



# UAE Corporate Tax

## An Overview



## 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. 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 download for free our detailed publication on the subject (“UAE Corporate Tax – A Comprehensive Guide”) by clicking [HERE](#).

You can reach out to:

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**THANK YOU**