

UAE Corporate Tax

Handbook Version 2.0

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*Prepared based on the Public Consultation Document on UAE Corporate Tax
released by the MoF on 28th April 2022*

Preface

The Corporate Tax (CT) will come into effect in the United Arab Emirates (UAE) from financial years starting on or after 1 June 2023.

On 31 January 2022, the UAE Tax Authority made announcement to introduce Corporate Tax and released the FAQs to address the preliminary queries of applicability and procedure.

On 28 April 2022, the UAE Ministry of Finance (MoF) released a Public Consultation Document for the purpose of obtaining input from interested parties. The stakeholders are invited to submit their concerns / comments in clear and concise form by **19 May 2022**. The intention is to reduce compliance cost of the stakeholders and also the complexity. Ministry has also invited comments on areas that are otherwise not covered in this document.

Business can take lead to make necessary modifications based on the clarifications made in the Consultation Document. However, it has been clearly stated in the Consultation Document that the same does not reflect the final view of the UAE Government and is not intended to comprehensively address all possible aspects of the proposed UAE Corporate Tax regime.

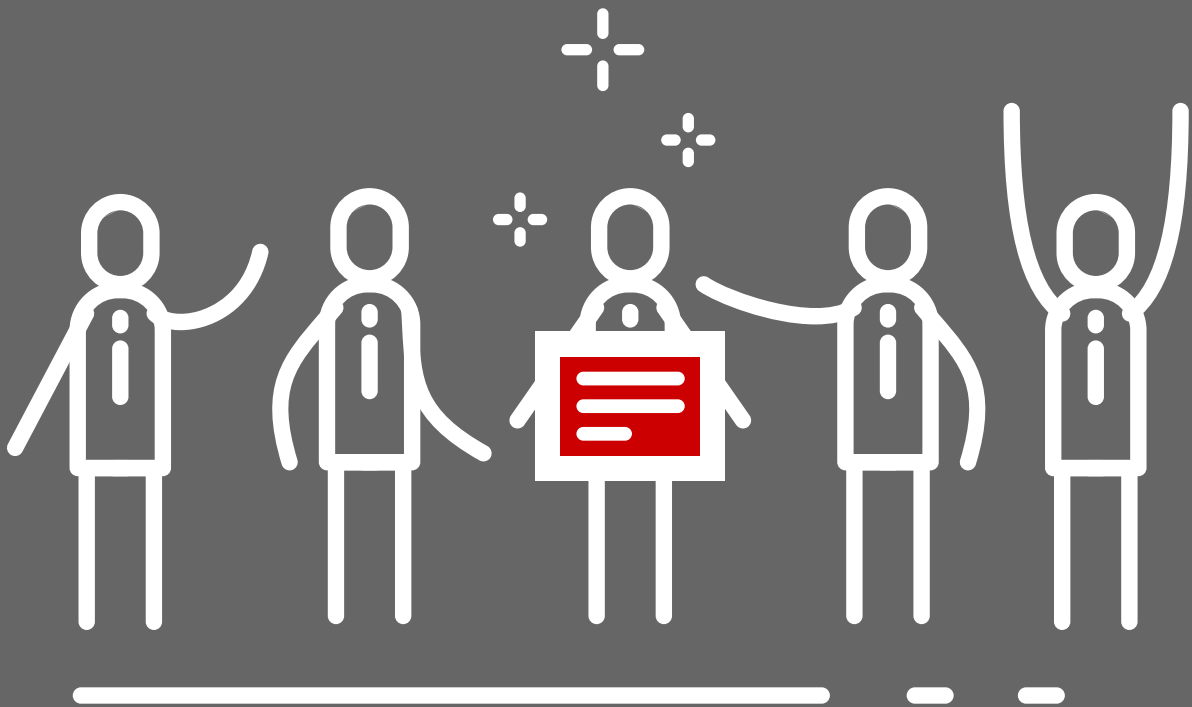
Further, it is also indicated that the Tax Procedures Law, to be released at a later stage will clarify many procedural aspects.

This Handbook is prepared by ECAG in its own capacity by interpreting the Public Consultation Document and does not necessarily represent the views of the Ministry of Finance or the Federal Tax Authority.



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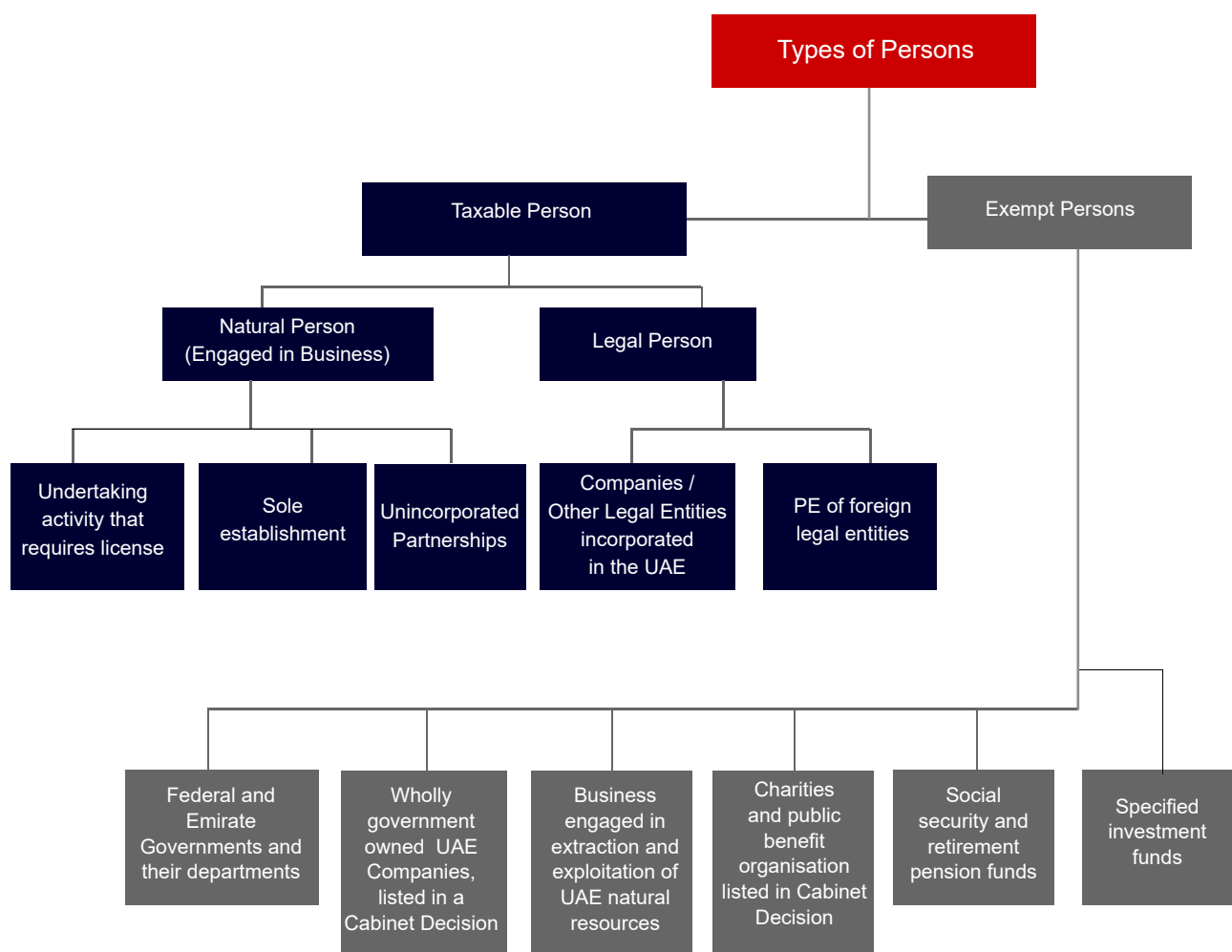
Chapter 1

Taxable Persons

Taxable Persons

The UAE Corporate Tax ('CT') has proposed to tax income of all persons, except natural persons. Income earned by natural persons (individuals) shall not be subject to tax, except in certain circumstances.

Below chart shows various taxable persons under the UAE Corporate Tax regime.



Taxability of Natural Person

It has been made clear that there is no intention to parallelly tax income of the natural person. Therefore, employment income and other personal income earned by UAE residents and foreign individuals will not be within the scope of the proposed UAE Corporate tax regime.

