

UAE Corporate Tax Key Areas and Recent Updates

21 June 2023



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Overview of the UAE Corporate Tax

Overview of the UAE Corporate Tax

Federal Decree Law No. 47 of 2022 released

Explanatory Guide providing an explanation of the meaning and intended effect of each Article of the CT law, released

5 Cabinet Decisions,
18 Ministerial Decisions and
3 FTA Decisions released

Corporate Tax registration currently open for PJSC and Private Companies through the EmaraTax - digital tax services platform

Snapshot of the Decisions released

Snapshot of the Decisions released

S. No.	Particulars	Relevant Article
<i>CABINET DECISIONS</i>		
1	Cabinet Decision No. 116 of 2022 on the Determination of the Amount of Annual Income Subject to Corporate Tax	Article 3
2	Cabinet Decision No. 37 of 2023 Regarding the Qualifying Public Benefit Entities for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses	Article 9
3	Cabinet Decision No. 49 of 2023 On Specifying the Categories of Businesses or Business Activities Conducted by a Resident or Non-Resident Natural Person that are Subject to Corporate Tax	Article 11
4	Cabinet Decision No. 55 of 2023 on Determining Qualifying Income for the Qualifying Free Zone Person for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses	Article 18
5	Cabinet Decision No. 56 of 2023 on Determination of a Non-Resident Person's Nexus in the State for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses	Article 11
<i>FTA DECISIONS</i>		
1	Federal Tax Authority Decision No. 5 of 2023 On Conditions for Change in Tax Period for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses	Article 58
2	Federal Tax Authority Decision No. 6 of 2023 On Tax Deregistration Timeline for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses	Article 52
3	Federal Tax Authority Decision No. 7 of 2023 On provisions of Exemption from Corporate Tax for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses	Article 22

Snapshot of the Decisions released

S. No.	Particulars	Relevant Article
MINISTERIAL DECISIONS		
1	Ministerial Decision No. 43 of 2023 Concerning Exception from Tax Registration for the Purpose of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses	Article 4 & 51
2	Ministerial Decision No. 68 of 2023 on the Treatment of all Businesses and Business Activities Conducted by a Government Entity as a Single Taxable Person	Article 5
3	Ministerial Decision No. 73 of 2023 on Small Business Relief for the Purposes of Federal Decree-Law No. 47 of 2022	Article 21
4	Ministerial Decision No. 82 of 2023 on the Determination of Categories of Taxable Persons Required to Prepare and Maintain Audited Financial Statements for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses	Article 54
5	Ministerial Decision No. 83 of 2023 on the Determination of the Conditions under which the Presence of a Natural Person in the State would not Create a Permanent Establishment for a Non-Resident Person for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses	Article 14
6	Ministerial Decision No. 97 of 2023 Requirements for Maintaining Transfer Pricing Documentation for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses	Article 55
7	Ministerial Decision No. 105 of 2023 on the Determination of the Conditions under which a Person may Continue to be Deemed as an Exempt Person, or Cease to be Deemed as an Exempt Person from a Different Date for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses	Article 4
8	Ministerial Decision No. 114 of 2023 on the Accounting Standards and Methods for Corporate Tax Purposes	Article 20
9	Ministerial Decision No.115 of 2023 on Private Pension Funds and Private Social Security Funds for Corporate Tax Purposes	Article 4

Snapshot of the Decisions released

S. No.	Particulars	Relevant Article
MINISTERIAL DECISIONS (Contd.)		
10	Ministerial Decision No. 116 of 2023 on the Participation Exemption for Corporate Tax Purposes	Article 23
11	Ministerial Decision No. 120 of 2023 on the Adjustments Under the Transitional Rules for the Purposes of Federal Decree-Law No. 47 of 2022	Article 61
12	Ministerial Decision No. 125 of 2023 on Tax Group for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses	Article 40
13	Ministerial Decision No. 126 of 2023 on the General Interest Deduction Limitation Rule for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses	Article 30
14	Ministerial Decision No. 127 of 2023 on Unincorporated Partnership, Foreign Partnership and Family Foundation for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses	Article 16 & 17
15	Ministerial Decision No. 132 of 2023 on Transfers Within a Qualifying Group for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses	Article 26
16	Ministerial Decision No. 133 of 2023 on Business Restructuring Relief for the Purposes of Federal Decree Law No. 47 of 2022 on the Taxation of Corporations and Businesses	Article 27
17	Ministerial Decision No.134 of 2023 on the General Rules for Determining Taxable Income for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses	Article 20
18	Ministerial Decision No. 139 of 2023 Regarding Qualifying Activities and Excluded Activities for the Purposes of Federal Decree Law No. 47 of 2022 on the Taxation of Corporations and Businesses	Article 18

