

UAE Corporate Tax Law summary



December 2022



1. The UAE releases corporate tax legislation

On 9 December 2022, the UAE released the Federal Decree-Law No. (47) of 2022 on the Taxation of Corporations and Businesses (hereinafter referred to as the 'CT Law'). The CT Law was published in the Official Gazette on 10 October 2022 and became effective on 25 October 2022 and will apply to Taxable Persons for financial years commencing on or after 1 June 2023.

The CT Law is materially aligned with the public consultation document that was released by the Ministry of Finance ('MoF') on 28 April 2022 and expands on many of the key provisions. As was promised, the UAE CT regime is predominantly based on international best practice with a minimal compliance burden placed on businesses relative to other regimes internationally. Importantly, the CT Law also lays the foundation for the UAE to align with the global minimum tax initiative as proposed under "Pillar Two" of the OECD Base Erosion and Profit Shifting ('BEPS') project. More clarity is expected on this during the course of 2023.

There are still certain aspects which are expected to be fully clarified in subsequent Cabinet and ministerial decisions, for example those related to certain Exempt Persons, and Qualifying Income for Qualifying Free Zone Persons. Some of these important aspects are expected to be clarified during the course of 2023. It seems unlikely, however, that every expected Cabinet Decision will be issued before 1 June 2023, since the UAE regime has been designed to enable the UAE to be flexible in order to respond to the ever changing environment and tax developments. Certain other practical guidance is also expected to be issued by the authorities, and this may help to provide additional insight.

In our view, the introduction of the UAE's first federal CT regime with statutory **tax rates of 0% and 9%** with a law that is easily understood by businesses and foreign investors and a low compliance burden represents a significant change for companies operating in the UAE.

In this document, we summarise the key legislative features of the CT Law, clarifications that were provided and certain areas that taxpayers need to consider.



2. Key provisions of the CT Law

Corporate Tax Rate

The CT Law provides for the following statutory tax rates:

Taxable Income	Rate of Tax
• Taxable income not exceeding the amount specified in a Cabinet Decision*	0%
• Qualifying Income of a Qualifying Free Zone Person**	
• Taxable income exceeding the amount specified in a Cabinet Decision	9%
• Non-Qualifying Income of a Qualifying Free Zone Person	

* The threshold of AED 375,000 was set out in the Ministry's announcement of the introduction of a CT law on 31 January 2022 and the Public consultation document that preceded the CT Law and this threshold is also mentioned in the Corporate Tax FAQs published by the FTA. We expect this threshold to be confirmed in the relevant Cabinet Decision.

**It is not clear what will be considered as 'Qualifying Income' but further clarity is expected in a subsequent Cabinet Decision. Please refer to our comments under the 'Free Zone' section.

The CT Law does not provide any guidance on the application of Pillar Two in a domestic context. However, the Corporate Tax FAQs indicate that multinationals will be subject to CT under the regular UAE CT regime until the UAE adopts the Pillar Two rules. Please refer to our comments under the "International tax developments - Pillar Two" section.

The CT Law also includes relief for small businesses whereby a small business may elect to be treated as not having derived Taxable Income for a Tax Period. This election is subject to a revenue threshold and other requirements which will be set out in a subsequent Cabinet Decision.





Exempt Persons



The following Persons are exempt from UAE CT:

Government Entity

The UAE Federal and Local Governments and their departments, agencies, ministries, authorities and public institutions (all defined individually as a 'Government Entity') will be exempt from UAE CT unless they conduct a Business or Business Activity under a Licence issued by a Licensing Authority.

The Business Activity should be treated as an independent Business and should have its own separate financial statements and calculate its Taxable Income independently for each Tax Period. In addition, transactions between the Business or Business Activity and the other activities of the Government Entity will be considered as related party transactions (please refer to the Transfer Pricing section for more details).

As a side note, a Government Entity that is regarded as a Taxable Person insofar it relates to any Business or Business Activities, should be regarded as an Exempt Person for purposes of interpreting the group relief, transfer of tax losses and tax grouping provisions included in the CT Law.

Furthermore, a Government Entity may apply to the Federal Tax Authority ('Authority') for all its Businesses and Business Activities to be treated as a single Taxable Person subject to meeting certain conditions (to be prescribed by the Minister).

Government Controlled Entity

A Government Controlled Entity is defined as an entity that is directly or indirectly wholly owned and controlled by a Government Entity, as specified in a Cabinet Decision. A Government Controlled Entity may be exempt from UAE CT unless it conducts a Business or Business Activity that is not within its Mandated Activities.

For a Government Controlled Entity to be exempt from UAE CT, it should be (i) directly or indirectly owned by a Government Entity, (ii) only conduct a Business or Business Activity that falls within its Mandated Activities, and (iii) be specified in a Cabinet Decision.