The treatment of income earned by Natural Persons (Individuals) under the UAE Corporate Tax regime is summarized hereunder:

Salary and other employment income (whether received from the public or private sector)	CT Not Applicable
Individual's Business income earned under a commercial license	CT Applicable
The investment in real estate by individuals in their personal capacity	CT Not Applicable provided the individual is not required to obtain a commercial license or permit to do the activity
Rental receipts from UAE real estate investments held in personal capacity	CT Not applicable
Other Investment Income (investment held in personal capacity)	CT Not applicable
Dividends, capital gains and other income earned from owning shares or other securities in their personal capacity	CT Not Applicable
Interest and other income earned by an individual from bank deposits or saving schemes	CT Not Applicable
Income earned by Individual from activities carried out under a freelance license / permit OR from an activity which requires a license/permit to perform such activity as per local laws	CT Applicable

It is further clarified that Income from UAE real estate and other investments that are held through a private or family trust on behalf of **beneficiaries that are natural persons shall not fall within the scope of Corporate Tax.**



Taxability of Legal Persons

UAE Corporate Tax will apply to UAE companies and other legal persons incorporated in the UAE, as well as foreign legal entities that have a permanent

establishment in the UAE or that earn UAE sourced income.

The taxability of various Legal persons is summarized in the table hereunder:

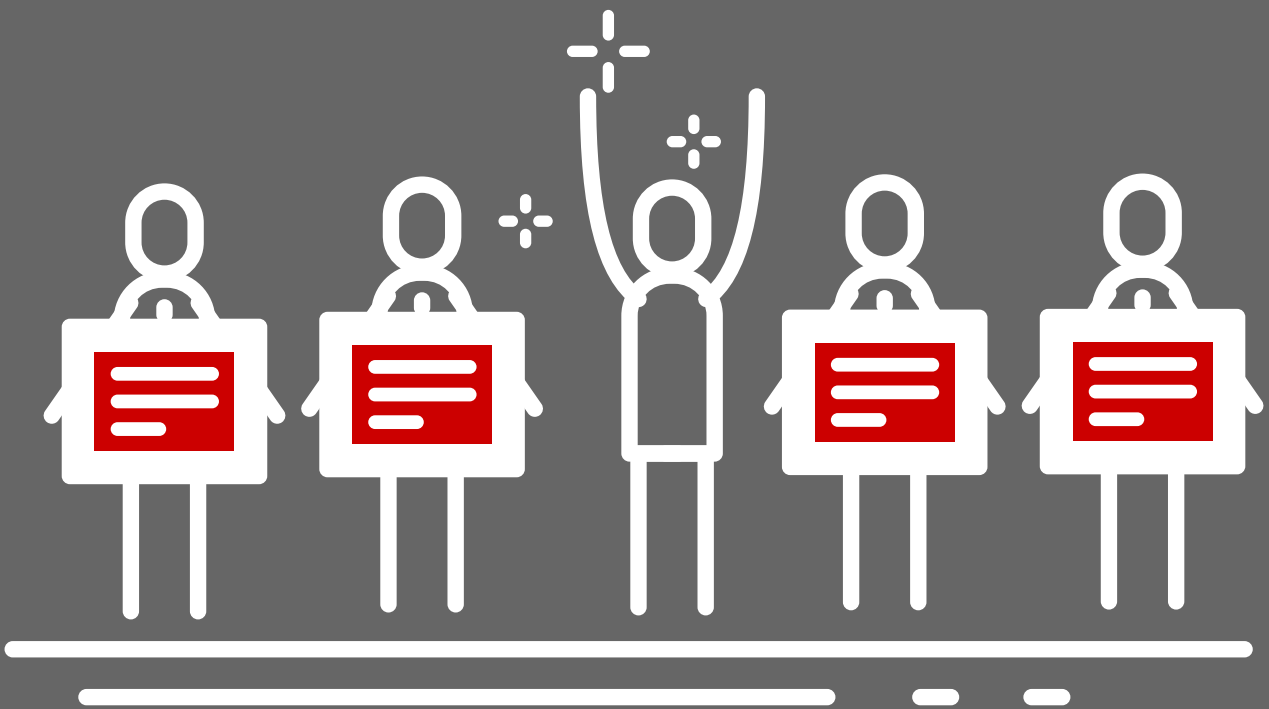
Type of legal entity	Taxability
Legal Person (Limited Liability Companies, Private Shareholding Companies, Public Joint Stock companies and other entities that have separate legal entity) incorporated in the UAE	CT Applicable
Legal Person incorporated in the foreign jurisdiction, but effectively managed and controlled in the UAE	CT Applicable, as if UAE incorporated
Limited liability partnership / partners limited by shares (where no partner has unlimited liability)	Treated as UAE Company - CT Applicable (Entity will be subject to tax and not the partners)
Limited and general partnership / other unincorporated joint ventures and AOP	Treated as transparent entities – partners / members taxable
Collective Investment funds that are structured as limited partnerships	Treated as transparent entities – partners / members taxable
Foreign unincorporated partnerships	To follow the tax treatment of the respective foreign jurisdiction

Our comments:



The Consultation Document has brought in the concept of Place of Effective Management ('POEM'). This triggers tax implications when the residents of the UAE conduct business by establishing legal entities outside the UAE. In this scenario, there is a possibility that these legal entity(ies) (which are managed and controlled in the UAE) established outside the UAE may be taxable in both the jurisdictions and will have to determine the taxability based on the tie-breaker Rule of the Tax Treaty between the two jurisdictions.

It is therefore recommended that businesses established outside the UAE but managed and controlled from the UAE may analyse the tax implications to optimise tax expenses.



Chapter 2

Exempt Persons

The UAE Corporate Tax regime intends to exempt certain Persons from Corporate Tax and has therefore provided that income earned by such persons **shall be out of scope** for the purpose of Corporate Tax.

1. Government and Government owned entities:

The following government entities will be exempt from UAE Corporate Tax, **either automatically or by way of application:-**

- The Federal and Emirate governments and their departments, authorities, and other public institutions.
- Wholly Government-owned UAE companies (considered as extension of the Government), if
 - » they carry out sovereign or mandated activity **and**
 - » are listed in a Cabinet Decision
- UAE subsidiaries of Government-owned companies that undertake
 - » part or whole of the sovereign activity, or
 - » mandated activity or ancillary activities

can **apply** for an exemption from UAE Corporate Tax.

Any business activity carried out directly by the Government under a trade license will be within the scope of the UAE Corporate Tax regime.

2. Businesses undertaking production and exploitation of natural resources

Oil, natural gas, water and deposits of sand and rocks are considered as the primary natural resources of the UAE.

Income earned by Government:

Any income/share of income from the extraction and exploitation of natural resources **directly earned** by the Government, or **royalties** and other **fiscal levies** raised by the Government from the extraction or production of natural resources by private sector companies will be **outside the scope of the UAE Corporate Tax regime.**

Income earned by Private Sector:

- **Subject to Emirate-level taxation:** Companies that are wholly or partially privately owned and doing extraction and exploitation of natural resources under **long-term concession agreements** entered into with the respective Emirate Government are subject to Emirate-level taxation. **These companies (concession holders) are exempt from Corporate Tax regime.**
- **Not subject to Emirate-level taxation:** Suppliers, contractors, or subcontractors used by the concession holders shall not be subject to emirate-level taxation and therefore be **liable to tax** under the Corporate Tax regime.

3. Charities and other public benefit organizations that are listed in a Cabinet Decision.

Organizations formed for carrying out social, cultural, religious, charitable or other public benefit activities, can apply to the Ministry of Finance for exemption from UAE Corporate Tax.

Whether an organization qualifies for a Corporate Tax exemption is at the discretion of the Ministry of Finance. If the application is approved by the Ministry of Finance, the organization will be listed in a Cabinet Decision and can get the benefit of exemption from UAE Corporate Tax.

Approved charities and public benefit organizations shall be exempt from Corporate Tax, however they **will need to comply with periodic information reporting obligations throughout their existence.**

No exemption from UAE Corporate Tax will be available to organizations that undertake commercial activities that are not directly related to their stated purpose, or whose income and donations are/or may be used for the personal gain of persons associated with the organization

(e.g., the founders and fiduciaries).

4. Investment Funds

The UAE Corporate Tax regime intends to treat UAE and foreign investment funds that are structured as unincorporated partnerships as fiscally transparent.

Regulated investment funds and Real Estate Investment Trusts can apply to the Federal Tax Authority (FTA) to be exempt from UAE Corporate Tax.

Main requirements for exemption are as under:

1. The investment fund is regulated by a regulatory authority in the UAE that is recognised by the Ministry of Finance. Eg:
 - » Securities and Commodities Authority
 - » Financial Services Regulatory Authority
 - » Dubai Financial Services Authority
2. No group of five (5) or fewer investors and their Related Parties has a 50% or greater economic interest in the investment fund;
3. No single investor and their Related Parties has 20% or greater economic interest in the investment fund;
4. Interests in the investment fund can be freely traded on a stock exchange in the UAE (or a recognised foreign stock exchange) or are widely marketed and made available to the intended categories of investors.

Our comments:



The Corporate Tax regime has given automatic exemption to Federal and Emirate Government departments and wholly government owned companies and to concession holders who are engaged in business of production and exploitation of natural resources.

Other exempt categories need to apply for the exemption and would be able to enjoy the exemption status only if exemption is granted



Chapter 3

Basis of Taxation

Taxation of Residents:

UAE resident persons will be taxable in the UAE on their worldwide income.

