



# DECODING UAE CORPORATE TAX

Uncovering the Ins and Outs for your Business

The background of the lower half of the page is a close-up photograph of various coins and banknotes. In the foreground, a small UAE flag is placed on top of a coin. The flag has three horizontal stripes: green at the top, white in the middle, and black at the bottom, with a red triangle at the bottom left corner. The coins are of various denominations and colors, including silver and gold. The overall scene is brightly lit, with a soft focus on the background.

**CORPORATE TAX**

United Arab Emirates

## MESSAGE FROM THE FOUNDER

Welcome to Water and Shark (W&S), an ingenious full-service financial and legal consulting firm practicing in various domains including Assurance, Tax Planning & Implementation Advisory and Consultancy to industries, businesses, and service level organizations for over a decade. W&S group is headquartered in USA, operating as one firm through its more than 10 offices across UAE, Singapore, UK, Hongkong, India, etc.

At Water and Shark, our growth has been a result of our dedication to meeting our clients' financial needs and providing them with personalized, timely services. We take ownership of our actions and have a clear vision for what we want to achieve. We actively share our ideas and collaborate with our colleagues and clients and are always looking for new ways to build trust and long-term relationships. In essence, we strive to be a dependable and transparent business advisor, consistently delivering on our promises.

As the UAE's economic environment shifts with the implementation of the Federal Corporate Tax Law, we at W&S, being a global accounting and legal firm, stand ready to offer research based support, guidance and insight on the UAE Corporate Tax and relevant regulations to business houses in the country, leveraging our international expertise and reach. We are committed to providing comprehensive support and leaving no detail overlooked in helping you understand the complexities of corporate tax. Our team at W&S is here to assist you and can be reached through our digital communication channels.

Warm regards,

**CA. Adv. Harsh Patel**  
Founder & Managing Partner



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# I. INTRODUCTION

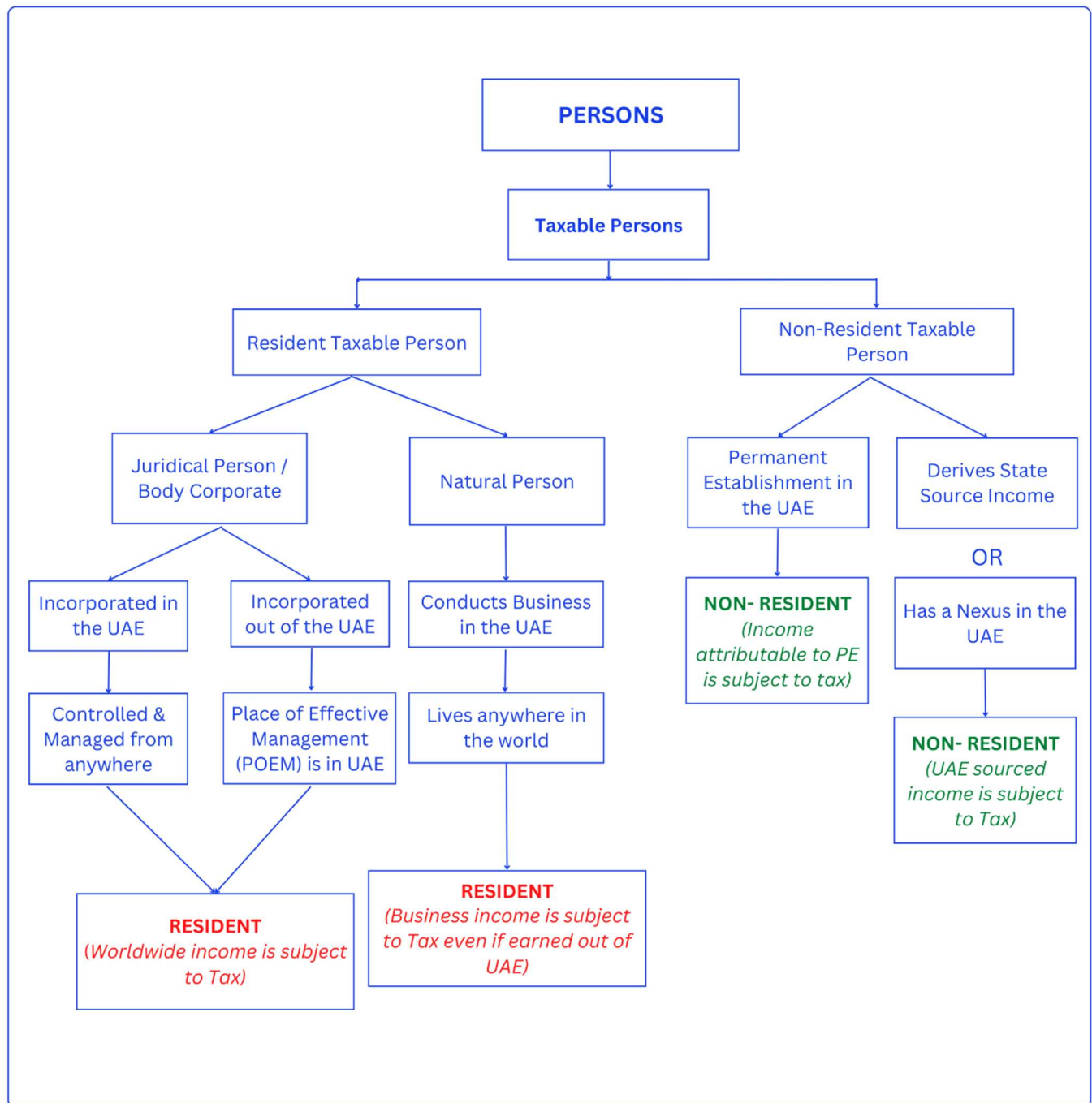
The UAE has taken numerous steps over the past few years to ensure that it meets international standards for tax transparency and prevent harmful tax practices. Most recently, the Ministry of Finance announced the introduction of a 9% federal corporate tax in UAE on business profits with a threshold of AED 375,000, coming into effect from the financial year beginning **1st June 2023**. This is one of the most competitive corporate tax rates in the world, and the lowest in the GCC – where Bahrain is now the only country without a CT regime.