Mandated Activities, in turn, are defined as any activity conducted by a Government Controlled Entity in accordance with the legal instrument establishing or regulating that entity, that is specified by a Cabinet decision. In our view, the legal decree whereby these entities are usually created is a very important starting point to determine whether the activities of the entity are Mandated Activities or not.

Our expectation, therefore, is that any future Cabinet Decision(s) may be required to list both the Government Controlled Entities (by name) and the related Mandated Activities for an exemption to apply in this case.

The taxation of the Business Activity for a Government Controlled Entity follows the same principle as explained above in that separate financial statements and independent tax calculations are required and Transfer Pricing will apply to transactions between the taxable and exempt activities. However, the Government Controlled Entity that is regarded as a Taxable Person in respect to its Business or Business Activities should be regarded as an Exempt Person for purposes of interpreting the group relief, business restructuring relief, transfer of tax losses and tax grouping provisions included in the CT Law.



Exempt Persons

Persons engaged in an Extractive Business

The CT Law provides exemptions from UAE CT to Persons engaged in an Extractive Business (defined as exploring, extracting, removing or otherwise producing and exploiting the UAE's natural resources or any interest therein as determined by the Minister), subject to meeting all of the following conditions:

- 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.

The above exemption does not apply to contractors, subcontractors, suppliers or any other Person that is used in the performance of the Extractive Business that does not in its own right meet the above conditions.

Where a Person is engaged in an Extractive Business and less than 5% of its total revenue is derived from activities that are ancillary or incidental to its Extractive Business such ancillary or incidental income will not be subject to UAE CT

Similar to other Exempt Persons, if any other Business is regarded as taxable, it will be treated as an independent Business following the same principles referred to above in respect of separate financial statements, independent tax calculations and the application of Transfer Pricing to transactions between the taxable and exempt activities. However, the Extractive Business that is regarded as a Taxable Person in respect to its Business or Business Activities should be regarded as an Exempt Person for purposes of interpreting the group relief, restructuring relief, transfer of tax losses and tax grouping provisions included in the CT Law.

Essentially, this means that Extractive Businesses will continue to be taxed under Emirate level Concessions and/or Fiscal letters to the extent that its activities fall within the ambit of that particular Concession/Fiscal letter. Where its Business or Business Activities do not fall within the ambit of that Concession/Fiscal letter it is expected that the income so derived will be taxed under the CT Law.



Exempt Persons



Persons engaged in Non-Extractive Natural Resource Business

The CT Law provides an exemption from UAE CT to Persons engaged in a Non-Extractive Natural Resource Business, which is defined as separating, treating, refining, processing, storing, transporting, marketing or distributing the UAE's natural resources. For this exemption to apply, the same conditions as those for Extractive Businesses should be met, with an additional requirement that the income earned by a Person from its Non-Extractive Natural Resource Business will be from Persons that themselves undertake a Business or Business Activity (e.g. it may not apply if the customer is an end-user).

Similar to Extractive Businesses, if any other Business of the Non-Extractive Natural Resource Business is regarded as taxable, it will be treated as an independent Business following the same principles as referred to earlier under the Extractive Business section.

Essentially, this means that Non-Extractive Natural Resource Businesses will continue to be taxed under Emirate level Concessions and/or Fiscal letters to the extent that its activities fall within the ambit of that particular Concession/Fiscal letter. Where its Business or Business Activities do not fall within the ambit of that Concession/Fiscal letter it is expected that the income so derived will be taxed under the CT Law.

Qualifying Public Benefit Entity

A Public Benefit Entity may qualify for an exemption under the CT law if certain conditions are met. These conditions relate mainly to the purpose of the Public Benefit Entity (for example religious, charitable, artistic, cultural, educational or other similar purposes) and whether the activities conducted are directly related to or are aimed at fulfilling the purpose for which the entity was established. The Public Benefit Entity must also be listed in a Cabinet Decision and further conditions may be prescribed in a subsequent Cabinet Decision.

The Authority may request relevant information to monitor the continued compliance status of the Public Benefit Entity. Therefore, the entity should have all documentation needed to support the reason of its incorporation and its qualifying public benefit activities (i.e. a substance over form review may be considered for the assessment of the entity).



Exempt Persons



Qualifying Investment Funds

According to the CT Law, an investment fund may apply to the tax authorities to be exempt from UAE CT as a “Qualifying Investment Fund”.

All of the following requirements should be met to be eligible for the exemption:

- 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 Recognised 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.

The Corporate Tax FAQs added some clarifications on this topic. Investment funds are commonly structured as limited partnerships to ensure tax neutrality for their investors. Investment funds that are structured as partnerships, unit trusts and other unincorporated vehicles would generally be treated as fiscally transparent “unincorporated partnerships” for the purposes of UAE CT. Further, investment funds that are structured as corporate entities can apply to the Authority to be exempt subject to meeting the requirements mentioned above.

