REAL ESTATE – ADDITIONAL NOTES

Part 1 - Real Estate Buying and Selling Activity (As a Legal / Juridical Person)

1. For a business with activity of Real Estate Buying and Selling, (ie, the properties are not held for rental income or long term investment or for use in the business but rather for buying and selling and profiting out of the activity), the properties are considered as inventory as per IFRS. However, if the properties are rented during the financial year, and we if can prove to FTA that the intention is holding for rental income and long term capital appreciation, even if the activity is buying and selling, we can classify it as investment properties.

2. As per IFRS IAS 2 Inventories, FIFO and Weighted Average Cost valuations are allowed. Buyer intending to continuously buy the inventory and if the investment in inventory scaling up with time with higher unit price, its better to use weighted average cost method for better tax benefits. However, if the buyer is scaling down on the purchases with lower unit price, its better to use FIFO method. This would not change the tax liability overall but only adjust the timing of the tax liability occurrence.

   For Eg:
   Eg 1. A company currently has an inventory of AED 10million with 10 properties, and the company buys additional 5 properties valuing AED 20 million, the weighted average cost method values each property at AED 2 million per property as per weighted average cost (ie AED 30 million for 15 properties) whereas initial value was only AED 1 million per property. In the FIFO method, it would be based on the purchase price of the inventories. Lets say they sold the 3 properties:

   1. FIFO method Cost of Goods Sold (COGS) would be – Purchase price of the properties which we assume AED 1 million per property, the COGS would be AED 3 million;
   2. Under Weighted Average Cost – the COGS would be AED 6 million, hence the benefit on the tax would 9% of the difference on the COGS.
      However, as discussed before, these do not reduce the tax liability overall, rather adjust tax liability to a later period.

   For Eg 2

   If the Company has inventory of AED 10million and the first bought property is AED 5million, second property is AED 3 million, the rest of the property is totally valued at AED 2million, Company additionally purchased 5 properties worth AED 5 million each valuing AED 1 million, the Company sold 2 properties:

   As per FIFO method the COGS would be AED 8million whereas as per Weighted average cost the COGS would be AED 2 million, the tax liability would be increased by 9% on difference in the COGS. Again, as discussed before these do not increase the tax liability overall, rather makes the tax liability occur earlier.

   Hence its important to understand how the company's unit prices are in the current inventory and how the company is planning to buy the inventory in the future in terms of unit price to make a better tax planning.

   If the company is continuously planning to increase the unit price in the future, adopting the Weighted average cost method would be beneficial to push the tax liability to a further period.

3. Companies can also plan to charge the owner/partner/directors salary that is reasonable as a deduction as anyother expenses part of business. However here the ‘Connected Person’ as per the FTA applies and if the gross payment to a connected person exceeds AED 500,000, such has to be disclosed in the filling.

4. How off plan properties are treated?
   1. Off plan property buyers do not have the legal title or physical control of the property; however, the purchase is bound by a Sale Purchase Agreement (SPA) and a significant amount must be paid from the beginning including the transfer fee charged by the government, additionally the buyers have the full right of economic benefits from the asset, the seller cannot unilaterally cancel the SPA without payment defaults.
   2. There are two scenarios in relation to recognition:
      a. The Buyer has the resell options without further conditions from the Seller:
         i. In this scenario, the inventory can be recognized;
         ii. The inventory is recognized at full value and the payable is recognized as payable.
      b. The Buyer does not have the resell options without the approval from the Seller:
         i. In this scenario the inventory cannot be recognized;
         ii. The paid shall be treated as the prepayments / advance paid to the vendor.

5. Commercial Properties:
   1. While residential properties are VAT 0% rated for the first supply if transferred or sold within 3 years after completion, the second supply of residential properties are VAT exempt (the difference between the 0% rated and Exempt being the 0% rated supplies can claim input VAT whereas exempt supplies cannot claim input VAT), the commercial properties are charged with 5% VAT on purchases. Also if the company rents it out and yearly revenue exceeds AED 375,000, they should register for VAT. Registering for VAT would help to claim the input VAT on purchasing the commercial property;
   2. The commercial properties are let out to the Companies and hence VAT is considered normal and is not considered as rental and the tenants can claim the input VAT). Hence, its ideal to register for VAT, claim the input VAT on purchases, charge VAT on rentals, and charge VAT on selling the property.
   3. On selling or buying of commercial properties, the price is usually quoted ‘Price + VAT’ hence, charging VAT on sales price wont in general affect the pricing or the market acceptance.
   4. If the commercial properties are purchased by a company and leased out under company name, the VAT treatment is easier and the company charges VAT as normal and claims the credit. Also it can claim the input VAT paid on the purchase of the commercial property. If the same was purchased by an individual or jointly by individuals, if the taxable value (rental) exceeds AED 375k a year, they need to register for VAT and charge VAT on the rental. The individual or the joint owners shall register in the FTA as individual or Association of Persons as the case may be along with the property ownership document (Title Deed) and purchase invoice. Its always advisable to register as the buyers can claim the input VAT paid on the purchase as its used for providing taxable services. They can claim the entire input VAT paid on the purchase. Further when they sell the property, they shall also charge VAT on the sale of that property. Its to be noted that individuals / association of individuals owning commercial property is subject to VAT if the taxable supplies exceed the threshold, however, they are not subject to corporate tax as the income is counted real estate income.

   5. Its to be noted that Capital Asset Scheme applies if the property is fully or partly changed for exempt supplies or for own use later. Under the capital asset scheme, the full VAT paid on purchased previously claimed shall be adjusted along with the life of the asset, and proportion of the asset used for exempt supplies, and such proportionate amount for the remaining life of the asset and the VAT on such amount shall be added back as payable to FTA.

6. Capital Asset Scheme reverses the input tax claimed only if the asset is stopped from used for taxable supplies or sold without charging VAT on it. If sold along with VAT, the input tax claimed shall not be reversed.

