

CORPORATE TAX

IN THE UNITED ARAB EMIRATES

Federal Decree-Law No. 47 of 2022



Volume 1

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INTRODUCTION

The United Arab Emirates has been gaining strength on the compliance aspects of the business during the last few years. To ensure continued ease of doing business, the compliances are aimed at strengthening ethical business practices while ensuring simplicity and lucidity of understanding and application.

To enhance UAE's commitment to meeting international standards of tax transparency and prevention of harmful tax practices in line with the principles of Organisation for Economic Corporation and Development (OECD), the UAE Ministry of Finance has issued the Federal Decree Law no. 47 of 2022, titled Taxation of Corporations and Businesses, popularly called the Corporate Tax Law on 09th December 2022.

This law is a much-awaited regulatory enactment among the tax professionals and business communities at large. Evas International, with its continued drive to educate and harmonise compliances among businesses have comprehensively analysed and summarized the Corporate Tax Law in an engaging series of Q & A at the interest of the readers.

The contents herein are formed purely on the basis of interpretation of the Corporate Tax Law and would have to be reconfirmed and re-analysed once the executive implementing regulations and other related cabinet decisions related to this law are published.

We have also prepared a sister document titled 'Handbook on UAE Corporate Tax' explaining the law in a succinct manner highlighting its key legislative features. Readers can download this write-up from our website www.evasinternational.com

I would like to take this opportunity to declare myself to be available at your service for corporate tax and transfer pricing related assistance and ponder my appreciation to our corporate tax team whose persistent efforts have contributed to this summary document. I also specially thank DR. S. Kevin, Former Pro Vice Chancellor, University of Kerala for his constant encouragement and support in penning down the preface for this document. I hope you find this book purposeful.

Vijaya Mohan,
Managing Partner, Evas International

PREFACE

Knowledge workers have to be continuous learners as they are required to use the latest information and knowledge in their work. Accountants and Tax Consultants dealing with corporate enterprises in the United Arab Emirates (UAE) currently face such a situation. A new legislation introducing corporate tax in UAE has been released. This new legal document has to be studied by all stakeholders to understand the application and the implications of the different legal provisions contained in it. This learning process will continue until the provisions and practices of corporate taxation according to the new law are properly understood and settled.

The UAE Ministry of Finance published the Federal Decree Law no. 47 of 2022 titled TAXATION OF CORPORATIONS AND BUSINESS HOUSES on 9th December 2022. It is a concise document dealing with the important aspects of corporate taxation with twenty Chapters and seventy Articles. It starts with Chapter 1 dealing with General Provisions and ends with Chapter 20 dealing with Closing Provisions. The important Provisions laid out in the document include imposition of corporate tax and applicable rates, exempt person, taxable person, corporate tax base, free zone person, calculating taxable income, exempt income, reliefs, deductions, calculation of corporate tax payable, payment and refund of corporate tax, tax returns, violations and penalties.

Article 69 states that this Decree Law shall apply to Tax Periods commencing on or after 1 June 2023. It mandates that the new corporate tax will be applicable to corporates starting Financial Year on or after 1 June 2023. There is hardly a time gap of six months for the transition to the new tax regime. The accounting practices and tax practices of corporates have to be modified as per the provisions of the new law. The stakeholders, including the accountants and tax consultants, face the challenge of completing the learning process within the shortest time.

It is in this context that this issue of the Newsletter includes informative articles on the Corporate Tax Law introduced in UAE. It will definitely facilitate the learning process required for the implementation of the new law. It is a timely service being provided to the accounting community.

DR. S. KEVIN

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CORPORATE TAX IN THE UAE

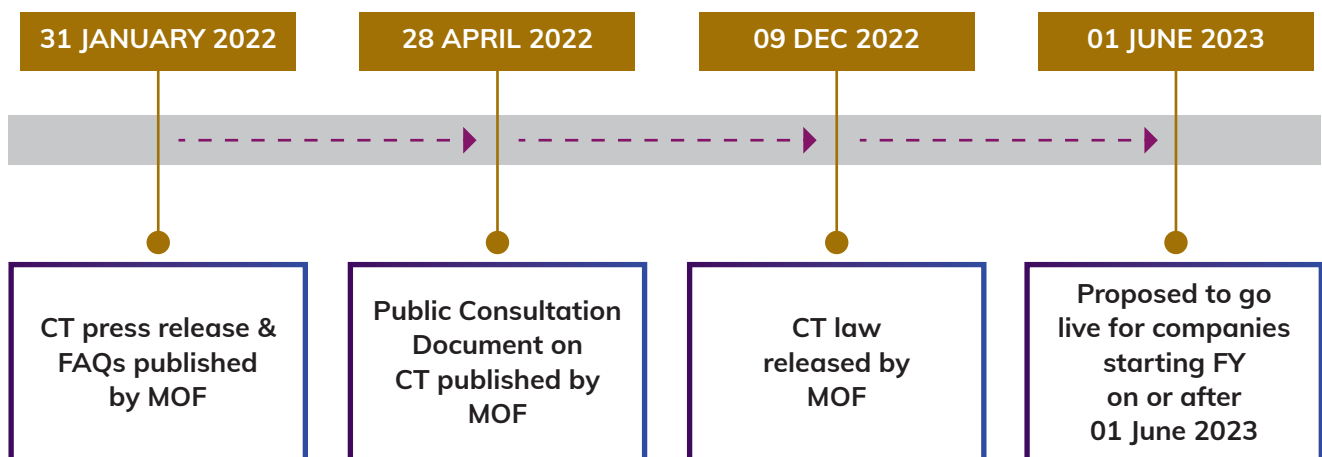
Since beginning of 2022 news and discussions about UAE Corporate Tax (CT) was rampant among business houses and tax consultants with added enthusiasm. After all anticipations and likelihoods, the Ministry of Finance (MOF) has published the Federal Decree Law no. 47 of 2022 titled TAXATION OF CORPORATIONS AND BUSINESS HOUSES on 09 December 2022.

This tax law is published by the Ministry after careful analysis and consideration of opinions from public. While this was an expected release, it still does not take away the fact that this will be a colossal change in a country who till now have only taxed very few businesses (those engaged in extraction and branches foreign banks). We cannot say for certain how it will impact the businesses and economy without complete clarity expected from subsequent cabinet and ministerial decisions which will be released in near time.

In our view, this law checks well with most of the aspects of the Public Consultation Document released in April 2022, provides clarity on many of the key provisions and is predominantly based on the international best practices making it simple for foreign investors and international corporates doing business in the UAE to institute and abide its fulfilments.

Even though the compliances are kept minimum, and tax is kept at an all-time low, there are still several exemptions available for businesses operating across strategic sectors like extractive natural resources and investment funds. Also, addition of Anti Avoidance rules and transfer pricing regulations imbibes the sentiment that resonates with the overall leadership of this landscape which is 'Firm but Fair'.

The following timeline shows the step-by-step deliberations by the MOF:



Through this document we intend to put a detailed discussion by capturing major aspects of the law comprehensively. We have also prepared a sister document titled 'Handbook on UAE Corporate Tax' explaining the law in a succinct manner highlighting its key legislative features. Readers can download this document from our website www.evasinternational.com

We will be delighted to take your feedbacks, comments and questions to help you navigate through this law with relative ease. Please do write to us at tax@evasinternational.com.

Happy reading!

