



UAE Corporate Tax

A Comprehensive Guide



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1. EXECUTIVE SUMMARY

a. Background

On January 31, 2022, the United Arab Emirates ("UAE") announced the introduction of Corporate Tax via a press release and frequently asked questions ("FAQs") published on the Ministry of Finance ("MoF") website. This was followed by the release of a Public Consultation Document ("PCD") by the MoF on April 28, 2022. The PCD highlighted the basic framework of Corporate Tax in the UAE and invited comments from various stakeholders.

Thereafter, on December 09, 2022, Federal Decree Law No. 47 of 2022 on the Taxation of Corporations and Businesses ("Decree-Law") was published in conjunction with FAQs which provide further guidance on the provisions.

In the coming weeks and months, this legislation will further be supplemented by Cabinet and Ministerial decisions on specific matters concerning the Decree-Law.

b. Coverage

The Decree-Law applies to juridical persons incorporated in the UAE and juridical persons effectively managed and controlled in the UAE, as well as to foreign juridical persons that have a permanent establishment in the UAE.

Individuals will be subject to Corporate Tax only if they are engaged in a business or business activity in the UAE, either directly or through an unincorporated partnership or sole proprietorship. A Cabinet Decision will be issued in due course specifying further information on what would bring a natural person within the scope of Corporate Tax.

c. Free Zone Persons

An area of significant debate after the release of the PCD was the treatment of "Free Zone Persons". The Decree-Law seems to indicate that a "Qualifying Free Zone Person" can have both "Qualifying Income" (taxed at 0%) and "Non-Qualifying Income" (taxed at 9%).

The conditions to be considered a Qualifying Free Zone Person include:

- Maintaining adequate substance.
- Complying with transfer pricing provisions.

- Not electing to be subject to the Corporate Tax Law.
- Derives "Qualifying Income".
- Meets additional conditions that may be prescribed in due course.

All Free Zone entities will be required to register and file a Corporate Tax return, irrespective of whether they are a Qualifying Free Zone Person or not.

d. Exempt Persons

The Decree-Law establishes which persons will be exempt from Corporate Tax. This definition has been enhanced in scope from the PCD as it now also includes certain non-extractive natural resources businesses.

Additionally, there is greater clarity with reference to Government Entities and Government Controlled Entities. The Corporate Tax Law specifically mentions that Government Entities would be exempt persons unless they conduct any business or business activity under a license issued by a licensing authority. With regards to Government Controlled Entities, these would be exempt persons unless they conduct a non-mandated activity.

For businesses in extractive industries, the Decree-Law has specified that if the entity is earning income from both extractive and non-extractive business, then the extractive income is to be taxed under the relevant Emirate Legislation and the other business income shall be taxed as per the Corporate Tax law.

e. Taxable Income

Taxable Income will be determined on the basis of the net profit (or loss) figure in the financial statements prepared in accordance with International Financial Reporting Standards ("IFRS"). The Decree-Law further mentions that additional tax adjustments will apply to determine the final Taxable Income.

f. Tax Grouping

In order to reduce the administrative burden of tax compliance, the Decree-Law has introduced the concept of Tax Grouping. Greater clarity has been provided in the law with regards to utilization of tax losses where a subsidiary joins a Tax Group and when a Tax Group ceases to exist.

g. Transfer Pricing

The Decree-Law makes specific mention of transfer pricing provisions being applicable to both domestic and international related party transactions.

Some of the key aspects mentioned by the Decree-Law are:

- Transactions with related parties and connected persons must meet the “arm’s length” principle.
- The accepted Transfer Pricing methods will be in accordance with the Organization for Economic Co-operation and Development (“OECD”) Transfer Pricing Guidelines.
- Key concepts like “related parties”, “control” and “connected persons” are defined by the Decree-Law.
- Concept of transfer pricing adjustments along with the mechanism of making corresponding adjustments is explained by the Decree-Law.
- Transfer Pricing documentation to be maintained by taxpayers will include an annual disclosure form, a Master File and a Local File. Conditions relating to the applicability of each document and specific disclosures therein will be provided under separate Cabinet and Ministerial decisions as well as tax authority guidance.

h. Participation Exemptions

Certain income like dividends and capital gains are exempted from Corporate Tax subject to participation limits. The Decree-Law specifically mentions participation exemption criteria such as 5% ownership and investee company to be subject to a 9% tax rate, and a 12-month continuous holding period. The Decree-Law also clarifies how the participation exemption may apply in cases where the immediate participation may not meet the conditions of the exemption.

i. Global Minimum Tax

No further guidance was provided in the Decree-Law in relation to Pillar Two. However, as per the FAQs, multinationals will be subject to Corporate Tax in the UAE under the regular tax regime for now. Further information will be released in due course on the adoption of the Pillar Two rules in the UAE.

j. Group Transfers and Restructuring

The Decree-Law added certain conditions to allow taxpayers to qualify for tax neutral intra group transactions and business restructurings.

k. General Anti-Abuse Rules

The Decree-Law has also introduced general anti-abuse rules which apply to transactions giving rise to a tax advantage where no valid commercial reason exists and where the tax advantage was the main or one of the main purposes of the transaction.