7. Its always mandatory to have tax invoice to claim for the VAT, however, in case of the loss of documents, the duplicates must be arranged, incase of the non arrangement of duplicates, its always possible to communicate and reason with FTA with other documents such as PO, Delivery note, contracts, SPA, title deeds, bank transfer note, Cheque copy, bank statements etc as applicable.

6. International Tax Implications:
    1. This needs to be addressed on each country level of the buyers. However, in general having a company could have the following benefits:
        a. Company can have a UAE bank account (Investors having a residency visa can also have UAE bank account);
        b. Might be easier to not get taxed than receiving the UAE income directly to buyers home country bank account where that might be taxable. The Home country authorities might have access to their UAE financial information of its citizens / residents whether its company or personal level. All of these depends on the bilateral cooperation between the home country and UAE. Refer to the bilateral agreements or discuss with the tax consultants of the home country.
        c. Also, if theres a double tax avoidance agreement between the home country and UAE, the tax amount in the UAE can be deducted from the tax liability in the home country. If theres no Double tax avoidance agreement between UAE and home country, refer to each country level if they provide foreign tax credit.

Part 2 – Transitional Rules as per FTA

1. Background and purpose of the transitional rules

For Corporate Tax purposes, a Taxable Person's opening balance sheet shall be the closing balance sheet prepared for the period immediately before their first Tax Period. This establishes the starting point for the application of Corporate Tax.

For instance, for assets or liabilities recorded on a historical cost basis, the opening balance sheet will be the net book value as of the last day of the Financial Year immediately preceding the first Tax Period, and not the Market Value at that date or the full original acquisition cost (if it is already partially depreciated or amortised).

During or after their first Tax Period, Taxable Persons that apply the historical Cost Method of Accounting might find themselves, upon disposal of assets or liabilities, realising gains which are partially associated with periods preceding their first Tax Period.

However, if assets or liabilities are recorded on a fair market value basis, the opening balance sheet in their first Tax Period will be the Market Value of the assets or liabilities, and the gain on disposal will not include gains related to periods preceding the first Tax Period.

Thus, where a Taxable Person applies the historical cost basis, the transitional rules aim to limit the taxable gain to the gain which arises after the start of the first Tax Period, in relation to certain categories of assets as specified in Ministerial Decision No. 120 of 2023.

Example 14: Asset acquired prior to the first Tax Period A Taxable Person acquired an asset in a period prior to their first Tax Period for AED 1,000 (an arm's length amount). The asset is recorded on the historical cost basis Under the historical cost basis, the asset is reported in the opening balance sheet at the start of the first Tax Period for the same original cost of AED 1,000 (assuming no depreciation has previously been recorded on that asset), even though the Market Value of the asset at the start of the first Tax Period is AED 1,700.

During that first Tax Period, the asset is disposed of for AED 2,200 realising a taxable gain of AED 1,200 (sale price AED 2,200 less cost AED 1,000), out of which AED 700 relates to periods prior to the first Tax Period (with AED 500 arising subsequently). The asset is recorded on the fair market value basis The realised taxable gain will be AED 500 (sale price AED 2,200 less cost AED 1,700). Considering the same facts, if alternatively, the Taxable Person applies the fair market value basis, the asset will be reported in its opening balance sheet for AED 1,700, the Market Value.

Under the transitional rules, Taxable Persons with Financial Assets or Financial Liabilities, Immovable Property and Intangible Assets owned before the first Tax Period and recorded on historical cost basis may elect to adjust their Taxable Income to exclude gains or losses related to the period(s) preceding the first Tax Period as follows:

- Exclude gains and losses when disposing of Financial Assets and Financial Liabilities.
- Exclude just gains when disposing of Immovable Property and Intangible Assets.

The election can only be made for the relevant assets or liabilities that are measured on the historical cost basis. The election must be made upon the submission of the first Tax Return and is irrevocable except under exceptional circumstances and pursuant to approval by the FTA.

2. Gains on disposal of Qualifying Immovable Property

A Taxable Person may elect to adjust their Taxable Income for calculating the gains on the disposal of any Qualifying Immovable Property.64 The election should be made for each Qualifying Immovable Property (i.e. on an asset-by-asset basis) upon submission of the first Tax Return.

a. What is a Qualifying Immovable Property

A Qualifying Immovable Property is defined as any Immovable Property that meets all of the following conditions:

- it is owned prior to the first Tax Period;
- it is measured in the Financial Statements on a historical cost basis; and
- it is disposed of or deemed to be disposed of during or after the first Tax Period for the purposes of determining the Taxable Income for a value exceeding the net book value.

b. Two methods to compute the excluded amount of the gain

In relation to the Qualifying Immovable Property, there are two methods to compute the excluded amount of the gain and the Taxable Person may elect either method. The methods are as follows:

i. Method 1: Valuation method

The excluded amount is the amount of the gain that would have arisen had the Qualifying Immovable Property been disposed of at Market Value at the start of the first Tax Period, and considering the cost of the Qualifying Immovable Property as the higher of the original cost and the net book value.

The Market Value at the start of the first Tax Period shall be determined by the relevant government competent authority in the UAE such as the Department of Municipalities and Transport (DMA) in Abu Dhabi, the Dubai Land Department (DLD) in Dubai, or similar authorities for each Emirate. It may also be determined by outsourced third parties authorised by the government competent authority.

The Market Value will, therefore, be determined based on the government competent authority's rules and regulations.

Example 15: Valuation method on Qualifying Immovable Property

Company C has a first Tax Period from 1 August 2023 to 31 July 2024. On 1 August 2023, the opening balance sheet shows the following in respect of an Immovable Property:

- Original cost: AED 20 million
- Accumulated depreciation: AED 3 million
- Net book value: AED 17 million

The Immovable Property was purchased on 1 August 2020 (assumed to be at arm's length) and is measured on a historical cost basis.

The Immovable Property is a Qualifying Immovable Property.

In the Tax Return of the first Tax Period, Company C makes an election for the transitional relief (under the valuation method) in respect of the Immovable Property.

Market Value at the start of the first Tax Period:

Step 1 – Company C obtains a valuation from the relevant government competent authority in the UAE and the Market Value of the Qualifying Immovable Property on 1 August 2023, as determined by the government competent authority is AED 24 million.