A. IMPOSITION OF CORPORATE TAX AND APPLICABLE RATES

01. How will this tax be imposed and taxable income calculated?

This tax shall be imposed on the taxable income which is nothing but profit earned by the business after necessary adjustments. The taxable income is calculated as follows.

Particulars	Amount
Accounting Net profit/(Loss) as per financial statement	XXX
Add: Unrealized loss pertaining to a capital item, if recorded in the financial statement (unrealized gain to be reduced)	XXX
Add: Net interest expense in excess of 30% of EBITDA (Ref: Q No: 36)	XXX
Add: 50% of entertainment expenses on customers, shareholders and suppliers etc.	XXX
Add: Administrative penalties, donation paid to unapproved charity, bribes, dividend, profit distributions or benefits paid to owner	XXX
Add: Recoverable VAT, expenditure not incurred for the business activity, expenses incurred to earn exempt income.	XXX
Less: Exempt income and reliefs	XXX
Taxable income	XXX

02. What will be the rate of tax?

CT shall be imposed on the Taxable income at the following rates:

a) For persons other than qualifying free zone persons :

Particulars	Rate of tax
Taxable income not exceeding a cut off amount	0%
Taxable income exceeding that amount	9%

The cut off amount will be specified in a decision which will be issued by the cabinet at the suggestion of the Minister of Finance.

b) For qualifying free zone persons :

Particulars	Rate of tax
On qualifying income	0%
On amount that is not qualifying income	9%

Our Comments: While the cut off amount is not specified in the law, the FAQs posted in the website of Ministry of Finance provide that the cut off limit shall be AED 375,000. The same as that proposed in the Corporate Tax Public Consultation Document.

The FAQs also provide that UAE will form a framework to adopt Pillar 2 Rules, hence "large" multinational corporations that have consolidated global revenues in excess of the UAE Dirham equivalent of EUR 750 million may be subject to tax at 15% instead of the specified 9%.

B. EXEMPT PERSONS

03. Who are all exempt from CT?

The following persons (both natural and juridical persons) will be exempt from CT subject to conditions set by the Ministry of Finance:

- a) Government entities including the federal Government, Local Governments, Ministries, Government departments, its agencies, authorities and public institutions of local and federal Governments.
- b) Any juridical person directly or indirectly wholly owned and controlled by any of the above Government entities
- c) Any person engaged in the business of exploring, extracting, removing or otherwise producing and exploiting water, oil, gas, coal, naturally formed minerals and other non-renewable, non-living natural resources of a state in the UAE
- d) Any person engaged in the business of separating, treating, refining, processing, storing, transporting, marketing or distributing the above natural resources of a state in UAE
- e) Any public benefit entity exclusively for religious, charitable, scientific, artistic, cultural, athletic, educational, healthcare, environmental, humanitarian, animal protection or other similar purposes that meets the conditions specified and is listed in a decision issued by the cabinet at the decision of the Minister of Finance
- f) 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. And who meets the conditions specified
- g) A public pension or social security fund, or a private pension or social security fund that is subject to regulatory oversight of the competent authority in the State and that meets any other conditions that may be prescribed by the Minister of Finance
- h) A juridical person incorporated in the State that is wholly owned and controlled by an Exempt Person specified in paragraphs (a), (b), (f) and (g) above and conducts any of the following:
 - Undertakes part or whole of the activity of the above Exempt Persons.
 - Is engaged exclusively in holding assets or investing funds for the benefit of the Exempt Person.
 - Only carries out activities that are ancillary to those carried out by the Exempt Person.
- i) Any other Person as may be determined in a decision issued by the Cabinet at the suggestion of the Minister.

Exempt persons:

The following persons (both natural and juridical persons) will be exempt from CT subject to conditions set by the Ministry of Finance:

a) Government entities

b) Government controlled entities

c) Extractive natural resources business

d) Non-extractive natural resources businesses

e) Qualifying public benefit entities

f) Qualifying investment funds

g) Public pension or social security funds

h) An entity controlled by an exempt person*

i) Any other person as determined by Minister of Finance

04. Who are all the persons getting automatically exempt from Corporate Tax?

- A Government entity is exempt from CT only if it fully performs its core activity. Income from any other business or business activity performed by it under a license shall be taxable
- Likewise, a Government entity shall be exempt from CT only on income from its Mandated activities, any other income earned from a non-mandated activity shall be subject to CT
- Extractive and non-extractive business is exempt from CT only for core income from extractive and non-extractive business, any other income earned by it shall be taxed. For this purpose, these businesses must maintain financial statements for its core and none core business independently.
- A qualifying investment fund, a public pension or social security fund and those entities owned by another exempt person shall be exempt from CT on fulfilment of stipulated conditions. An application has to be made to the Federal tax Authority (FTA) on fulfilment of those conditions, and this application shall be cleared by the FTA after due investigation.

*Subject to activities carried out

C. TAXABLE PERSON

Corporate Tax shall be imposed on a Taxable Person. Taxable Person shall be either a **Resident Person** or a **Non-Resident Person**.

05. Who is a Resident person?

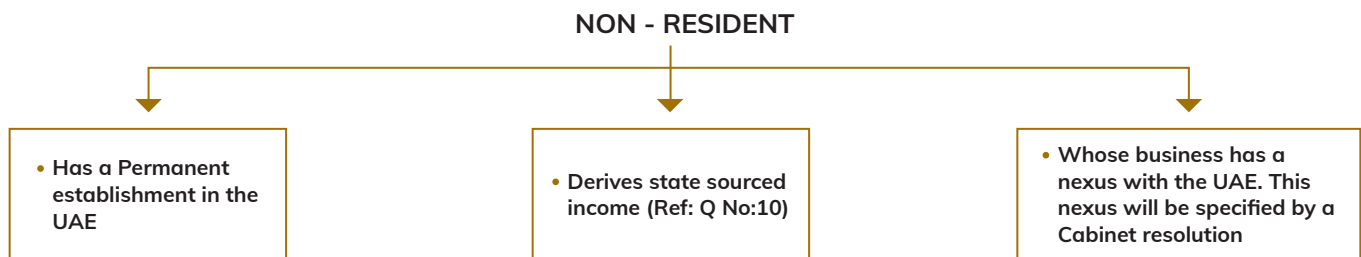
A resident person can be:



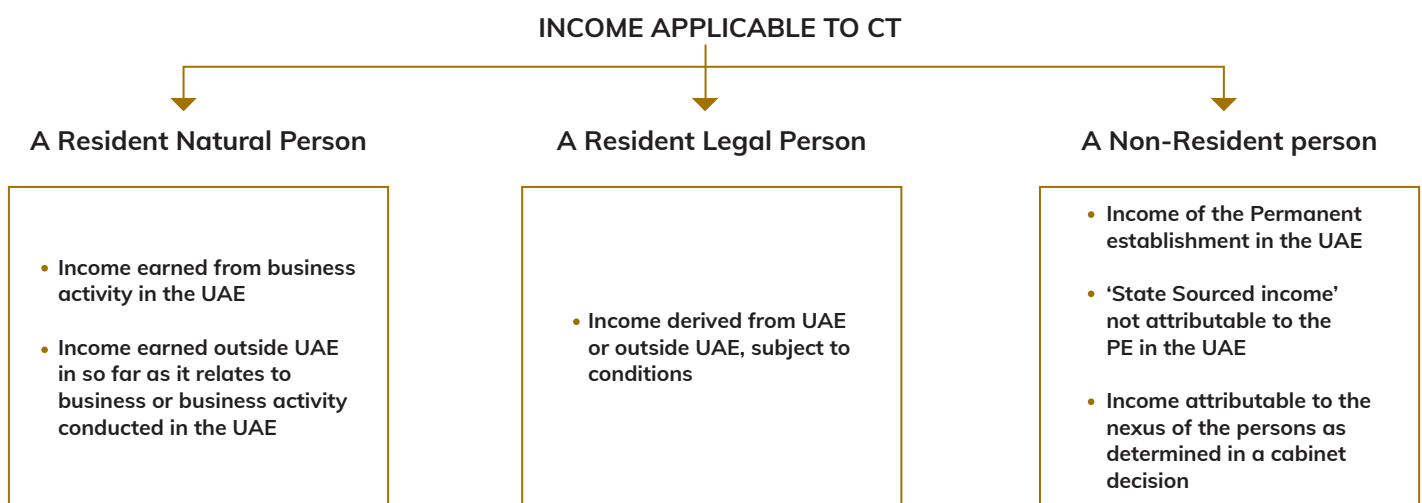
Note: Any other persons may be determined as a resident persons by a cabinet resolution at the suggestion of the Minister of Finance.

06. Who is a Non-Resident Person?

A Non-resident person is a Person who is not a Resident person mentioned above and who either



07. What incomes of these persons are subject to Corporate Tax?



Our Comments: It is to be noted that a Foreign legal person if managed and controlled in the UAE would be treated as a Resident-person, and his global income may be subject to tax in the UAE

08. How can a Non-resident person have a Permanent establishment in the UAE?

A Non-resident person has a Permanent establishment in the UAE in any of the following instances:

- When it has a fixed permanent place through which its business in full or part is conducted
- When it has a person who habitually exercises authority to conduct business in its name, and that person is not an independent agent
- Where it has any form of nexus which will be specified in a cabinet decision.

09. What does fixed or permanent place in the state mean?

It includes a place of management, a branch, an office, a factory, a workshop, land, building, other real property, an installation or structure for exploration of renewable or non-renewable natural resources, a mine, an oil or gas well, a quarry or any other place of extraction of natural resources, It may also include a building site a construction project, or place of assembly or installation, or supervisory activities connected therewith if lasts for more than 6 months.

10. What is a 'State Sourced income' earning which the Non-resident persons are taxable?

'State Sourced income' is any income earned by the non-resident person that is

- Derived from a resident person
- Derived from a Non-resident Person, and that income is attributable to the Permanent establishment of the Non-resident person in the UAE
- Derived or accrued from activities performed, assets located, capital invested, rights used or services performed or benefitted from the UAE
- From sale of goods in the UAE
- From provision of services which are rendered, utilised or benefitted from UAE
- From contracts benefitted or wholly/partly performed in the UAE
- From movable or immovable property in the UAE
- From disposal of shares or capital of a Resident Person
- From providing use or right to use of any intellectual or intangible property in the UAE
- Interest income earned
 - Which is secured by a movable or immovable property in the UAE
 - From the borrower who is a Resident Person
 - From the borrower who is a Government entity
- Insurance or reinsurance premiums earned
 - From insuring an asset located in the UAE
 - From insuring a person who is a Resident Person or
 - From insuring an activity that is conducted in the UAE

11. Does taxable person include unincorporated partnership firms?

An unincorporated partnership firm shall not be considered as a taxable person in its own right, persons conducting a business as an unincorporated partnership firm shall be treated as individual taxable persons.

12. How will the profit/taxable income earned by the unincorporated partnership firm be divided among its partners for tax?

The assets, liabilities, income and expenditure of the Unincorporated Partnership shall be allocated to each partner in proportion to their distributive share in that Unincorporated Partnership, or in the manner prescribed by the Federal Tax Authority where the distributive share of a partner cannot be identified.

In addition, the direct expenditure and interest on capital contribution incurred directly by the partner in relation to the business of the partnership shall be allowed as an expense.

However, the partnership firm can make an application to the Federal Tax Authority for the unincorporated partnership to be treated as a taxable person.

Foreign partnerships shall be treated as an unincorporated partnership only if it is not subject to tax under the laws of foreign jurisdiction where it is formed, and each partner is individually subject to tax on their distributive share of income received or accrued by the Foreign partnership.

13. How is a family foundation taxed under this law?

A family foundation formed under the laws of UAE may be taxed as a Resident – person, and those incorporated outside the UAE under laws of that state may be taxed as Non-resident person.

However, the family foundation can make an application to the Federal tax Authority to be treated as an unincorporated partnership, and tax the beneficiaries according to their share of interest. For making the application, the family foundation must fulfil certain conditions provided in the CT law.

D. FREE ZONES

14. Are businesses in the free zones taxed in the UAE?

The decree law does not exempt free zones from CT. They will be taxed at the following rates

Particulars	Rate of tax
On qualifying income	0%
On amount that is not qualifying income	9%

Evass comments: Even though Free Zones does not pay any tax on qualifying income (0%), they are still a taxable person subject to CT. Hence, the following compliances are to be planned for

- Tax registration
- Filing of tax returns
- Maintenance of financial statements
- Transfer pricing documentation
- Record keeping in line with this law

Also, qualifying free zone persons that are part of large multinational group are anticipated to be subject to a different CT rate once the Pillar Two rules are embedded into the UAE CT regime.

It is also worthy to note that a specific exemption limit (e.g., AED 375,000) is not provided to taxing free zone person's income as compared to other persons.

15. Who is a qualifying free zone person?

A qualifying free zone person is one who meets all of the following conditions

- Maintains adequate substance in the UAE
- Drives qualifying income
- Has not elected to be subject to corporate tax voluntarily
- Who carries out transactions with its suppliers and customers in arm's length and maintains adequate transfer pricing documentation if applicable
- Meets any other conditions which will be specified by the Minister of Finance

16. What is qualifying income?

Qualifying income will be specified by the decision of the cabinet at the suggestion of the Minister of Finance.

17. Could a qualifying free zone person elect to be subject to Corporate Tax?

Yes. A qualifying free zone person can make an election to be subject to corporate tax at 9% for taxable income above the limit which will be specified by a cabinet decision.

E. TAXABLE INCOME

18. How is taxable income calculated?

Taxable income is arrived at after adjusting reported profit with items mentioned in the table under Q1.

19. What is reported profit?

Reported profit is the net profit/net income determined based on standalone financial statements that is prepared in accordance with applicable accounting standards accepted in UAE.

20. Will financial statements need to be prepared on an accrual basis?

Taxpayers should prepare their financial statements, and determine their taxable income on an accrual's basis, unless they are permitted to use the cash basis of accounting by the Minister of Finance. The Minister may prescribe the instances where a taxpayer can prepare financial statements using the cash basis, which is expected to be available for certain categories of individual entrepreneurs and small businesses.

21. What are the items that are adjusted to the reported income to arrive at the taxable income?

- Unrealised gains and losses on capital items
- Exempt income
- Income arising on intra-group transfers.
- Deductions which are not allowable for tax purposes.
- Transactions with Related Parties and Connected Persons.
- Tax losses carry forwarded from prior periods or from another entity within the qualifying group
- Incentives for qualified business activity (to be specified)
- Others (to be specified)

22. What about unrealised gains and losses that form a part of Financial statements as per the applicable accounting standards?