2. KEY CONCEPTS DEFINED – ARTICLE 1**a. Corporate Tax**

The tax imposed by this Decree-Law on juridical persons and business income.

b. Business

Any activity conducted regularly, on an ongoing and independent basis by any Person and in any location, such as industrial, commercial, agricultural, vocational, professional, service or excavation activities or any other activity related to the use of tangible or intangible properties.

c. Qualifying Income

Any income derived by a Qualifying Free Zone Person that is subject to Corporate Tax at the rate specified in paragraph (a) of Clause 2 of Article 3 of this Decree-Law.

d. Person

Any natural person or juridical person.

e. Business Activity

Any transaction or activity, or series of transactions or series of activities conducted by a person in the course of its business.

f. State's Territory

The State's lands, territorial sea and airspace above it.

g. Natural Resources

Water, oil, gas, coal, naturally formed minerals, and other non-renewable, non-living natural resources that may be extracted from the State's Territory.

h. Qualifying Public Benefit Entity

Any entity that meets the conditions set out in Article 9 of this Decree-Law and that is listed in a decision issued by the Cabinet at the suggestion of the Minister.

i. Qualifying Investment Fund

Any entity whose principal activity is the issuing of investment interests to raise funds or pool investor funds or establish a joint investment fund with the aim of enabling the holder of such an investment interest to benefit from the profits or gains from the entity's acquisition, holding, management or disposal of investments, in accordance with the applicable legislation and when it meets the conditions set out in Article 10 of this Decree-Law.

j. Taxable Person

A person subject to Corporate Tax in the State under this Decree-Law.

k. Taxable Income

The income that is subject to Corporate Tax under this Decree-Law.

l. Tax Return

Information filed with the Authority for Corporate Tax purposes in the form and manner as prescribed by the Authority, including any schedule or attachment thereto, and any amendment thereof.

m. Tax Period

The period for which a tax return is required to be filed.

n. Free Zone

A designated and defined geographic area within the State that is specified in a decision issued by the Cabinet at the suggestion of the Minister.

o. Free Zone Person

A juridical person incorporated, established or otherwise registered in a free zone, including a branch of a non-resident person registered in a free zone.

p. Unincorporated Partnership

A relationship established by contract between two persons or more, such as a partnership or trust or any other similar association of persons, in accordance with the applicable legislation of the State.

q. Corporate Tax Payable

Corporate Tax that has or will become due for payment to the Authority in respect of one or more tax periods.

r. Foreign Partnership

A relationship established by contract between two persons or more, such as a partnership or trust or any other similar association of persons, in accordance with laws of a foreign jurisdiction.

s. Foreign Tax Credit

Tax paid under the laws of a foreign jurisdiction on income or profits that may be deducted from the Corporate Tax due, in accordance with the conditions of Clause 2 of Article 47 of this Decree-Law.

t. Tax Registration

A procedure under which a person registers for Corporate Tax purposes with the Authority.

u. Tax Registration Number

A unique number issued by the Authority to each person who is registered for Corporate Tax purposes in the State.

v. Tax Deregistration

A procedure under which a person is deregistered for Corporate Tax purposes with the Authority.

w. Tax Procedures Law

The federal law that governs tax procedures in the State.

x. Administrative Penalties

Amounts imposed and collected under this Decree-Law or the Tax Procedures Law.

3. SCOPE & APPLICABILITY OF CORPORATE TAX

a. Applicable Corporate Tax Rate – Article 2 & 3

- Corporate Tax Rate for all Entities
 - 0% : on taxable income that does not exceed AED 375,000.
 - 9% : on taxable income that exceeds AED 375,000.
- Corporate Tax Rate for Free Zone Persons
 - 0% : on Qualifying Income.
 - 9% : on Non-Qualifying Income.

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- The basic exemption limit of AED 375,000 is subject to confirmation by way of a Cabinet Decision. The Decree-Law does not make any mention of such a limit. However, the FAQs on the MoF website mention this basic exemption limit.
- Having a basic exemption limit is in line with the UAE governments intention to protect small businesses from such a tax burden

b. Exempt Persons

- Government Entities and Government Controlled Entities – Article 4, 5 & 6
 - Government entities and government-controlled entities are exempt from Corporate Tax.
 - Government entities and government-controlled entities will be subject to Corporate Tax if they conduct business under a license issued by a licensing authority.
- Extractive and Non-Extractive Natural Resource Business – Article 4, 7 & 8
 - Income derived from an extractive business is exempt from Corporate Tax subject to certain conditions.
 - Any ancillary business from which the revenue does not exceed 5% of the total revenue of that person would form part of the extractive business.
- Qualifying Public Benefit Entity – Article 4 & 9
A Qualifying Public Benefit Entity shall be treated as an exempt person provided certain conditions are fulfilled. These conditions include specified activity, specified purpose, no profit objective etc.

- **Qualifying Investment Fund – Article 4 & 10**

A Qualifying Investment Fund shall be treated as an exempt person if certain conditions are fulfilled. These conditions include:

- Investment funds or their managers are subject to regulatory oversight by UAE competent authorities or prescribed foreign competent authorities.
- Fund interests are traded on a Recognized Stock Exchange, or the fund is widely marketed and available to investors.
- Investment funds are not intended to avoid corporate taxes.

- **Pension or Social Security Fund – Article 4**

A pension or social security fund, either public or private, that is subject to regulatory oversight by the competent authority in the UAE shall be exempt, subject to fulfillment of the requirements as prescribed by the MoF.

- **Other – Article 4**

A juridical person incorporated in the UAE that is wholly owned and controlled by an Exempt Person is also exempt subject to fulfillment of certain conditions.