The exemption of investment funds will help the UAE to keep its attractiveness as a leading asset and wealth management hub and as a leading centre for financial services.

Other Exemptions

The CT Law also makes reference to the following Persons who will be required to submit an application to the Authorities to be exempt from UAE CT:

- 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



Exempt Persons

Summary

In our view, all of the above Persons that possibly qualify as being an Exempt Person for purposes of the CT Law, should review their activities, assess the impact and review whether any rationalisation is required. One should also familiarise oneself with the appropriate rules, to determine whether an exemption will be automatic, obtained through a Cabinet Decision, or obtained by submitting an application to the Authority or a notification to the Ministry.

In addition, one should carefully consider the rules to determine whether any of its Business or Business Activities will be taxable under the CT Law, and if so, assess whether the required level of information needed to prepare separate financial statements and compliance with the UAE CT Law is available in respect of each taxable Business or Business Activity.



Taxable Persons and Corporate Tax Base

Taxable Persons and Tax Base

A Taxable Person as defined in the CT Law, is an individual and/or entity that is subject to UAE CT. For the purposes of the CT Law, a distinction is made between a Resident Person and a Non-Resident Person and the applicable Tax base will depend on the nature of the Taxable person.

The following table sets out the aspects to consider when determining the nature of a Taxable person (i.e. Resident vs. Non-resident) as well as the applicable Tax base:

Resident Person	Tax base
An entity that is incorporated in the UAE (including a Free Zone entity)	Worldwide income
A foreign entity that is effectively managed and controlled in the UAE	Worldwide income
A natural Person/individual who conducts a Business or Business Activity in the UAE	Worldwide income
Non-resident Person	Tax base
Has a permanent establishment ('PE') in the UAE	Taxable income attributable to the PE
Derives UAE Sourced Income	The UAE sourced income not attributable to the PE
Has a Nexus in the UAE	Taxable income attributable to the Nexus

In respect to **Resident Persons**, it is clear from the above that UAE incorporated entities, including those registered in Free Zones will be regarded as UAE Taxable Persons. Insofar as foreign incorporated entities that are effectively managed and controlled in the UAE are concerned, no additional guidance is provided in the CT Law, therefore we believe taxpayers should rely on guidance from the OECD's international tax commentaries, which provide detailed guidance on determination of 'effective management and control'.

In respect to **Non-Resident Persons**, it will be subject to UAE CT on any Taxable Income attributable to the PE of the non-resident (see details below), or any UAE sourced income where the income is not attributable to the PE (see details below), or any Taxable Income attributable to the nexus of the non-resident in the UAE (to be determined in a subsequent Cabinet Decision).

Lastly, both Resident Persons and Non-Resident Persons are regarded as Taxable Persons for purposes of the CT Law, meaning that the tax compliance obligations for these Persons should be carefully considered.

Taxable Persons and Corporate Tax Base

UAE Sourced Income

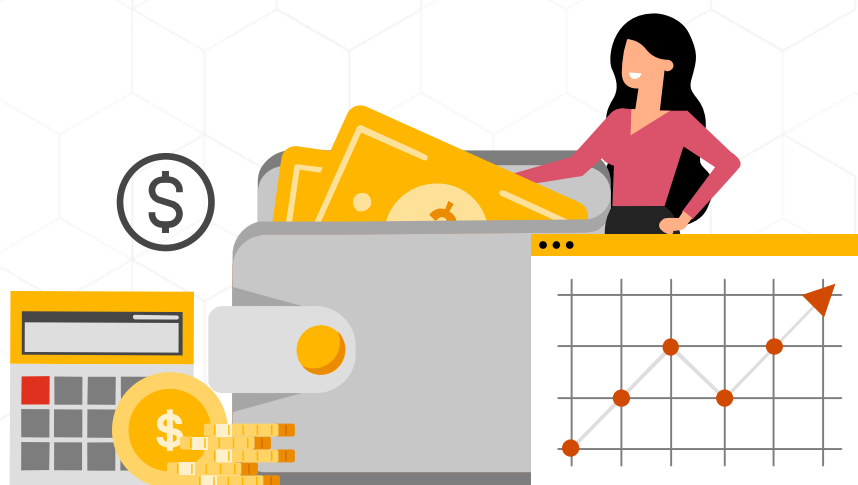
As expected, the CT Law introduced specific rules to determine when income will be regarded as UAE sourced income. Generally speaking, income will be regarded as UAE sourced income when the income is (1) derived from a UAE Resident Person (e.g. the payor is a resident Person), (2) derived from a non-resident Person and is attributable to a PE of that Person in the UAE of that non-resident Person (e.g. the UAE PE is the payor), or (3) derived from activities performed, assets located, capital invested, rights issued, or services performed or benefitted from in the UAE.