Qualifying Free Zone

Qualifying Free Zone Person ('QFZP') (1/3)

List of Free Zones may be notified separately

QFZP-
ALL the following conditions to be satisfied

Maintaining adequate substance in the FZ

Derives Qualifying income

Has not elected to be subject to CT

Complies with Transfer Pricing

Meets any other prescribed conditions (As prescribed in CD 55 and MD 139)

Prepares and maintains Audited FS

Substance Test

1. Undertake its Core Income generating activity in the FZ,
2. Have adequate assets
3. Adequate no. of qualified employees
4. Incur an adequate amount of operating expenditure
5. Outsourcing to an entity in FZ allowed, subject to control and supervision of the outsourced entity

Qualifying income

Income from FZs

All income except excluded activities

Income from non-FZs (mainland/ outside UAE)

Only Qualifying activities

Natural Person

Only 4 prescribed activities

De-Minimis Test
(5% of the total revenue or AED 5 Million, whichever is lower)

- Excluded activities with FZPs
- Any activity other than qualifying activity with NFZPs
- Any activity other than 4 prescribed activities with Natural Person

(All the above considered as Non-Qualifying income)
The aggregation of the above should meet the De-Minimis Test. In case where the same is not met, the total income of the FZP shall be taxable at 9%

Exclusions of Qualifying income
(Also to be excluded from non-qualifying income and total revenue to compute the de-minimis test)

- Income attributable to a Domestic PE or a Foreign PE of the QFZP
- Income attributable to 'Ownership or exploitation of immovable property' located in free zone that is derived from transactions with Non-FZP in respect of Commercial Property ('CP') ; and with any Person in respect of immovable property that is not CP

Qualifying Free Zone Person ('QFZP') (2/3)

Qualifying activities

- a Manufacturing of goods or materials
- b Processing of goods or materials
- c Holding of shares and other securities
- d Ownership, management and operation of Ships
- e Reinsurance services (regulated by the concerned UAE authorities)
- f Fund management services (regulated by the concerned UAE authorities)
- g Wealth and investment management services (regulated by the concerned UAE authorities)
- h Headquarter services to Related Parties
- i Treasury and financing services to Related Parties.
- j Financing and leasing of Aircraft, including engines and rotatable components.
- k Distribution of goods or materials **in or from a Designated Zone ('DZ') (current list as per VAT regulations – 27 DZs)** to a customer that **resells** such goods or materials, or parts thereof or processes or alters such goods or materials or parts thereof **for the purposes of sale or resale**. Other conditions:
 - a. Activity of distributing goods/materials must be undertaken **in or from** the DZ; and
 - b. Goods/ materials **entering the UAE, imported through** the DZ
- l Logistics services
- m Any activities that are ancillary to the activities listed in (a) to (l) above

Excluded activities

- a Any transactions with natural persons, except transactions in relation to the following Qualifying Activities:
 - Ownership, management and operation of Ships;
 - Fund management services (regulated by the concerned UAE authorities)
 - Wealth & investment management services (regulated by the concerned UAE authorities); and
 - Financing and leasing of aircraft including engines and rotatable components
- b Banking activities (regulated by the concerned UAE authorities)
- c Insurance activities (regulated by the concerned UAE authorities), other than the reinsurance services activity specified under the 'qualifying activities'
- d Finance and leasing activities (regulated by the concerned UAE authorities), other than treasury and financing services and financing and leasing of aircraft as specified under the 'qualifying activities'
- e Ownership or exploitation of immovable property, other than Commercial Property located in a FZ where the transaction in respect of such Commercial Property is conducted with other FZPs
- f Ownership and exploitation of intellectual property assets
- g Any activities that are ancillary to the activities listed in (a) to (f) above

Qualifying Free Zone Person ('QFZP') (3/3)

Key points

- Distribution*
- **Distribution** of goods and materials shall be considered as a Qualifying activities, subject to fulfilment of the following conditions :
 - distribution of goods or materials **in or from a Designated Zone**;
 - to a customer **that resells** such goods or materials, or parts thereof **or processes or alters** such goods or materials or parts thereof **for the purposes of sale or resale**; and
 - the goods or materials entering the State **must be imported through the Designated Zone**