The UAE's Corporate Tax Law (“UAE CT”) is largely based on international best practice and features minimal compliance requirements for businesses. Additionally, the UAE has implemented a number of measures as part of its Action Plan on Base Erosion and Profit Shifting (BEPS), including:

- the introduction of Value Added Tax (VAT) at a rate of 5% from 2018.
- Requirements pertaining to Country-by-country reporting (CbCR) starting 2019.
- Mandatory compliance with Economic Substance Regulations (ESR) rules and guidelines commencing 2020; and
- The corporate tax rate coming into effect in 2023.

In this document we have outlined the main aspects of the Corporate Tax Law, including explanations and clarifications, and highlight areas that taxpayers should take into account.

## II. APPLICABILITY OF CORPORATE TAX & THE TAX BASE



According to the UAE Corporate Tax Law, corporate tax will be imposed on taxable persons who are either residents or non-residents. The definition of a taxable person is crucial in determining the scope, applicability, and chargeability of corporate tax. This is why the definitions of Resident Person, Non-Resident Person, Permanent Establishment, and Unincorporated Partnerships are important to understand. While the UAE Corporate Tax Law presents these definitions in a more internationally accepted manner with various inclusions and terminologies, it is important to carefully consider and fully understand these definitions before delving further into understanding the UAE Corporate Tax.

Let's understand what is and is not covered with specific reference to the definitions of Resident Person, Non-Resident Person, Permanent Establishment and Unincorporated Partnerships:

## 1. Resident Person

The definition of Resident Person includes:

- A Juridical Person incorporated, established, or recognized in the UAE (including its branches in the UAE)
- A foreign juridical person that is effectively managed and controlled in the UAE
- A juridical person in a free trade zone, including a branch of a non-resident entity registered in a free trade zone (collectively referred to as "free trade zone entities")
- A natural person who conducts certain business or business activities in the UAE (detailed guidance on specific categories of business or business activities that shall be subjected to corporate tax is yet to be clarified by the Authority).

## 2. Non-Resident Person

Non-resident persons will be subject to corporate income tax in the UAE if they have a permanent establishment, derive income from sources within the UAE (other than income from their permanent establishment), or have a significant presence in the UAE. The UAE's corporate income tax law includes internationally recognized definitions of fixed place and dependent agent permanent establishments, and certain exemptions have been provided for investment managers.

### 3. Permanent Establishment

A Non- Resident person is considered to have a Permanent Establishment in the following instances:

- If it has a fixed or permanent place of business or dependent agent in the UAE;
- If he habitually exercises the authority to conduct a business or business activity in the UAE on behalf of the non-resident person or;
- If it has any other form of nexus in the UAE as specified in a decision issued by the Cabinet.

### 4. Unincorporated Partnership

A relationship established by contract between two persons or more, such as a partnership or trust or any other similar association of Persons, in accordance with the applicable legislation of the State.

In line with the universally recognized principle, an unincorporated partnership is not considered a Taxable Person, similar to its classification in countries such as the UK, USA, etc. This means that the partnership shall not be subject to UAE CT, but rather each partner is responsible for their own distributive share of the partnership's income, liabilities, assets and expenses, and for complying with UAE CT administration and compliance burdens.

However, partners in an unincorporated partnership can apply to the Authority to be recognized as a Taxable Person and be subject to UAE CT as an entity. In this case, partners remain jointly and severally liable for the partnership's CT liability, and one partner will be appointed as the responsible partner for any UAE CT obligations and proceedings for the partnership.

For foreign partnerships, they will be treated as unincorporated partnerships if they are not subject to tax in their foreign jurisdiction, and each partner is individually subject to tax on their distributive share of the partnership's income when received or accrued.

### 5. Family Foundation

Family foundations, trusts and similar entities are independent juridical persons that can be utilized by individuals or families to protect and manage their assets. Under particular conditions, they can be treated as transparent unincorporated partnerships for UAE CT purposes, thus avoiding the taxation of

the foundation or trust's income and allowing the family to benefit from a more efficient holding structure, better governance, and smoother succession planning.