Taxable Income adjustments upon disposal:

Step 2 - Company C sells the Immovable Property for AED 27 million on 31 July 2024, when its net book value is AED 16,000,000 following the recognition of depreciation of AED 1,000,000 for the year ended 31 July 2024. The Taxable Income adjustments for the Tax Period of disposal will therefore be as follows:

Calculation of total gain Amounts (in AED)

Sale price 27,000,000

Net book value 16,000,000

Total gain 11,000,000

Calculation of excluded gain (i.e. pre-Corporate Tax gain) Market Value 24,000,000

Higher of the original cost and the net book value (i.e. AED 20,000,000 vs AED 17,000,000, hence 20,000,000)

Excluded gain (Market Value - Higher of the original cost and the net book value) 4,000,000

Calculation of taxable gain (i.e. post-Corporate Tax gain) Taxable gain (Total gain – Excluded gain) 7,000,00

ii. Method 2: Time apportionment method

The excluded gain amount is calculated by applying four steps to pro-rate the excluded gain based on the period elapsed between the time the asset was purchased and the start of the first Tax Period.

To explain these steps, the same facts mentioned in the previous example are used below (except that the Taxable Person elects to use the time apportionment method):

Example 16: Time apportionment method on Qualifying Immovable Property (same facts as Example 15) The Taxable Income adjustments for the Tax Period of disposal will be as follows: Calculation of the excluded gain (i.e. pre-Corporate Tax gain):

- Step 1 - Calculate the amount of gain that would have arisen upon the disposal of the Qualifying Immovable Property, had its cost been equal to the higher of the original cost and the net book value at the start of the first Tax Period. Gain = 27,000,000 – 20,000,000 = 7,000,000
- Step 2 - Divide the number of days the Qualifying Immovable Property is owned before the first Tax Period by the total number of days the Qualifying Immovable Property is owned.
- A =the number of days the Qualifying Immovable Property is owned before the first Tax Period divided by The total number of days the Qualifying Immovable Property is owned A =1,094 (Number of days between 1 August 2020 and 31 July 2023) 1,460 (Number of days between 1 August 2020 and 31 July 2024) = 0.7493
- Step 3 - Multiply the amount calculated in Step 1 by the amount calculated in Step 2
- B = Gain x A, hence B = 7,000,000 x 0.7493 = 5,245,100
- Step 4 - The amount calculated in Step 3 shall be the amount of gain on the Qualifying Immovable Property excluded from the Taxable Income during the relevant Tax Period. Excluded gain amount = 5,245,100
- Calculation of the taxable gain (i.e. post-Corporate Tax gain): Total gain = Sale price – Net book value = 27,000,000 – 16,000,000 = 11,000,000
- Taxable gain = Total gain – Excluded gain = 11,000,000 – 5,245,100 = 5,754,900

Transitional Rules – General

In order to compute the Corporate Tax liabilities for a Taxable Person's first Tax Period, it is necessary for Taxable Persons to have both an opening and a closing balance sheet. The opening balance sheet for the first Tax Period should be the closing balance sheet on the last day of the Person's Financial Year that ends immediately before its first Tax Period commences.

If no accounts were prepared for the previous Financial Year, a closing balance sheet will have to be prepared under an appropriate accounting standard, as applicable and regardless of whether the Cash Basis of Accounting or Accrual Basis of Accounting is applied.

Ministerial Decision No. 120 of 2023 includes certain adjustments a Taxable Person may make (by way of an election) in relation to intangible assets, Immovable Property, and Financial Assets and Financial Liabilities owned by the Taxable Person before it becomes subject to Corporate Tax.

These elections must be made on the submission of the Taxable Person's first Tax Return, and are deemed irrevocable except under exceptional circumstances that require FTA approval.

In relation to Immovable Property, if Immovable Property owned by the Taxable Person prior to the Taxable Person's first Tax Period is recorded on a historical cost basis in the Financial Statements, the Taxable Person can elect in its first Tax Period to adjust its Taxable Income in calculating the gain on the disposal of any Immovable Property in order that only gains accruing

while within the scope of Corporate Tax will be taxed. The Taxable Person can select whether they use a 'time apportionment method' or a 'valuation method' when determining the amount of the gain that shall be excluded.

The 'valuation method' allows the Taxable Person to exclude the amount of the gain that would have arisen at the start of their first Tax Period had the Immovable Property been disposed of at Market Value and the cost of the Immovable Property was the higher of the original cost and the net book value.

This would require the Taxable Person to determine the Market Value of the Immovable Property at the start of their first Tax Period on the basis as set out in Ministerial Decision No. 120 of 2023. Alternatively, the Taxable Person could choose to use the 'time apportionment method' to exclude the amount of the gain that would have arisen at the start of their first Tax Period.

This allows the Taxable Person to exclude a proportion of the total gain in accordance with the proportion of time the Immovable Property was owned prior to the start of the Taxable Person's first Tax Period and the time of disposal of the Immovable Property. For intangible assets, any apportionment must be on the basis of time apportionment; 247 while for Financial Assets and Financial Liabilities, any apportionment must be on the basis of valuations at the start of the period where the assets came within the scope of Corporate Tax.

For further details on these transitional rules, readers are advised to consult Ministerial Decision No. 120 of 2023 on the Adjustments Under the Transitional Rules. (provided in the attachment)

Transitional Rules – Tax Returns Filings

This election allows you to adjust your Taxable Income to exclude gains or losses related to periods preceding the first Tax Period if you owned Qualifying Financial Assets or Qualifying Financial Liabilities, Qualifying Immovable Property and/or Qualifying Intangible Assets at the start of your first Tax Period and recorded them on a historical cost basis.48 If you have not recorded the relevant assets on a historical cost basis in your financial statements, you are not entitled to make this election in relation to such assets.

If you make an election to apply the transitional rules as per the questions below, you will be guided to the relevant schedule in the Tax Return (see Section 21).

5.2.1 Is the Taxable Person making an election to adjust Taxable Income for gains recognised on any Qualifying Immovable Property owned prior to the first Tax Period?