The CT Law further lists specific types of incomes that are considered as UAE sourced income. The list is fairly consistent and in line with expectations (such as income from sale of goods in the UAE, provision of services rendered, utilised or benefitted from the UAE, income from property in the UAE, income from the use or right of use of intellectual or intangible property in the UAE, etc.).

The following are some notable areas to point out:

- Income from the disposal of shares or capital of a Resident Person may be regarded as UAE sourced income, which may result in the income/capital gain from the disposal of shares in a UAE entity by a non-resident becoming taxable in the UAE.
- Interest on loans secured by movable or immovable property located in the UAE where the borrower is a Resident Person and/or the Borrower is a Government Entity may be taxable in the UAE.
- Specific rules apply in respect to insurance and reinsurance premiums where the insured asset is located in the UAE, the insured Person is a Resident Person and/or the insured activity is conducted in the UAE.

With the clarity around what the CT Law regards as UAE Sourced Income, non-residents will need to consider the impact on their activities in the UAE.





Taxable Persons and Corporate Tax Base

Permanent Establishment

The CT Law definition of a Permanent Establishment is aligned with the definition in the OECD Model Tax Convention. The guidance on PEs provided in the OECD's Commentary on the Model Tax Convention can therefore be used as a reference when assessing whether a PE is created in the UAE.

In terms of the CT Law, a non-resident Person would generally be considered to have a PE in the UAE where it has a fixed or permanent place in the UAE through which the Business of the non-resident Person, or any part thereof, is conducted or where a Person has and habitually exercises an authority to conduct a Business or Business Activity in the State on behalf of the non-resident Person. An additional instance is included in the CT Law whereby a PE can be created where the non-resident has any other form of nexus in the UAE as specified through a subsequent Cabinet Decision.

A fixed or permanent place in the UAE will not be considered a PE if it is used solely for conducting activities of a preparatory or auxiliary nature and the Minister may prescribe conditions in this regard in terms of which the mere presence of a natural person in the UAE will not create a PE for a non-resident. However, this will not be the case if the same Non-Resident Person or its Related Party (as defined) carries on a Business or Business Activity at the same or another place in the UAE (subject to certain conditions).

The CT law does not make reference to a Services PE but more clarity on how this aspect will be interpreted may be provided in the Cabinet Decision addressing what "any other form of nexus" will encompass.

Non-residents will have to consider the impact of the PE provisions to their activities in the UAE. Where a PE is created in the UAE, careful consideration must be given to aspects such as legal registration (e.g. a branch), obtaining appropriate licences, UAE CT registration obligations, etc.

Investment Manager exemption

Since the UAE is seeking to enhance its attractiveness as a leading asset and wealth management hub and leading centre for the financial services sector, an Investment Manager exemption was introduced in the CT Law (subject to certain conditions to be met). This exemption allows an Investment Manager (i.e. a Person who provides brokerage or investment management services subject to regulatory oversight) to be considered an independent agent when acting on behalf of a Non-Resident Person for purposes of determining whether or not the Investment Manager will create a PE in the UAE.

This is applicable to Investment Managers who deal in transactions involving amongst others commodities, real property, bonds, shares, derivative, securities or foreign currency.



Taxable Persons and Corporate Tax Base

Partners in Unincorporated Partnership

As a general rule, an unincorporated partnership will not be treated as a Taxable Person, i.e. the partnership is looked through and each Partner is treated as a Taxable Person on their distributive share. We understand this to mean each Partner would be responsible for complying with UAE CT administration and compliance burdens and for paying UAE CT on their Taxable Income as if each carrying on independent Business subject to UAE CT.

Assets, liabilities, income and expenditure of the partnership should be allocated to each Partner in accordance with their distributive share.

Partners in an unincorporated partnership can apply to the Authority for the unincorporated partnership to be treated as a Taxable Person, i.e. to be recognised as its own entity subject to UAE CT. Where this application is made, Partners remain jointly and severally liable for the partnership's CT liability. One partner will be appointed as the responsible partner for any UAE CT obligations and proceedings for the partnership.

Foreign partnerships will be treated as unincorporated partnerships where the partnership is not subject to tax under the laws of the foreign jurisdiction and each Partner is individually subject to tax on their distributive share of the partnership's income when the partnership receives or accrues it.

Partnerships are flexible vehicles that are typically complex from a tax perspective. The approach adopted in the UAE CT law attempts to simplify the tax treatment and is in line with international best practice.

Family Foundation

The CT Law identifies family foundations, trusts and similar entities as independent juridical persons that are used to protect and manage the assets of an individual or a family with a separate legal personality.

A Family foundation can apply to be treated as a transparent "unincorporated partnership" for UAE CT purposes under certain conditions. This would generally prevent the income of the foundation or trust from attracting UAE CT and could be a useful vehicle for families to ensure a tax efficient holding structure, proper governance as well as succession planning.