*W&S Takeaway:*

*The contribution of family offices to the growth and prosperity of the UAE economy is well-established, as evidenced by the government's recent introduction of family offices. Additionally, family foundations have long been a popular choice among high-net-worth individuals, both expatriates and locals, in the UAE. Furthermore, UAE corporate tax laws, similar to those in other countries, have granted family foundations a pass-through status, making them an effective tax planning tool for global citizens.*

*The UAE government also offers the option for individual beneficiaries to treat family foundations as non-pass-through entities and file them as personal income tax returns. However, it is important to be aware of all the beneficiaries and their tax residency status before making this choice, as it may have an impact on filing taxes in respective home country (such as the USA, UK, or India).*

*It is quite interesting to note that in scenarios wherein the beneficiaries are filing corporate tax return at personal level rather than family foundation level, since UAE being a gateway to Global Family Office & Investment Planning, a large number of such beneficiaries must be located across the world. They might be resident of USA/UK/Singapore/India. Accordingly, it might also affect the home country's tax treaty and hence global income would attract tax in home country. In case they opt to be taxed at personal level, the beneficiaries would end-up paying taxes on the foundation income.*



## CORPORATE TAX BASE

A resident juridical person would be liable for corporate tax on income both within and outside of the UAE, while a resident individual would only be subject to corporate tax on income generated from business activity within the UAE.

However, a Non-resident person would be subject to Corporate Tax on the income derived from-

- Permanent Establishment of a Non-resident in the UAE.
- UAE sourced income that is not attributable to the Permanent establishment of the non-resident in the UAE.
- Nexus of the Non-Resident person in the UAE (Further Guidance of the Cabinet awaited).

### W&S Takeaway:

*The UAE CT Law operates on a hybrid Tax System that taxes income based on both the Residential Status and Source System, similar to the way it is done by the Indian Income Tax Authority. Additionally, as enumerated above, though Freezone Companies are also covered under the definition of Taxable Person, as informed by the authorities from time to time, since UAE is committed to offer various Tax-incentives to the qualifying Freezones, the income of such qualifying freezones shall be exempt subject to certain conditions as outlined in later section of the Article.*

*As per the UAE CT Law, A Non – Resident Person having their Nexus (i.e. conducting business activities) in the UAE shall be deemed to be a Taxable person. It has further been specified that a Resident person having a branch in the UAE will also be classified as a taxable person.*

*Additionally, the public consultation documents introduced the concept of Place of Effective Management (POEM), which can have tax implications for residents of the UAE who conduct business through legal entities established outside of the UAE. In these cases, it is possible that these entities may be subject to taxes in both jurisdictions, and the taxability will be determined based on the tie-breaker provisions in the UAE's Double*

*Taxation Avoidance Agreements (DTAA) with the other country. Therefore, it is recommended that businesses which are established outside of the UAE but managed and controlled from the UAE analyze the potential tax implications in order to minimize tax expenses.*

*UAE CT Law is perceived to find its source/origin from the various International Tax conventions and principles. For instance, the concept of Permanent Establishment has been modelled after the definition outlined in Article 5 of the OECD MODEL Tax Convention, which states an analysis on the following:*

- *What constitutes a Permanent Establishment?*
- *What does not qualify as a Permanent Establishment?*
- *Whether it will be left to judiciary to determine the classification of Permanent Establishment?*

*On these stated matters, further guidance and clarification are awaited from the Authority.*

*Despite this, foreign companies, multinational enterprises (MNEs), and business houses are encouraged to re-evaluate whether they may potentially be classified as having a Permanent Establishment in the UAE. Therefore, sitting today, it is crucial to analyze:*

- *Whether any foreign company is liable to be designated as having a PE in the UAE?*
- *Whether the Place of Effective Management (POEM) of the Foreign Company is said to be in the UAE?*
- *Whether the source income of the company is said to be in the UAE?*

### III. RATE OF CORPORATE TAX

The Corporate Tax will be imposed at the following rates.

On Taxable Income-

- 0% if the Taxable Income does not exceed AED 375,000/-
- 9% on Taxable Income that exceeds AED 375,000/-

W&S Takeaway:

*The consultation document indicated that the UAE plans to align with the OECD's BEPS Pillar 2 project, which aims to impose a global minimum tax rate of 15% on multinational groups. However, the UAE's Corporate Tax Law does not provide any guidance on how to apply Pillar Two in a domestic context, so there is currently no mention of a higher tax rate for large multinational groups in the law. As a result, large groups will need to wait for further guidance on this matter. In the meantime, it has been clarified that these groups will be subject to the current corporate tax regimes and rates. This is a positive development for large multinational corporations, as they will be taxed at 9% rather than 15% until the UAE implements Pillar 2 of the OECD's BEPS project, which is likely to happen in the future as the UAE is a signatory to the project.*

## IV. FREE ZONE PERSONS

Companies and branches located in a Free Zone are considered Taxable Persons under the CT Law and must fulfill standard compliance obligations, including transfer pricing requirements. However, if a Free Zone entity meets the criteria to be considered a Qualifying Free Zone Person (QFZP), it may qualify for a 0% UAE CT rate on its Qualifying Income. Income that is not Qualifying Income for a QFZP will be subject to the standard 9% CT rate.