5.2.2 Is the Taxable Person making an election to adjust Taxable Income for gains recognised on all Qualifying Intangible Assets owned prior to the first Tax Period?

5.2.3 Is the Taxable Person making an election to adjust Taxable Income for gains and losses on all Qualifying Financial Assets and/or Qualifying Financial Liabilities owned prior to the first Tax Period?

Answer 'Yes' or 'No' as applicable.

This election can only be made when filing your first Tax Return. With the exception of Qualifying Immovable Property, where it is possible to make the election for individual assets, the election applies to all relevant categories of assets and/or liabilities.

This election is not available if you use the Cash Basis of Accounting. Hence, this question will not be visible if you answered 'Cash' to the question 'Has the Taxable Person's Financial Statements been prepared under the cash or accrual basis' in Taxable Person details (see Section 4).

If you are a Tax Group, the election for transitional rules works as follows:

(a) If none of your members had a first Tax Period before joining the Tax Group, you (i.e. the Tax Group) can independently elect for transitional rules in your first Tax Period.

(b) If any of your members had a first Tax Period before joining the Tax Group and your members previously made elections in relation to certain assets, then the relevant election will continue to apply only to such assets in the Tax Group.

If you were a member of a Tax Group referred to in scenario (a) above but left the Tax Group or the Tax Group ceases to exist, you are required to follow the same election as the Tax Group. Hence, the election made by the Tax Group of which you were formerly a member, will be pre-populated here.

If you were a member of a Tax Group referred to in scenario (b) above but left the Tax Group or the Tax Group ceases to exist, you will continue with the same elections which you made on a standalone basis prior to joining the Tax Group.

Transitional Rules Schedules

The Transitional Rules Schedules apply where the Taxable Person (or in certain circumstances, another person) has met all the conditions for, and has elected for the application of the transitional rules as per Ministerial Decision No 120 of 2023, and includes the following schedules:

- transitional rules in relation to Qualifying Immovable Property;
- transitional rules in relation to Qualifying Intangible Assets; and
- transitional rules in relation to Qualifying Financial Assets or Liabilities.

A. Qualifying Immovable Property Schedule

This schedule should be completed in your first Tax Period if you have made the election to exclude an element of the gain which may arise in respect of Qualifying Immovable Property owned prior to your first Tax Period, in terms of the transitional rules.

This schedule must be completed regardless of whether you have actually disposed of the relevant Immovable Property in the Tax Period. However, it will only result in an adjustment in the tax computation part of the Tax Return in a Tax Period in which a relevant asset is disposed of by you.

For further information on this transitional adjustment, see the Corporate Tax Guide on Accounting Standards and Interaction with Corporate Tax.

Schedule of Qualifying Immovable Properties subject to the election

This part is only completed in the Tax Return for your first Tax Period or when an asset is transferred within a Qualifying Group or transferred between members of a Tax Group. In this part each property must be disclosed separately.

21.1.1 Address of the Qualifying Immovable Property

Provide the detailed address i.e. street, area, city, Emirate.

21.1.2 Makani Number

Provide this (if available), for example the Makani number in Dubai or Onwani in Abu Dhabi.

21.1.3 Date of ownership

Enter the date you acquired each Qualifying Immovable Property. The date format is presented with a pre-populated calendar. Based on your preference, you may either input the date or select from the calendar.

The date of ownership can be impacted if you are a Tax Group or if you are a member of a Qualifying Group. In this regard the following should be noted:

• If you are a Tax Group formed in the first Tax Period following the introduction of Corporate Tax, enter the date when the Qualifying Immovable Property was first owned by a member of the Tax Group before Corporate Tax was effective.

• If you are a Tax Group that formed other than in the first Tax Period following the introduction of Corporate Tax, enter the date the Qualifying Immovable Property was first owned by a member of the Tax Group which made the election in its own capacity before joining the Tax Group.

• If you are a member of a Qualifying Group, enter the date when the Qualifying Immovable Property was first owned by you or any Person with whom you are in a Qualifying Group before the Corporate Tax was effective.

21.1.4 Original cost on commencement of the first Tax Period

Enter the original purchase or the acquisition cost of the Qualifying Immovable Property. In relation to a Tax Group or Qualifying Group the following should be noted:

• If you are a Tax Group (formed in the first Tax Period following the introduction of Corporate Tax) or are a member of a Qualifying Group, enter the original purchase or acquisition cost recorded in the balance sheet by the first owner of the asset in the Tax Group, or Qualifying Group, as the case may be, before the Corporate Tax was effective.

• If you are a Tax Group that formed other than in the first Tax Period following introduction of the Corporate Tax, enter the original purchase or acquisition cost recorded in the balance sheet by the member of the Tax Group which held the asset before Corporate Tax was effective and, before joining the Tax Group, made the election in its own capacity in its first Tax Period.

21.1.5 Net book value on commencement of the first Tax Period

This refers to the opening balance (net book value) of the Qualifying Immovable Property per the Taxable Persons' financial Statements in relation to its first Tax Period.

In relation to a Tax Group the following should be noted:

• If you are a Tax Group formed in the first Tax Period following the introduction of Corporate Tax, enter the value recorded in the opening balance sheet of the Tax Group.

• If you are a Tax Group that formed other than in the first Tax Period following introduction of the Corporate Tax, enter the net book value recorded in the opening balance sheet by the member of the Tax Group who held the asset before Corporate Tax was effective and, before joining the Tax Group, made the election in its own capacity in its first Tax Period.

In relation to a member of a Qualifying Group, the following should be noted:

• If you are a member of a Qualifying Group, enter the value recorded in the opening balance sheet by the member of the Qualifying Group who held the asset at the start of its first Tax Period.

21.2. Schedule of Qualifying Immovable Properties that have been disposed of during the Tax Period

Complete this part when you dispose of, or are deemed to dispose of, a property which is subject to the election.

21.2.1 Address of the Qualifying Immovable

Property Select from the drop-down list.

21.2.2 Makani Number

Enter if available/known.