Third port shipment/ drop shipment may be subject to tax at 9% unless any further guidance in this regard is provided

- Services*
- **All services provided to FZPs** shall be taxable at 0%
 - **Only following services provided to Non-FZPs** shall be taxable at 0%
 Ownership, management and operation of ships; Reinsurance service; Fund management services; Wealth and investment management services; Headquarter services; Treasury and financing services; Financing and leasing of aircraft; and Logistic services

- Beneficial recipient*
- In case of transactions with FZP, the FZP recipient should be the beneficial recipient of goods / services i.e.
- Should have the right to use and enjoy the goods or service; and
 - Does not have a contractual or legal obligation to pass it on

FZ branch of a mainland entity

Whether a FZ branch of a UAE mainland entity shall be considered as a FZP? (Not covered in the CT Decree Law, however covered in the Explanatory Guide)

Non fulfillment of any of the prescribed conditions

Where a QFZP, at any particular time during a Tax Period fails to meet any of the conditions set out in relevant provision of the CT Decree law, the Cabinet Decision No. 55 of 2023 and the Ministerial Decision 139 of 2023, **it shall cease to be a QFZP from the beginning of the relevant Tax Period and for the subsequent 4 tax periods**

Participation Exemption

Participation Exemption (1/2)

Particulars	Provisions / Conditions
Income from a participating interest shall be exempt	
To qualify as a Participating Interest	<p>Following conditions to be met:</p> <ul style="list-style-type: none"> • If any of the following two conditions is satisfied: <ul style="list-style-type: none"> ▪ 5% or greater ownership interest ('OI') in the shares or capital of the 'participation', or ▪ aggregated acquisition cost of the OI in the participation is minimum AED 4,000,000. • Holding period - Minimum 12 months • Participation being subject to Corporate Tax / similar tax – rate not less than 9% (QFZP or an exempt person considered as meeting this test) • Entitlement to minimum 5% of profits available for distribution and minimum 5% of liquidation proceeds • Other key conditions: <ul style="list-style-type: none"> ▪ Exemption will apply to taxable person only if he has control and the right to the economic benefits produced by the OI ▪ Expenses incurred for acquisition, sale, transfer, or disposal of a participating interest will not be deductible as they will be incurred for earning exempt income
Types of Exempt Income	<ul style="list-style-type: none"> • Dividend and other profit distributions from a non-resident person • Gains/ losses on sale, transfer or disposal of the participating interest • Foreign exchange gains or losses in relation to a participation exemption • Impairment gains/ losses in relation to a participation exemption

Participation Exemption (2/2)

Ownership Interests

- Ordinary, Preferred, Redeemable shares and Membership and Partnership Interests

- Other types of securities, capital contributions and rights that entitle the owner to receive profits & liquidation proceeds

- OI should be classified as an equity interest under the accounting standards

Aggregation of OIs

- Different types of OIs in the same juridical person

- OIs in the same juridical person **held by members of a qualifying group.**

Two Taxable Persons shall be treated as members of the same Qualifying Group where, among other conditions,

- *Either one has a direct or indirect **ownership interest of at least 75%** in the other; or*
- *Both have a common shareholder having direct or indirect **ownership interest of at least 75%** in each of them*

Subject To Tax

- Resident for tax purposes throughout the same tax period in another country / foreign territory that levies a Corporate tax

- Corporate Tax is applied on similar basis

- Corporate Tax is levied at a rate not less than 9% or in case where it is calculated basis net worth, then effective tax rate ('ETR') to be calculated and to be more than 9%

POEM Vs. PE

Place of Effective Management ('POEM') vs. Permanent Establishment ('PE')

POEM

Key Factor

Where **key management and commercial decisions concerned with broader strategic and policy matters necessary** for the conduct of the company's business as a whole are regularly and predominantly made and given

This will ordinarily be a **company's board of directors (or any equivalent body for other types of juridical persons)** make these decisions

Foreign company shall be considered as a UAE tax resident and its worldwide income shall be taxable in the UAE

Permanent Establishment

A fixed or permanent place in the State includes a **place of management**

- Where decisions necessary for the day-to-day conduct of the foreign entity's business are (in substance) made
- Day-to-day management which takes **implementation decisions**

Foreign company shall be construed as having a PE in UAE and income attributable to such PE shall be taxable in the UAE

As per clause 3(b) of Article 11 of the CT Decree Law, a resident person is, among others, *"A juridical person that is incorporated or otherwise established or recognised under the applicable legislation of a foreign jurisdiction that is effectively managed and controlled in the State"*

As per clause 4 of Article 11 of the CT Decree law, *"A Non-Resident Person is a Person who is not considered a Resident Person under Clause 3 of this Article and that either..."*

Thus, where the foreign entity is considered as effectively managed and controlled in the UAE (i.e. forming a POEM in UAE), then analysis under the PE provisions may not be required.