Exception:

- Income of **natural person** will be taxable only if it is earned from their business activity carried out in the UAE
- Certain Income of **legal person** earned from overseas, viz:-
 - » income from foreign branch
 - » income from qualifying foreign shareholdings

Where income earned from abroad is not exempt, income taxes paid in the foreign jurisdiction can be taken as a credit against the Corporate Tax payable in the UAE on the relevant income to prevent double taxation.

Resident for the purpose of Corporate Tax means:

- » Natural person engaged in business or commercial activity in the UAE, either in his own name or through unincorporated partnership
- » A legal person that is incorporated in the UAE
- » A foreign company if it is **effectively managed and controlled** in the UAE

Taxation of Non-Residents:

Non-residents will be subject to UAE Corporate Tax on:

- » Taxable income from their Permanent Establishment in the UAE (Exemption is available for Investment Managers subject to conditions); and
- » Income which is sourced in the UAE.

Our comments:



The Corporate Tax Consultation Document has indicated that the effective management and control test is a question of a fact. It has also indicated that one will have to see where the directors / decision makers make the key management and commercial decisions. Thus, to determine residence status of a legal person, one will have to analyse where the decision makers meet and which country are they resident of.

In this connection, analogy can be drawn from the Article 4 of the OECD Model Tax Treaty and its commentary.



Chapter 4

Permanent Establishment

The main purpose of the PE concept is to determine if and when a foreign company has established sufficient presence in the UAE to warrant direct taxation of the business profits of that company in the UAE.

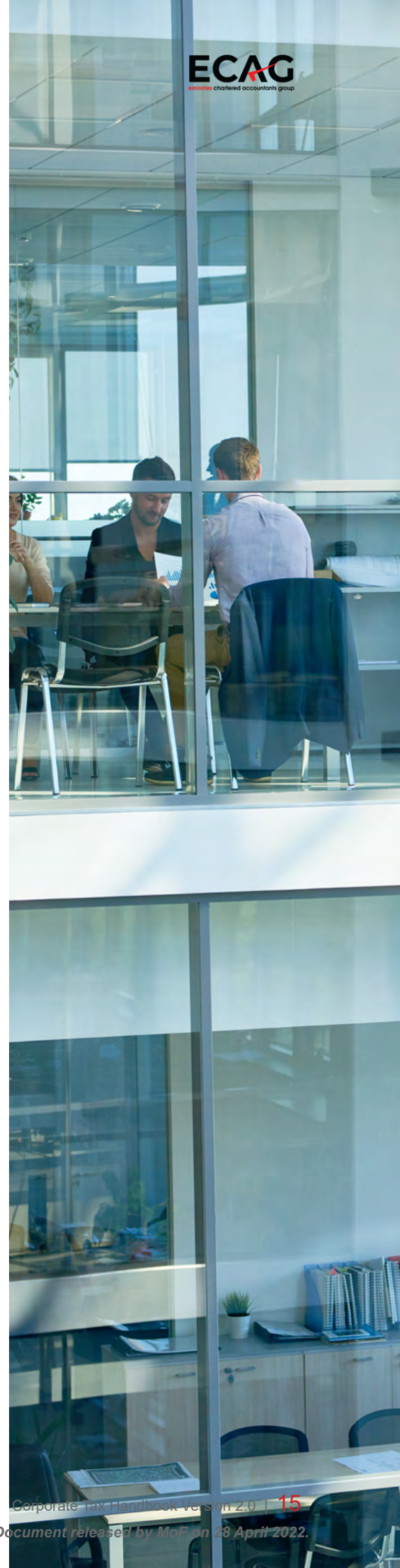
The Tax Authority has indicated that it will design the PE concept based on Article 5 of the OECD Model Tax Convention.

However, the outcome based on the local laws should be aligned to the respective jurisdiction’s Tax Treaty. The UAE Corporate Tax regime proposes to define PE using following **two general tests**:

- whether the entity has a **fixed place of business** in the UAE; or
- whether the entity operates in the UAE through a **dependent agent**, that habitually exercises the authority to conclude contracts in the UAE on behalf of the entity.

Permanent Establishment as per OECD Article 5, can be broadly categorised as under:

Fixed Base PE	Construction PE
Place of Management Branch Office (including temporary office or employee’s home office) Factory Workshop Mine/ oil or gas well Quarry Farm / Plantation	Building Site Construction, Installation, Assembly project Connected Supervisory Activity Continues for a certain period of time
Service PE	Agency PE
Provision of Service Through employees or other personnel For a certain period of time	Not an Independent agent Habitually concluding contract and having authority to do so



Article 5 of the OECD Model Tax Treaty specifically states that following activities conducted in a country through a fixed place of business shall not constitute PE of a foreign entity:

- Use of Facilities for storage or display of goods or merchandise
- Maintenance of stock of goods
 - » solely for storage or display
 - » for processing by another enterprise
- Maintenance of fixed place of business for
 - » purchasing goods or collecting information
 - » carrying on any other activity of a preparatory or auxiliary character

The Consultation Document has specifically clarified that the UAE Corporate Tax regime shall allow **regulated UAE investment managers** to provide discretionary investment management services to foreign customers without triggering a UAE PE for the foreign investor or the foreign investment fund. However, this exemption will be subject to fulfilment of certain conditions.

Corporate Tax Consultation Document also indicates that same rules for PE will apply if a free zone person earns income from a source in mainland.

Our comments:



One will have to look out for specific PE regulations once the Corporate Tax Law is out and identify if there is any contrast between the PE definition as per OECD model tax treaty, bilateral tax treaty and local law.

Extension of the concept of PE for a freezone to their mainland income is to be looked into and reviewed, especially in connection with income of the freelancer working from home / flexidesk options given by the freezones / employees of freezone person working from home etc. Though we expect further clarity in the final law on such situations, free zone persons working from mainland or working for mainland entities will have to lookout for tax implications on their transactions.

UAE Sourced Income

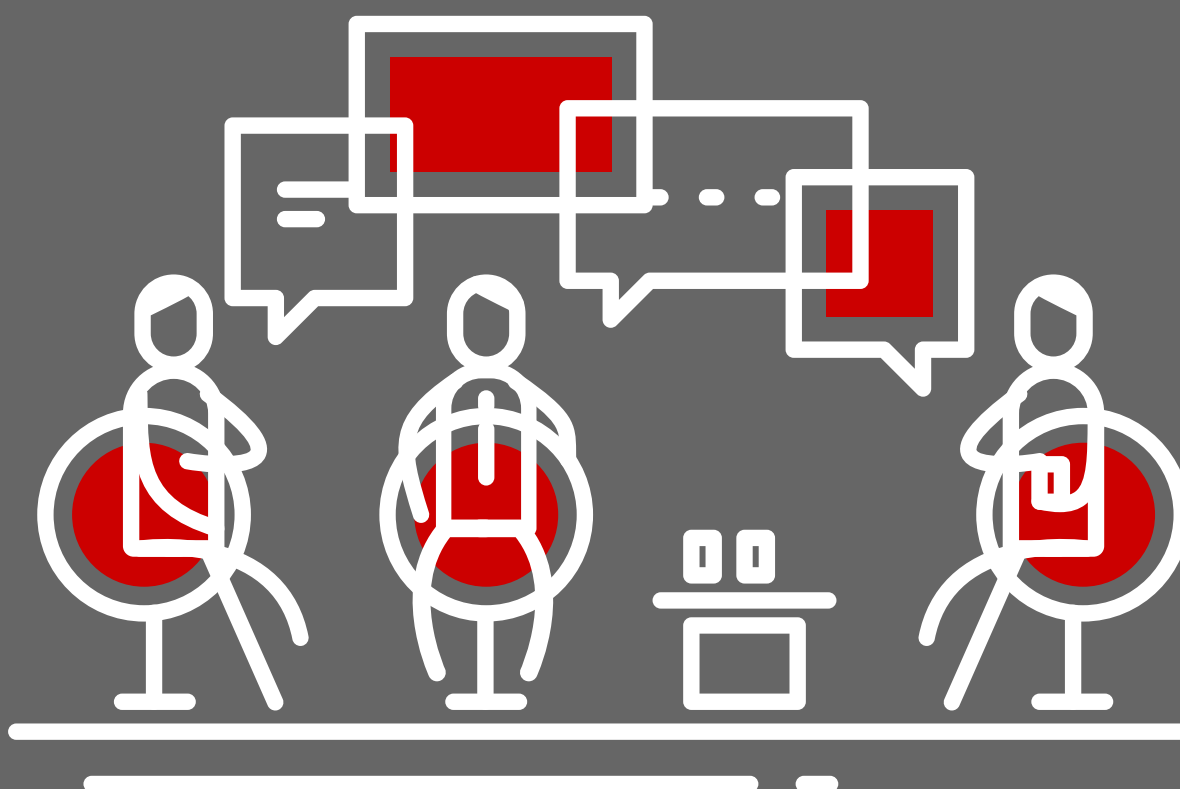
The UAE Corporate Tax regime shall have specific rules and guidance to determine whether income has a source in the UAE.