21.2.3 Date of ownership

This box may be pre-populated based on the information you have provided in your Tax Return for the first Tax Period. However, if the date is not already present, enter the date manually. See the comments under 'Date of ownership' in the previous section, 'Schedule of Qualifying Immovable Properties subject to the election' (see Section 21.1).

21.2.4 Date of sale

Enter the date of the sale. This should be consistent with the date recognised for Financial Statements purposes i.e. as per IFRS (or IFRS for SMEs if applicable).

21.2.5 Original cost on commencement of the first Tax Period

This box may be pre-populated based on the information you have provided in your Tax Return for the first Tax Period. However, if not reflected here enter the cost manually. See the comments under 'Original cost on commencement of the first Tax Period' in the previous section, 'Schedule of Qualifying Immovable Properties subject to the election' (see Section 21.1).

21.2.6 Net book value on commencement of the first Tax Period

This box may be pre-populated based on the information you have provided in your Tax Return for the first Tax Period. However, if not reflected here enter the net book value manually. See the comments under 'Net book value on commencement of the first Tax Period' in the previous section, 'Schedule of Qualifying Immovable Properties subject to the election' (see Section 21.1).

21.2.7 Was the Qualifying Immovable Property transferred and Business Restructuring relief or relief for transfers within a Qualifying Group was applied?

This question is relevant if you are a Transferor in relation to a transaction in respect of which Qualifying Immovable Property was transferred and Qualifying Group relief or Business Restructuring Relief was elected in relation to such transfer. If you answer yes, fields 21.2.10 to 21.2.15 will not be applicable.

21.2.8 Name of transacting party

21.2.9 Transaction counterparty Corporate Tax TRN

Provide the name and the TRN of the Transferee to whom the Qualifying Intangible Asset was transferred as part of a Qualifying Group or Business Restructuring Relief transaction.

21.2.10 Method of adjustment

In relation to Qualifying Immovable Property, there are 2 methods to compute the excluded gains under transitional rules - valuation method and time apportionment method.220 Select the relevant method that you have used to compute the excluded gain.

21.2.11 Market Value of the Qualifying Immovable Property on commencement of first Tax Period

If you have elected the valuation method, enter the Market Value of the Qualifying Immovable Property at the start of your first Tax Period. The Market Value is determined by the relevant government competent authority in the UAE such as the Department of Municipalities and Transport (DMA) in Abu Dhabi, the Dubai Land Department (DLD) in Dubai, or similar authorities for each Emirate. It may also be determined by outsourced third parties authorised by the government competent authority.

In relation to a Tax Group, the following should be noted:

- If you are a Tax Group formed in the first Tax Period following the introduction of Corporate Tax, enter the Market Value of the Qualifying Immovable property at the start of your first Tax Period.

- However, if you are a Tax Group that was formed other than in the first Tax Period following introduction of the Corporate Tax, enter the Market Value of the Qualifying Immovable Property at the start of the first Tax Period of the member of the Tax Group who held the asset before Corporate Tax was effective and, before joining the Tax Group, made the election in its own capacity in its first Tax Period.

If you are a member of a Qualifying Group, enter the Market Value of the Qualifying Immovable Property at the start of the first Tax Period of the member of the Qualifying Group who first held the asset at the time of commencement of Corporate Tax.

21.2.12 Number of days the Qualifying Immovable Property was owned prior the commencement of first Tax Period

If you have elected the time apportionment method, enter the total number of days from the first ownership day until the day preceding the start of the first Tax Period.

If you are a Tax Group (formed in the first Tax Period following the introduction of Corporate Tax) or are a member of a Qualifying Group, provide the combined ownership period when the asset was held before Corporate Tax became effective, by juridical persons who would qualify as members of a Tax Group or members of the same Qualifying Group had Corporate Tax been effective at the time.

21.2.13 Total number of days the Qualifying Immovable Property has been owned

This is calculated automatically.

21.2.14 Proceeds on disposal of the Qualifying Immovable Property

Enter the proceeds derived in the current Tax Period, converted to AED if the transaction was in another currency.

21.2.15 Amount excluded from Taxable Income

This is calculated automatically based on Article 2 of Ministerial Decision No. 120 of 2023 and will only exclude a gain and not a loss.

Article 61 – Transitional Rules

1. A Taxable Person's opening balance sheet for Corporate Tax purposes shall be the closing balance sheet prepared for financial reporting purposes under accounting standards applied in the State on the last day of the Financial Year that ends immediately before their first Tax Period commences, subject to any conditions or adjustments that may be prescribed by the Minister.

2. The opening balance sheet referred to in Clause 1 of this Article shall be prepared taking into consideration the arm's length principle in accordance with Article 34 of this Decree Law.

3. For the purposes of Clauses 1 and 2 of this Article, and as an exception to the provisions of Article 70 of this Decree-Law, the provisions of Article 50 of this Decree-Law shall apply to transactions or arrangements entered into on or after the date this Decree-Law is published in the Official Gazette.

4. The Cabinet may, at the suggestion of the Minister, issue a decision prescribing other transitional measures related to the implementation of this Decree-Law and the application of its provisions.

22.1. Income/Losses which will not subsequently be reported in the income statement Schedule

This schedule needs to be completed by you if you have recognized gains and losses in your Financial Statements (other than the income statement) which will not subsequently be recognized in the income statement.

If this amount is an unrealised gain or loss (which will not be subsequently recognised in the income statement) and you have elected for realisation basis, the amount of unrealised gain or loss should not be entered in this schedule or the 'Unrealised gains or loss' schedule. In other words, this amount of unrealised gain or loss should not be reflected in the Tax Return.

22.1.1 Description of the asset / liability

Enter a description.

22.1.2 Is the income or loss derived from an unrealised gain / loss?

Select 'Yes' or 'No' as relevant.

22.1.3 Has the Taxable Person elected to apply the realisation basis?

This is pre-populated based on your response in Section 5.1. 4

If the answer to question 22.1.2 and this question is 'Yes', the fields below will not be visible to you.

22.1. 4 Original cost of the asset/liability

Enter the amount as per your Financial Statements when asset or liability was purchased or acquired.

