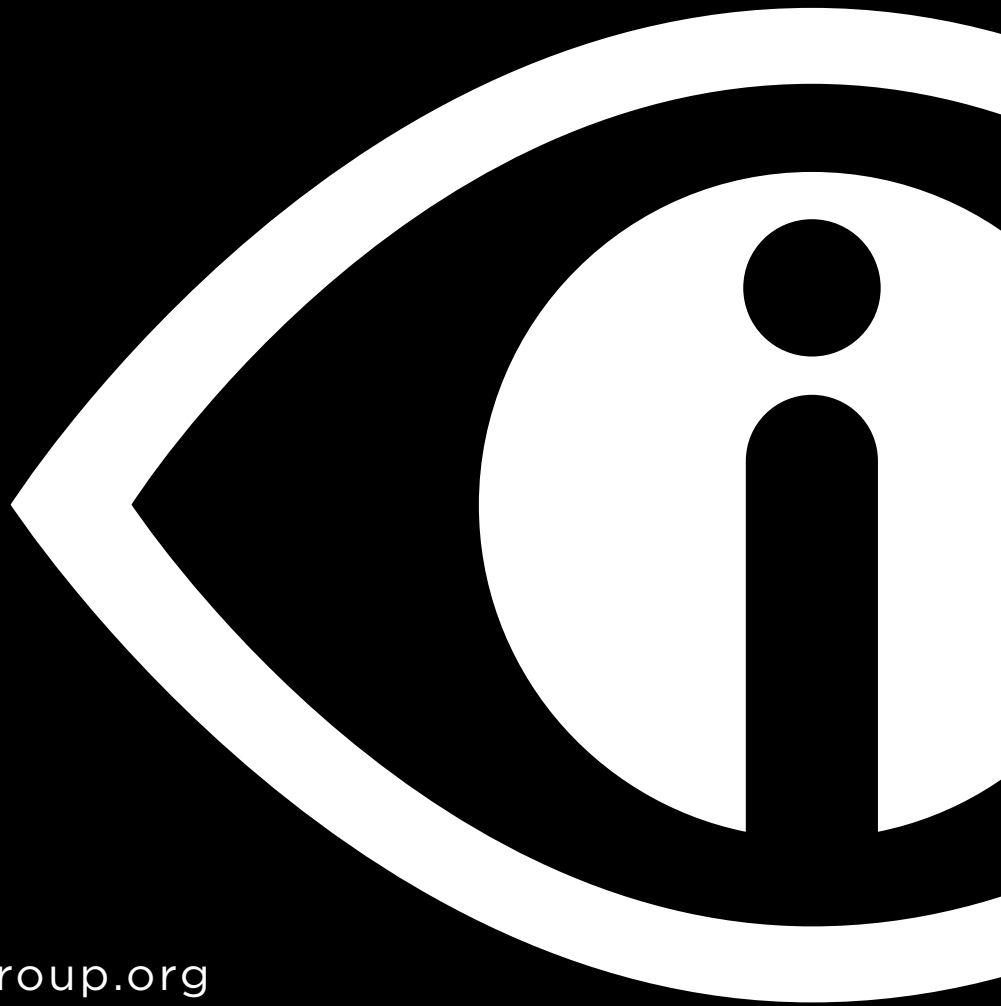
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Deloitte is among the region's leading professional services firms, providing audit, tax, consulting, and financial advisory services through 26 offices in 15 countries with around 3,000 partners, directors and staff. It is a Tier 1 Tax advisor in the GCC region since 2010 (according to the International Tax Review World Tax Rankings). It has received numerous awards in the last few years which include Best Employer in the Middle East, best consulting firm, and the Middle East Training & Development Excellence Award by the Institute of Chartered Accountants in England and Wales (ICAEW).

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