In general, income will considered to be UAE sourced if :-

- the income is earned from a UAE resident person, or
- the payment is attributed to a PE in the UAE of a foreign company, or
- the income is derived from activities or contracts performed in the UAE, assets located in the UAE, or rights used for economic purposes in the UAE.

Once the income of foreign person is considered to be sourced from the UAE, the same shall be subject to withholding tax as under:

- 0% - if a foreign person does not have a PE in the UAE
- Local Corporate Tax provisions shall apply - if a foreign person has a PE in the UAE



Chapter 5

Free Zone Persons

Companies and branches that are registered in a Free Zone (hereafter referred to as “Free Zone Persons”) will be within the scope of the UAE Corporate Tax and subject to tax return filing requirements. The UAE Corporate Tax regime has committed to honor the tax incentives currently being offered to

Free Zone Persons that maintain **adequate substance** and comply with all **regulatory requirements**.

The taxability of income earned by various free zone persons from business within and outside free zone is tabulated hereunder for the ease of understanding

No	Type of transactions	UAE CT Rate
01	Transaction from Free Zone to business located outside the UAE	0%
02	Trading from Free zone to the same Free Zone [within the same Free Zone]	0%
03	Trading from Free zone to any other Free Zone	0%
04	Income from certain regulated financial services directed at foreign markets.	0%
05	Branch of Free Zone entity in mainland UAE	On mainland sourced income - Regular CT rates (say 9%)
		Other than Mainland Sourced Income – 0%
06	Free Zone Person which doesn't have branch in Mainland - Passive Income from the transactions with mainland entity	Passive income* – 0%
07	Income for a Free Zone company from transactions with the Group Companies located in the mainland UAE	0% **
08	Free Zone person located in a designated zone and sells goods to the UAE mainland business, who is importer of those goods on records.	0%
09	Any other mainland source income earned by the Free Zone Person	Disqualify from 0% CT for all income
10	Free Zone person has PE [Permanent Establishment] in the mainland UAE	Regular CT rates (say 9%)***

*Interest and royalties and dividends and capital gains from owning shares in mainland UAE companies

** payment by mainland group company to freezone person shall not be deductible expense for the mainland entity.

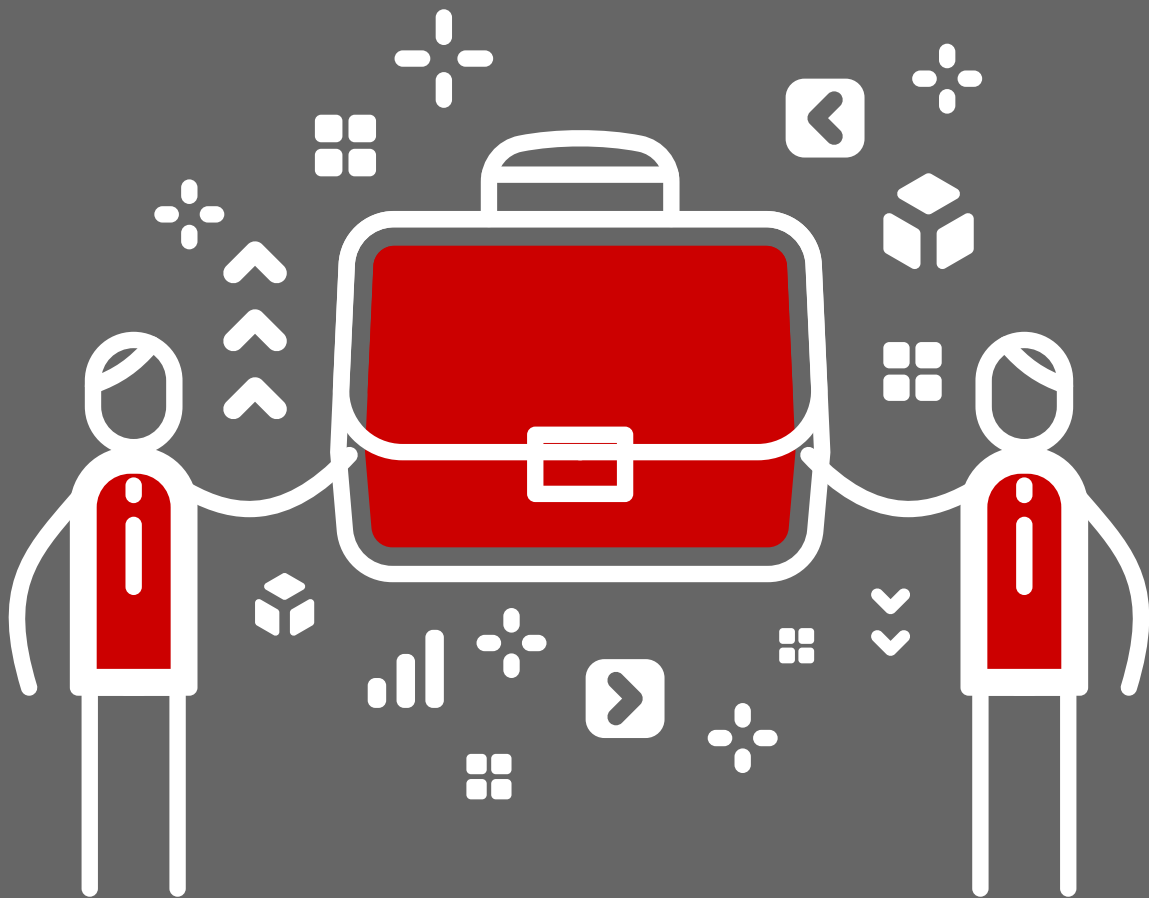
***PE rules and principles will apply to determine whether a Free Zone Person has a PE in the mainland land. Awaiting the CT Law for further information.

Our comments:



- Maintain adequate substance – whether the conditions for adequate substance would be same as mentioned in the ESR Regulations or whether there will be any further relief given.
- There is specific mention that the trading transactions between two Free Zones or within the same Free Zone are allowed for 0% Corporate Tax rate. However, there is no mention of taxability on the services rendered within the same Free Zone or from one Free Zone to another. Accordingly, it is uncertain whether it is an indication that services rendered by one Free Zone entity to same Free Zone person or other Free Zone person would disqualify for tax holiday.
- The implications in the hands of offshore company receiving any income from mainland (eg. rent from real-estate owned by the offshore entity), has not been particularly clarified and therefore whether they will have same implications as other free zone entities, including the PE concept would be required to be looked into.
- Transactions between group companies and Free Zone entity would not disqualify Free Zone entity from the tax holiday. Whether the group company means the same as defined for the purpose of transfer of losses (75% common ownership) or there would be other criteria for the same is to be looked out for.
- The implications on MNEs located in Free Zone will have to be reviewed once the Pillar Two Regulations are embedded in the UAE Corporate Tax.
- Mainland branch of Free Zone person shall be taxed on its mainland Sourced income. The payments made by mainland branch of Free Zone person would be allowed as deductible expenditure for the branch. However, if the payment is done by group company to its Free Zone group company, the same shall not be allowed as deductible expense. Whether “payment” would mean payment for expenses alone or for cost of goods as well? This would trigger restructuring of the groups having business in Free Zone and mainland. Also, mainland branch may be required to maintain separate accounts to substantiate its income offered to tax.





Chapter 6

Tax Groups

New Corporate Tax regime allows taxpayers to form a Tax Group. However, the criteria to form the Tax Group under Corporate Tax is completely different as compared to formation of Tax Group under VAT.

Under the Corporate Tax regime, taxpayer who is UAE Resident Group can **elect** to form a Tax Group and be treated as a single taxable entity if all the following conditions are satisfied:-

- Parent Company holds minimum 95% of the share capital and voting rights of its subsidiaries
- Subsidiaries are indirectly owned by the parent company and atleast 95% of its shares are owned by other subsidiaries of the Parent Company.
- Group entity is UAE branch of parent or any of its subsidiaries
- Parent company or any of the subsidiaries is **not an Exempt Person or Free Zone Person that benefits from 0% Corporate Tax.**

Procedure to Form a Tax Group

To form a Tax Group, a notice signed by

- the parent company and
- all subsidiaries

need to be submitted to the FTA.

Subsequent addition of new entity to the Tax Group, can be done by submission of similar notice signed by parent company and the new subsidiary.

Post Formation of Tax Group

Once the Tax Group is formed, it shall be considered as single taxable person for all compliance under the Corporate Tax.

The Parent Company will be responsible (on behalf of all the Group Entities) for:-

- Consolidation of financials of each subsidiary
- Eliminate transactions between parent Company and Group subsidiaries
- Determination of Taxable Income
- Administration and Payment of Corporate tax

Group's Corporate Tax will be joint and several liability of parent company and each subsidiary in the Group. However, the same can be limited to one or more members with approval of FTA.