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- If a government entity or a government-controlled entity undertakes a transaction where one party is performing mandated activities and the other party is performing activities under a license, then such a transaction shall be considered to be a Related Party Transaction and therefore would need to comply with the “arm’s length” principle.
- If a person engaged in an extractive and non-extractive natural resource business undertakes a transaction where one party is performing an extractive business and the other party is performing non-extractive business, then such a transaction shall be considered to be a Related Party Transaction and therefore would need to comply with the “arm’s length” principle.
- We expect additional Cabinet and Ministerial Decisions to be published in the coming months to bring further clarity with regards to the various additional conditions that will need to be fulfilled to qualify for the exempt status.
- In certain cases, the exemption is not automatic and an application for exemption needs to be made to the Tax Authority. Evaluating the applicability criteria and then making the application as soon as possible will be critical.

4. TAXABLE PERSONS**a. General Clause – Article 11**

- A taxable person shall be either a Resident Person or a Non-Resident Person including a natural person.
- A branch of a taxable person shall also be a taxable person.
- UAE incorporated companies and other UAE juridical persons will be subject to Corporate Tax as resident persons. An entity that is incorporated in the UAE will automatically be considered a resident person for UAE Corporate Tax purposes. Similarly, an individual who is engaged in a business or business activity in the UAE will also be considered a resident person for UAE Corporate Tax purposes.
- A foreign company may be treated as a resident person for UAE Corporate Tax purposes if it is effectively “managed and controlled” in the UAE. All facts and circumstances must be considered in determining where a company is effectively managed and controlled, but a relevant indicator may include the place where the strategic decisions affecting the business are made.

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- Individuals are within the scope of the Corporate Tax Law if they are engaged in specified business activities. A list of specified business activities will be issued by the Cabinet.
- Foreign entities that are effectively managed and controlled in the UAE are sought to be brought into the Corporate Tax net. Specifics as to what would constitute effective management and control will most likely be codified by the Cabinet.
- Personal income of individuals such as interest and investment income is outside the scope of Corporate Tax.

b. Unincorporated Partnership – Article 16

- Unincorporated Partnerships shall not be considered as taxable persons.
- Partners shall be treated as individual taxable persons in such cases.

- The partners can make an application to the Authority to treat Unincorporated Partnerships as a Taxable Persons.

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- Option to be treated as a taxable person could result in simplifying the Corporate Tax compliance process. If the option is taken, partners not having income from other business activities would be outside the scope of Corporate Tax.
- The Corporate Tax Law makes a distinction between unincorporated and incorporated partnerships. Unincorporated Partnerships are essentially a contractual relationship between two or more persons, as opposed to being a distinct juridical person separate from their partners / members. Unincorporated partnerships are treated as transparent for Corporate Tax purposes. This means that an unincorporated partnership is not subject to Corporate Tax in its own right. Instead, each partner is subject to Corporate Tax on their share of the income from the business conducted through the partnership. Incorporated partnerships include limited liability partnerships, partnerships limited by shares and other types of partnerships where none of the partners have unlimited liability for the partnership's obligations or other partners' actions. Such partnerships are subject to Corporate Tax in the same manner as a corporate entity.

c. Family Foundation – Article 17

A Family Foundation can be treated as an Unincorporated Partnership if all the following conditions are met:

- It was established for the benefit of identifiable natural persons.
- The principal activity of the foundation is to manage assets or funds associated with savings or investment.
- It was not formed for the avoidance of Corporate Tax.

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- The principal activity of a Family Foundation would generally be to receive, hold, invest, disburse, or otherwise manage funds and assets associated with savings or investment for the interest of individual beneficiaries or to achieve a charitable purpose. Such activities would typically not constitute a business or business activity for Corporate Tax purposes if they were undertaken directly by the founder, beneficiary or any other individual.

d. Non-Resident Person Operating Aircraft or Ships in International Transportation – Article 25

Income derived by a Non-Resident Person from the operation of aircraft or ships in international transportation shall not be subject to Corporate Tax where the non-resident person is in the business of international transport (passengers, livestock, mail, parcels, merchandise or goods), leasing aircrafts or ships or their integral (essential for seaworthiness or airworthiness as the case may be) equipment.

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- The above exemption is only applicable if a reciprocal exemption is granted to a UAE resident in the country of residence of the Non-Resident Person.

5. TAX BASE

a. Corporate Tax Base – Article 12

- A resident juridical person is subject to Corporate Tax on its taxable income derived from the UAE or from outside UAE.
- A resident natural person is subject to Corporate Tax on his income derived from business activity in the UAE or outside the UAE.
- A Non-Resident Person is subject to Corporate Tax on the following:
 - Taxable Income attributable to a Permanent Establishment in the UAE.
 - Any other income that has its source in the UAE.
 - Taxable income attributable to the nexus of the Non-Resident in the UAE.

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- UAE incorporated companies such as LLCs, PSCs, PJSCs, and other UAE juridical persons will be subject to CT as resident persons. An entity that is incorporated in the UAE will automatically be considered a resident person for Corporate Tax purposes. Equally, an individual who is engaged in a business or business activity in the UAE will also be considered a resident person for Corporate Tax purposes.
- A foreign company may be treated as a resident person for Corporate Tax purposes if it is effectively “managed and controlled” in the UAE. All facts and circumstances must be considered in determining where a company is effectively managed and controlled, but a relevant indicator may include the place where the strategic decisions affecting the business are made.
- Under the Corporate Tax Law, a juridical person is considered a non-resident if it is incorporated in a foreign country and is effectively managed and controlled outside the UAE. A natural person is considered a non-resident for Corporate Tax purposes if he or she is not engaged in a taxable business or business activity in the UAE.

b. State Sourced Income – Article 13

Income shall be deemed to have its source in the UAE if:

- It is derived from a Resident Person.

- Derived from a Non-Resident in connection with its Permanent Establishment in the UAE.
- Derived from activities performed, assets located, capital invested, rights used, or services performed or benefitted from in the UAE.