Free Zone Person



Companies and branches registered in a Free Zone are considered Taxable Persons under the CT Law and are required to meet normal compliance obligations, including transfer pricing requirements. However, provided a Free Zone entity meets the conditions to be considered a Qualifying Free Zone Person ('QFZP'), it should be eligible for a 0% UAE CT rate on its Qualifying Income. The income of a QFZP which is not Qualifying Income will be taxed at the standard 9% CT rate.

In order to qualify for the 0% CT rate, QFZP must meet all of the following conditions:

- It must be a Free Zone Person (i.e. a juridical person incorporated, established or otherwise registered in a Free Zone, incl. branches);
- Maintain adequate substance in the UAE;
- Derive Qualifying Income (to be defined in a Cabinet Decision);
- Not have made an election to be subject to the standard UAE CT regime;
- Comply with all transfer pricing rules and documentation requirements; and
- Meet any other conditions as prescribed by the MoF.

If a QFZP fails to meet any of these conditions at any time during a Tax Period, it will no longer be considered a QFZP and will be subject to the standard UAE CT regime from the beginning of that Tax Period. Notwithstanding this, the MoF may set rules under which a person may continue as a QFZP, or cease to be a QFZP from a different date.

A QFZP can make an election to become subject to regular UAE CT on all of its income. The CT Law does not mention that such an election is irrevocable.

There are a number of areas that remain uncertain, including the definition of Qualifying Income (subject to a Cabinet Decision yet to be released), the treatment of transactions between Free Zone entities and related/unrelated entities/branches in mainland UAE, what will be regarded as 'adequate substance in the UAE' for a Free Zone Person, and any additional conditions that may be set by a Cabinet Decision. At a minimum though, we expect that the Qualifying Income definition should arguably include income derived from outside of the UAE or within Free Zones (as highlighted in the recent public consultation document).



Taxable Income

To reduce complexity and compliance costs, the UAE CT regime uses the accounting net profit (or loss) as stated in the financial statements of a Business as the starting point for determining its Taxable Income. For this purpose, the financial statements should be prepared in accordance with accounting standards accepted in the UAE. The UAE does not have its own Generally Accepted Accounting Principles (GAAP) and International Financial Reporting Standards (IFRS) are commonly used by businesses in the UAE.

In order to arrive at Taxable Income, expenditure incurred wholly and exclusively for the purposes of the Taxable Person's Business that is not capital in nature may be deductible in the Tax Period in which it is incurred. However, the CT Law disallows/restricts the deduction of certain expenses. This is to ensure that relief can only be obtained for expenses incurred for the purpose of generating Taxable Income, and to address possible situations of abuse or excessive deductions.

The CT Law prescribes a number of key adjustments to the accounting net profit (or loss) in order to compute the Taxable Income. These include for instance unrealised gains/losses (Taxable Persons now have an election to make on how to treat it), exempt income, certain tax reliefs, non-deductible expenditure, transfer pricing adjustments, tax loss reliefs, other incentives or special reliefs for a Qualifying Business Activity (as specified in a future Cabinet Decision), and any other income or expenditure as may be specified in a Cabinet Decision at a later stage.

The CT law makes reference to certain incentives and special relief for Qualifying business on which further detail will be provided in a subsequent Cabinet Decision. The CT law is also silent on the tax treatment of depreciation, adjustments in respect of revenue and expense items accounted for in Equity or Other Comprehensive income and leases. Even though not specifically mentioned, we expect that Taxable income will need to be adjusted for to the extent that it relates to expenditure that has not yet been incurred. Furthermore, the deferred tax implications in respect of any adjustments to Taxable income related to temporary differences (e.g. unrealised gains and losses and provisions) must be considered.





Taxable Income



Set out below is an illustrative/indicative summary of how Taxable Income will generally be computed for UAE CT purposes:

Net accounting profit/(loss) before tax

Fair value accounting and capital asset adjustments (subject to election)

- less/add: unrealised gains/losses
- less/add: foreign exchange gains/losses

Exempt income

- less: Dividends and profit distributions received from Resident juridical person
- less/add: Participation exemption
 - dividends and profit distributions
 - other income
 - gains/losses from sale
 - foreign exchange gains/losses
 - impairment gains/losses
- less/add: foreign PE (subject to election)
- less: international transportation (non-residents only)

Reliefs

- Transfers within a qualifying group
- Business restructuring relief

Deductions

- add: expenditure not actually incurred (including provisions)
- add: expenditure of a capital nature
- add: expenditure not wholly and exclusively incurred for Taxable person's business
- add: expenses incurred in relation to exempt income
- add: limitation on deduction of net interest expense (30% of EBITDA-rule)
- add: other non-deductible interest
- add: donations, grant, gifts to non-Public Benefit Entities
- add: 50% of entertainment expenses
- add: penalties and fines
- add: bribes and other illicit payments

Transactions with related parties and connected persons

Tax loss relief (limited to 75% of taxable income)

- less: carried forward losses
- less: intragroup transfer of losses

Taxable income

Tax liability

- Taxable income > AED375,000 x 9%
- Less: Withholding tax credit
- Less: Foreign tax credit
- Amount owing/refundable



Taxable Income

Small Business Relief

The CT Law provides tax relief for small businesses. A tax resident person may elect to be treated as not having derived any Taxable Income where the revenue for the relevant and previous Tax Periods do not exceed a threshold and meet certain conditions (to be confirmed by Cabinet Decision).