Conditions to be considered a Qualifying Free Zone Person and be subject to 0% tax rate on qualifying income include.

- Maintaining adequate substance in the UAE.
- Deriving qualifying income as specified by the Cabinet.
- Not elected to be subject to Corporate Tax at Standard Rates.
- Complies with the provisions of Arm's Length Principle (ALP) and Transfer Pricing Documentations.

Corporate Tax Rate on Qualifying Free Zone-

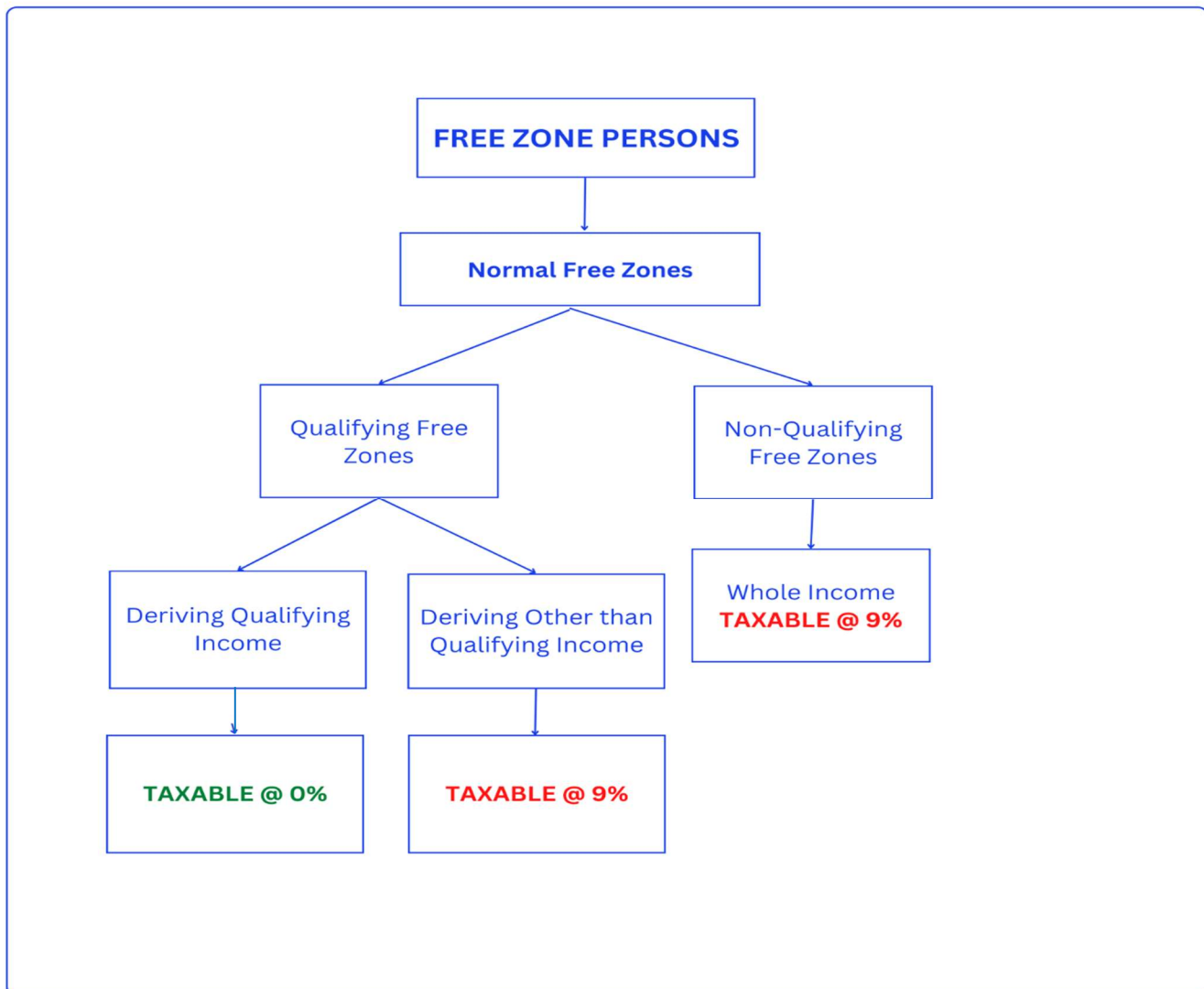
- 0% on Qualifying Income.
- 9% on Taxable Income that is not Qualifying Income\*

\*However, as of now it is still unclear as to what shall constitute "Qualifying Income". Further clarity is expected in a subsequent Cabinet Decision.

\*\*If a Qualifying Free Zone Person fails to meet any of the above conditions during any particular Tax Period, a rate of 9% tax would apply to such non-qualifying income.

