



SCV & Co. LLP

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UAE Corporate Tax Law

Key Highlights

UAE Corporate Tax Law

Overview

On 9th December 2022, the UAE Ministry of Finance (MoF) released the final UAE Corporate Tax Law vide Federal Decree-Law No. 47 of 2022. In addition the MoF also released a set of Frequently Asked Questions (FAQs) which provide clarity to the law.

The Corporate Tax (CT) Law has been drafted based on international best practices. The CT law also provides Transfer Pricing (TP) regulations based on the Organisation of Economic Co-operation and Development (OECD) TP guidelines.

The CT law will be effective from 1st June 2023, including TP regulations. The CT law provides several exemptions and continues to provide the benefit to Free Zone entities. The CT law provides inter-alia concepts such as, General Anti Abuse Rules, Participation exemption, Small Business relief, Tax Group etc.

Key Provisions of the law

Applicability & Scope

CT Law applies to '**Taxable Persons**' both 'Residents' and 'Non-residents'.

Resident includes (Article 11):

- Entities incorporated under the UAE laws, including Free Zone entities

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- Entities incorporated outside UAE, that are effectively managed and controlled from the UAE
- Individuals who conduct business or business activities in UAE

Non Resident means :

- Entities incorporated outside UAE, that are effectively managed and controlled outside UAE
- Individual not engaged in a taxable business or business activity in UAE

Non Resident would be taxable in UAE if (Article 11):

- It has a Permanent Establishment (PE) in the UAE
- It derives UAE-sourced income
- It has a nexus in the UAE

Exempt Persons (Article 4)

- Government and Government owned companies
- Business engaged in extraction of natural resources and related non-extractive activities subject to Emirate-level taxation
- Qualifying Public Benefit Entities
- Qualifying Investment Funds, Public or Private Pension or Social Security Funds

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Corporate Tax Rates (Article 3)

Taxpayer	Applicable CT rate
Individuals and juridical persons	0% for taxable income up to and including AED 375,000 9% for taxable income exceeding AED 375,000
Qualifying Free Zone Persons	0% on qualifying income 9% on taxable income that does not meet the qualifying income definition

Tax Period, Corporate Tax registration and filings (Article 48, 51, 57,69)

The CT regime would be effective for the Tax Periods starting **1st June 2023**.

The Tax Period will normally be the Gregorian calendar year (i.e. from 1 January to 31 December), unless the business applies a different 12-month period for preparing its financial statements.

All Taxable Persons (including Free Zone Persons) will be required to register for Corporate Tax and obtain a Corporate Tax Registration Number. Certain Exempt Persons may also be required to register for Corporate Tax.

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Corporate tax returns are to be filed for each Tax Period within 9 months from the end of the relevant period. The payment of taxes is on self-assessment basis and is required to be deposited at the time of filing the returns.

General tax filing times-lines are as under:

Tax Period/ Financial Year	Period of Registration	Return filing date
1 st June-31 st May	1 st January 2023- 28 th February 2025	28 th February 2025
1 st January- 31 st December	1 st January 2023- 30 th September 2025	30 th September 2025

Taxable Income (Article 20)

Taxable income shall be the accounting profit (or loss) of the business based on financial statements prepared in accordance with internationally acceptable accounting standards, adjusted for certain specified items as per the CT Law, such as unrealised gains/(losses), exempt income, deductions not allowable under CT law, incentives/ tax reliefs etc.

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Exempt Income (Article 22)

Following incomes shall not be included in Taxable Income for taxation purpose:

- Dividends/profit distributions from resident persons (including dividend paid by a Free Zone person)
- Dividends/profit distributions from participating interest in a foreign juridical person
- Any other income from participating interest as specified in the law
- Income from foreign PEs
- Income of a non-resident from operating of aircrafts or ships in international traffic

UAE Sourced Income (Article 13)

UAE sourced income would include:

- Income derived from resident of UAE
- Income derived from non-resident in connection with and attributable to the Permanent Establishment of the non-resident in UAE
- Income accrued /derived from activities performed, assets located, capital invested, or services performed in the UAE

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Illustrative list of income includes the sale of goods in UAE, income from activities in UAE, loan/insurance income in respect of UAE borrower/asset, disposal of shares/capital, etc.

Participation Exemption (Article 23)

Participation exemption exempts certain incomes such as dividends and capital gains from CT, subject to following conditions:

- 5% or greater ownership interest in the shares or capital of a juridical person and entitled to receive at least 5% of distributable profits and liquidation proceeds
- Period of holding to be at-least 12 months
- Investee entity must be subject to is subject to CT or similar tax in the foreign jurisdiction at a rate that is not less than 9%
- The assets held directly or indirectly by invstee should not contain more than 50% of such interests, which if held directly by the person, would not have qualified for exemption.

