

UAE Corporate Tax - Interplay with Indian Tax Residency

Mar 02, 2023



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UAE was always considered as a tax-free zone. However, after the introduction of indirect taxes in 2018, the United Arab Emirates (UAE) Ministry of Finance (MoF) recently released the [Federal Decree - Law No. 47 of 2022 on 9th December 2022](#) thereby enacting the corporate tax (CT) regime in UAE. The introduction of CT regime is basically with an objective of fulfilling commitment to meet international standards for tax transparency, implementation of Pillar 2 of OECD BEPS project and prevent harmful tax practices. The MoF has also released a set of [Frequently Asked Questions \(FAQs\)](#), which supplement the law and aim at providing clarity to stakeholders.

UAE CT Law is based on internationally accepted principles to ensure efficiency, transparency, and predictability. The intent of the UAE CT Law is to achieve strategic objectives and accelerate UAE's development and transformation and to strengthen its position as a leading destination for business and investment.

The UAE CT Law is comprehensive yet concise. It contains anti-abuse provisions, exemptions, and various benefits for businesses. Further it aims at maintaining ease of compliance for stakeholders. The Law shall be effective from 1st June 2023 and shall apply to specified individuals and corporate entities. With a headline tax rate of 9%, UAE CT law requires taxable persons to register with the Federal Tax Authority (FTA) and undertake compliances on an annual basis.

Up until the introduction of CT Law in UAE, natural persons were not liable to pay any tax on income earned in UAE. Now, the CT Law provides that natural persons engaged in any business or business activity shall be covered under the purview of CT Law and liable to pay tax on their income in UAE. It may be noted that individuals earning income, other than from business or business activities are still out of the purview of CT Law.

CT Law is applicable to a 'taxable person' i.e., a person subject to corporate tax under the said Law. A 'taxable person' can be 'resident' and 'non-resident' in UAE.

It is interesting to note that an individual shall be considered as a 'resident' in UAE, if such individual conducts business or business activity in UAE. In September 2022, the UAE FTA had issued [Cabinet Decision No. 85 of 2022](#), whereby an individual was to be considered as a 'resident' in UAE, based on physical presence of specified number of days in UAE. In fact, as per India-UAE Double Taxation

Avoidance Agreement, the residency of individual depends on number of days stay in UAE. However, in the CT Law enacted, residency of an individual is based on the nature of activities undertaken in UAE, rather than the physical presence of such individuals in the Country.

Impact of CT Law on Indian tax residency rules

In India the tax residency rules are based on the physical presence of an individual in India. Therefore, where an individual is physically present in India for the prescribed number of days, such individual shall be considered as a resident in India (subject to other conditions prescribed).

It is pertinent to note that, the enactment of the CT Law and the provisions defining tax residency of individuals in UAE shall have a significant impact on Indian citizens conducting business/ engaged in business activities in UAE. This is so, since the Indian Government vide Finance Act 2020 had introduced an amendment in its tax residency rules, as per which, an Indian Citizen shall be deemed to be a resident in India for tax purpose, in case such individual derives income exceeding Rupees Fifteen Lakhs in India and is not liable to tax in any other country, by reason of domicile or residence etc.

It was observed by the Indian Government that under the pre-amended tax residency provisions in India, in various instances, individuals were able to arrange their affairs in a manner such that they were not liable to be tax in any country/ jurisdiction during a fiscal year.

Such individuals although earning income from India or other countries were not paying taxes on such income in any of the jurisdictions, by virtue of their residential status. Hence such situations resulted in double non-taxation, which was an undesirable outcome for the Governments, especially India. The amendment vide Finance Act 2020 was to inter-alia curb this situation of non-taxation.

As a consequence of this amendment, Indian citizens undertaking business activities in UAE (considered as not liable to tax in UAE as per Indian Income Tax Act) and also earning income of more than Rupees Fifteen Lakhs in India were deemed to be resident in India. Accordingly, they were liable to tax in India on the income earned in India.

With the introduction of corporate tax in UAE, now Indian citizens undertaking business activities in UAE are covered under the purview of UAE CT Law and their business income is taxable in UAE and therefore are covered under the 'definition of liable to tax'.

The 'deemed residency' provisions in the Indian Income Tax Act, apply to Indian citizens, who are 'not liable to tax' in any country. Now, since the Indian citizens earning business income in UAE are required to pay tax on such income in UAE, hence the 'deemed residency' provisions shall not apply to such individuals in India.

As per the UAE Tax Laws such individuals would be considered as tax residents of UAE. Accordingly, given the number of days spent in India, such individuals would need to see whether they qualify as residents in India or not, as per the Indian Income Tax Act, other than under the 'deemed residency' provisions.

Where such individuals qualify as non-residents in India (as deemed residency provisions would not be applicable), they shall be liable to pay tax at the rate of 9% in UAE on their business income, obtain tax registration and file their annual income tax return with the FTA in UAE.

Tax residency as per India-UAE Tax Treaty

As highlighted above, as per CT Law, the tax residency of individuals in UAE is based on the nature of revenue generating activities undertaken by them in UAE. There is no reference to the physical presence of such individuals in UAE. However as per Article 4 'Resident' of the India-UAE Tax Treaty, in case of UAE, an individual shall be considered as a 'resident' for the purpose tax treaty, where such person is present for 183 days or more in UAE in a calendar year.

In the current scheme of things, this implies that even if an individual is present in UAE for less than 183 days in a calendar year, as per the CT Law, such individual shall still be considered a resident in UAE, in

case such individual undertakes any business activity in UAE, however for treaty purposes such individual would not be a resident of UAE

There was no provision for tax residency in UAE laws at the time when India-UAE Tax Treaty was negotiated. However now, with the enactment of CT Law, specific provisions relating to tax residence have been incorporated in the domestic tax law in UAE.

As is evident from above, in context to India, there is a dichotomy in the residence rule for UAE as per the CT Law and the India-UAE Tax Treaty. From a taxation standpoint, an individual can be considered as a tax resident of one country only. Where, based on certain facts an individual qualifies as the tax resident of both the countries, the tie-breaker rule as per the tax treaty comes into play and decides on the tax residence of the individual for the purpose of taxation.

Therefore, to determine the tax residency of an individual from UAE standpoint, there needs to be consistency in the residence rules as per its domestic tax laws in UAE and its tax treaty with India.

UAE had earlier issued a Cabinet Decision in September 2022 before the enactment of CT Law, wherein the tax residency of a natural person in UAE was linked to physical presence in UAE. Such rules were to be effective from 1st March 2023. However thereafter the CT Law was introduced and enacted and there has been no reference of the said Cabinet Decision in the CT Law.

This aspect therefore needs clarification from UAE FTA, since this shall have significant ramifications on individuals earning income from UAE and for determining their tax residence for the purpose of taxability of income, whether in India or UAE.

Conclusion

The introduction of CT law in UAE and the specific provisions for determining tax residency in UAE, shall help streamline the taxability of Indian citizens earning income from UAE.

It shall further help in reducing ambiguities with respect to availability of tax treaty benefit between India and UAE to such individuals. This shall however be effective provided the definition of tax resident in UAE, is made consistent per CT Law and the India-UAE Tax Treaty.