Nexus

Particulars

Overview	<p>A Non-Resident Person is subject to CT on the following:</p> <ol style="list-style-type: none"> Taxable Income that is attributable to the PE of the Non Resident Person in the State State Sourced Income that is not attributable to a PE of the Non-Resident Person in the State <i>Taxable Income that is attributable to the nexus of the Non-Resident Person in the State</i>
Applicability	<p>Any juridical person that is a Non-Resident Person shall have a nexus in the State if it earns income from any Immovable Property in the State</p> <p>Immovable Property means any of the following:</p> <ol style="list-style-type: none"> Any area of land over which rights or interests or services can be created Any building, structure or engineering work attached to the land permanently or attached to the seabed Any fixture or equipment which makes up a permanent part of the land or is permanently attached to the building, structure or engineering work or attached to the seabed <p>Taxable Income that is attributable to the Immovable Property in the State shall include income derived from the right in rem, sale, disposal, assignment, direct use, letting, including subletting and any other form of exploitation of Immovable Property.</p>
GAAR can be triggered	<p>If a Non-Resident Person artificially transfers or otherwise disposes of its right in rem in any Immovable Property in the state to another person and that transfer or disposal is not for a valid commercial or other non-fiscal reason which reflects economic reality, this would be considered an arrangement to obtain a Corporate Tax advantage under the GAAR provisions</p>
Compliance requirements	<p>A Non-Resident Person that has a nexus in the State shall be required to register for Corporate tax purposes</p>

Transfer Pricing

Transfer Pricing (1/2)

Transfer Pricing Documentation

Threshold for maintaining Master File and Local File (*Ministerial Decision No. 97 of 2023 Master File and Local File*)

- A Taxable Person who meets either one of the following conditions shall maintain both a Master File and a Local File in the relevant Tax Period:
 - a) Where the Taxable Person, for any time during the relevant Tax Period, is a Constituent Entity of MNE Group that has a total consolidated group Revenue of **AED 3.15 billion or more** in the relevant Tax Period; and/ or
 - b) Where the Taxable Person's Revenue in the relevant Tax Period is **AED 200 million or more**.

Independence Test:

- The transaction or arrangement must be undertaken in the ordinary course of business.
- Parties to the transaction or arrangement are not exclusively or almost exclusively transacting each other.
- Activities of one of the parties may not be subject to detailed instruction or control of the other party.

The FTA will take into account all relevant facts and circumstances to determine whether the Persons are regarded as acting independent of each other.

Inclusion list

Transactions or arrangements, with the following Related Parties and Connected Persons, should be documented in the Local File:

- A Non-Resident Person.
- An Exempt Person.
- A Resident Person who has opted for Small Business Relief.
- Resident Person subject to a different CT Rate (i.e., Free Zone Persons).

Exclusion list

Transactions or arrangements, with the following Related Parties and Connected Persons, do not need to be documented in the Local File:

- Resident Persons other than those specified in inclusion list.
- A Natural Person acting independently of each other (i.e., on an arm's length basis).
- Juridical persons considered to be a related party or connected person by virtue of being a partner in an unincorporated partnership, acting independently of each other.
- Permanent Establishments of a non-UAE entity subject to corporate tax rate of 9%.

Documents must be submitted to the FTA within **30 days** following a request, or by such a date as directed by the FTA.