If a tax resident person applies for “small business relief”, certain provisions of the CT Law will not apply such as exempt income, reliefs, deductions, tax loss relief, transfer pricing compliance requirements, as specified in the relevant chapters of the CT Law.

The Authority may request any relevant records or supporting information to verify the compliance within a timeline (to be confirmed).





Exempt Income



To avoid instances of double taxation, and recognising the UAE's position as an international Business hub and leading holding company location, the UAE CT regime exempts dividends and other profit distributions received by a Taxable Person from a UAE tax resident entity (i.e. local dividends).

In addition, certain dividends, other profit distributions, and other types of income are treated as exempt income as detailed below.

Participation Exemption

Dividends and other profit distributions received from a foreign juridical person in which a 'Participating interest is held, will be exempt from UAE CT. In addition, other income (e.g. foreign exchange, impairment and capital gains and losses) received from residents or non-residents will be exempt from UAE CT where the Participating interest requirement is met.

A Participating interest means (i) an ownership interest of at least 5% in the shares or capital of a juridical person, referred to as a 'Participation', that entitles a Taxable Person to receive at least 5% of profits available for distribution and any liquidation proceeds; (ii) a 12 month uninterrupted holding period (or the intention to hold for 12 months), (iii) the Participation is subject to tax in its country or territory of residence at a rate that is not lower than 9%, (iv) no more than 50% of the assets directly or indirectly owned by the Participation may consist of an ownership interest or entitlements that would not qualify for the Participation Exemption if these assets were held directly by the Taxable Person and (v) any conditions prescribed by the Minister are met.

Further, an entity could be treated as satisfying the condition that it must be subject to tax at a rate that is not lower than the UAE CT rate (i.e. at least 9%) if its principal Business objective and activity is to acquire and hold shares or equitable interests that are considered as Participating Interests and the income of the Participation during the relevant Tax Period substantially consists of income from Participating Interests. The tax rate requirement will also be treated as met where the juridical person is a Qualifying Free Zone or Exempt person.

A Participating Interest of less than 5% could also qualify for the exemption where the acquisition cost of the ownership interest exceeds a threshold to be specified by the Minister. The Participation exemption will not be available for a period of 2 years where a Participation Interest was derived by acquisition of interest that did not satisfy the Participation Interest conditions or the acquisition was subject to group or restructuring relief.



Exempt Income

Foreign Permanent Establishment Exemption

A Resident Person could have a PE in another jurisdiction based on the domestic tax laws of this jurisdiction, subject to any tax treaty. Generally, the income attributed to such a Foreign PE will be taxed in that jurisdiction. In such a scenario, the CT Law provides an option to the Resident Person to elect for an exemption of this income in the UAE. The CT Law does not specify whether this election is irrevocable. The exemption will only apply to Foreign PEs that are subject to CT or similar taxes at a rate not less than 9% in the foreign jurisdiction. If the resident person opts for this exemption, it will not be eligible to take into account losses, income, expenditure and foreign tax credits in relation to the Foreign PE in the UAE.

International Transportation

Income earned by a non-resident from operating aircraft or ships in international transportation will not be subject to CT in the UAE if the income earned by a UAE resident person that carries on these activities is exempt from CT in the jurisdiction of the non-resident.

This reciprocity principle can be widely seen in domestic tax laws across the world and is also acknowledged in Double Tax Agreements.





Reliefs



The CT Law allows group companies to transfer assets or liabilities or undergo restructuring without triggering any adverse tax consequences under certain circumstances.

Transfers within a Qualifying Group

The CT Law provides tax relief on intra-group transfer of assets or liabilities between Taxable Persons that are members of the same Qualifying Group. Taxable Persons will be treated as members of the same Qualifying Group if all the following conditions are met:

- the Taxable Persons are tax resident entities, or non-residents that have a PE in the UAE;
- the Taxable Persons are at least 75% commonly owned and have the same financial year and prepare the financial statements using the same accounting standards; and
- none of the Taxable Persons are regarded as an Exempt Person or a Qualifying Free Zone Person.

