

June 2022



UAE Corporate Tax Consultation Document

Introduction

The Ministry of Finance (MoF) announced the introduction of Corporate Tax (CT) in the UAE. Corporate Tax will be applicable on the business profits of the companies for the financial years starting on or after June 01, 2023.

A competitive CT regime based on international best practices will cement the UAE's position as a leading global hub for business and investment and accelerate the UAE's transformation to achieve its strategic objectives and its commitment to meeting Global standards for tax transparency and preventing harmful tax practices.

On April 28, 2022, MoF issued the Public consultation document (PCD) and requested the comments and input from the interested parties which will help the MoF to make an informed decision on the final design and implementation of UAE Corporate Tax.

The Ministry of Finance has been guided by a set of internationally accepted principles to ensure efficiency, fairness, transparency, and predictability in the design and execution of the proposed UAE CT regime.

The UAE CT is a Federal tax and will therefore apply across all Emirates. The Federal Tax Authority will be responsible for the administration, collection, and enforcement of UAE CT and the Ministry of Finance will remain the 'competent authority' for purposes of bilateral/multilateral agreements and the international exchange of information for tax purposes.

Taxable Persons

Natural Persons

- Natural persons (including sole proprietorships and unincorporated partnerships) who are engaged in commercial activity which requires them to obtain a license or permit from the regulatory authority will be subject to UAE CT.
- However, it has been clarified that the UAE CT regime does not intend to tax personal income in the hands of individuals. For example, employment income, dividend income, rental income earned from UAE real estate investments, or any other form of income earned from various investments which are held in a personal capacity

Legal Persons

The UAE CT will apply to the below Legal persons:

- UAE companies & other legal entities that are incorporated in UAE
- Foreign legal entities that have Permanent establishment in UAE or are effectively managed and controlled in the UAE
- Foreign legal entities that have UAE sourced income
- Limited liability companies, private shareholding companies, Public Joint-stock companies, Limited liability.

Hence, UAE CT will apply to all UAE businesses and commercial activities alike, except for the extraction of natural resources, which will remain subject to Emirate level corporate taxation. All activities undertaken by a legal entity will be deemed “business activities” and hence be within the scope of UAE CT.

Exempt Persons

The UAE CT regime intends to provide an exemption for the below category of persons either by way of exemption or by way of application:

- Federal and Emirate governments and other public institutions that conduct non-commercial activities will be exempt.
- Wholly Government-owned UAE entities that carry out a sovereign or mandated activity will be exempt to the extent of the income generated from this activity only.
- Entities engaged in the activity of extraction and exploitation of natural resources will be exempt and they will continue to be subject to Emirate level taxation.
- Charities and other public benefit organizations will be granted exemption purely at the discretion of the Ministry of Finance (MoF).
- Retirement & social security pension funds.
- Investment funds that meet certain criteria which have been prescribed in the PCD.



Taxable Persons

Taxability of Free Zone Persons



- Free zone businesses will be subject to UAE CT, but the UAE CT regime will continue to honour the CT incentives currently being offered to free zone businesses that comply with all regulatory requirements and that do not conduct business with mainland UAE.
- Free zone companies will be subject to corporate tax at 0% on the income generated from transactions with businesses located outside of UAE or with companies located in other free zones.
- The branch of the free zone company located on the Mainland will be subject to tax at regular CT rates.
- Passive income generated by Freezone companies from Mainland will be eligible for exemption. For example, royalties, dividend income, etc.
- Intercompany transactions between free zone companies and Mainland companies will be subject to a 0% CT rate.
- Companies located in the Designated zone will be subject to a 0% CT rate concerning the transactions with the Mainland companies that are the importer of record of those goods.
- To prevent Free Zone businesses from gaining an unfair competitive advantage compared to businesses established in mainland UAE, any other mainland sourced income will disqualify a Free Zone Person from the 0% CT regime in respect of all their income.
- A business established in a free zone will be required to register and file a CT return. Further details on the compliance obligations of free zone businesses will be provided in due course.
- The UAE CT treatment that will apply to businesses in free zones will be the same across all free zones including 'financial free zones'.