Benefits of Forming a Tax Group

- Tax compliance procedure will be reduced
- Will help optimising tax cost.

Taxability of Legal Persons

The UAE Corporate Tax regime shall allow certain transactions between group companies, even when it is not possible to form a Tax Group or when the group companies do not elect to form a Tax Group.

This includes transfer of losses and transfer of assets and liabilities in a tax optimisation manner, subject to fulfilment of certain conditions.

Transfer of Losses

UAE Corporate Tax regime can allow a transfer of tax losses from one company to another group company with profits, provided following conditions are met:

- UAE Group companies are at least 75% commonly owned
- Loss transfers from companies that are exempt or that benefit from 0% Free Zone Corporate Tax regime shall not be allowed
- Losses offset should not exceed 75% of the taxable income of the company receiving the transferred loss in the relevant period.

Intra-group transfer of assets and liabilities

Relevant assets and liabilities will be treated as being transferred at their tax net book value, so that neither a gain nor a loss needs to be taken into account while calculating the taxable income of the transferor or the transferee.

However, this exemption will be allowed if following conditions are fulfilled:

- The transfer is between the UAE resident companies
- The transferor and transferee are at least 75% commonly owned
- Assets or liabilities remain within the same group for a minimum of three years

On violation of any of the above conditions, the relief shall be withdrawn.

Any gain or loss that would have arisen upon initial transfer will need to be calculated and included in the transferor's tax return in the tax period in which the conditions ceased to be met.

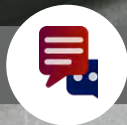
Restructuring Relief

In order to facilitate mergers, spin-offs and other corporate restructuring transactions, the UAE Corporate Tax regime will exempt or allow for a deferral of taxation where a whole business, or independent parts of a business, are transferred in exchange for shares or other ownership interests.

Similar to intra group transfer, relevant assets and liabilities will be treated as being transferred at their tax net book value, so that neither a gain nor a loss needs to be taken into account while calculating the taxable income of the transferor or the transferee.

However, this exemption will be 'clawed back' if within 3 years of restructuring there is a subsequent transfer of business to any third party.

Our comments:



Transfer of Losses

Losses incurred in one group company in one financial year will be allowed to transfer to another group company only for the same financial year. Such loss may not be carried forward and setoff in the subsequent financial years with another group entity.

Restructuring and Reorganisation

It has been mentioned that the proposed Corporate Tax regime shall allow:-

- exemption or deferral of Corporate Tax in respect of transfer of assets and liabilities between members of a group
- certain corporate reorganisation transactions within the group like mergers can be undertaken on tax neutral basis. Whether any further requirements would be there for such restructuring and reorganisaion, is to be looked out for.



Chapter 7

Basis of Taxation

Calculation of Taxable Income

Basis of calculating taxable income

Taxable income will be determined based on the accounting net profit (or loss) as stated in the financial statements.

Basis of Preparation of Financial Statements

Financial statements for the UAE Corporate Tax are required to be prepared based on the accounting standards and principles accepted in the UAE [IFRS is commonly used in the UAE].

However, certain tax payers - startups and small businesses shall be provided relief from IFRS and will be allowed alternative financial reporting standards.

Period of Financial Statement

The financial accounting period shall be considered as the annual tax period. In case no financial accounting period is adopted by the taxable person, the Gregorian calendar year will be the default tax period.





Chapter 8

Exempt Income

The UAE Corporate Tax regime will exempt certain forms of income from taxation.

The main exemptions relate to income earned by UAE companies from:-

- investments in other companies, and
- operations conducted outside the UAE through foreign subsidiaries or foreign branches.

Taxability on Dividend & Capital Gain

Income from Investments (Termed as Participation Exemption)

I. Dividend

Dividend Earned by UAE Legal Person from	Taxability	Conditions to be met
UAE mainland company	Exempt	NA
Freezone Person	Exempt	NA
Foreign company	Exempt	<ul style="list-style-type: none"> • Own at least 5% shares in the foreign subsidiary & • The foreign subsidiary should be subject to CT (or an equivalent tax) at a rate of minimum 9%

II. Capital Gains [CG]

CG Earned by UAE Legal Person from sale of shares of	Taxability	Conditions to be met
UAE Mainland Company	Exempt	Own at least 5% shares in the subsidiary
Freezone Person	Exempt	<ul style="list-style-type: none"> • Free Zone Person is a holding company & • Its substantial income is from shareholdings in subsidiary companies • It holds minimum 5% shares in each subsidiary
Foreign company	Exempt	<ul style="list-style-type: none"> • Own at least 5% shares in the foreign subsidiary & • The foreign subsidiary should be subject to CT (or an equivalent tax) at a rate of minimum 9%

Foreign branch profit exemption

UAE businesses may structure their foreign operations through a foreign subsidiary or a foreign branch.

A foreign subsidiary is a separate legal entity and will have its own books and records

A foreign branch is an extension of its parent company and would typically constitute PE in the foreign Country and therefore subject to taxes. However, a foreign branch may not have separate financials.

Recognising the potential complexities associated with attributing income and expenses to foreign branches, UAE companies have been given the irrevocable option to select one of the following:

1. Claim Tax credit – can claim foreign tax credit for taxes paid in the foreign branch country,
2. Claim Exemption – can opt to claim an exemption for their foreign branch profits. **Such exemption may not be available if the foreign branch profits are not subject to a sufficient level of tax in the foreign jurisdiction.**

Income from operating or leasing aircraft or ships

Income earned by a non-resident from operating or leasing aircraft or ships (and associated equipment) used in international transportation will be exempted, if same exemption is provided to a UAE business in the relevant foreign jurisdiction under the reciprocity principle.

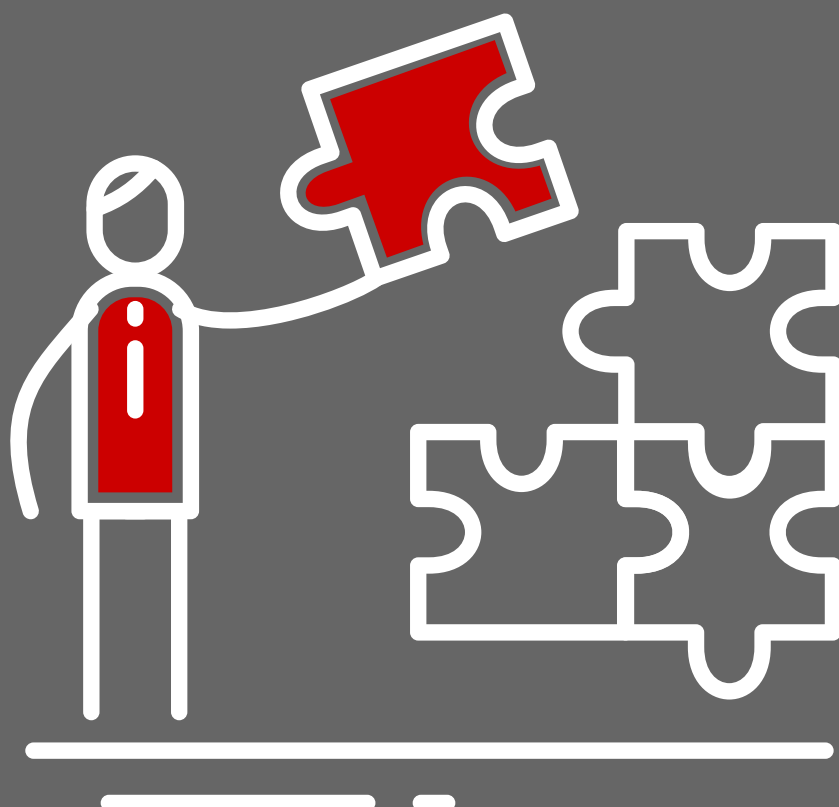
Our comments:



It will be essential to analyse whether to adopt an option to claim credit or exemption depending on the jurisdiction the branch is located and local tax liability, especially when the jurisdiction in which branch is located levies taxes on the income earned by the branch.

In case the jurisdiction does not levy any tax then exemption for the branch income cannot be availed. The income earned by such branch shall be taxable in the UAE.





Chapter 9

Expenses Deduction Limitations

Expenditure Disallowed

The UAE Corporate Tax regime will disallow or restrict the deduction of certain specific expenses to ensure

- that relief can only be obtained for expenses incurred for the purpose of generating taxable income, and
- Possible situations of abuse or excessive deductions are addressed

Interest Disallowance

Interest and other similar financing costs are deductible as cost of doing business.

However, **Interest capping rule has been introduced**. Accordingly, deductible amount of **net interest expense** will be 30% of business' earnings before EBITDA, as adjusted for Corporate Tax purposes.