Transfer Pricing (2/2)

Transfer Pricing Documentation

TP Disclosure Form

Broadly may include:

- Ownership information (beneficial owner, actual ownership, ownership %)
- Information on the intercompany transactions and transfer pricing method applied

It shall be a yearly submission along with the Tax Return

(No thresholds or format have been announced for TP Disclosure Form)

Master File

Generally, a Master File includes the following:

- Group wide description
- High level description of IP and R&D management
- High level description of group financing arrangements
- Consolidated group accounts
- APAs or other rulings

Local File

Generally, a Local File includes the following:

- Local management structure
- Detailed functional analysis
- Economic analysis
- Local industry analysis

Country-by-Country Reporting

- Revenue and profit
- Current tax standing
- Capital and retained earnings
- Number of employees
- Complete list of entities and permanent establishment

The format of the Disclosure Form, Master File and Local File is yet to be prescribed by the Ministry

Small Business Relief

Small Business Relief ('SB' Relief)



Relief

A resident taxable Person that may elect to be treated as not having derived any Taxable Income for a Tax Period

Applicability

Resident taxable person who is neither a QZFP nor a member of a MNEs in scope of Country-by-Country Reporting requirements

Compliance Requirement

Any person who qualifies and claims the SB relief remains a Taxable Person for the purposes of CT Law, and will be required to meet the compliance obligations such as Corporate tax registration and corporate tax return filings

Scope

- Revenue threshold for the relevant tax period and prior tax periods is **AED 3 million**
- **Relief will apply only in tax periods ending or before 31 December 2026, unless prescribed otherwise by the Government in future.**
- Revenues will be calculated based on applicable accounting standards accepted in the UAE.
- Limitation to carry forward any tax losses or disallowed net interest expenditures incurred during the tax period for which the election is made.
- GAAR will apply if the FTA determines that a taxpayer has artificially separated their business or business activity to qualify and elect for this relief.

Tax Grouping

Tax Grouping

Introduction

- Group Companies (resident, juridical person) can opt to form a tax group where the parent company holds (either directly or indirectly) **at least 95%** of a subsidiary's:
 - Shares;
 - Voting rights; and
 - Profits and Net Assets
- All group companies should have **same Financial Year** and must use the **same Accounting Standards**.
- An exempt person or a Qualifying Free Zone Person **cannot form** a part of Tax Group

Important Points

- A Tax Group is treated as a **single taxable person**
- The Parent company will be **responsible** for settling the Tax Group's CT dues and applying for any CT refund;
- The Parent company will be **responsible** for complying with the requirement to register and deregister for CT purposes on behalf of Tax Group
- The Parent company will be responsible for filing a Tax return, maintaining relevant financial statements, keeping the required records, maintaining transfer pricing documentation and submitting a clarification to the FTA (if required)
- VAT and CT groups can be different

General Interest Deduction Rules

General Interest Deduction Rules ('GIDR') (1/2)

De-Minimis Net Interest Expenditure

- Limitation on the deductible Net Interest Expenditure i.e. 30% of EBITDA, shall not apply where the Net Interest Expenditure for the relevant Tax Period does not exceed AED 12,000,000
- Where the Net Interest Expenditure ('NIE') exceeds AED 12,000,000, a Taxable Person may deduct upto the higher of AED 12,000,000 or 30% of EBITDA

Overview:

Particulars	Example 1 (NIE<12mn)	Example 2 (NIE>12mn)	Example 3 (NIE>12mn)
Net Interest Expenditure	11,000,000	13,000,000	13,000,000
EBITDA	Analysis not required. General Interest Deduction Rules do not apply	50,000,000	30,000,000
30% of EBITDA (A)		15,000,000	9,000,000
Cap of allowable deduction of net interest expenditure: AED 12 mn or (A) above, whichever is higher	11,000,000	13,000,000	12,000,000

General Interest Deduction Rules ('GIDR') (2/2)

- 'Interest' under GIDR
- Interest or payments economically equivalent to interest shall be considered regardless of the IFRS classification
 - Amounts incurred in connection with raising finance shall also be considered interest
 - Interest shall include, but not be limited to Guarantee fees, Arrangement fees, Commitment fees and any other fees similar in nature
 - It shall include interest component on forward contracts, futures contracts, options, interest rate and foreign exchange swap agreements or any other financial derivative instruments used to hedge risks directly connected with the raising of finance
 - Interest under lease accounting and capitalized interest also to be considered for the purpose of limitation rule

Taxable income post prescribed adjustments to be considered for EBITDA
In case where EBITDA is negative, EBITDA to be considered as '0'

Other key points Disallowed NIE may **be carried forward** and deducted in the subsequent 10 tax periods **in the order in which the amount was incurred**, subject to conditions

The rule shall **not apply** to Banks, an Insurance Provider, a natural person undertaking a Business or Business Activity in the State or any other Person as may be determined by the Minister