Basis of Taxation

Taxation for Residents

Residents include the following:

- Legal person incorporated in the UAE.
- Natural Person engaged in business or commercial activity.
- Foreign Company effectively managed and controlled in UAE.

Residents will be taxed in UAE for their worldwide income. However, for a natural person, this will be limited to the extent of the income earned from the activity which required a license or permit from the regulatory authority.

It has been clarified that the income tax paid in a foreign jurisdiction can be taken as a credit against the CT payable in the UAE.

Basis of Calculation of Tax

- **The UAE CT regime proposes to use the accounting net profit (or loss) as stated in the financial statements of a business as the starting point for determining their taxable income.**
- The financial statements should be prepared using accounting standards and principles that are acceptable in the UAE, and businesses will use their financial accounting period as their (annual) tax period.
- For the business which does not have a financial accounting period, then the default tax period will be the Gregorian calendar year.
- The UAE CT will have specific rules to determine whether an unrealized gain or loss should be considered when calculating taxable income.
- The exemption will be granted to the income earned by UAE companies from investments in other companies, and operations conducted outside the UAE through foreign subsidiaries or foreign branches.

Taxation for Non-Residents

Non-residents will be subject to UAE CT on:

- **Taxable income from their Permanent Establishment in the UAE; and**
- **Income is sourced in the UAE.**

The activity threshold that will trigger a PE for a foreign company in the UAE will be determined by the following two main tests:

1. Fixed place of business test:

A foreign company will have a PE in the UAE if it has a “fixed place” in the UAE through which the business of the foreign company is wholly or partly carried on.

2. Dependent agent test:

The “dependent agent test” may be met where business travellers or UAE-based persons act on behalf of the foreign company in the UAE and have, and habitually exercise, the authority to conclude contracts in the name of a foreign company.

- Dividends and capital gains earned by a UAE business from its ‘qualifying shareholdings’ will be exempt from UAE CT. A qualifying shareholding refers to an ownership interest in a UAE or foreign company that meets certain conditions to be specified in the UAE CT law. Also, qualifying intra-group transactions and reorganizations will not be subject to UAE CT.
- **Domestic dividends earned from UAE companies, including the Free Zone companies will be exempt.**
- Dividends paid by foreign companies, and capital gains from the sale of shares in both UAE and foreign companies will also be exempt from CT, provided certain conditions are met.
- **UAE companies can either (i) claim a foreign tax credit for taxes paid in the foreign branch country, or (ii) elect to claim an exemption for their foreign branch profits.**

Tax Relief for Losses

- The businesses will be able to offset loss incurred in one period against the taxable income of future periods, up to a maximum of 75% of the taxable income in each of those future periods.
- Tax losses can be carried forward indefinitely provided the same shareholder(s) hold at least 50% of the share capital from the start of the period a loss is incurred to the end of the period in which a loss is offset against taxable income.
- If there is a change in ownership of more than 50%, tax losses may still be carried forward provided the same or similar business is carried on by the new owners.

However, certain losses cannot be offset by the taxpayers which have been clarified in the PCD.



Tax Group



- A UAE resident group of companies can elect to form a tax group and be treated as a single taxable person if the parent company holds at least 95% of the share capital and voting rights of its subsidiaries.
- To form a tax group, neither the parent company nor any of the subsidiaries can be an exempt person or a Free Zone Person that benefits from the 0% CT rate, and all group members must use the same financial year.
- A UAE tax group will only be required to file a single tax return for the entire group.
- **The UAE CT regime will allow full consolidation for tax purposes for a wholly owned group of companies, and the transfer of losses between group companies that are 75% or more commonly owned.**

Transfer Pricing

- Transfer pricing rules seek to ensure that transactions between related parties are carried out on arm's length terms (i.e., as if the transaction was carried out between independent parties).
- UAE will apply the internationally recognized "arm's length" principle to transactions and arrangements between related parties and with connected persons.
- UAE businesses will need to comply with transfer pricing rules and documentation requirements set with reference to the OECD Transfer Pricing Guidelines.
- **Payments or benefits to a 'Connected Persons' (which includes the related parties) will be deductible only if the business can demonstrate that the payment of benefits:**
 1. **corresponds with the market value of the service provided; and**
 2. **is incurred wholly and exclusively for the taxpayer's business**

Withholding Tax

Withholding tax is a tax collected at source by the payer on behalf of the recipient of the income and withholding taxes exist in many tax systems and are typically used in respect of dividends, interest, royalties and similar payments.