The taxable person, while computing the taxable income, may consider the unrealised gains or losses due to impairment or fair value accounting on assets/liabilities on a realisation basis provided such assets/liabilities are held on capital account. However, similar gains or losses on assets/liabilities held on revenue account will be taxable.

23. What are assets and liabilities held on capital account and revenue account?

Assets held on capital account are non- tradeable assets, assets that are eligible for depreciation, items of PPE, investment property, intangible assets and other non-current assets.

Liabilities held on capital account are liabilities which do not give rise to non-deductible expenditure and liabilities treated as non-current liabilities.

Assets and liabilities held on revenue account refers to assets and liabilities other than those held on capital account.

24. What about foreign exchange gains or losses on assets or liabilities?

Unrealised gains or losses include unrealised foreign exchange gain or loss. Foreign exchange gain or loss on assets and liabilities held on capital account shall be taxed on a realisation basis whereas those held on revenue account shall be taxed on accrual basis.

25. Is there any relief for small businesses from Corporate Tax?

A resident taxable person has the option to elect to claim relief from Corporate Tax T provided his revenue for the relevant tax period do not exceed the specified threshold limit and all other conditions are complied with. The threshold limit and other conditions are yet to be notified.

F. EXEMPT INCOME

26. What types of incomes are exempt from Corporate Tax?

The following incomes are exempt from Corporate Tax:

- Dividends and profit distributions from a juridical person being a resident in the UAE (even companies applicable to 0% Corporate Tax rate)
- Dividends and profit distributions from participating interest in a foreign juridical person
- Any other income from participating interest
- Income from foreign permanent establishments subject to conditions
- Income derived by a Non-resident Person from operating aircrafts and ships in international taxation subject to conditions

27. What are the participating exemption conditions?

Dividends, profit distributions and any other income received by a taxable person from foreign juridical persons are exempt from Corporate Tax if such taxable person has an ownership interest of 5% or more held for a period of 12 months and such foreign juridical person is subject to a tax similar to Corporate Tax at a rate not less than 9% in the legislation of the country in which such juridical person is a resident. Also, not more than 50% of the direct and indirect assets of that company consist of ownership interests that would not have qualified for an exemption under Corporate Tax Law if held directly by the taxable person, subject to other conditions. Additionally, the taxable person should be entitled to not less than 5% of profits and liquidation proceeds of the foreign juridical person on account of such ownership interest.

28. What are the consequences on failing to comply with the participating exemption conditions after availing exemption?

If the person fails to hold 5% or greater ownership interest for uninterrupted period of 12 months or more, income in relation to such participation that was already claimed as exemption, shall be included in the taxable income of the tax period where the ownership falls below 5%.

29. What is foreign permanent establishment?

A foreign permanent establishment includes the foreign branches or other foreign establishments of a UAE business. A taxable person can elect not to include the income and associated expenditure of a foreign permanent establishment to determine its taxable income. However, to take this election, the foreign permanent establishment must be taxed in the country of its incorporation at a rate not less than 9%.

G. RELIEF

30. What are the reliefs available under Corporate Tax?

The following gains / losses are relieved from Corporate Tax:

- Transfer of assets or liabilities between two taxable persons that are members of the same qualifying group.
- Transfer of entire business or part of business by one or more taxable persons to another taxable person in exchange for shares or other ownership interest of the transferee (business restructuring relief)

31. What constitutes a qualifying group?

- They are resident persons or non-resident persons having permanent establishment in UAE.
- One taxable person has 75% or more ownership interest in the other or a third person has 75% or more ownership interest in each of the taxable persons.
- None of the persons are exempt person or qualifying free zone person.
- Both the taxable persons follow the same accounting standards and same financial year to prepare their financial statements.

32. What is business restructuring relief?

Where a taxable person transfers its entire business or independent part of business to another person who is either a taxable person or will become a taxable person due to this transfer, and the transferor receives shares or ownership interest of the transferee in consideration of transfer, the gains or losses on such transfer are not subject to CT subject to certain conditions. This exemption is termed as business restructuring relief.

33. How is business restructuring relief claimed?

To avail business restructuring relief, the following book entries and provisions are considered:

- The transfer is recognized at the net book value of the transferred asset.
- The value of shares or ownership rights received by transferor shall not exceed shares or ownership rights surrendered by him reduced by any other forms of consideration received.
- Unutilized tax losses of the transferor company shall become tax losses of transferee company on account of transfer.

34. Under any circumstances can the business restructuring relief claimed be reversed in future tax periods?

The relief claimed against taxable income in UAE CT will be reversed if there is subsequent transfer of acquired business or independent part or if the share or ownership interests received are sold, transferred, or disposed of to the non-member of the qualifying group within two years.

H. DEDUCTIONS

35. What are the deductible and non- deductible expenditure for the purposes of calculating taxable income?

Deductible expenditure:

- All legitimate business expenditure incurred to derive taxable income and expended in the tax period
- Depreciation & amortization.

Non-deductible expenditures

- VAT recoverable,
- bribes,
- fines, penalties and illicit payments,
- tax on income imposed outside UAE,
- dividends and other profit distributions,
- corporate tax,
- expenditure not incurred for business purposes,
- expenditure incurred for earning exempt income
- donations, grants, or gifts made to non-qualifying public benefit entity and any other expenditure as specified.

36. Is there any restriction on claiming full amount of deduction with respect to interest expenditure?

As per the general interest deduction limitation rule, businesses with net interest expenditure above a threshold to be set by the Minister will be allowed to deduct net interest expenditure up to 30% of their earnings before interest, tax, depreciation, and amortization (EBITDA), excluding any exempt income.

As per specific interest deduction limitation rule, where any interest on a loan obtained from a Related Party for following purposes shall not be deducted to compute taxable income.

- A dividend or profit distribution to a Related Party
- A redemption, repurchase, reduction or return of share capital
- A capital contribution to a Related Party

The interest on the related party loan will not be deductible unless the taxpayer can demonstrate that the main purpose of obtaining the loan and carrying out the transaction is not to gain a Corporate Tax advantage.

37. Can deductions be carried forward, if not utilized in current tax year?

Any unused net interest expenditure may be carried forward and utilized in the subsequent 10 tax periods.

38. Is interest deduction limitation rule applicable to all the sectors across UAE?

This rule is applicable to all sectors except banks, insurance providers, natural persons undertaking a business activity and such persons determined by the ministry.

39. Can businesses claim full amount of deduction with respect to entertainment expenditure?

A taxable person shall be allowed to claim a maximum deduction of 50% of the amount spent for any entertainment, amusement, or recreation expenditure to receive and entertain customers, shareholders, suppliers, or other business partners and including but not limited to expenditure in connection with meals, accommodation, transportation, admission fees, facilities used to provide such services.

40. Will service fees paid to local and Federal Governments be deductible for UAE Corporate Tax?

Business set up, licence renewal and other Government fees and charges incurred wholly and exclusively in the ordinary course of business are deductible for Corporate Tax purposes.

41. Will Value Added Tax paid be deductible for UAE Corporate Tax?

Only irrecoverable input Value Added Tax may be deductible for Corporate Tax purposes. Otherwise, Value Added Tax charged and Value Added Tax incurred would not impact the calculation of taxable income.