It is worth noting that there is still some uncertainty surrounding the definition of qualifying and non-qualifying income, the treatment of transactions between free zone entities and entities/branches in mainland UAE, and what constitutes 'adequate substance in the UAE' for a free zone person, in terms of determining corporate tax applicability. Further guidance on these matters is currently pending.

In a nutshell, the applicability of Corporate Tax on Free Zone Persons can be summarized as follows:



**W&S Takeaway:**

*It is important to note that the UAE CT Law does not exempt income earned by a company in a qualifying free zone. Instead, such income is taxed at a rate of 0%. As a result, it is necessary to determine whether expenses incurred to earn this income can be considered as deductions when calculating the tax owed. Additionally, it is necessary to determine how expenses should be allocated between qualifying and non-qualifying income. To do this, it is important to keep accurate financial records, establish clear policies, and document procedures and systems to distinguish between expenses.*

## V. PERSONS EXEMPTED FROM CORPORATE TAX

The UAE CT Law has stated a list of individuals or entities that are not required to pay corporate taxes. These exemptions may apply to certain types of businesses or organizations, or to specific individuals or groups based on their circumstances or qualifications. It is important to note that the specific exemptions listed in the Decree may vary and it is essential to review the Decree in detail to understand if and how it applies to a specific individual or organization.

The list of exempt persons include:

### 1. Persons engaged in an Extractive Business

The UAE CT law includes exceptions for individuals or entities involved in extractive industries, such as exploration, extraction, and production of natural resources. The qualifying condition for this exemption includes:

- The Person directly or indirectly holds or has an interest in a right, concession or licence issued by a local government to undertake its Extractive Business.
- The Person is subject to Emirate-level taxation in respect of such Business; and
- The Person submitted a notification to the Ministry in the agreed form and manner.

However, contractors, subcontractors, suppliers, and other parties not meeting these conditions do not qualify for the exemption. Additionally, if less than 5% of a person's revenue from an extractive business comes from ancillary or incidental activities, that income will not be subject to UAE CT.

### 2. Persons engaged in Non-Extractive Natural Resource Business

The CT Law grants an exemption from UAE Corporate Tax to individuals or entities engaged in a non-extractive natural resource business, such as separating, treating, refining, processing, storing, transporting, marketing or distributing the UAE's natural resources. To qualify for this exemption, the same conditions that apply to extractive businesses must be met, along with an additional requirement that the income earned from the non-extractive natural resource business must come from entities that engage in a business or business activity themselves, rather than from end-users.

### 3. Qualifying Public Benefit Entity

Under UAE CT law, a Public Benefit Entity may be eligible for exemption if it meets certain criteria, such as having a purpose related to religion, charity, art, culture, education, or similar fields and conducting activities that align with that purpose. Additionally, the entity must be listed in a Cabinet Decision and may have to meet additional conditions outlined in a subsequent Cabinet Decision.

### 4. Qualifying Investment Funds

In order to be eligible for exemption from UAE corporate tax as a "Qualifying Investment Fund," an investment fund must meet certain requirements, as outlined by the CT Law. These conditions include:

- The investment fund or the investment fund's manager is subject to the regulatory oversight of a competent authority in the UAE, or a foreign competent authority.
- Interests in the investment fund are traded on a Recognized Stock Exchange (needs to be licensed and regulated by the relevant competent authority) or are marketed and made available sufficiently widely to investors.
- The main or principal purpose of the investment fund is not to avoid UAE CT.
- Any other conditions as may be prescribed by a Cabinet Decision.

### 5. Other Exemptions

As per the CT Law, certain individuals and entities may be required to apply to the authorities in order to be exempt from the UAE CT. These include:

- A public pension or social security fund, or a private pension or social security fund that is subject to regulatory oversight of the competent authority in the UAE and that meets any other conditions that may be prescribed.
- An entity incorporated in the UAE that is wholly owned and controlled by certain Exempt Persons subject to certain conditions.
- Any other Person as may be determined in a decision issued by the Cabinet.

## VI. SMALL BUSINESS RELIEF

In a relief to small businesses, a resident taxable person may elect to be treated as not having derived any taxable income, subject to meeting certain conditions, such as revenue threshold, which is yet to be prescribed by the Cabinet.

In case a person, who is considered a tax resident applies for "small business relief," certain sections of the CT Law, including exemptions, deductions, tax loss relief, and transfer pricing compliance requirements, as outlined in specific chapters of the CT Law, will not apply to them.

### W&S Takeaway:

*UAE has always endeavored in implementing array of reforms aimed at improving the ease of doing business, attracting foreign investors, creating jobs and diversifying its economy. Currently, the United Arab Emirates is ranked 16 among 190 economies in ease of doing business. Further, by introducing "Small Business relief", small business may even be exempted from filing and various compliance requirements. This eventually cements UAE's position in offering adequate reliefs to small businesses and enhancing the Ease of Doing Business in the UAE.*

## VII. CALCULATION OF TAXABLE INCOME

The UAE CT regime simplifies the calculation of Taxable Income by using the net profit (or loss) as reported in a Business's financial statements, which should be in accordance with accepted accounting standards in the UAE. These standards are typically based on IFRS since the UAE does not have its own Generally Accepted Accounting Principles (GAAP).