22.1.5 Net book value of the asset / liability at the end of the Tax Period

Enter the amount as per the Financial Statements.

22.1.6 Income recognised in the Financial Statements but not in the income statement

22.1.7 Loss recognised in the Financial Statements but not in the income statement

Enter the income or loss, as applicable, for each asset or liability.

22.1.8 Total adjustment in respect of income

22.1.9 Total adjustment in respect of losses

This is calculated automatically as a total of amounts in fields 22.1.6 and 22.1.7. This amount will be pre-populated in your tax computation (see Section 7.4)

22.2. Unrealised gains/losses Schedule

This schedule must be completed if you have made the election to be subject to tax on the realisation basis (see Section 5.1) and have unrealised gains or losses in the Tax Period (see Section 7.5).

For further information, see the Corporate Tax Guide on Accounting Standards and Interaction with Corporate Tax.

22.2.1 Description of the asset / liability

Enter a description sufficient to identify the specific asset/liability.

22.2.2 Original cost of the asset / liability

Enter the cost of the asset/ liability recorded in your Financial Statements in the year when asset/ liability was purchased or acquired or created.

22.2.3 Net book value of the asset / liability at the end of the Tax Period

Enter the amount as per the Financial Statements.

22.2.4 Unrealised gains recognised during the Tax Period

22.2.5 Unrealised losses recognised during the Tax Period

Enter the amount in the relevant field. For assets (other than Financial Assets), only unrealised gains/losses in excess of the original cost are excluded. For Financial Assets, all unrealised gains/losses are excluded.

22.3. Deferred gains or losses Schedule

This schedule must be completed in respect of unrealised gains or losses which were not previously subject to Corporate Tax due to an election to apply the realisation basis, which have subsequently been realised in the current Tax Period. For further information, see the Corporate Tax Guide on Accounting Standards and Interaction with Corporate Tax.

22.3.1 Description of the asset/liability

Enter a description sufficient to identify the specific asset/liability.

22.3.2 Date that the realisation event occurred

For an asset, enter the date that it was sold, disposed of, transferred, settled or became worthless. For a liability, enter the date that it was settled, assigned, transferred or forgiven.

22.3.3 Tax Period(s) in which the unrealised gain(s)/loss(es) was deferred?

For each unrealised gain or loss, enter the Tax Period in which it was originally excluded from Taxable Income.

22.3.4 Were any unrealised gain(s)/ loss(es) previously recognised through the Income Statement?

Enter 'Yes' or 'No' as applicable.

22.3.5 Amount of previously unrealised gains which have been realised in the current Tax Period

22.3.6 Amount of previously unrealised losses which have been realised in the current Tax Period Enter the gain or loss calculated as per Article 2 of Ministerial Decision No. 134 of 2023.

Notes On Transitional Rules

- For taxable persons following the fair value based accounting, the property prices as of the opening balance sheet of the first taxable period must be representing the fair market value of the property, however, the taxable persons accounting under the historic cost method, the property must be recorded at the original cost net of depreciation if any as of the opening balance sheet date of the first taxable period, to avoid this disadvantage, the transitional rules come in to play. Hence, it should be noted that the transitional rules in respect of the immovable property benefits apply to the taxable persons that accounted the relevant properties under historic cost method of accounting, and not for the immovable properties accounted under the fair value based accounting.

- In the two methods available under the transitional rules, valuation method would require valuation report and for properties that are not possible to receive valuation report, its better to choose the time apportionment method.
- Its important to note that the transitional rules shall be applied during the filing of the first tax period for all taxable persons except tax group which is explained in detail in this document and other files related to the transitional rules. The legal persons holding properties shall ensure that the transitional rules benefits are applied while the first filing to ensure that the benefits are received. If not, the properties when sold in the future shall attract the tax even for the value appreciated before the first tax period.
- If the taxable person accounted the relevant properties using the fair value based accounting (can only be used for non depreciated asset as per FTA), during the tax filing there are two options available:
  a. Realisation method:
     i. Under this method, any unrealized gains during the tax period shall not be taxed and shall be taxed on the event of realisation;
     ii. However, the tricky part is FTA requires certain procedures to be completed (as discussed before in the document and other files) during tax filings. This procedures requires the entire information about the original cost of the asset, Net book value, total income or loss recognized in the financials but not in income statement and then auto calculates the tax due. In this method, FTA has a schedule called Deferred Gains or Losses schedule which asks for all details about the property such as date of purchase, amount, FV on the date of first tax period, Sales price, etc. This method, FTA may ask for the valuation certificate as of the first tax period beginning.

  b. Non – Realization Method:
     i. In this method, any incomes / losses recognized in the financial statements but not in the income statements are adjusted during tax filings. Effectively meaning the unrealized gains or losses are taxed or considered while computing the taxable income.
     ii. The good thing under this is the FTA is not asking for details related to original purchase price and selling price. This would be easier for not getting taxed for gains prior to the first tax period. However, the con under this method is any unrealized gains during the tax period is taxed even when no sale or realization has happened. Other Again, for certain unrealised gains, its rather judgements than absolute information, the taxable person can use the judgement whether to account the unrealized gains / losses in a tax period

     It has to be noted that the election to use realization or non realization method is irrevocable unless obtained permission from FTA (subject to approval only)