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- The Corporate Tax Law includes a non-exhaustive list of income that is considered as being sourced in the UAE. We expect that a Cabinet Decision will be issued in due course specifying the types of UAE sourced income subject to withholding tax. At the moment the UAE withholding tax rate is set at 0% (explained in greater detail later).

6. PERMANENT ESTABLISHMENT

a. Permanent Establishment – Article 14

The definition of a Permanent Establishment as specified in the UAE Corporate Tax Law is broadly like the definition of a Permanent Establishment as explained in Article 5 of the OECD Model Tax Convention.

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- A UAE branch of a foreign business would generally be subject to Corporate Tax, unless the activities of the branch do not give rise to a permanent establishment in the UAE for Corporate Tax purposes.
- Generally, a foreign person will have a Permanent Establishment in the UAE if: (i) It has a fixed or permanent place in the UAE through which the business of the foreign person is carried on; or (ii) There is a person who has and habitually exercises an authority to conduct business in the UAE on behalf of the foreign person. A fixed place of business would not be considered a Permanent Establishment if it is used solely to store, display or deliver goods or merchandise belonging to the foreign person or to conduct any activities that are of a preparatory or auxiliary nature. A Permanent Establishment would not arise if the person who has and habitually exercises an authority to conduct business in the UAE on behalf of the foreign person acts as an independent agent. Where relevant, the application of an international agreement should be taken into consideration when determining whether a permanent establishment exists.
- A foreign individual that owns property in the UAE in his or her personal capacity would generally not be subject to UAE CT and related compliance obligations. The investment in UAE real estate by a foreign juridical person may give rise to a taxable permanent establishment where the real estate represents a fixed place of business in the UAE through which the business of the foreign person is wholly or partially carried out.

b. Foreign Permanent Establishment Exemption – Article 24

An option is available for resident taxable persons to not consider income and expenditure of its Foreign Permanent Establishments in determining its taxable income if such foreign Permanent Establishment is subject to Corporate Tax at a rate higher than the UAE Corporate Tax rate.

7. FREE ZONE

a. Qualifying Free Zone Person – Article 18

- Free Zone Persons that are eligible for a 0% Corporate Tax rate are known as Qualifying Free Zone Persons.
- Some Free Zones in the UAE prescribe a specific period over which tax incentives will be granted to entities registered with them. In such cases, the tax rate of 0% will be available only for the remaining tax incentive period prescribed in the respective Free Zone regulations.
- A Qualifying Free Zone Person is a Free Zone Person that meets all of the following conditions:
 - Maintains adequate substance in the State.
 - Comply with the “arm’s length” principle and transfer pricing documentation.
 - Derives Qualifying Income.
- If such a Qualifying Free Zone Person fails to meet any of the above conditions during any particular tax period, he will be taxed at the 9% rate from the beginning of the said tax period.

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- What constitutes Qualifying Income will be defined by way of a future Cabinet Decision.
- Qualifying Free Zone entities that are part of a large multinational group are anticipated to be subject to a different Corporate Tax rate once the Pillar Two rules are embedded into the UAE Corporate Tax regime.

b. Option to opt for Regular Corporate Tax Rates – Article 19

A Qualifying Free Zone Person has the option to be subject to Corporate Tax at the 9% tax rate.

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- A Qualifying Free Zone Person that meets the relevant conditions will be able to benefit from the 0% Free Zone Corporate Tax regime automatically. However, a Qualifying Free Zone Person can elect not to apply the Free Zone Corporate Tax regime, but instead be subject to the regular Corporate Tax regime and rates.

8. CALCULATION OF CORPORATE TAX PAYABLE

a. Taxable Income – Article 20

- Financial statements are to be prepared in accordance with the accounting standards accepted in the state i.e. IFRS.
- Option for preparation of accounts on cash basis is available subject to conditions that will be prescribed.
- Specified adjustment to the taxable income by way of deductions and additions has been prescribed.
- Where a taxpayer prepares their financial statements on the accrual basis, it has the following options in relation to treatment of unrealized accounting gains and losses:
 - Option 1: The taxpayer can elect to recognize gains and losses on a “realization basis” for all assets and liabilities. Therefore, any unrealized gains would not be taxable and conversely, any unrealized losses would not be deductible until they are realized.
 - Option 2: The taxpayer can elect to recognize gains and losses on a “realization basis” for assets and liabilities held “on capital account” only. Therefore, only unrealized gains and losses in respect of assets and liabilities held “on capital account” would not be taxable or deductible, as the case may be, until they are realized. Unrealized gains and losses arising from assets and liabilities held “on revenue account” would continue to be included in taxable income.

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- Held “on capital account” refers to cases where assets and liabilities are not expected to be sold or traded with during the regular course of the business.
- No distinction is made between gains arising from the sale of capital assets and those arising from the sale of non-capital (revenue) assets. Capital gains derived from the disposal of assets are included in annual taxable income in the same manner as other income from the business. Capital gains on the sale of shares may be exempt from corporate income tax, subject to meeting certain conditions as may be prescribed.

- Option to offer the gains or losses on realization basis prevents tax outflow on unrealized gains. Deferred tax adjustments on such timing difference will have to be accounted for.

b. Small Business Relief – Article 21

- A small business can choose to opt out of having taxable income if it meets all the following conditions:
 - Threshold limit that will be prescribed by future Ministerial and Cabinet Decisions.
 - Other conditions that will be prescribed in due course
- Once the business is under the small business category, other provisions of exemption, relief, deductions, tax loss relief, etc. will not be applicable.