Natural Person

Natural Person

Particulars

Overview:	A natural person who conducts a Business or Business Activity in the UAE shall be subject to tax in the UAE on the income derived from the UAE or from outside the UAE insofar as it relates to the Business or Business Activity conducted by the natural person in the UAE
Applicability:	Business or business activities conducted by a resident or non-resident natural person, where the total Turnover derived from such Businesses or business activities exceeds AED 1,000,000 within a Gregorian calendar year
Exclusions:	Activities that give rise to a turnover from the following sources shall not be considered as Businesses or business activities subject to CT, regardless of the amount of Turnover derived from such activities: <ol style="list-style-type: none">1. Wage2. Personal Investment income3. Real Estate Investment income (which do not require a license)
Compliance requirements:	Natural person that is not conducting a Business or business activities subject to Corporate Tax in accordance with this Article shall not be required to register for Corporate Tax

List of key clarifications provided by the Explanatory Guide

List of key clarifications provided by the Explanatory Guide

Provisions

- A **foreign entity recognized as a UAE tax resident by virtue of being managed and controlled in the UAE** cannot qualify as a FZ person for CT purposes if the POEM of the foreign entity is in the free zone
- Expenditure for **staff entertainment is fully deductible**
- Compensation paid to direct or indirect owners that is not fixed and determinable **but instead contingent on the financial performance of the taxable person**, is not tax deductible
- A single Taxable Person may transfer their Tax Losses **to more than one Taxable Person** (subject to conditions)
- All the members of the Tax Group will remain **individually responsible** for the provisions regarding Withholding Tax, when applicable
- A QFZP will **not be able to benefit from the 0% CT** threshold for income upto AED 375,000
- UAE Branch of a resident person will be treated as the **same taxable person** and the resident person should include the income and expenditure of all its domestic branches in its tax return
- UAE branch of a foreign entity shall be regarded as an **extension of the foreign entity**

List of provisions where thresholds are prescribed

List of provisions where thresholds are prescribed (1/2)

Relevant Article of CT law	Provisions
Article 3 – Corporate Tax Rate	The portion of taxable income of the taxable person not exceeding <u>AED 375,000</u> shall be subject to Corporate Tax at the rate of 0% in the Tax Period
Article 21- Small business relief	A resident taxable Person may elect to be treated as not having derived any Taxable Income for a Tax Period where, amongst other conditions, the revenue for the relevant Tax Period and previous Tax Periods does not exceed <u>AED 3,000,000</u>
Article 23- Participation Exemption (Clause 2 and 11)	<p>Income from a Participating Interest shall be exempt subject to fulfillment of the prescribed conditions.</p> <p>Participation exemption means:</p> <ul style="list-style-type: none"> • 5% or greater ownership interest in the shares or capital of a juridical person); or • aggregated acquisition cost of the ownership interests is equal to or exceeds <u>AED 4,000,000</u> <p>whichever is lower.</p>
Article 55 - Transfer Pricing Documentation	<p>A Taxable Person that meets either of the following conditions shall maintain both a master file and a local file in the relevant tax period</p> <ul style="list-style-type: none"> • Where the Taxable Person, for any time during the relevant Tax Period, is a Constituent Company of an MNE Group that has a total consolidated group Revenue of <u>AED 3,150,000,000</u> or more in the relevant Tax Period; • Where the Taxable Person’s Revenue in the relevant Tax Period is <u>AED 200,000,000 or more.</u>

List of provisions where thresholds are prescribed (2/2)

Relevant Article of CT law	Provisions
Article 30 - General Interest Deduction Limitation Rule	<p>De Minimis Net Interest Expenditure</p> <ul style="list-style-type: none"> • Limitation on the deductible Net Interest Expenditure i.e. 30% of EBITDA, shall not apply where the Net Interest Expenditure for the relevant Tax Period does not exceed <u>AED 12,000,000</u> • Where the Net Interest Expenditure ('NIE') exceeds AED 12,000,000, a Taxable Person may deduct upto the higher of AED 12,000,000 or 30% of EBITDA
Article 54 - Financial Statements	<p>Following categories of Taxable Persons shall prepare and maintain audited financial statements:</p> <ul style="list-style-type: none"> • a taxable person deriving <u>revenue exceeding AED 50,000,000</u> during the relevant Tax Period • a Qualifying Free Zone Person

List of provisions where holding percentages
are prescribed

List of provisions where holding percentages are prescribed (1/2)