I. TAX LOSS

42. Will the UAE Corporate Tax regime allow prior year tax losses to reduce taxable income?

Tax losses can subject to certain conditions be offset against the taxable income of future periods, up to a maximum of 75% (or other percentage as specified in a cabinet decision) of the taxable income in each of those future periods. Any excess (unused) tax losses can be carried forward and used against taxable income of future Tax Periods.

Example:

A taxpayer has taxable income of AED 100,000 and carried forward losses of AED 125,000. It can offset $(75\% \times \text{AED } 100,000) = \text{AED } 75,000$ of its losses carried forward in the relevant Tax Period, reducing its taxable income to AED 25,000.

The amount of tax losses available for carry forward to subsequent Tax periods would reduce to AED 50,000 (AED 125,000 – AED 75,000).

It is to be noted that a limitation period for carry forward of losses is not specified. However, there are certain conditions to be followed before carry forward to future years.

43. Will losses incurred before the date of commencement of corporate tax be eligible for carry forward?

A taxable person cannot claim tax loss relief for losses incurred before the date of commencement of corporate tax in UAE.

44. Will losses incurred before a person becomes a taxable person under Corporate Tax Law be eligible for carry forward?

Losses incurred by a person before he becomes taxable under Corporate Tax law cannot be claimed nor carried forward.

45. Can loss from exempted activity be allowed to carried forward?

A taxable person cannot use loss incurred on a exempted activity for set off while computing the taxable income. Neither will it be allowed to be carried forward for set off in future years.

46. Will a change in ownership of the taxable person restrict the ability to use its tax losses?

Tax losses can be carried forward without limitation provided the same person or persons continue to own at least 50% of the entity. Tax losses may still be carried forward in case of change in ownership (greater than 50%) provided there is no major change in the nature or conduct of the entity's business.

47. Can one taxable person utilise the tax loss of another taxable person with in the same qualifying group?

Yes, subject to the following conditions: -

- Both such taxable persons are judicial and resident persons
- One taxable person has 75% or more ownership interest in the other or a third has 75% or more ownership interest in each of the taxable persons and such common ownership exist for the entire tax period (from tax loss till set off)
- None of the persons are exempt person or qualifying free zone person
- Both the taxable persons follow the same accounting standard and same financial year to prepare their financial statements.

J. TAX GROUP PROVISIONS

48. What are the requirements for forming a Tax Group for the purpose of Corporate Tax?

A Resident person who is a Parent Company, can make an application to the Authority to form a Tax Group with one or more other Resident persons who are its Subsidiaries, where all of the following conditions are met:

a.	The Resident Persons are juridical persons.	
b.	The Parent Company owns at least 95% of the share capital of the Subsidiary	either directly or indirectly through one or more Subsidiaries.
c.	The Parent Company holds at least 95% of the voting rights in the Subsidiary	
d.	The Parent Company is entitled to at least 95% of the Subsidiary's profits and net assets	
e.	Neither the Parent Company nor the Subsidiary is an Exempt Person.	
f.	Neither the Parent Company nor the Subsidiary is a Qualifying Free Zone Person.	
g.	The Parent Company and the Subsidiary have the same Financial Year.	
h.	Both the Parent Company and the Subsidiary prepare their financial statements using the same accounting standards.	

Note: One or more Subsidiaries in which a Government Entity directly or indirectly owns at least a 95% ownership interest as specified in (b), (c) and (d) can form a Tax Group, subject to the conditions to be prescribed by the Authority.

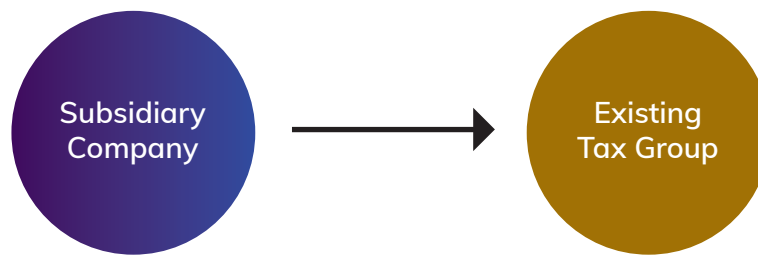
49. Who needs to make the application to the Authority to form a Tax Group?

An application to form a Tax group shall be made to the Authority by the Parent Company and each Subsidiary seeking to become members of the Tax Group.



50. Can a Subsidiary join an existing Tax Group?

A Subsidiary can join an existing Tax Group following submission of an application to the Authority by the Parent Company and the relevant Subsidiary.



[Application by parent company + new subsidiary]

51. What are the effects of forming a Tax Group?

- a) A Tax Group formed shall be treated as a single Taxable Person represented by the Parent Company.
- b) The Parent Company and each Subsidiary shall be jointly and severally liable for Corporate Tax Payable by the Tax Group for those Tax Periods when they are members of the Tax Group
- c) The joint and several liability for a Tax Period can be limited to one or more members of the Tax Group following approval by the Authority.
- d) The Parent Company and each Subsidiary shall remain responsible for complying with the provisions of Withholding tax.

52. Can a Subsidiary leave a Tax Group?

Yes, a Subsidiary shall leave the Tax Group in the following circumstances:

- a) Following approval by the Authority of an application by the Parent Company and the relevant Subsidiary.
- b) Where the relevant Subsidiary no longer meets the conditions to be a member of the Tax Group as specified in Q46.

53. In a Tax Group, can one Parent Company be replaced by another Parent Company?

Yes, the Parent Company of a Tax Group can make an application to the Authority to be replaced by another Parent Company without a discontinuation of the Tax Group, in any of the following circumstances.

- a) The new Parent Company meets the conditions specified
- b) The former Parent Company ceases to exist and the new Parent Company or a Subsidiary is its universal legal successor.

54. Can a Tax Group be dissolved?

Yes. The tax group can be dissolved by means of an application by the Parent Company or suo moto by the Federal Tax Authority at its discretion. The forms and methods for dissolution application (by the parent company) and suo moto dissolution (by the Authority) will be notified in a cabinet regulation.

55. What will be the date of formation of a Tax Group?

A Tax Group shall be formed, or a new Subsidiary shall join an existing Tax Group:

> from the beginning of the Tax Period specified in the application submitted to the Authority, or

> from the beginning of any other Tax Period determined by the Authority.

56. What will be the date of cessation of a Tax Group?

The relevant member of a Tax Group shall be treated as leaving that Tax Group:

> from the beginning of the Tax Period specified in the application submitted to the Authority, or

> from the beginning of any other Tax Period determined by the Authority or

> from the beginning of the Tax Period in which the conditions specified are no longer met.

57. How is taxable income computed for a Tax Group?

For the purposes of determining the Taxable Income of a Tax Group, the Parent Company shall consolidate the

- ▶ financial results,
- ▶ assets and liabilities

of each Subsidiary for the relevant Tax Period, **eliminating transactions** between the Parent Company and each Subsidiary that is a member of the Tax Group.

Note: The Tax Group must prepare **consolidated financial statements** in accordance with accounting standards applied in the State.

58. Is there any exception for Consolidation of financial results, assets and liabilities?

- a) Consolidation of financial results, assets and liabilities shall not apply where an asset or liability has been transferred between members of the Tax Group and either the transferor or transferee leaves the Tax Group within 2 years from the date of the transfer.
- b) Any income that was not taken into account as above shall be taken into account on the date the transferor or transferee leaves the Tax Group, and shall result in a corresponding adjustment of the cost base for Corporate Tax purposes of the relevant asset or liability.