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- In addition to a 0% Corporate Tax rate for taxable income up to and including AED 375,000, small businesses with revenue below a certain threshold can claim small business relief and be treated as having no taxable income during the relevant tax period and may be subject to simplified compliance obligations. In order to claim small business relief, an explicit option to opt for the same must be made to the Tax Authority.
- Any UAE resident juridical person or individual with revenues below the threshold defined by the Minister and that meets any other conditions that may be set, can claim small business relief.

c. Currency – Article 43

- All amounts for Corporate Tax purposes are to be quantified in AED.
- Amounts quantified in any other currency are to be converted into AED using the applicable exchange rate set by the Central Bank of the UAE.

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- A taxpayer's income, deductions and credits must be measured in the national currency of the UAE (AED), and income derived and expenses incurred in a foreign currency need to be converted into AED.

- In principle, taxpayers are expected to convert amounts denominated in a foreign currency on a transaction-by-transaction basis. This means that the receipt of income denominated in foreign currency should be translated into AED at the time the income is derived. Similarly, each deductible expenditure denominated in a foreign currency should be translated into AED at the time the expenditure is incurred.

d. Calculation and Settlement of Corporate Tax – Article 44 & 48

Corporate Tax must be settled after setting off the following available credits in the following order:

- Withholding tax credit.
- Foreign tax credit.
- Any credits or other forms of relief specified.

9. WITHHOLDING TAXES

a. Withholding Tax – Article 45

- The following income shall be subject to withholding tax at 0% or any other rate as may be prescribed in due course by way of Cabinet or Ministerial Decisions:
 - UAE sourced income derived by a non-resident person as may be prescribed, subject to such income not being attributable to a Permanent Establishment in the UAE.
 - Any other income that may be specified by way of a decision of the Cabinet or Minister.

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- Because of the 0% rate, in practice, no withholding tax would be due and there will be no withholding tax related registration and filing obligations for UAE businesses or foreign recipients of UAE sourced income. However, this is likely to change in the future although a timeline for the same is uncertain.
- Withholding tax does not apply to transactions between UAE resident persons.

b. Withholding Tax Credit – Article 46

- The Corporate Tax payable should be reduced by the amount of withholding tax credit for the respective tax period.
- Maximum credit available shall not exceed the corporate tax due.

10. EXEMPT INCOME

a. Exempt Income – Article 22

- Dividends and other profit distributions received from the following sources will be exempt from Corporate Tax:
 - UAE incorporated or resident legal person.
 - Participating interest in a foreign juridical person.
 - Other income from participating interest.
- Income of a foreign Permanent Establishment provided it opts to claim such an exemption.
- Income derived by a Non-Resident Person from operating aircraft or ships in international transportation subject to reciprocity conditions.

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- Domestic dividends and other profit distributions earned from UAE juridical persons are exempt from Corporate Tax, irrespective of the level of ownership in the UAE juridical person paying the dividend or profit share. This exemption also applies to dividends received from a UAE juridical person that benefits from a Corporate Tax exemption or whose profits are subject to the 0% Free Zone Corporate Tax rate.
- Under the participation exemption regime, capital gains earned from a participating interest are exempt from Corporate Tax. Also, there is relief from Corporate Tax for capital gains that may arise on intra-group transfers and reorganization and restructuring transactions. Other capital gains would be treated as ordinary income and therefore would be subject to Corporate Tax.

b. Participation Exemption – Article 23

Income from participating interest is exempt, subject the certain prescribed conditions such as minimum 12 months holding, tax rate in foreign jurisdiction to be equal to or greater than the rate applicable in the UAE, ownership of atleast 5%, etc.

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- Minimum holding period of 12 months is an additional condition with an intention to restrict relief to long-term investments.
- Relaxation in minimum 5% ownership requirement will attract large investments in UAE entities from domestic and foreign investors.
- There can be instances where a UAE business makes a strategic investment in another company that does not result in a 5% or greater ownership interest, or where the percentage ownership in the participation falls below the 5% ownership threshold because of events outside of the control of the UAE shareholder company. To address such instances and reduce the administrative burden associated with monitoring the continued compliance with the minimum ownership requirement under the participation exemption regime, the Minister may prescribe a certain minimum acquisition cost / value above which the ownership interest in another juridical person is deemed to be a qualifying participation, and the income from this investment can benefit from the participation exemption.

11. INTRA GROUP TRANSFERS

a. Transfers within a Qualifying Group – Article 26

- The transfer of assets or liabilities between the members of the Qualifying Group to be tax neutral. Therefore no gain or loss needs to be taken into account.
- A tax group can be formed by residents or non-residents having a Permanent Establishment in the UAE having at least 75% ownership.
- Value of assets or liabilities to be at net book value at the time of transfer.
- Value of consideration paid or received to be at net book value of assets or liabilities at time of transfer.
- The benefit shall be reversed if any of the following occurs within 2 years from the date of transfer:
 - Subsequent transfer of these assets or liabilities outside the Qualifying Group.
 - Taxable persons cease to be a member of the Qualifying Group.
- If the benefit is reversed due to the aforementioned situations, the value of the transfer will be the market value of the assets or liabilities as on the date of the transfer.

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- A Qualifying Group exists where all of the following conditions are met: (i) the members are juridical persons which are UAE residents or non-resident persons that have a permanent establishment in the UAE; (ii) Either party owns 75% or more of the other, or a third party owns 75% or more of both entities; (iii) Neither member is an exempt person; (iv) Neither member is a Qualifying Free Zone Person; and (v) Members prepare their financial statements using the same accounting standards, and have the same financial year.

b. Business Restructuring Relief – Article 27

The Corporate Tax Law provides for tax neutral business restructuring subject to certain prescribed conditions. However, this benefit shall be reversed if the following occurs within 2 years of the restructuring:

- The shares or other ownership interests received are sold, transferred, or disposed of to a non-member of the qualifying group.
- Subsequent transfer of the business or an independent part of the business.