Relevant Article of CT law	Provisions
Article 26 -Transfers Within a Qualifying Group	<p>Transfer of one or more assets or liabilities between two Taxable Persons that are members of the same Qualifying Group – No gain or loss needs to be taken into account in determining the Taxable Income.</p> <p>Two Taxable Persons shall be treated as members of the same Qualifying Group where, among other conditions,</p> <ul style="list-style-type: none"> • Either one has a direct or indirect ownership interest of at least <u>75%</u> in the other; or • Both have a common shareholder having direct or indirect ownership interest of at least <u>75%</u> in each of them
Article 35 – Related Parties and Control	<p>“Related Parties”, among others, means:</p> <p>In case of two or more juridical persons where:</p> <ol style="list-style-type: none"> 1) one juridical person, alone or together with its related parties, directly or indirectly owns a <u>50%</u> or greater ownership interest in the other juridical person; 2) any Person, alone or together with its related parties, directly or indirectly owns a <u>50%</u> or greater ownership interest in or controls such two or more juridical persons
Article 35 – Related Parties and Control	<p>“Control”, among others, means the ability of a Person, whether in their own right or by agreement or otherwise to influence another Person, including:</p> <ol style="list-style-type: none"> a. The ability to exercise <u>50%</u> or more of the voting rights of another Person. b. The ability to determine the composition of <u>50%</u> or more of the Board of directors of another Person. c. The ability to receive <u>50%</u> or more of the profits of another Person.

List of provisions where holding percentages are prescribed (2/2)

Relevant Article of CT law	Provisions
Article 38 – Transfer of Tax Loss	<p>A Tax Loss or a portion thereof may be offset against the Taxable Income of another Taxable Person where, among other conditions,</p> <ul style="list-style-type: none"> • either Taxable Person has a direct or indirect ownership interest of at least <u>75%</u> in the other, or • a third Person has a direct or indirect ownership interest of at least <u>75%</u> in each of the Taxable Person
Article 39 – Limitation on Tax Losses Carried Forward	<p>Tax Losses can only be carried forward and utilized, subject to the prescribed conditions, provided that from the beginning of the Tax Period in which the Tax Loss is incurred to the end of the Tax Period in which the Tax Loss or part thereof is offset against Taxable Income of that period, the same Person or Persons continuously owned at least a <u>50%</u> ownership interest in the Taxable Person or the Taxable Person continued to conduct the same or a similar Business or Business Activity following a change in ownership of more than 50%.</p>
Article 40 – Tax Group	<p>A Tax Group can be formed with the parent and subsidiary company, if, amongst other conditions, all the following the conditions are met:</p> <p>Parent Company, either directly or indirectly through one or more Subsidiaries:</p> <ul style="list-style-type: none"> • owns at least <u>95%</u> of the share capital of the Subsidiary, • holds at least <u>95%</u> of the voting rights in the Subsidiary, • is entitled to at least <u>95%</u> of the Subsidiary's profits and net assets.

List of key clarifications (Cabinet Decisions/
Ministerial Decisions) still awaited

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Relevant Article of law	Relevant extract of the CT Decree Law
Article 1 – Definitions (Free Zone)	<i>A designated and defined geographic area within the State that is specified in a decision issued by the Cabinet at the suggestion of the Minister</i>
Article 4 – Exempt Person	<p><i>The following Persons shall be exempt from Corporate Tax:</i></p> <ul style="list-style-type: none"> • • <i>Any other Person as may be determined in a decision issued by the Cabinet at the suggestion of the Minister</i>
Article 10 – Qualifying Investment Fund	<p><i>An investment fund may apply to the Authority to be exempt from Corporate Tax as a Qualifying Investment Fund where all of the following conditions are met:</i></p> <ul style="list-style-type: none"> • • <i>Any other conditions as may be prescribed in a decision issued by Cabinet at the suggestion of the Minister</i>
Article 11 – Taxable Person	<p><i>A Resident Person is any of the following Persons:</i></p> <ul style="list-style-type: none"> • ... • <i>Any other Person as may be determined in a decision issued by the Cabinet at the suggestion of the Minister</i>
Article 13 – State Sourced Income	Subject to any conditions and limitations that the Minister may determine, State Sourced Income shall include, without limitation:
Article 15 – Investment Manager Exemption	<p><i>...an Investment Manager shall be considered an independent agent when acting on behalf of a Non-Resident Person, where all of the following conditions are met:</i></p> <ul style="list-style-type: none"> • ... • <i>Any such other conditions as may be prescribed in a decision issued by the Cabinet at the suggestion of the Minister</i>
Article 18 – Qualifying Free Zone Person	<i>The application of paragraph (a) of Clause 2 of Article 3 of this Decree-Law to a Qualifying Free Zone Person shall apply for the remainder of the tax incentive period stipulated in the applicable legislation of the Free Zone in which the Qualifying Free Zone Person is registered, which period may be extended in accordance with any conditions as may be determined in a decision issued by the Cabinet at the suggestion of the Minister, but any one period shall not exceed (50) fifty years</i>
Article 20 – General Rules for Determining Taxable Income	<p><i>The Taxable Income for a Tax Period shall be the Accounting Income for that period, and to the extent applicable, adjusted for the following:</i></p> <ul style="list-style-type: none"> • • <i>Any income or expenditure that has not otherwise been taken into account in determining the Taxable Income under the provisions of this Decree-Law as may be specified in a decision issued by the Cabinet at the suggestion of the Minister</i>