Further, Corporate Tax shall also introduce safe harbour / de minimis amount that would allow certain amount of net interest expenditure irrespective of EBITDA Rule.

Also, **businesses that are part of a consolidated group** shall be allowed to apply a different interest capping threshold by reference to group's overall position.

It is clarified that interest capping rules will not apply to

- banks, insurance businesses, and certain other regulated financial services entities.
- businesses carried on by natural persons.

Conditions to be satisfied for deducting the interest paid on **related party borrowing**:

1. It is at arm's length – when such borrowing is used for certain specific intra-group transaction like pay dividend or capitalise group company.
2. The related party lender is subject to Corporate Tax (or an equivalent tax) of at least 9% on the interest income

Other Disallowances

Other disallowances include the following:

- **Payment to Free Zone Person:** Related party payments made to a Free Zone Person who is taxed at 0% on receipt of the income (payment to a mainland branch of the free zone person is allowed).
- **Entertainment Expenses:** 50% of expenditure incurred to entertain customers, shareholders, suppliers, and other business partners.
- **Penalties:** Specific expenses such as administrative penalties, recoverable VAT, etc.
- **Donations:** Donations paid to a non-approved charity or public benefit organisation.

Unrealised loss on capital items - The UAE Corporate Tax will have specific rules to determine whether an unrealised gain or loss should be considered revenue or capital item, when calculating taxable

Our comments:



It becomes essential for all the businesses to review related party and connected party payments and to ensure that the same are at arm's length to avoid disallowance by the authorities. Transfer Pricing Regulations would be required to be adhered to in such cases.

Also, expenses shall be allowed only if they are incurred to generate taxable income. For example, administration expenses incurred to earn exempt income may be disallowed by the Authorities.



Chapter 10

Carry Forward & Offset of Losses

A business will be able to carry forward loss incurred in one period to offset against the taxable income of future periods.

Offset limit:

Loss incurred in one period can be offset against income of future period, up to a maximum of 75% of the taxable income in each future tax periods.

Time limit:

Tax losses can be carried forward indefinitely if:-

- The same shareholder(s) hold at least 50% of the share capital from the start of the period of loss to the end of the period in which a loss is offset; or
- the same or similar business is carried on by the new owners.

The continuity of shareholder or business requirements do not apply to businesses that are listed on a recognised stock exchange.

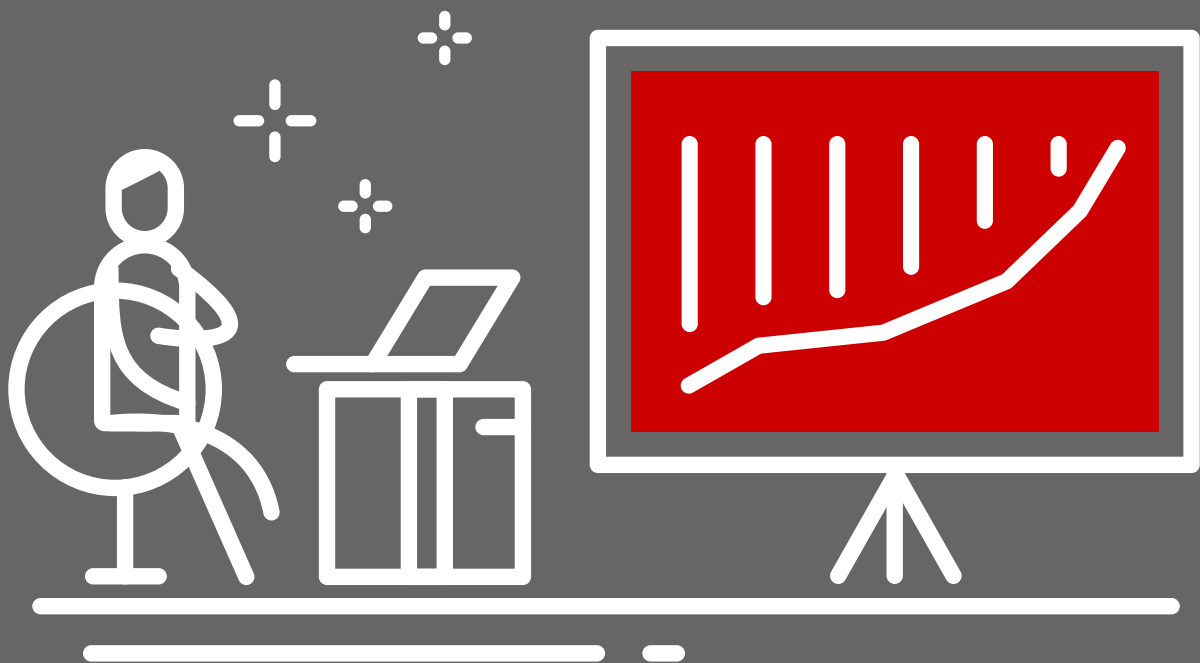
Following losses will not be allowed to be carried forward and offset against future income:

- Losses incurred before the effective date of Corporate Tax;
- Losses incurred before a person becomes a taxpayer for UAE Corporate Tax purposes;
- Losses incurred from activities or assets which generate income that is exempt from UAE Corporate Tax;
- Losses incurred by a Free Zone Person that are not attributable to a PE in the

Our comments:

For losses to be carried forward and offset against income of the future years, continuity of shareholder or business is an essential condition. Accordingly, in case businesses are planning any restructuring / transfer in Corporate Tax regime due to heavy loss, it will have to keep in mind the loss offset conditions.





Chapter 11

Calculation of Corporate Tax Liability

The proposed Corporate Tax rates and applicable thresholds remain same as communicated earlier in the year. The Corporate Tax rates are as below :

Taxable Income	Rate of Tax
Taxable income up to AED 375,000	0%
Taxable income above AED 375,000	9% (on portion of taxable income exceeding AED 375,000)
For large Multinationals (having consolidated business revenues in excess of EUR 750 M)	A different Tax Rate

Sample Tax Calculation Sheet

Taxpayer Name: xxxxxxxxxxxxxxxxxxxxxx		
Tax period: xxxxxxxxxxxxxxxxxxxxxx		
Sr.	Particulars	Amount in AED
1	Profit/Loss as per financial statement (A)	XXXX
	Add:	
2.a	Disallowance for expenses (expenses incurred to generate income that is not subject to tax)	XX
2.b	Interest expense disallowed (more than the capping rule (30% of EBITDA as per CT provisions))	XX
2.c	Related party interest expense without valid commercial reason	XX
2.d	Related party payment made to freezone person who is taxed at 0%	XX
2.e	Disallowance for entertainment expenses (50% of total)	XX
2.f	Any expenses such as administrative penalties, recoverable VAT	XX
	Subtotal of items from 2.a to 2.f (B)	XXX
	C = A+B	XXXX
	Less:	
3.a	Income from foreign subsidiary operations	XX
3.b	Income from foreign branch operations (if claimed exempt)	XX
3.c	Dividend income from domestic companies/freezone person	XX
3.d	Dividend from foreign companies (eligible participation exemption)	XX
3.e	Capital gain on sale of shares (eligible participation exemption)	XX
	Subtotal of items from 3.a to 3.e (D)	XXX
	Gross Taxable income E= C-D	XXXX
	Less: Brought forward losses (F)	XX
	Total Taxable Income for the tax year (G= E-F)	XXXX
	Tax payable	
	Upto AED 375,000	0
	9% of (G – AED 375,000)	XX
	Less: Foreign tax credit	XX
	Net Tax Payable	XX

Note: Unrealised Gain / Loss to be considered

Small Business relief

Relief for startups and small businesses in the form of simplified financial and tax reporting obligations has been proposed.

The exact procedure to be followed by the small business as regards accounting of income and filing of corporate tax return shall be included in the final **Tax Procedures Law**.

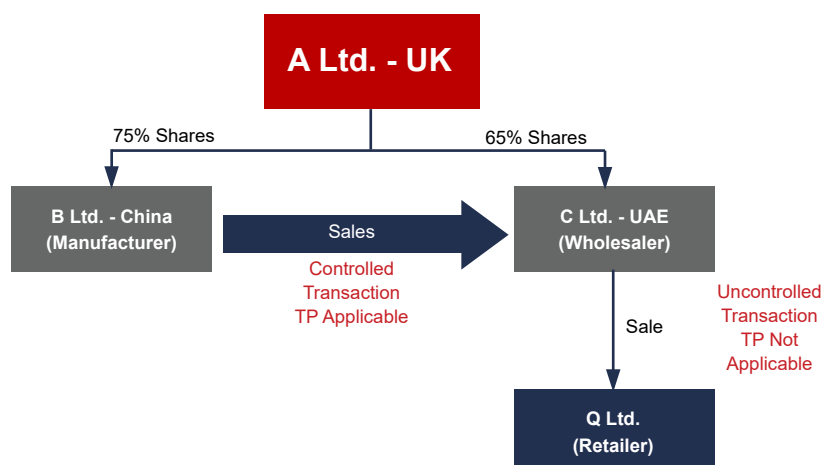




Chapter 12

Transfer Pricing

Transfer Pricing refers to the rules and methods for pricing transactions within and between enterprises under common ownership or control. The UAE Corporate Tax regime will have Transfer Pricing rules to ensure that the price of a transaction is not influenced by the relationship between the parties involved.