- **Withholding tax of 0% will be applicable on the domestic and cross-border payments made by UAE businesses.**
- The following income shall be subject to 0% withholding tax:
 1. UAE sourced income earned by a foreign company that is not attributable to a PE in the UAE of that foreign company;
 2. Mainland UAE sourced income earned by a Free Zone Person that benefits from the 0% CT regime, unless the income is attributable to a mainland branch of that Free Zone Person; and
 3. Dividends and other profit distributions made by a Free Zone Person that benefits from the 0% CT regime to a mainland UAE shareholder in the Free Zone Person.



Foreign Tax Credit

To avoid double taxation, the UAE CT regime will allow a credit for the tax paid in a foreign jurisdiction against the UAE CT liability on the foreign-sourced income that has not been otherwise exempted. This is known as the “Foreign Tax Credit”.

The maximum Foreign Tax Credit available will be the lower of:

- The amount of tax that was paid in the foreign jurisdiction; or
- The UAE CT was payable on the foreign-sourced income.

It has been clarified that unutilized foreign tax credit cannot be carried forward to future business periods nor FTA will grant any refund for the same.



Calculation of CT Liability

CT will be charged on the annual taxable income of a business as follows:

- **0%, for taxable income not exceeding AED 375,000; and**
- **9%, for taxable income exceeding AED 375,000; or**

The table below will help to understand how the Corporate Tax will be determined for a particular financial year:



Final taxable Income	
AED 0 – AED 375,000	CT @ 0% (A)
Above AED 375,000	CT @ 9 % (B)
CT Liability	A + B
Less: Foreign Tax Credit	
Final CT payable	

- A different tax rate will be used for large multinationals that meet specific criteria set with reference to 'Pillar Two' of the OECD Base Erosion and Profit Shifting project.
- A multinational corporation is a corporation that operates in its home country, as well as in other countries through a foreign subsidiary, branch or other form of presence /registration. “Merely earning income from outside its home country without a foreign presence or registration would not make a business a multinational corporation in the context of the global minimum effective tax rate as proposed under 'Pillar Two' of the OECD Base Erosion and Profit Shifting project.”

Administration

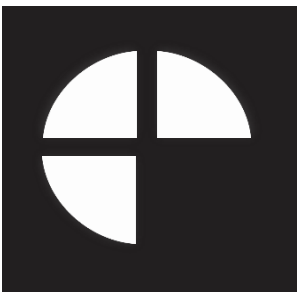
- A business subject to CT will need to register with the FTA and obtain a Tax Registration Number within a prescribed period.
- **The Tax return and the CT payment must be made within nine (9) months from the end of the relevant Tax Period. A financial period is generally a year.**
- Where a business ceases to be subject to the CT due to liquidation of the business or other reasons, it will need to submit a deregistration request to the FTA within 3 months from the date of cessation.
- There will not be any requirement to file a provisional CT return or make advance payments to CT.
- To keep the administrative burden on taxpayers to a minimum, a business will only need to prepare and file one tax return with the FTA for each tax period.
- The CT return will need to be filed electronically.
- Also, like other taxes in the UAE (e.g., VAT), businesses will be subject to penalties for non-compliance with the CT regime



Disclaimer

The information in the above pages is meant to provide an initial introduction to the proposed UAE Corporate Tax (CT) regime in advance of relevant legislation being finalized. It is not intended to comprehensively address all possible aspects of the UAE CT regime or to provide concrete answers and should not be used for individual or business decisions as it does not represent the final legislation.

We will be coming out with further information on the technical details and other specifics of the UAE CT regime in due course.



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