In such a case, the assets or liabilities will be treated as being transferred on a tax neutral basis (i.e. at net book value and the consideration for the transfer will be equal to the net book value). However, there is a clawback period of 2 years from the date of initial transfer in the case there is a subsequent transfer of such asset or liability outside the permitted group or where transferor or transferee ceases to be the member of the permitted group.

Business Restructuring Relief

Similar to intra-group transfer of assets or liabilities within a Qualifying Group, the CT Law provides tax relief on mergers, spin-offs and other corporate restructuring transactions where whole or independent part of business is being transferred in exchange of shares or other ownership interest provided the following conditions are met:

- the transfer is undertaken in accordance with the applicable regulations in the UAE;
- the Taxable Persons are Resident Persons, or Non-Resident Persons that have a PE in the UAE;
- none of the Persons are regarded as an Exempt Person or a Qualifying Free Zone Person;
- have the same financial year and prepare the financial statements using the same accounting standards; and
- the transfer is undertaken for valid commercial or economic reasons.

In such a case, the assets and liabilities will be treated as being transferred on a tax neutral basis (i.e. at net book value and the value of shares or ownership interests received for the transfer will not exceed the net book value assets and liabilities assumed). There are also specific rules on the treatment of unutilised tax losses.

However, there is a claw back period of 2 years from the date of the transfer if there is a subsequent transfer to a third party, or shares or ownership interests received are transferred or otherwise disposed of, the gains or losses on the initial transfer will be reported in the period in which the subsequent transfer made to the third-party.



Deductions



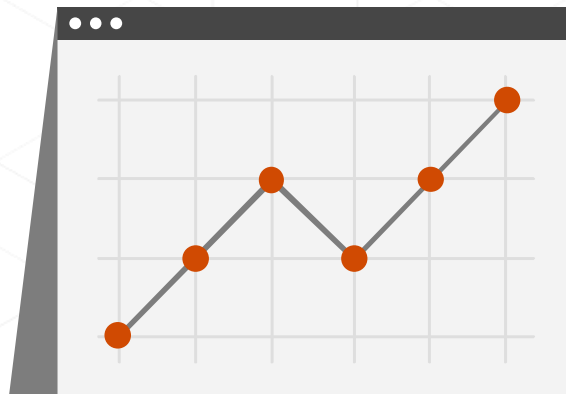
Deductible Expenditure

Expenditure that is not of a capital nature that is incurred wholly and exclusively for the purposes of the Taxable Person's Business should generally be tax deductible. There are certain exclusions, for example, expenses incurred in deriving an exempt income will not be tax deductible.

Expenses associated with entertainment of customers, shareholders, suppliers and other business partners such as meals, accommodation, transportation, admission fees, facilities and equipment used for entertainment and other expenses specified by a Cabinet Decision may be deducted up to 50% of the amount incurred.

Fines and penalties (other than compensation for damages for breach of the contract), bribes or other illicit payments, donations paid to entities that are non Qualifying Public Benefit Entities, dividends/profit distribution, CT, recoverable VAT, taxes imposed outside the UAE and other expenses specified in Cabinet decision will also not be considered as deductible for UAE CT purposes.

Where expenditure is incurred for more than one purpose, a deduction will be allowed for any identifiable part or proportion of the expenses incurred wholly and exclusively for deriving Taxable Income. Also, an appropriate proportion of any unidentifiable part or proportion of the expenses incurred for the purposes of deriving Taxable Income that has been determined on a fair and reasonable basis could be claimed for deduction for UAE CT purposes.





Deductions

Interest Expenditure

The CT Law provides for the limitation of the deductibility of the net interest expense (i.e. interest expenses incurred (including amount of net interest expenditure) less interest income in line with OECD's interest limitation rules proposed by Action 4 of OECD's BEPS project).

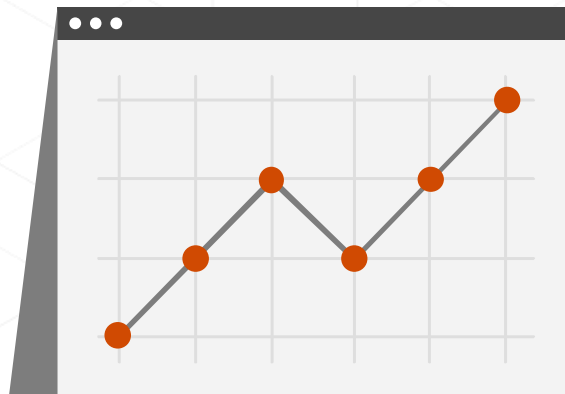
The objective is to prevent tax arbitrage opportunities for erosion of the UAE CT base. The CT Law provides that net interest expense up to 30% of business' EBITDA (adjusted by excluding Exempt Income) could be deductible. To reduce the administrative burden, it also provides for a safe harbour/de-minimis threshold to be specified by a Cabinet Decision which can be deducted irrespective of the interest deductibility limit based on the EBITDA rule.