In order to achieve this outcome, the UAE will apply the internationally recognised “arm’s length” principle to transactions and arrangements between **related parties** and with connected persons.

Related Parties

A related party is an individual or entity who has a pre-existing relationship with a business that is within the scope of the UAE Corporate Tax regime through ownership, control, or kinship (in the case of natural persons).

Following will be considered as Related Parties for the purpose of UAE Corporate Tax:

1	Two or more individuals	Related to the fourth degree of kinship or affiliation, including by birth, marriage, adoption or guardianship
2	An individual and a legal entity	Individual alone or together with a related party, directly or indirectly owns a 50% or greater share in, or controls the legal entity
3	Two or more legal entities	<ul style="list-style-type: none"> Legal entity alone or together with a related party, directly or indirectly, owns a 50% or greater share in or controls the other legal entity Taxpayer alone or with a related party, directly or indirectly, owns a 50% share of each or controls them.
4	Taxpayer	Its branch or permanent establishment
5	Unincorporated partnership	All partners
6	Exempt and non-exempt business	Activities of the same person

Connected Persons

Payments or benefits provided by a business to its “Connected Persons” will be deductible only if the business can demonstrate that the payment or benefit:

- corresponds with the market value of the service provided; and
- is incurred wholly and exclusively for the purposes of the taxpayer’s business.

Arm’s length principle

All Related Party transactions and transactions with Connected Persons will need to comply with transfer pricing rules and the arm’s length principle as set out in the OECD Transfer

OECD Guidelines - Transfer Pricing Methods

The latest OECD Transfer Pricing Guidelines (released in 2022) recommends five widely used methods of establishing transfer pricing. They are:

1	The Comparable Uncontrolled Price (CUP) Method	The CUP method compares transactions made between related and unrelated organisations. By comparing the price of good and services in an intercompany transaction with the price used by independent parties, a benchmark price can be determined.
2	The Cost-Plus Method (CPM):	The cost plus method begins with the costs incurred by the supplier of the goods /services and then an appropriate cost plus mark-up is added to make an appropriate profit in light of the functions performed and market conditions. Once the mark-up is determined, it should be equal to what a third party would make for a comparable transaction, in a comparable context with similar external market conditions.
3	The Resale Price Method (RPM):	Resale price method begins with the price at which a product that has been purchased from an Associated Enterprise is resold to an independent enterprise. This resale price is then reduced by an appropriate gross margin representing the amount out of which the reseller would seek to cover its selling and other operating expenses. This method is commonly used by resellers and distributors, as opposed to manufacturers.
4	Transactional Net Margin Method (TNMM):	TNMM is based on the net profit of a controlled transaction, rather than comparable external market pricing. The net profit is then compared with the net profit of independent enterprises.
5	Transactional Profit Split Method(TPSM):	TPSM is a method that identifies the relevant profits to be split for of associated enterprises from a controlled transaction and then splits those profits between the associated enterprises on an economically valid basis that approximates the division of profits that would have been agreed at arm’s length.

A person will be considered as ‘connected’ to a business that is within the scope of the

UAE Corporate Tax regime under following circumstances:

1	Individual, who has direct or indirect ownership / control in the taxable person
2	Director / Officer of taxable person
3	An individual related to owner, director or officer
4	Any other partner of the unincorporated partnership
5	Related party of any of the above

Over and above the aforementioned methods of arriving at arm's length price, the new OECD Guidance Note also includes guidance on specific transactions like:

- Hard to Value Intangibles – BEPS Action Plan 8
- Financial Transactions - Risks and Capital Transactions – BEPS Action Plan 9
- High Risk Transactions - controlled transactions which are not commercially rational (e.g. management fee, HO expenses, etc.) – BEPS Action Plan 10
- Business Restructurings

Transfer Pricing documentation requirements

Business will have to maintain appropriate documentation in respect of transactions with Related Parties and Connected Persons as specified under OECD BEPS Action 13, including:-

- Master File; and
- Local files

where arm's length value of their related party transactions **exceeds a certain threshold**.

Our comments:

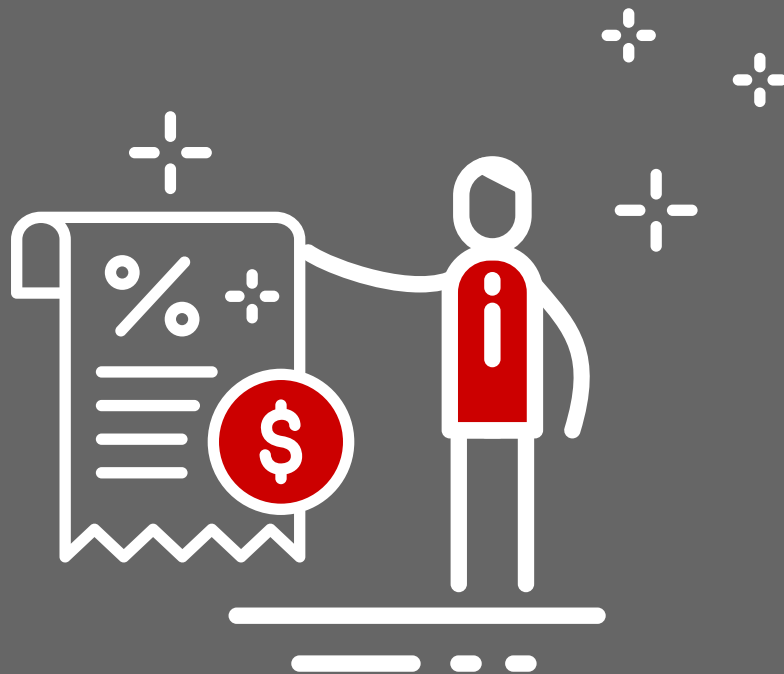


It is indicated that the scope of Transfer Pricing will not only include foreign transactions but also domestic transactions, subject to a threshold limit.

It will become essential for the businesses to maintain and demonstrate that every transaction (above threshold) is being conducted at arm's length. Transfer Pricing benchmarking test / study would be required to be conducted in case of transaction covered under this provision.

Further, payment to connected persons has also been brought under this regulations, which ensures a check on payment made to senior management, partners etc.





Chapter 13

Withholding Tax

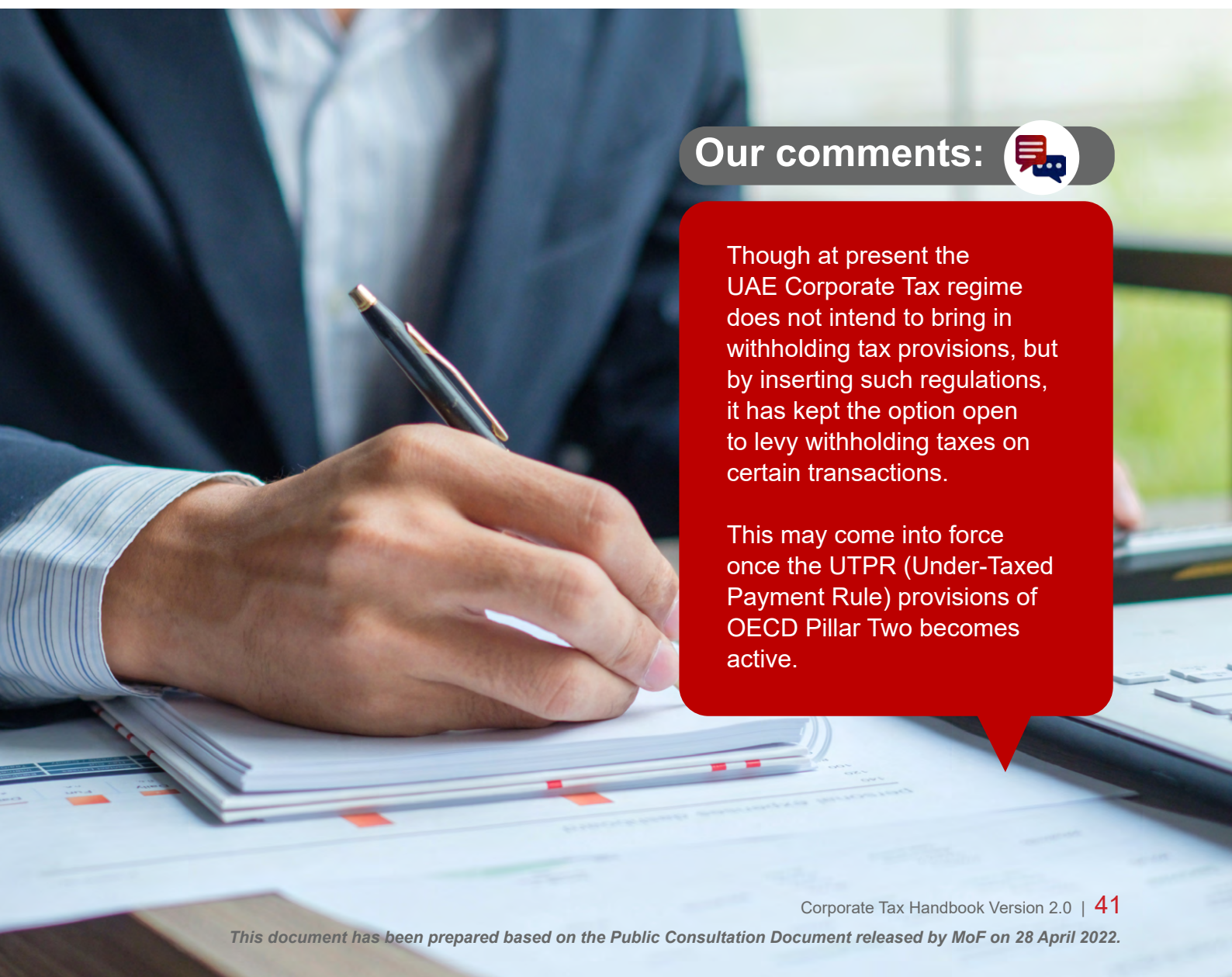
At present it is proposed to apply 0% withholding tax on domestic and cross border payments made by the UAE business.