- Off Plan Properties:
  a. In the real estate context, "off-plan" property refers to a property that is purchased before it's fully constructed. This means the buyer is essentially investing in a property based on plans, models, or architectural drawings, rather than a finished, ready-to-move-in unit. The key difference with the off plan properties are that the 'title deed' is received after the project completion and handover of the property. Buyer has already entered into an Sales Purchase Agreement (SPA) with the Developer, paid the advance payment, registration charges, received initial contract of sale from the Authorities (oqood) and also agreed on paying based on the instalment plans agreed as per the SPA. The buyers have the right to sell the property as per the terms of the SPA and no objection certificate from the Developer.
  b. The taxable persons that purchased off plan properties prior the first tax period however has unrealised gains / price appreciations during the years prior to the first tax period;

c. There are adequate grounds to capitalize the offplan units as Investment Property under construction, ie by the IAS 40, and IAS 4, however, if the transitional rules are opted, the FTA asks for details such as the date of ownership, original cost, etc as mentioned before in this document, the actual date of ownership would be as per the title deed, if the FTA do not accept the ownership date from the date of SPA, then the gains occurred prior to the title deed (between the SPA date and title deed date) shall be taxable. However, if the title deed has been received prior to the first tax period, that issue shall be solved. Then the issue would be which method to choose from, whether Valuation method or Time apportionment method.
d. If the title deed has not been received prior to the first tax period, it shall be beneficial to use the fair value accounting method and opt for non realization based taxation. This way, the offplan property can be capitalized and fair value prior to the first tax period can be considered for the financials. If the realization method is opted, the FTA asks for information related to the unrealized gains and might tax on the entire unrealized gains upon occurrence of the realisation event
e. Choosing this method would result in the getting unrealized gains to be taxed every year; however, as discussed before for certain unrealised gains, its rather judgements than absolute information, the taxable person can use the judgement whether to account the unrealized gains / losses in a tax period.
f. It is to be noted that the valuation report from the approved valuation companies are available for off plan units as well based on the oqood (Initial Contract of Sale). This can be done for a period in the past. For eg, its possible to do a valuation report as of a previous date. Date of report shall be the current date however, the the property valuation can be as of a previous date.

<u>Part 3 – What are available Methods for property owners?</u>

1. The property owners can choose the following method as per the FTA, it is to be noted that the election must be done in the first tax period and no adjustments are available after the first election. The elections are irrevocable and any changes are subject to approval from FTA. The following options are available:
    a. Fair Value Method:
        i. Realisation Basis – Property owners can choose the Fair Value method and choose Realization based taxing. Ie, The taxable person shall not be taxed for the unrealized gains or losses and such amounts are adjusted in the filing (not in the P&L).
            1. The good thing with this method is that taxable person can use the fair value method and not get taxed for the unrealized gains during the years it holds that property;
            2. Now the question would be isn't it same as the Market Value method? NO, the difference is that Market Value method is available for assets recorded under historical cost and as per IFRS it requires the depreciation to be charged on the assets. In the Market Value approach, it provides the benefits between the market value of the asset as on first tax period as reduced by original cost of the asset. Now in the P&L, the gain on sale of the asset would be calculated between the sale price and net book value. This gain would include the gain to the extent of depreciation that was charged in the P&L prior to the tax period. The depreciation that did not get any tax benefit (as it was prior to the tax period) gets to be taxed in the period it sells the property. The tax benefit under market value would be calculated as Gain as per P&L reduced by Tax benefit under Market Value (Market Value as on tax period – Original cost).
            3. So it would look as this method is better to choose than the Market Value method; however, FTA has Deferred Gains / losses schedule that asks for all

information on the property in terms of purchase price, date, sales price, date, fair value as on the tax period, and may ask for valuation report.

ii. Non realization basis – In this method, the unrealized gains or losses in the fair value adjustment shall be taxable in the year it occurs.

b. Historical Cost Method:

i. Market Value Method:
   1. As mentioned before, here the condition is the asset shall be recorded at the historical cost and combined with the IFRS it means that the asset shall be depreciated as well.
   2. The market value method requires the taxable person to upload the valuation certificate as of the date of the tax period from an approved valuation company;
   3. The tax benefit calculated would be as discussed in this document before.

ii. Time Apportionment Method:
   1. Its based on proportionate holding of the asset. Its calculated as previously mentioned in this document.

Its to be noted that under both methods of Historical Cost, the depreciation charged prior to the first tax period get taxable in the period they sell the property. Ie, the P&L would show an amount (Sale Price – Net Book Value), here in this book value, the depreciation that's previously reduced become taxable at this period. If the depreciation has been charged in the tax periods, it would be fine as we got the tax benefit in that year, however, for the depreciation in the period prior to the tax, there is no tax benefit received, however, the same becomes taxable now.

Part 4 – Which method to choose?

Here is the million dollar question, which method to choose from? Fair Value methods with unrealized gains / losses or Fair value method on realization basis or Historic cost method with market value or time apportionment method?

It totally depends on the scenario, if the documentations are an issue and most of the properties were held prior to the tax periods and no further appreciation is expected in the tax periods or the property is planned to transfer sooner, fair value with unrealized gains / losses would be easy as it requires least disclosure requirements in the filing. However, the issue with this method is that the unrealized gains shall also be taxable if the property is held for longer tax periods and the property is appreciating on yearly basis. Also if the company has many properties or acquires further properties, this method shall be applicable to all those properties. This method would not work well in these scenarios. In these cases, Fair value with realization method is better however, during the sales of the properties, FTA asks for Deferred Gains / Losses schedules where we need to update all details and may ask for property valuation certificate as well.

We need to analyze the tax benefit calculations under Fair Value methods with unrealized gains / losses, Fair value method on realization basis, Historic cost method with market value, and time apportionment method, and see which one is beneficial. In general it depends on how proportional period the asset has been held prior to the tax period vs what proportion of appreciation in terms market value is attributable prior to the tax period. Further, it also

Part 5 – Gifting a property?

Now there is another idea we can consider for minimizing the tax impact on the company. That's by transferring the property from the company account to the personal name. Now the transfer charge of 4% could be the issue everyone is thinking about, here the good thing is the gift transfer has only .125% transfer charge from DLD as compared with 4% for the usual sale transfer. However, there is a condition here that the company shall be 100% owned by the person to whom the company is gifting the property.

So using this idea, we can transfer the property from company name to personal name as early as possible and minimize the further taxes that applies on the appreciation.

Part 5 - Freezone Properties:

'Qualifying Freezone Persons' (QFZP) that is discussed in detail in the other documents has certain relaxations in terms of the income from properties owned by them. The details are discussed below.