Taxable income shall be accounting income adjusted for certain items such as unrealized gains or loss, exempt income, reliefs, deductions, tax loss relief, any incentives or other adjustments as may be specified etc. In order to determine taxable income, which is an accounting income for the relevant tax period, it shall be adjusted for;

## 1. Deductible Expenses

Business expenses incurred solely for the purpose of the business can be deducted in the year they are incurred. Expenses that are capital in nature or for generating exempt income are not deductible. Additionally, losses not related to the business cannot be deducted. If an expense has multiple purposes, only a proportionate amount can be deducted.

## 2. Specific Limitations

Interest Expense	Entertainment Expense	Other Limitations
Interest expenditure is only deductible up to 30% of EBITDA for the relevant tax period, including any interest expenditure carried forward from previous years. The unused interest expenditure can be carried forward and deducted in the next 10 tax periods. Banks, insurance providers, natural persons, and others determined by the government are not subject to this restriction. Interest incurred on related party loans, certain transactions in	Expenses for entertainment, amusement, and recreation can only be written off up to 50%. This includes costs for meals, lodging, transportation, and admission fees related to business interactions with customers, shareholders, suppliers, or other partners.	Donations, gifts, and grants to non-approved charities, fines, penalties (with the exception of damages or contract breaches), bribes, dividends, profit distributions, and similar benefits to owners, business withdrawals, taxes paid, recoverable value-added taxes, and foreign taxes paid are not tax deductible.

the nature of profit distributions, and the acquisition of capital or shares of an entity are not deductible, unless the taxpayer can demonstrate that the main purpose of obtaining the loan was not for a tax advantage. A tax advantage is not deemed to arise if the related party lender is subject to a tax rate of 9% in the UAE or outside of the UAE.

### 3. Tax Losses

The CT Law in the UAE allows for businesses to offset tax losses against their taxable income in subsequent tax periods, with a limit of 75% of the taxable income for that period. Any remaining tax loss can be carried forward to future tax periods. However, the law does not allow for tax loss relief for losses incurred before the implementation of the UAE CT regime or from exempt assets or activities.

Transfer of tax losses between group entities is allowed if there is 75% or more common ownership and other conditions are met, but not between exempt or qualifying free zone persons.

To prevent transfer of tax losses through changes in ownership, the CT Law states that tax losses can only be carried forward and used by a taxable person only if:

- the same person or group of persons continuously own at least 50% of the taxable person from the beginning of the tax period in which the loss was incurred to the end of the period in which the loss is offset against taxable income.
- The taxable person must also continue to conduct the same or similar business following a change in ownership of more than 50%.

#### 4. Group Transfers and Business restructuring Relief

No profits or loss need to be considered in ascertaining taxable income for the transfer of assets and liabilities between taxable persons of the same qualifying group. The transferred asset and liabilities would accordingly be recognized at new book value.

Similarly, no profits or losses need to be taken into account if a taxable person transfers their business or part of it at net book value in exchange of shares or other ownership interest.

Furthermore, for determining taxable income, a retrieval period of two years from the date of the initial transfer has also been prescribed and that the initial transfer of the business would be viewed as having taken place at market value on the date of the transfer for ascertaining taxable income.

##### *W&S Takeaway:*

*The Public Consultation Document had proposed a 3-year retrieval period instead of 2 years as per the regime, for the transfer of assets between taxable persons of the same qualifying group and reliefs on business restructuring.*

*Moreover, intra-group business restructuring will now be carried out efficiently as taxes will be applicable only when the transfer takes place outside the group.*

#### 5. Non-Deductible Expense

As per the UAE CT Law, certain expenses are not considered deductible when calculating a company's taxable income. These non-deductible expenses include:

- Expenses incurred for purposes other business of the taxable person such as donations, grants, fines or penalties, bribes or related payments, dividends or profit distribution, taxes including VAT, etc
- Expenses incurred in deriving Exempt income.
- Losses not connected with or arising out of the Taxable person's business.
- Other expenses as may be specified in a decision of the cabinet.
- The Corporate Tax Law also prescribes specific deduction limitations and rules on interest expenditure for a tax period and restrictions on entertainment expenditure.

## VIII. TAX GROUP

UAE CT Laws allows juridical persons to form a tax group and file a single tax return and make a single tax payment. A resident parent company will be able to make an application to the Federal Tax Authority (FTA) with one or more resident persons to form a tax group, subject to the fulfilment of conditions in Article 40(1) which are:

- The resident persons are juridical persons.
- The parent company owns at least 95% of the share capital, voting rights, right to the net assets and profits of the subsidiary.
- Tax Group (Parent and Subsidiary) are not an Exempt Person or Qualifying Free Zone Person.
- Both the Parent company and the subsidiary have the same financial year and prepare their financial statements using the same accounting standards.