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- The Corporate Tax regime allows for legal mergers, business mergers, spin-offs and other transfers and restructuring transactions that meet the conditions specified to be carried out without triggering a gain or loss for Corporate Tax purposes.

12. DEDUCTIONS

a. Deductible Expenditure – Article 28

- Expenditure incurred specifically for the taxable person's business other than capital expenditure will be deductible when calculating the Taxable Income.
- Such expenses will be deductible in the tax period in which they are incurred.
- The following expenses will be specifically disallowed when calculating the Taxable Income:
 - Expenditure incurred for purposes other than the business of the taxable person.
 - Expenditure incurred for the purpose of earning income that is exempt from Corporate Tax.
 - Losses not connected with the taxable business.
 - Other expenses that may be specified by decisions of the Cabinet or Minister.
- When expenses are incurred for more than one purpose, proportionate deduction shall be allowed.

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- In principle, all legitimate business expenses incurred to derive taxable income will be deductible, although the timing of the deduction may vary for different types of expenses and the accounting method applied. For capital assets, expenditure would generally be recognized by way of depreciation or amortization deductions over the economic life of the asset or benefit. Expenditure that has a dual purpose, such as expenses incurred for both personal and business purposes, will need to be apportioned with the relevant portion of the expenditure treated as incurred wholly and exclusively for the purpose of the taxable person's business.

b. Interest Expenditure – Article 29, 30 & 31

- Interest expenditure shall be deductible in the tax period in which it is incurred subject to the limitation rule.

- **General Interest Deduction Limitation Rule**

The net interest expenditure allowable as a deduction shall be higher of the following:

- Up to 30% of Earnings before Interest, Tax, Depreciation and Amortization ("EBITDA") excluding exempt income.
- An amount specified by the Minister.

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<ul style="list-style-type: none"> ▪ The disallowed net interest expenditure can be carried forward for deduction in the subsequent 10 tax periods. ▪ This general interest deduction limitation rule is not applicable to Banks, Insurance providers, natural persons undertaking a business activity or any other specified persons. ▪ Carry forward of disallowed interest is beneficial to capital intensive businesses where profits are low in the initial years.

- **Specific Interest Deduction Limitation Rule**

Interest on related party loans will not be allowed as a deduction if the loans are for the following purposes:

- Distribution of dividend or profit to a related party.
- Redemption, repurchase, reduction or return of share capital to a related party.
- Capital contribution to a related party.
- Acquisition of an ownership interest in a person who will become a related party following the acquisition.

c. Entertainment Expenditure – Article 32

- Entertainment expenditure includes things like meals, accommodation, transportation, admission fees etc.
- The taxpayer can only deduct 50% of entertainment expenditure incurred during a tax period.

d. Non-Deductible Expenditure – Article 33

The following expenses will be specifically disallowed when computing the Taxable Income:

- Donations, grants, or gifts made to an entity that is not a Qualifying Public Benefit Entity.
- Fines and penalties other than compensation for damages.
- Bribes or similar payments.
- Dividends or profit distributed to the owner.
- Drawings by the shareholder.
- Corporate Tax.
- Recoverable input Value Added Tax ("VAT").
- Tax imposed outside the State.
- Any other expenditure as may be specified by a decision of the Cabinet or Minister.

13. TRANSFER PRICING**a. The Arm's Length Principle – Article 34**

- Transactions and arrangements between related parties must comply with the "arm's length" principle.
- There are five methods (as prescribed by the OECD) to determine the "arm's length" price. Option to choose any other method also available, provided there is valid and sufficient justification for the same.
- The Tax Authority shall adjust the taxable income when the transactions or arrangements are not at "arm's length".
- The Tax Authority shall also make a corresponding adjustment to the taxable income of the related party which is the counter party to the relevant transaction or arrangement.
- If a foreign competent authority adjusts a taxable person's income, that taxable person may apply to the Tax Authority to make a corresponding adjustment.

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- A few points that need further clarification by way of a Cabinet Decision include the acceptability of an inter-quartile range, single year vs. multi-year comparable margins, preference for use of regional comparables and conditions, threshold limits and formats of documentation to be maintained.
- Generally, taxpayers are required to apply one or more of the following methodologies to determine the arm's length values for transfer pricing purposes: (i) the comparable uncontrolled price method ; (ii) the resale price method ; (iii) the cost-plus method ; (iv) the transactional net margin method ; (vi) the transactional profit split method.
- Any loan obtained from (or granted to) a Related Party or Connected Person needs to be at arm's length i.e. interest rate, duration, etc.
- Transactions between members of a Tax Group are eliminated in the consolidation of the Group's financial results statements and hence do not need to comply with the transfer pricing rules, unless a member of the Tax Group needs to compute its standalone Taxable Income for the purposes of utilizing tax losses incurred before joining the Tax Group or when leaving a Tax Group.