Immovable Property located in a Free Zone Income that a QFZP derives from Immovable Property located in a Free Zone is subject to the following treatment:

- Income from transactions with a Free Zone Person (who is the Beneficial Recipient) in respect of Commercial Property located in a Free Zone is treated as Qualifying Income. Hence income from such transactions will not be treated as Taxable Income.
- Income from transactions with a Free Zone Person (who is not the Beneficial Recipient) in respect of Commercial Property located in a Free Zone is not treated as Qualifying Income and will be treated as Taxable Income subject to a 9% Corporate Tax rate. This will be disregarded for the purposes of calculating total Revenue and non-qualifying Revenue for the de minimis requirement.
- Income from other Immovable Property located in a Free Zone is not treated as Qualifying Income. Hence such income will be treated as Taxable Income and will be disregarded for the purposes of calculating total Revenue and non-qualifying Revenue for the de minimis requirement.

Mixed-use property located in a Free Zone

Income derived from a mixed-use property located in a Free Zone shall be subject to Corporate Tax at 0% and 9%, based on the use of the respective components of the property.

For example, a residential apartment building located in a Free Zone that has retail units on the ground floor can generate both:

- Qualifying Income from the renting of retail space to Free Zone Persons, and
- income that is not Qualifying Income from the renting of residential apartments to any Person.
- Similarly, in the case of a hotel building in a Free Zone, the Revenue should be allocated between the commercial and non-commercial units. This could be based on records of the relevant land registry department or some alternate basis (for example, rental or property value) that results in an arm's

length allocation that is reasonable based on the facts and circumstances of each case. Generally, retail outlets and restaurants in a hotel are commercial units but rooms, conference rooms and/or banquet halls are non-commercial units.

Example 35: Mixed-use property located in a Free Zone

Company E (a QFZP) has a property located in the Free Zone comprising of 10 floors. Out of these, 8 floors (80%) are residential apartments, and the other 2 floors (20%) are occupied by retail establishments that are also Free Zone Persons. Company E receives total annual rental income from this property of AED 10,000,000.

Company E should allocate income using the direct allocation method unless that is not possible, in which case Company E should adopt an allocation method based on specific market conditions and property characteristics. If it was concluded that a direct allocation was not possible, an indirect allocation, for example, using floor space may be used, as follows:

- The income derived from the retail component (paid by Free Zone Persons) would be: 20% of AED 10,000,000 = AED 2,000,000. This income is considered as Qualifying Income and would be subject to Corporate Tax at 0%.
- The income derived from the residential apartments would be: 80% of AED 10,000,000 = AED 8,000,000. This portion of the income is Taxable Income that is not considered Qualifying Income and is hence subject to Corporate Tax at 9%. However, the Revenue would not be taken into consideration in applying the de minimis requirements.

Example 36: Mixed-use of hotel in Free Zone

Company F (a QFZP) owns a hotel in a Free Zone that it leases to Company Y, a Free Zone Person engaged in the Business of operating hotels. The facilities in the hotel include accommodation, conference rooms, retail spaces and restaurants. Company F should use a direct allocation method unless this is not possible, in which case an indirect method should be used with an appropriate allocation key to determine the amount of Revenue from Company Y that is attributable to the commercial units (i.e. retail spaces and restaurants) and to non-commercial units (i.e. accommodation and conference rooms).

- Revenue from retail spaces and restaurants will give rise to Qualifying Income.
- Revenue from accommodation and conference rooms will not give rise to Qualifying Income.
- For the purpose of the de minimis requirements, transactions related to Immovable Properties located in a Free Zone are not included in the total Revenue and non qualifying Revenue unless the transaction is in relation to Commercial Property with a Free Zone Person (retail spaces and restaurants).

We need to be careful with the above option, if we have commercial properties in the freezone and is owned by a company, if the company is a freezone person and a Qualified Freezone Person (meeting the criteria of FTA to be a Qualified Freezone Person), then the income from the rental is not taxable. However, if the company is a freezone company but not a qualified freezone company, in this scenario, its better to attain QFZP status and get this income tax free. If that's not possible, and calculate the cost between forming a new company and operating it vs the tax benefits from the rentals, a good decision can be made in terms of structuring.

If a person is buying a new property in a freezone in a company name, its better to structure the company appropriately in the freezone to get the tax benefits. If the person is buying under personal name, then the corporate tax does not apply anyway.

It is to be noted that a mainland company / freezone company with no QFZP status gets taxed for the rental income from a commercial immovable property in the freezone whereas the QFZP companies or individuals do not get taxed under the corporate tax.

Part 6 – US Citizens where they have citizenship based tax

Now for US citizens are having citizenship based tax system instead of usual residence based tax system. US citizens are taxed on the global income regardless of their residency status in the US. Now if a US citizen is earning salary or other income from the UAE and it exceeds the threshold set by the US government, citizens are subject to US tax. Now if the US persons are having business income, that's also taxed as per US tax laws. A benefit to be noted is the companies that does not come under the Controlled Foreign Corporation, the profits unless not distributed shall not be taxed. Now for this the ownership structure needs to be properly planned and addressed.

Further information shall be provided on this.

Part 7 – UAE Citizens and Residential Construction

Citizens of UAE can claim the VAT paid for the goods and services related to the construction of a new residence that is not part of the Persons business. To be noted that its not for commercial properties or residential properties used for leasing out as a business. Such can be claimed under the company if the company is VAT registered.

Now the question here is if an individual is building a property for leasing out in his individual capacity, they cannot claim the VAT, however, property developers can get the VAT input claim for all the VAT spends. Here its possible that if the cost of forming the company is worth the tax savings, the individuals can form a developer company for this and get the full refund claims on the VAT inputs. The problem here is the company is charged 9% corporate tax and the VAT benefits shall be negated by the corporate tax expense in the first year or in the years to come based on the profit amount.

We can try a method for tax planning here: On completion of the VAT refunds, transfer the company to the individual name (most beneficially under gift scheme where DLD charges only .125% transfer fee). In this scenario, the VAT is totally refunded and claimed, the corporate tax does not apply for individuals and real estate income does not come under the purview of corporate tax. This way the entire VAT is claimed and there won't be any corporate tax payable as well.