The members of the Tax group will be jointly and severally liable for the Corporate Tax owed for the relevant tax periods. The new regime also provides clarity on conditions under which a subsidiary can leave a Tax Group and when it shall cease to exist.

Tax grouping is a good way to reduce the administrative burden of tax and share losses to reduce tax. This provision also remains unchanged as in the Public Consultation Document.

## IX. TAXABLE INCOME OF A TAX GROUP

To determine the taxable income of a tax group, the parent company shall consolidate the financial results, income in relation to the transfer of assets and liabilities that were not taken into account, to be considered if the transferor or transferee leaves the Tax Group within two years of the date of transaction eliminating transactions between members of the Tax Group (Parent Company and Subsidiary).

Unutilized tax losses of a subsidiary joining the tax group, will be carried forward and set-off against taxable income of the tax group. Nevertheless, the existing tax loss of the Tax Group cannot be utilized for

offsetting Taxable Income attributable to the new subsidiary. When a Subsidiary leaves a tax group, losses shall remain with the Tax Group with the exception of any unutilized pre-group losses.

On the cessation of a tax group –

- Where a parent company continues to be a taxable person, all tax losses will remain with it
- Where a parent company ceases to be a Taxable Person, tax losses will not be available for offset against future taxable income with the exception of any unutilized pre-group losses.

It would be interesting to see if tax grouping provisions would apply to UAE juridical persons and if it would apply to entities other than companies.

## X. TAX REGISTRATION

All persons covered under the Corporate Tax Law are required to register and obtain a Tax Registration. Exempted entities such as qualifying investment funds, pension or social security funds, charities, and public benefit organizations may also be required to obtain registration.

In the event of cessation of business in future, a tax deregistration application may be required to file with the Authority. Unless a taxable person has paid all the corporate tax and penalties owed by him, his Tax Registration Number will not be deregistered. The Timelines and guidance in this regard are however yet to be prescribed by the MOF.

## XI. CURRENCY

All amounts must be quantified in United Arab Emirates dirham (AED) and amounts quantified in any other currency must be converted as per the Exchange Rate set by the Central Bank of the UAE and any other conditions by the FTA/ Authority.

It is anticipated that detailed rules would be issued for currency conversion with businesses entering foreign currency transactions as these procedures will go a long way in assuring congruous reporting.

## XII. TAX RETURNS & PAYMENTS

The filing of the Corporate Tax returns and tax payments must be settled **within 9 months** from the end of the relevant tax period. A parent company must file a Tax return on behalf of the Tax Group. Circumstances, where a refund for corporate tax may be claimed, are as follows;

- Where the Withholding Tax Credit available to a Taxable Person exceeds that Taxable Person's Corporate Tax Payable; or
- the FTA is otherwise satisfied that the Taxable Person has paid Corporate Tax in excess of that Taxable Person's Corporate Tax Payable.

## XIII. RECORD-KEEPING

A Taxable person is required to maintain Corporate Tax return-related records and documents for a period of 7 years from the end of the relevant tax period. Under this, an exempt person may also be required to maintain all relevant records that enable the exempt status for a 7-year period.

## XIV. CLARIFICATIONS

An application may be made by a taxable person for clarifying the application of the Corporate Tax Law and for concluding an advance pricing agreement with respect to a proposed transaction or an agreement.

This Application may be made to the FTA, wherever and whenever there are issues with regard to interpretation, ambiguities and irregularities in the regime, thus helping businesses obtain certainty over tax discharges.

## XV. ASSESSMENT OF CORPORATE TAX & PENALTY

A Taxable person may be subject to assessment and penalties under the Corporate Tax Law in accordance with the Corporate Tax Law Procedures.

## XVI. TRANSFER PRICING (“TP”)

The applicability of the TP regulations in the UAE CT, extends to related parties and connected persons. The transactions between the related parties should meet the standards of arm’s length basis, i.e., the transaction or an arrangement that is consistent with the results where the transaction would have been executed by the independent parties.

The Article also lays down where, as a result of the transaction or arrangement where the transaction or the arrangement does not fall within the arm’s length range, then the Authority shall adjust the taxable income to achieve the arm’s length result that best reflects the facts and circumstances of the transaction or arrangement.

It is further stated that where a foreign competent authority makes an adjustment to a transaction or arrangement involving a taxable person, then such a taxable person may make an application to the Authority to make the corresponding adjustment.

While considering the applicability of the TP provisions it is pertinent to note that the payments made to connected persons like the directors, owners, shareholders and their related persons are also under the ambit of the TP regulations (whereby any excess payment made which does not correspond with the market value shall not be allowed as a deductible expense).

## TP Documentation

The documentation requirements for Taxable Persons, which could apply to both Mainland and Free Zone, are as follows:

- The Taxable Person may be required by the Authority to submit a disclosure form along with their Tax Return, which includes details about transactions and dealings with Related Parties and Connected Persons.
- If the Ministry's requirements are fulfilled, both a master file and a local file must be kept on record. These files must be submitted to the Authority **within 30 days** of their request.
- The Authority may also require any Taxable Person to submit (**within 30 days**) any information supporting the arm's length nature of the transactions and arrangements with Related Parties and Connected Persons.