b. Related Parties and Control – Article 35

- A related party would be any of the following:
 - Two or more natural persons who are related within the fourth degree of kinship or affiliation, including by way of adoption or guardianship.
 - A natural person and a juridical person where:
 - The natural person or one or more Related Parties of the natural person are shareholders in the juridical person, and the natural person, alone or together with its Related Parties, directly or indirectly owns a 50% or greater ownership interest in the juridical person; or
 - The natural person, alone or together with its Related Parties, directly or indirectly Controls the juridical person
 - Two or more juridical persons where:
 - One juridical person, alone or together with its Related Parties, directly or indirectly owns a 50% or greater ownership interest in the other juridical person; or
 - One juridical person, alone or together with its Related Parties, directly or indirectly Controls the other juridical person; or
 - Any Person, alone or together with its Related Parties, directly or indirectly owns a 50% (fifty percent) or greater ownership interest in or Controls such two or more juridical persons.
 - A Person and its Permanent Establishment or Foreign Permanent Establishment.
 - Two or more Persons that are partners in the same Unincorporated Partnership.
 - A Person who is the trustee, founder, settlor or beneficiary of a trust or foundation, and its Related Parties.
- “Control” means the ability of a Person, whether in their own right or by agreement or otherwise to influence another Person, including:

- The ability to exercise 50% (fifty percent) or more of the voting rights of another Person.
- The ability to determine the composition of 50% or more of the Board of directors of another Person.
- The ability to receive 50% (fifty percent) or more of the profits of another Person.
- The ability to determine, or exercise significant influence over, the conduct of the business and affairs of another Person.

c. Connected Persons – Article 36

- A payment or benefit provided by a taxable person to its connected person shall be deductible only if payment is as per market value and is incurred only for taxable person's business.
- A Person shall be considered a Connected Person of a Taxable Person if that Person is:
 - An owner of the Taxable Person.
 - A director or officer of the Taxable Person.
 - A Related Party of any of the persons mentioned in the above two points.
 - Where the Taxable Person is a partner in an Unincorporated Partnership, a Connected Person is any other partner in that same Unincorporated Partnership, and any Person that is a Related Party of that partner.
- The market value requirement for connected persons does not apply to the following:
 - A Taxable Person whose shares are traded on a Recognized Stock Exchange.
 - A Taxable Person that is subject to the regulatory oversight of a competent authority in the State.
 - Any other Person as may be determined by a decision of the Cabinet or Minister.

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- Transfer pricing rules apply to UAE businesses that have transactions with Related Parties and Connected Persons, irrespective of whether the Related Parties or Connected Persons are located in the UAE mainland, a Free Zone or in a foreign jurisdiction. Therefore transfer pricing rules would apply to domestic and cross border transactions.

d. Transfer Pricing Documentation – Article 55

- Taxable persons are required to file a disclosure on transactions or arrangements with their related parties and connected person along with their tax return.
- If the disclosure filed meets certain additional conditions prescribed, then the taxable person must maintain a master file and/or a local file.
- The documents (master file and/or local file) are to be submitted within 30 days from the request being made.

14. TAX LOSS PROVISIONS**a. Tax Loss Relief and Limitation of Tax Loss Carried Forward – Article 37 & 39**

- Tax loss can be offset against taxable income of the subsequent tax periods.
- Only up to 75% of the taxable income can be set off using tax losses carried forward.
 - The following losses cannot be used for tax loss relief:
 - Losses incurred before the Corporate Tax commencement date.
 - Losses incurred before a person becomes taxable person.
 - Losses arising from activities that are exempt from Corporate Tax.
- Tax loss relief can be claimed subject to certain conditions. These conditions are:
 - At least 50% ownership interest in the entity must be maintained by the same person or persons; or
 - If the ownership changes by more than 50%, the same or similar business must be continued.

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- Allowing carry forward of losses by loss making entities, despite change in majority shareholding would promote revival of loss making businesses.

b. Transfer of Tax Loss – Article 38

A tax loss or a portion thereof may be offset against the taxable income of another taxable person where all the following conditions are met:

- Both Taxable Persons are juridical persons.
- Both Taxable Persons are Resident Persons.
- Either one of the taxable persons has a direct or indirect ownership interest of at least 75% in the other, or a third person has a direct or indirect ownership interest of at least 75% in each of the taxable persons
- The aforementioned common ownership requirement (at least 75% direct or indirect ownership) must exist for the entire tax period from the tax loss till setoff.

- None of the Persons are an Exempt Person.
- None of the Persons are a Qualifying Free Zone Person.
- The financial year of each of the taxable persons ends on the same date.
- Both taxable persons prepare their financial statements using the same accounting standards.

15. TAX GROUP PROVISIONS**a. Tax Group – Article 40**

- A Tax Group will be considered to be a single taxable person.
- The Tax Group shall be represented by the parent company.
- The parent company must hold (directly or indirectly) a minimum of 95% of the share capital or voting rights or profits and net assets of its subsidiaries.
- The companies must not be exempt persons or qualified free zone persons
- The Parent and its subsidiaries must have the same financial year and must use the same accounting standards.

b. Date of Formation and Cessation of a Tax Group – Article 41

Member companies may join or leave the tax group from the tax period specified in the application or as may be determined by the tax authority.

c. Taxable Income of a Tax Group – Article 42

- The parent company shall consolidate the financial results, assets, and liabilities of all the member companies, eliminating the inter group transactions.
- Unutilized tax losses of a new subsidiary can be utilized by the tax group to offset the taxable income of the tax group relating to that subsidiary.
- Unutilized taxable loss of the tax group cannot be used to offset the taxable income of the new subsidiary.
- If a member company ceases to be a member of the tax group within 2 years of an asset/liability transfer, then such income should be taken in account on the date when the member company ceases to be a member of the tax group.
- Any unutilized tax losses shall remain with the parent company in case of cessation of the tax group

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- Tax neutral provisions for intra group asset transfers and business restructuring will incentivize groups to reorganize their business operations.