Small Business Relief (Article-21)

Resident Taxable Person whose revenue for prescribed tax periods does not exceed a specific threshold and fulfils such other conditions as may be specified may elect to be treated as not having derived any taxable income for a tax period.

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Qualifying Free Zone Entities (Article 18)

An entity in the Free Zone shall be treated as Qualifying Free Zone Person, subject to adequate substance, deriving specified Qualifying income, not elected to be subject to CT, complies with TP provisions etc.

Such entity shall be taxed at 0% on its qualifying income and at 9% on all income other than qualifying income.

Free Zone person failing to meet the specified condition shall cease to be treated as non-qualifying person from beginning of Tax Period.

Permanent Establishment (PE) (Article 14)

CT Law provides the definition of PE on a non-resident in UAE in accordance with basis of the definition provided in Article 5 of the OECD Model Tax Convention on Income and Capital and the position adopted by the UAE under the Multilateral Instruments.

Foreign PE Exemption (Article 24)

Resident person has an option to not include income and expenditure of its foreign PE, provided that such PE is subject to at-least 9% of CT in foreign jurisdiction.

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Group Transfers and Restructuring (Article 26 & 27)

Qualifying Group, (i.e., which owns 75% or more in the other or held by a third party which owns 75% or more), shall not be required to include any gain/(loss) in their Taxable Income on account of transfer of asset/ liabilities within the Group.

The transfers between the Group shall be treated as transferred at net book value.

Also, gains/losses on the transfer of entire businesses or an independent part of the same between taxable persons by way of exchange of shares or other ownership interest including transfers in a merger arrangement are not treated as taxable income subject to the fulfilment of conditions

Where conditions prescribed in the various clauses of the article are not fulfilled, the transfer would be treated as having taken place at market value as on the date of transfer.

General Anti-abuse Rule (Article 50)

CT Law provides for disregarding transactions not entered for valid commercial reasons and purely for obtaining tax benefits under the law.

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Tax Group (Article 40)

Parent company may apply to be treated as a Tax Group with its subsidiaries, provided the parent company holds 95% in the subsidiary company, holds 95% voting rights and is entitled to 95% of the profits and net assets in the subsidiary.

The tax group shall be treated as a single taxable person and the parent company shall be responsible for all compliances, significantly reducing administrative burden.

Other Provisions

Withholding Tax (Article 46) - Withholding Tax rate of 0% has been prescribed

Foreign Tax Credit (Article 47)- Provisions for claiming Foreign Tax Credit have been provided

Transitional Rules (Article 61)- Opening Balance Sheet for the first Tax period shall be the closing Balance Sheet prepared for financial reporting on the last day of the Financial Year that ends immediately before the first Tax Period.

Such Balance Sheet must be prepared considering TP provisions.

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Transfer Pricing (TP) (Article 34-36 & 55)

TP rules apply to UAE businesses that have transactions with Related Parties and Connected Persons located in UAE mainland, Free Zone area or foreign jurisdiction.

All transactions between Related Parties and Connected Persons must meet arm's length standards.

Related parties have been defined as under:

- Two or more related individuals
- Individual alone or jointly with relatives (directly or indirectly) 'controls the company or owns 50% or more ownership in the company
- Company alone or together with related party (directly or indirectly) 'controls' the company, or owns 50% or more ownership in the company
- Partners in the same Unincorporated Partnership
- Trustee, founder, settlor or beneficiary of a trust or foundation.

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Following methods have been prescribed for determining arm's length:

- The comparable uncontrolled price method
- The resale price method
- The cost-plus method
- The transactional net margin method
- The transactional profit split method

Payment to Connected Persons must be at Market Value determined as per TP regulations. Connected Persons include:

- Owner of the business
- A director or officer of the business or
- A Related Party of either of the above

UAE business is required to maintain information regarding their transactions with Related Parties and Connected Persons, and certain businesses will be required to submit this information along with their tax return.

Certain businesses may be requested to maintain a master file and a local file.

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With the enactment of the CT Law and it being effective from 1st June 2023, it is essential for businesses to proactively gear-up for implementing the same.

Businesses must therefore understand the applicability of CT Law to their businesses and accordingly take the requisite actions to ensure they are well prepared ahead of the Law being effective.

Way Forward

- Stakeholders must undertake an impact analysis exercise to understand the implications of UAE CT Law on current businesses and the potential tax cost
- Undertaking re-structuring exercises (where required) to bring in tax efficiencies
- Factor in potential tax cost on proposed restructuring
- Creating a roadmap for smooth transitioning to the new tax regime
- Establishing an effective governance framework to ensure efficient administration and compliance.

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