59. Can Tax Losses of a Subsidiary be carried forward as Tax Losses of the Tax Group?

- 1) Unutilised Tax Losses** of a Subsidiary that joins a Tax Group (pre-Grouping Tax Losses) shall become carried forward Tax Losses of the Tax Group and can be used to offset the Taxable Income of the Tax Group insofar this income is attributable to the relevant Subsidiary.
- 2)** Where a new Subsidiary joins an existing Tax Group, unutilised Tax Losses of the existing Tax Group cannot be used to offset the Taxable Income of the Tax Group insofar this income is attributable to the new Subsidiary.
- 3)** Where a Subsidiary leaves a Tax Group, Tax Losses of the Tax Group shall remain with the Tax Group, with the exception of any unutilised pre-Grouping Tax Losses of the relevant Subsidiary.

60. What happens to the unutilised Tax Losses on cessation of the Tax Group?

On cessation of a Tax Group, unutilised Tax Losses of the Tax Group shall be allocated as follows:

- a)** Where the Parent Company continues to be a Taxable Person, all Tax Losses shall remain with the Parent Company.
- b)** Where the Parent Company ceases to be a Taxable Person, Tax Losses of the Tax Group shall not be available for offset against future Taxable Income of individual Subsidiaries, with the exception of any unutilised pre-Grouping Tax Losses of such Subsidiaries.

Note: The unavailability of tax losses as provided in point b shall not arise if the Parent Company (which ceases to be a taxable person) is replaced by another Company, thereby continuing the tax group.

K. TAX REGISTRATION AND DEREGISTRATION

61. Who is required to register for Corporate Tax?

Any Taxable Person shall register for Corporate Tax with the Authority in the form and manner and within the timeline prescribed by the Authority and obtain a Tax Registration Number, except in circumstances prescribed by the Minister.

The Authority shall, at its discretion and based on information available to the Authority, have the ability to register a Person for Corporate Tax effective from the date the Person became a Taxable Person.

62. Is it necessary for exempt persons to get registered for Corporate Tax?

For the purposes of an exemption from Corporate Tax, the Authority may require the relevant Person (like qualifying public benefit entities, qualifying investment funds, qualifying retirement funds, or entities wholly owned by Government controlled entities), as applicable, to register for Corporate Tax and obtain a Tax Registration Number.

63. Can a registered person deregister from Corporate Tax? What are the conditions?

A Person with a Tax Registration Number shall file a Tax Deregistration application with the Authority where there is a cessation of its Business or Business Activity, whether by dissolution, liquidation, or otherwise, in the form and manner and within the timeline prescribed by the Authority.

A Taxable Person shall not be deregistered unless it has paid all Corporate Tax and Administrative Penalties due and filed all Tax Returns due under this Corporate Tax Law, including its Tax Return for the Tax Period up to and including the date of cessation.

64. Can the Authority deregister a person from Corporate Tax? At what date?

Where a Person does not comply with the Tax Deregistration requirements (Ref: Q61), the Authority may, at its discretion and based on information available to the Authority, deregister the Taxable Person effective from the later of either:

- a)** the last day of the Tax Period in which it became apparent to the Authority that it has paid all Corporate Tax and Administrative Penalties have been paid and all Tax Returns have been filed; or
- b)** the date the Taxable Person ceases to exist.

65. What is the effect of deregistration?

If the Tax Deregistration application is approved, the Authority shall deregister the Person for Corporate Tax purposes with effect from the date of cessation or from such other date as may be determined by the Authority.

L. CALCULATION OF CORPORATE TAX PAYABLE

66. In which currency should the Tax calculation be done?

All amounts must be quantified in the United Arab Emirates dirham. Any amount quantified in another currency must be converted at the applicable exchange rate set by the Central Bank of the United Arab Emirates, subject to any conditions that may be prescribed in a decision issued by the Authority.

67. What is the order of settlement of Corporate Tax due?

The Corporate Tax due is settled in the following order:

1. First, by using the Taxable Person's available Withholding Tax Credit

2. To the extent there is a residual amount after Withholding Tax, by using the Taxable Person's available Foreign Tax Credit

3. To the extent there is a residual amount after Foreign Tax Credit by using any credits or other forms of relief as specified in a decision issued by the Cabinet

4. To the extent there is a residual amount Clause 3 above, this amount of Corporate Tax Payable must be settled as per the time limit prescribed.

68. What category of income is subject to Withholding tax?

The following income shall be subject to Withholding Tax at the rate of 0% (zero percent) or any other rate as specified in a decision issued by the Cabinet at the suggestion of the Minister:

- a)** The categories of State Sourced Income derived by a Non-Resident Person as prescribed in the decision issued by the Cabinet pursuant to this Article, insofar such income is not attributable to a Permanent Establishment of the Non-Resident Person in the State.
- b)** Any other income as specified in a decision issued by the Cabinet

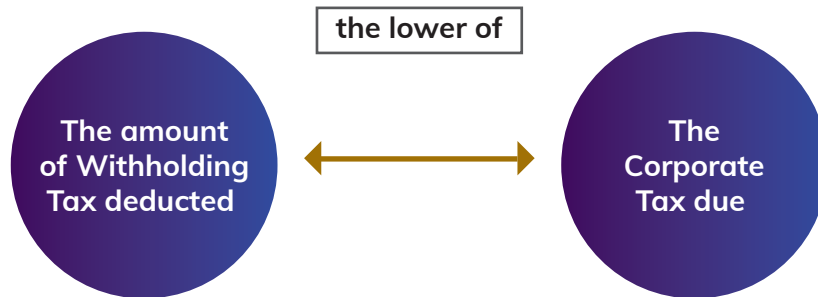
Note: The Withholding Tax payable shall be deducted from the gross amount of the payment and remitted to the Authority in the form and manner and within the timeline prescribed by the Authority.

69. How can Withholding tax credit be utilised?

If a Person becomes a Taxable Person in a Tax Period, the Person's Corporate Tax due can be reduced by the amount of Withholding Tax Credit for that Tax Period.

70. What is the maximum amount of Withholding tax credit?

The maximum Withholding Tax Credit is:



71. Will excess Withholding tax credit be refunded?

Yes, any excess Withholding Tax Credit for a Tax Period shall be refunded to the Taxable Person in accordance with Refund provision of the Law.

72. What are the provisions with respect to Foreign Tax Credit?

- a) Corporate Tax due can be reduced by the amount of Foreign Tax Credit for the relevant Tax Period.
- b) The Foreign Tax Credit cannot exceed the amount of Corporate Tax due on the relevant income.
- c) Any unutilised Foreign Tax Credit cannot be carried forward or carried back.
- d) A Taxable Person shall maintain all necessary records for the purposes of claiming a Foreign Tax Credit.

M. PAYMENT AND REFUND OF CORPORATE TAX

73. What is the timeline within which Corporate Tax should be paid?

A Taxable Person must settle the Corporate Tax Payable within 9 nine months from the end of the relevant Tax Period, or by such other date as determined by the Authority.

74. When can a person get refund of the Corporate Tax?

A Taxable Person may make an application to the Authority for a Corporate Tax refund in accordance with the provisions of the Tax Procedures Law in the following circumstances:

- a)** The Withholding Tax Credit available to a Taxable Person exceeds the Taxable Person's Corporate Tax Payable.
- b)** Where the Authority is otherwise satisfied that the Taxable Person has paid Corporate Tax in excess of the Taxable Person's Corporate Tax Payable.