16. PAYMENT & REFUND OF CORPORATE TAX**a. Payment of Corporate Tax – Article 48**

Corporate Tax due must be paid within 9 months from the end of the relevant tax period.

b. Refund of Corporate Tax – Article 49

A taxable person can apply for tax refund, if the withholding tax credit available is in excess of the Corporate Tax payable.

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- At the moment, as per the current law, the withholding tax rate is 0%. It is possible that in the future a decision of the Cabinet or Minister may result in a higher withholding tax rate.

17. GENERAL ANTI ABUSE RULES

- a. These rules are prescribed by Article 50 of the UAE Corporate Tax Law.
- b. These rules empower the Tax Authority to deny tax benefits of transactions or arrangements that do not have any commercial substance and whose only purpose is to obtain a Corporate Tax advantage.
- c. As per Article 50, a Corporate Tax advantage includes:
 - A refund or an increased refund of Corporate Tax.
 - Avoidance or reduction of Corporate Tax payable.
 - Deferral of payment of Corporate Tax or advancement of a refund of Corporate Tax.
 - Avoidance of an obligation to deduct or account for Corporate Tax.
- d. As per Article 50, the burden of proof to determine a Corporate Tax advantage is on the Tax Authority before proceeding any assessment in this regard.
- e. For the purpose of determining whether this Article applies to a transaction or arrangement, the following must be considered:
 - The manner in which the transaction or arrangement was entered into or carried out.
 - The form and substance of the transaction or arrangement.
 - The timing of the transaction or arrangement.
 - The result of the transaction or arrangement in relation to the application of this Decree-Law.
 - Any change in the financial position of the Taxable Person that has resulted, will result, or may reasonably be expected to result, from the transaction or arrangement.
 - Any change in the financial position of another Person that has resulted, will result, or may reasonably be expected to result, from the transaction or arrangement.

- Whether the transaction or arrangement has created rights or obligations which would not normally be created between Persons dealing with each other at arm's length in respect of the relevant transaction or arrangement.
- Any other relevant information and circumstances.

18. TAX REGISTRATION/DEREGISTRATION & TAX RETURNS**a. Tax Registration – Article 51**

- Taxable person shall register for Corporate Tax and obtain a tax registration number within the prescribed period.
- To obtain exemption from Corporate Tax, an exempt person or unincorporated partnership must apply for registration.
- The Tax Authority has the power to automatically register an entity.

b. Tax Deregistration – Article 52

- At the time of cessation, dissolution, or liquidation an entity must apply for deregistration within the prescribed time.
- A taxable person shall not be deregistered unless it has paid all Corporate Tax and administrative penalties due and filed all tax returns due, including its tax return for the tax period up to and including the date of cessation.
- If tax deregistration is approved, the effective date shall be date of cessation or any other date determined by the Tax Authority.
- The Tax Authority has the power to deregister a person on its own motion if the taxable person does not comply with the deregistration requirements.

c. Tax Returns – Article 53

- Taxable person must file a return within 9 months from the end of the relevant tax period.
- The tax return must include at least the following information:
 - The tax period to which the tax return relates.
 - The name, address and tax registration number of the taxable person.
 - The date of submission of the tax return.
 - The accounting basis used in the financial statements.
 - The taxable income for the tax period.

- The amount of tax loss relief claimed.
 - The amount of tax loss transferred.
 - The available tax credits claimed.
 - The Corporate Tax payable for the tax period.
- The minister may prescribe the form and manner in which a tax return should be filed if disclosure of information impedes national security or is contrary to the public interest.
 - Exempt persons must also file a tax return.
 - An authorized partner in an unincorporated partnership is to be treated as a taxable person and therefore must file a tax return.
 - The parent company must file a tax return on behalf of the group it represents.

d. Financial Statements – Article 54

The Minister may issue a decision requiring categories of taxable persons to prepare and maintain audited or certified financial statements.

e. Record Keeping – Article 56

All supporting and documentation records relating to Corporate Tax to be maintained for a period of 7 years from the end of the relevant tax period.

19. VIOLATIONS, PENALTIES & OTHER MISCELLANEOUS PROVISIONS**a. Assessment of Corporate Tax & Penalties – Article 60**

Corporate Tax assessment and penalties will be in accordance with the Tax Procedures Law.

b. Delegation of Power – Article 62

The Minister may delegate his powers to the Tax Authority in cases where the Minister deems fit to do so.

c. Revenue Sharing – Article 65

Corporate Tax revenues and administrative penalties collected will be shared among the federal government and the local government.

d. International Agreements – Article 66

The terms of any international agreements shall prevail over provisions of the UAE Corporate Tax Law to the extent that the UAE Corporate Tax Law is inconsistent with the terms of such international agreements.

e. Application of the Decree Law – Article 69

The Decree Law is applicable for tax periods commencing on or after June 01, 2023.

f. Transitional Rules – Article 61

- The opening balance sheet shall be the closing balance sheet prepared for financial reporting purposes on the day immediately before the first tax period.
- The opening balance sheet shall be prepared in compliance with the “arm’s length” principle.

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- The Tax Procedures Law specifies a time limit of 5 years from the end of relevant tax period for completion of assessment. However, where a notice for assessment has been served within 5 years, the Authority will get another 4 years to complete the assessment. This could result into assessment being open for a total period of 9 years and consequently record keeping as well.

20. CONTACT US

Feel free to reach out to us to review the impact the new UAE Corporate Tax Law will have on your business and tax compliance process. We have a dedicated team of experienced professionals that will be happy to answer any questions you may have and provide you with the tools necessary to help you navigate the regulatory landscape of the UAE.

You can reach out to:

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THANK YOU