List of key clarifications (Cabinet Decisions/ Ministerial Decisions) still awaited

Relevant Article of law	Relevant extract of the CT Decree Law
Article 28 – Deductible Expenditure	<p><i>For the purposes of calculating the Taxable Income for a Tax Period, no deduction is allowed for the following:</i></p> <ul style="list-style-type: none"> • ... • <i>Such other expenditure as may be specified in a decision issued by the Cabinet at the suggestion of the Minister</i>
Article 30 – General Interest Deduction Limitation Rule	<p><i>Clauses 1 to 5 of this Article shall not apply to the following Persons:</i></p> <ul style="list-style-type: none"> • ... • <i>Any other Person as may be determined by the Minister.</i>
Article 32 – Entertainment Expenditure	<p><i>Clause 1 of this Article applies to any expenditure incurred for the purposes of receiving and entertaining the Taxable Person’s customers, shareholders, suppliers or other business partners, including, but not limited to, expenditure in connection with any of the following:</i></p> <ul style="list-style-type: none"> • ... • <i>Such other expenditure as specified by the Minister</i>
Article 33 – Non-deductible Expenditure	<p><i>No deduction is allowed for:</i></p> <ul style="list-style-type: none"> • ... • <i>Such other expenditure as specified in a decision issued by the Cabinet at the suggestion of the Minister</i>
Article 36 – Payments to Connected Persons	<p><i>...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... The above shall not apply to any of the following:</i></p> <ul style="list-style-type: none"> • ... • <i>Any other Person as may be determined in a decision issued by the Cabinet at the suggestion of the Minister.</i>
Article 37 – Tax Loss Relief	<p><i>The amount of Tax Loss used to reduce the Taxable Income for any subsequent Tax Period cannot exceed 75% (seventy-five percent) or any other percentage as specified in a decision issued by the Cabinet at the suggestion of the Minister of the Taxable Income for that Tax Period before any Tax Loss relief, except in circumstances that may be prescribed in a decision issued by the Cabinet at the suggestion of the Minister</i></p>
Article 44 – Calculation and Settlement of Corporate Tax	<p><i>To the extent there is a residual amount after Clause 2 of this Article, by using any credits or other forms of relief as specified in a decision issued by the Cabinet at the suggestion of the Minister</i></p>

List of key clarifications (Cabinet Decisions/ Ministerial Decisions) still awaited

Relevant Article of law	Relevant extract of the CT Decree Law
Article 45 – Withholding Tax	<p>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:</p> <ol style="list-style-type: none">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 StateAny other income as specified in a decision issued by the Cabinet at the suggestion of the Minister
Article 53 – Tax Returns	<p>As an exception to the provisions of this Article and any other relevant provision of this Decree-Law, the Minister may prescribe the form and manner in which a Tax Return and other information is to be filed with the Authority by a Taxable Person where the disclosure of information may impede national security or may be contrary to the public interest</p>

Disclaimer

This document is prepared by PKF UAE to provide general information on certain aspects of the UAE's Corporate Tax law. It is not an official interpretation or comprehensive analysis. For authoritative information, it is advised to rely on official publications from the UAE Ministry of Finance and Federal Tax Authority. This document has been prepared as a general guide. It is not substitute for professional advice. Neither PKF UAE nor its partners or employees accept any responsibility for loss or damage incurred as a result of acting or refraining from acting upon anything contained in or omitted from this document. If you wish to be included on the regular mailing list for this newsletter, forward your request and a mailing address to Ms. Greta Creado, P O Box 13094, Dubai, UAE. Email: gcreado@pkfuae.com

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