Note: The Authority shall issue the Taxable Person a notice of the Authority's decision on an application for refund in accordance with the Tax Procedures Law.

N. TAX RETURNS AND CLARIFICATIONS

75. How and when should Corporate Tax returns be filed?

A Taxable Person must file a Tax Return, as applicable, to the Authority in the form and manner prescribed by the Authority no later than 9 months from the end of the relevant Tax Period, or by such other date as directed by the Authority.

76. What information is required to be disclosed in the Tax Return?

The Tax Return shall include at least the following information, as applicable:



Note: A Taxable Person shall provide the Authority with any such information, documents or records as shall be reasonably required by the Authority for the purposes of implementing the provisions of Law.

77. Is there any requirement to disclose related party transactions?

Yes, the Authority may, by notice or through a decision issued by the Authority, require a Taxable Person to file together with their Tax Return a disclosure containing information regarding the Taxable Person's transactions and arrangements with its Related Parties and Connected Persons in the form prescribed by the Authority.

If a Taxable Person's transactions with its Related Parties and Connected Persons for a Tax Period meet the conditions prescribed by the Minister, the Taxable Person must maintain both a master file and a local file in the form prescribed by the Authority.

78. What is the time limit for submission of documents related to related party transactions?

The master file and the local file must be submitted to the Authority within 30 days following a request by the Authority, or by any such other later date as directed by the Authority.

Upon request by the Authority, a Taxable Person shall provide the Authority with any information to support the arm's length nature of the Taxable Person's transactions or arrangements with its Related Parties and Connected Persons, within 30 days following the request by the Authority, or by any such other later date as directed by the Authority.

79. How long should all the records and documents relating to Corporate Tax be maintained?

The Tax Return shall include at least the following information, as applicable:

- 1)** Taxable Person shall maintain all records and documents for a period of 7 years following the end of the Tax Period to which they relate that:
 - a)** Support the information to be provided in a Tax Return or in any other document to be filed with the Authority.
 - b)** Enable the Taxable Person's Taxable Income to be readily ascertained by the Authority.
- 2)** An Exempt Person shall maintain all records that enable the Exempt Person's status to be readily ascertained by the Authority for a period of 7 years following the end of the Tax Period to which they relate.

80. What is the relevant Tax Period for the purpose of Corporate Tax?

- 1)** A Taxable Person's Tax Period is the Financial Year or part thereof for which a Tax Return is required to be filed.
- 2)** The Financial Year of a Taxable Person shall be the Gregorian calendar year, or the 12 month period for which the Taxable Person prepares financial statements.

81. Can a different Tax Period be adopted?

A Taxable Person can make an application to the Authority to change the start and end date of its Tax Period, or use a different Tax Period, subject to conditions to be set by the Authority, which will be prescribed later.

82. Can a person file clarification to the Authority on any doubts that might arise?

A Person may make an application to the Authority for a clarification regarding:

- a)** the application of this Decree-Law or
- b)** the conclusion of an advance pricing agreement with respect to a transaction or
- c)** an arrangement proposed or entered into by the Person.

Note: : The application shall be made in the form and manner prescribed by the Authority.

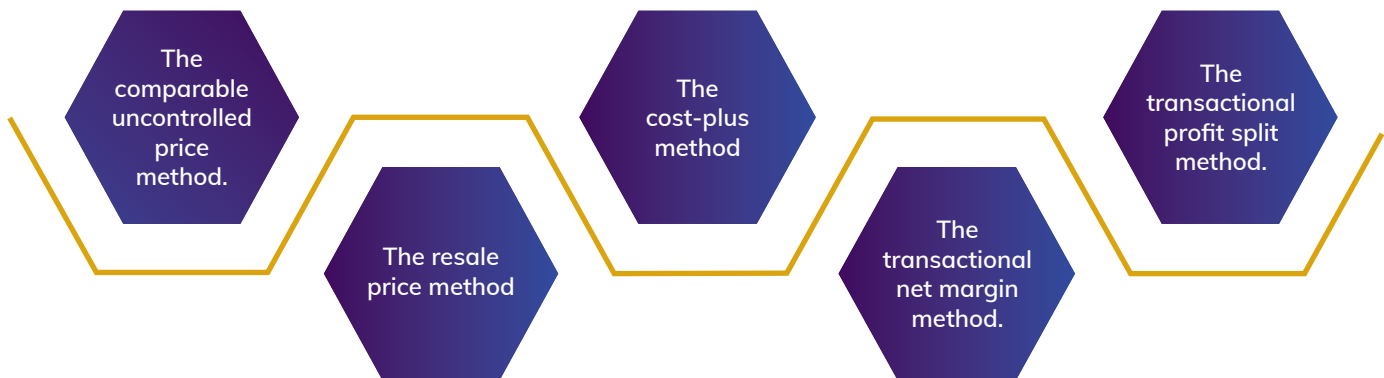
O. TRANSACTIONS WITH RELATED PARTIES AND CONNECTED PERSONS

83. On what basis will transactions with related parties and connected persons be taxed?

- 1) In determining Taxable Income, transactions and arrangements between Related Parties must meet the arm's length standard (as discussed in point 2 below) and any conditions that may be prescribed in a decision issued by the Authority.
- 2) A transaction or arrangement between Related Parties meets the arm's length standard if the results of the transaction or arrangement are consistent with the results that would have been realised if Persons who were not Related Parties had engaged in a similar transaction or arrangement under similar circumstances.

84. How can one find arm's length price?

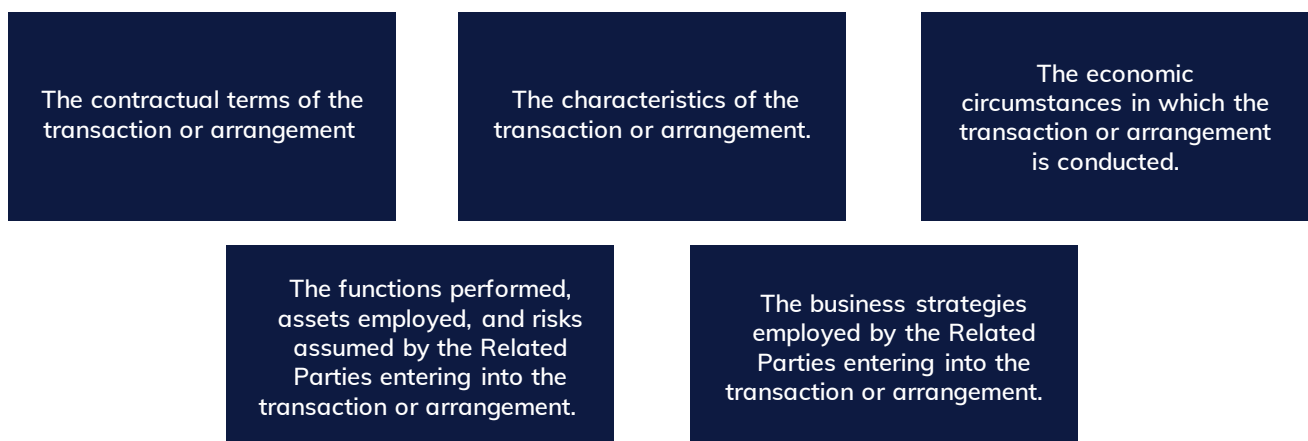
The arm's length result of a transaction or arrangement between Related Parties must be determined by applying one or a combination of the following transfer pricing methods:



Note: The Taxable Person may apply any transfer pricing method other than the methods listed above where the Taxable Person can demonstrate that none of the above methods can be reasonably applied to determine an arm's length result and that any such other transfer pricing method used satisfies the condition specified.