### W&S Takeaway:

*The transfer pricing regulations, in the UAE CT has left room for obscurity, there is no specific limit or a threshold governing the applicability of the TP regulations, the TP regulations shall be construed to apply on all the related parties/connected parties therefore, this shall increase the compliance burden on the taxpayers. Furthermore, the Transfer Pricing guidelines states that Transfer Pricing provisions won't just apply to related parties but to Connected persons as well. Hence all the transactions with Related Parties and Connected Persons will require proper Documentations. Also, it is very much possible that UAE, at some future date, may also require the entities to perform Transfer Pricing Audits. Hence, it would be advisable for businesses to be well prepared in advance with TP Documentations, TP Reports, TP Agreements, Master File, Local File Compliance with Arms Lengths Price, etc. for future Transfer Pricing Audit Implications, if any.*



## XVII. GENERAL ANTI-ABUSE RULES ('GAAR')

The UAE CT provides standard provisions pertaining to GAAR, the applicability of the provisions shall be triggered in case there is no valid commercial or other non-fiscal reason which reflects economic reality, the applicability of the provisions of GARR may also be triggered in case the transaction or arrangement is not consistent with the intention/purpose of UAE CT.

The Authority may, in cases where GARR is triggered, assess the advantages obtained as a result of the transaction or arrangement and shall counteract or adjust the benefit derived. The UAE CT also lays out things to be considered where the article applies to a transaction or arrangement.

### W&S Takeaway:

*The provisions pertaining to GAAR will play a crucial role in contemplating business structures and envisioning business operations so as to not breach the provisions of the UAE CT. However, this, in no manner, restricts the genuine business restructuring exercise. Any business organization that wishes to implement a business restructuring post implementation of UAE CT, can do so, provided there exists proper documentation and a valid commercial reason to substantiate the legitimacy of the exercise.*

## XVIII. TAX IMPLICATIONS

### 1. Withholding Taxes

The government of UAE is simplifying and strengthening their CT regime in order to reduce the burden on taxpayers. To achieve this, they have implemented a 0% withholding tax for certain types of income received by non-residents, as long as it is not connected to a permanent establishment of the non-resident. The specific tax rate and categories of income subject to withholding tax will be determined

by a decision from the Cabinet. As the withholding tax rate is 0%, there will be no need for registration or filing.

## 2. Foreign Tax Credit

A credit for foreign taxes paid on income earned by a UAE Taxable Person can be claimed, but it is limited to the amount of CT (Corporate Tax) owed on that specific income. Any unused credit cannot be carried over to future tax periods and will be forfeited. Supporting records, such as proof of tax due in the foreign jurisdiction, payment, and non-refundability, must be kept and maintained, even though there is no specific guidance on what records are required.

## 3. Corporate Refund

A taxpayers will have to make an application to the Authority for a CT refunds. In usual circumstances the returns are filed at the time of filing of tax returns, however in case of UAE CT, a separate application may have to be filed for claiming UAE CT refunds.

# XIX. INTERNATIONAL AGREEMENTS

The UAE CT states that in case of inconsistencies between the terms of the international agreement with the provisions of the UAE CT, the provisions of the international agreement shall prevail.

### *W&S Takeaway:*

*Instead of a non-obstante clause, the UAE CT in this article upholds the international agreements thereby honoring the international commitments.*

## XX. TRANSITIONAL RULES

Taxable person's opening balance shall be the closing balance of the taxable person in the preceding financial year. The opening balance, however, shall be prepared in consideration of the transfer pricing regulations mentioned under Article 34 of the UAE CT.

Way forward/W&S Takeaway:

*The introduction of the UAE CT will require the businesses in UAE as well as the prospective businesses in UAE to rethink their business operations as well as structures as there are increased compliance requirements along with certain tax implications on the business based in UAE for the very first time. Given the UAE CT is still at a nascent stage, it will be interesting to track the developments in the UAE CT, upon its enactment from the 1st June 2023.*

## HOW CAN WATER AND SHARK HELP?

As a reputable international firm with expertise in taxation and regulations across multiple countries, we at Water and Shark understand that the corporate tax in the UAE is not just a domestic issue, but rather a part of international taxation. This is because companies in the UAE are often globally connected.

Our team, composed of multi-jurisdictional and seasoned Chartered Accountants (CA), Certified Public Accountants (CPA), legal practitioners, and attorney, are well-positioned to assist and guide businesses in understanding the impact of corporate taxes on their operations. Our team at Water and Shark is equipped to offer a wide range of services to assist businesses with their corporate tax needs, including but not limited to:

- Conduct High Impact Assessment
- Global corporate structure planning,
- Guidance on cross-border transactions,
- Drafting agreements related to transfer pricing,
- Conducting audits on transfer pricing,
- Tax Accounting, including registering for corporate taxes and filing corporate tax returns.

For additional clarifications, contact the International Tax Desk of Water And Shark UAE.

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