Therefore UAE businesses would not be under any obligation to make deductions from the payment made to anyone nor will it be under an obligation to file withholding tax return.

Further, clarification on the type of transactions that will be eligible for **0% withholding tax** has been given.

This indicates that if there is any intention to introduce withholding taxes in future, considering the **OECD Pillar Two approach**, the following transactions may be Impacted:

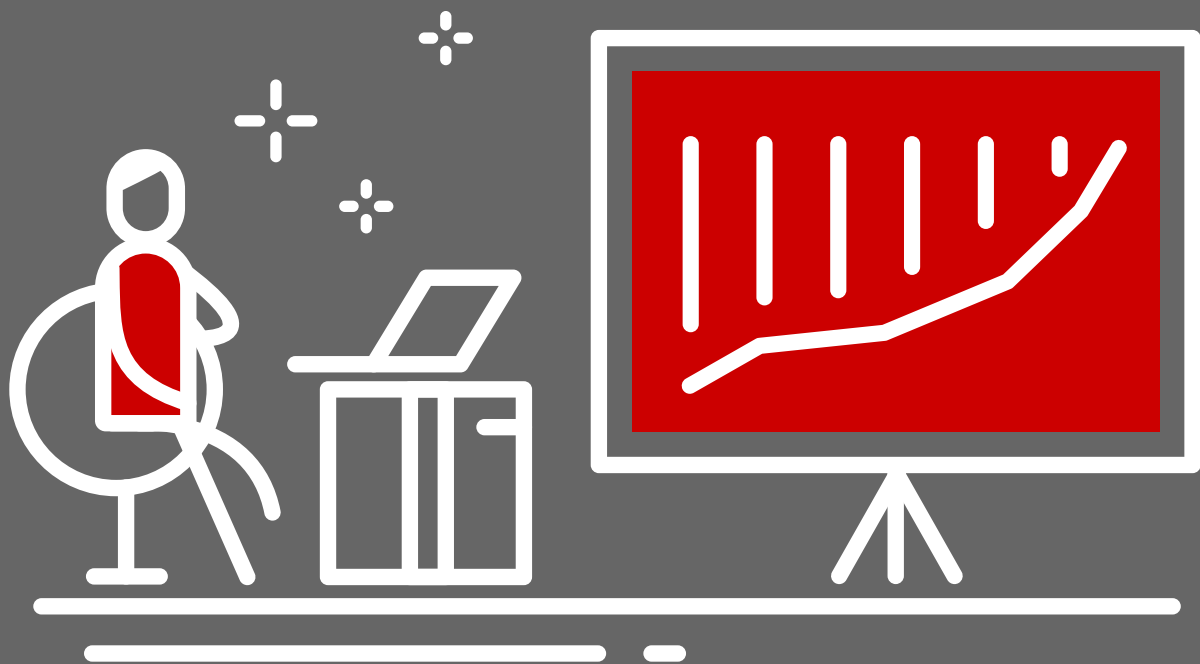
Taxable Income
UAE Sourced income earned by foreign Company (not attributable to PE in the UAE)
Mainland sourced income earned by free zone person
Income attributable to mainland branch of the free zone
Dividend / profit distribution by the free zone person to a mainland UAE shareholder



Our comments:

Though at present the UAE Corporate Tax regime does not intend to bring in withholding tax provisions, but by inserting such regulations, it has kept the option open to levy withholding taxes on certain transactions.

This may come into force once the UTPR (Under-Taxed Payment Rule) provisions of OECD Pillar Two becomes active.



Chapter 14

Compliance and Dispute Resolution

Administration

Registration and Deregistration

Registration	<ul style="list-style-type: none"> • Business subject to Corporate Tax to register with FTA • Obtain Tax Registration Number, within prescribed period • Automatic registration by FTA, if suo-moto not registered
Deregistration	<ul style="list-style-type: none"> • At the time of cessation or liquidation • Apply for deregistration within 3 months from the date of cessation • Will be deregistered only post completion of return filing and payment of due taxes.

Filing:

Corporate Tax Return

Filing within 9 months from the end of relevant tax period

- One Tax Return and other related supporting schedules for each tax period
- No provisional Corporate Tax Return or payment of advance tax

Additional documents

Mainland: Audited financials - whether the financial statements are to be audited or not shall be determined by the applicable company laws. As per the Commercial Company Law (Federal Law no (2) of 2015) the financials are to be audited by an accredited audit firm.

Free Zone: Audit is mandatory for Free Zone Persons to benefit from 0% tax regime

Other records that explain information contained in the return would also be required to be filed.

Exempted persons will also require maintaining records to ascertain exempt status

Payment of Corporate tax

Payment to settle the tax liability to be made within 9 months of the end of relevant tax period.

Where refund is due, apply to FTA for refund.

Assessment:

Corporate Tax regime based on the self- assessment principle.

Review of Corporate Tax Return filed will be undertaken by the FTA within the time-frame as prescribed by the law.

Taxpayer can challenge an amended assessment via process and procedures outlined in Tax Procedures Law.

Advance Clarification / determination of taxes

Corporate Tax regime gives option to taxpayers to avail clarification from FTA on a particular contract to determine taxability.

Clarification would be binding on FTA when the facts and circumstances are similar.



Our comments:



The new Corporate Tax regime insists on maintenance of books of accounts and their audit as well, which otherwise was not stringently followed by many businesses in the UAE.

In order to support start-ups and small businesses in the UAE, and to manage the compliance burden on these taxpayers, the UAE Corporate Tax regime intends to provide relief for small businesses in the form of simplified financial and tax reporting obligations. This is another good move to promote the start-ups and SMEs. The eligibility for a business to be considered as start-ups and small businesses is awaited.

An option for the businesses to clarify their tax position in case of doubt, is a welcome move which will provide insight to authorities and business on complicated matters. It would help to reduce litigation as the tax position would be taken before filing the tax return.

It has been indicated that Tax Procedures Law shall be released which will introduce the time limit for assessment and reassessment as well as conditions under which an appeal can be filed to challenge the assessment.



Chapter 15

International Tax Developments

Provisions of OECD - Pillar Two shall be merged in the UAE Corporate Tax Laws. The applicability, rules and procedures shall be embedded in the UAE Corporate Tax once the same is finalised at OECD level.

Further, County-by-Country Reporting (CbCR) requirements as introduced in the UAE from 2019 shall not be impacted by the Corporate Tax regime.

Our comments:



Once the Pillar Two Principles are embedded in the UAE Corporate Tax regime, it may impact the taxability of MNEs having business in the UAE mainland as well as in Free Zones.

This may also trigger withholding taxes on certain UAE sourced income.

Way Forward

Organization

- Conduct Impact assessment of the legal structure of the entity and the group at large
- Conduct impact analysis of the bottom-line and profits after tax
- Review whether the financial year followed by the Company requires any modification / adopt uniform financial year
- Review whether adequate resources are available to undertake compliance function

Data Collection & Maintenance

- Review the bottlenecks, if any, in the process to collect relevant information and review the risks associated
- Review whether any change in the process is required
- Review whether the systems allow to leave audit trail
- Ensure to maintain Financial Statements – even for prior to the effective date

Accounting

- Books of Accounts as per Internationally Accepted Accounting Standards
- Whether expenses of personal nature accounted in the company books
- Complete records of assets and its value to ensure accurate claim of depreciation

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