85. What factors are used for comparability and arm's length price identification?

The choice and application of a transfer pricing method or combination of transfer pricing methods must be made having regard to the most reliable transfer pricing method and taking into account following factors:



86. How will the Authority examine whether a transaction meets the Arm's Length standard?

The Authority's examination as to whether income and expenditures resulting from the Taxable Person's relevant transactions or arrangements meet the arm's length standard shall be based on the transfer pricing method used by the Taxable Person, provided such transfer pricing method is appropriate having regard to the factors mentioned in Q. No.83 above

87. What different actions can the Authority take with regard to transactions with related party and connected persons?

- 1) Where the result of the transaction or arrangement between Related Parties does not fall within the arm's length range, the Authority shall adjust the Taxable Income to achieve the arm's length result that best reflects the facts and circumstances of the transaction or arrangement.
- 2) Where the Authority makes an adjustment to the Taxable Income, the Authority shall rely on information that can or will be made available to the Taxable Person.
- 3) Where the Authority or a Taxable Person adjusts the Taxable Income for a transaction or arrangement to meet the arm's length standard, the Authority shall make a corresponding adjustment to the Taxable Income of the Related Party that is party to the relevant transaction or arrangement.
- 4) Where a foreign competent authority makes an adjustment to a transaction or arrangement involving a Taxable Person to meet the arm's length standard, such Taxable Person can make an application to the Authority to make a corresponding adjustment to its Taxable Income.

88. What is the meaning of Related Parties?

"Related Parties" means any of the following:

a.	Two or more natural persons who are related within the fourth degree of kinship or affiliation, including by way of adoption or guardianship
b.	<p>A natural person and a juridical person where:</p> <ol style="list-style-type: none"> 1. 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% (fifty percent) or greater ownership interest in the juridical person; or 2. the natural person, alone or together with its Related Parties, directly or indirectly Controls the juridical person.

c.	Two or more juridical persons where: <ol style="list-style-type: none"> 1. one juridical person, alone or together with its Related Parties, directly or indirectly owns a 50% (fifty percent) or greater ownership interest in the other juridical person; 2. one juridical person, alone or together with its Related Parties, directly or indirectly Controls the other juridical person; or 3. 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.
d.	A Person and its Permanent Establishment or Foreign Permanent Establishment.
e.	Two or more Persons that are partners in the same Unincorporated Partnership.
f.	A Person who is the trustee, founder, settlor or beneficiary of a trust or foundation, and its Related Parties.

89. What is the meaning of Control?

“Control” means the ability of a Person, whether in their own right or by agreement or otherwise to influence another Person, including:

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

90. What is the meaning of a Connected Person?

- 1) A Person shall be considered a Connected Person of a Taxable Person if that Person is:
 - a) An owner of the Taxable Person.
 - b) A director or officer of the Taxable Person.
 - c) A Related Party of (a) and (b)
- 2) An owner of the Taxable Person is any natural person who directly or indirectly owns an ownership interest in the Taxable Person or Controls such Taxable Person.
- 3) 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.

91. Are payments made to Connected Persons deductible from taxable income?

Yes. A payment or benefit provided by a Taxable Person to its Connected Person shall be deductible only if and to the extent:

- the payment or benefit corresponds with the Market Value of the service, benefit or otherwise provided by the Connected Person and
- is incurred wholly and exclusively for the purposes of the Taxable Person's Business.

92. Can a taxable person claim deduction on payment made to Connected persons if the conditions mentioned in Q.89 above are not satisfied?

Yes, law has exempted the following taxable persons from fulfilling the above 2 conditions for claiming the deduction:

- a) A Taxable Person whose shares are traded on a Recognised Stock Exchange.
- b) A Taxable Person that is subject to the regulatory oversight of a competent authority in the State.
- c) Any other Person as may be determined in a decision issued by the Cabinet at the suggestion of the Minister.

P. ANTI-ABUSE RULES

93. What are anti-abuse rules?

Anti- abuse rules are provided in the CT law to check that the transactions conducted by taxable persons are only for valid commercial or other non-fiscal reasons which reflects economic reality and not for obtaining a corporate tax advantage.

94. What is a corporate tax advantage?

Corporate tax advantage are artificial arrangements carried out to unscrupulously benefit from the provisions of the CT tax law like.

- Getting a refund or increased refund of tax
- Unfair avoidance or reduction of tax payable
- Deferral of payment or tax or advancement of refund of the tax
- Avoidance of an obligation to deduct or account for Corporate Tax.

95. What are the negative consequences of resorting to corporate tax advantages?

If the Federal Tax Authority during the course of its assessment understands that a taxable person has achieved an unfair corporate tax advantage, they may:

- Disallow an exemption, deduction, or relief in calculating the taxable income
- Allocate such exemption, deduction, or relief to any other person
- Recharacterize the nature of payment, receipt or other amount as the case may be or
- Disregard the effect of such advantage.

96. What pointers will be considered by the Federal Tax Authority for determining if a taxable person has achieved unfair corporate tax advantage?

The following will 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 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.

Q. VIOLATIONS, PENALTIES, AND OTHER ADMINISTRATIVE ASPECTS

97. Would there be a corporate tax assessment by the Federal tax Authorities?

Yes. A taxable person may be subject to a Corporate Tax assessment in accordance with the Tax Procedures Law and the decisions issued in the implementation of its provisions which is yet to be published.

98. What are the violations and applicable penalties in Corporate Tax law?

The violations and penalties earmarked for each violation will be provided in the implementing regulations which will be published by the Minister of Finance.

99. What will be the opening balance sheet for Corporate Tax starting for financial years starting from 01 June 2023?

The opening balance sheet shall be the closing balance sheet of the previous financial year subject to conditions and adjustments which will be prescribed by the Minister of Finance. The opening balance sheet shall be prepared taking into consideration the arm's length principle.

100. How would this Corporate Tax law be applicable in front of international agreements like the Double Taxation Avoidance Agreements signed by the UAE with different countries?

To the extent the terms of an international agreement that is in force in the State are inconsistent with the provisions of this Decree-Law, the terms of the international agreement shall prevail.

Disclaimer: This document is derived from Federal Decree law No. 47 of 2022 ('Corporate Tax Law') and does not constitute a referable legal document. Readers are requested to refer the actual Corporate Tax Law issued by the Ministry of Finance for all interpretations and tax planning.



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SHARJAH

Office No: Q1-04-006/A
P.O Box 513424
SAIF Zone

RAS AL KHAIMAH

Suite No: 103
P.O Box 5846
Abbas Al Blooshi Bldg.
Al Nakheel

INDIA

TRIVANDRUM

Shivadha Towers, 2nd floor
TC 31/480- 3, Near Canara Bank
Pettah, Trivandrum
Kerala - 695024

PUNALUR

Building No. XIII/670A,C
Kochuvilayil
Tholicodu P.O, Punalur
Kerala - 691333



GGi
INDEPENDENT MEMBER

Audit & Assurance | Tax | Advisory | Compliance | Accounting | Consulting | ICV Certifying Body