It further states that interest capping rules will not apply to banks, insurance businesses and certain other regulated financial service entities. Also, interest capping rules will not apply to Business carried on by natural persons/individuals or any other Person that may be determined by a Cabinet decision

The net interest expense amount disallowed for deduction under the interest capping rules could be carried forward and deducted in the subsequent ten Tax Periods.

In addition to the general interest limitation rule set out above, no interest deduction will be allowed if the loan was obtained, directly or indirectly, from a related party for the following transaction with the related parties and loan was not attracted to gain a UAE CT advantage (i.e. lender is subject CT in the UAE or a tax of a similar character under applicable legislation of foreign jurisdiction at a rate not less than 9%):

- dividends/profit distribution;
- redemption, repurchase, reduction or return of share capital;
- capital contribution; or
- acquisition of ownership interest in a legal entity, who is or becomes a related party following acquisition.





Transfer pricing



The CT Law introduces transfer pricing ('TP') rules and regulations. The transfer pricing regulations take immediate effect coinciding with the effective date of the other tax provisions.

Arm's Length Principle

Both cross border and domestic transactions and arrangements between Related Parties (including transactions undertaken by Free Zone entities) need to adhere to the arm's length standard i.e., transactions must be undertaken as if they are carried out between independent parties under similar circumstances.

Furthermore, payments and benefits provided to Connected Persons should be at Market Value, which should be determined by applying the arm's length standard.

TP Methods and their Application

In order to determine the arm's length nature of the transactions between Related Parties, the CT Law prescribes five methods, broadly aligned with the OECD TP Guidelines. In case the Taxable Person can demonstrate that none of the prescribed methods can be reasonably applied, the taxpayer is allowed to apply any other method. In alignment with the OECD TP Guidelines, appropriate factors must be considered when applying the most appropriate method, namely i) contractual terms, ii) characteristics of the transaction, iii) economic circumstances, iv) functions, assets, risks and v) business strategies.

Additional guidance on the application of the arm's length principle is expected to be issued at a later date under a separate decision of the Authority (e.g. measure of arm's length range - interquartile vs full range, benchmarking guidance, financial transactions, intra-group services, intangibles, etc.).





Transactions with Related Parties and Connected Persons

Related Parties

The definition of Related Parties is broadly aligned with the previously issued public consultation document, and is summarised below:

- Two or more natural Persons related up to fourth degree of kinship; or
- A natural Person and a juridical Person related by ownership (50% or greater) or control; or
- Two or more juridical Persons related by ownership (50% or greater) or control; or
- A Person and its PE or foreign PE; or
- Partners in the same unincorporated partnership; or
- Trustee, founder, settlor or beneficiary of a trust or foundation and its related parties.

In this regard, the term 'Control' has now been defined as the ability of a Person to influence another Person including the ability to:

- Exercise 50% or more voting rights; or
- Determine composition of 50% or more of Board of Directors; or
- Receive 50% or more profits; or
- Exercise significant influence over the conduct/affairs of another Person.

The CT Law does not provide a clarification on how "significant influence" is interpreted and it is yet to be seen whether additional guidance will be issued and whether or not reference will be made to the interpretation as per accounting standards.

Other Businesses in Scope

When a Government Entity and a Government Controlled Entity conduct a Business or Business Activity, the transactions between the Business Activity and the exempted activities will be considered Related Party transactions and the arm's length principle should be applied accordingly to determine the Taxable Income relating to the Business Activity.

Similarly, the same arm's length principle will be applied for the transactions between the Extractive Business/Non-Extractive Natural Resource Business and any other Business of a Person as these will be considered Related Party transactions as well.



Transactions with Related Parties and Connected Persons

Connected Persons

Any payment or benefit provided by a Taxable Person to a Connected Person should i) correspond to the Market Value of the service or benefit and ii) be incurred wholly and exclusively for business purposes in order for a deduction to be allowed. The Market Value should be determined by applying the arm's length standard. A specific exclusion on this limitation of deductibility applies in the event that the payment or benefit is provided by:

- A Taxable Person whose shares are traded on a Recognised Stock Exchange;
- A Taxable Person subject to regulatory oversight of a competent State authority; and
- Any other Person to be determined under a separate decision, which is yet to be issued.

The definition of "Connected Persons" is broadly aligned with the previously issued public consultation document and could be any of the below:

- A natural Person who directly or indirectly owns an ownership interest or controls the Taxable Person; or
- A director or officer of the Taxable Person; or
- Partners in the same unincorporated partnership; or
- Related party(ies) of any of the above.

TP Adjustments

The Taxable Income may be adjusted by the Authority if the results of the transaction between Related Parties does not fall within the arm's length range.

In the event of an adjustment made by the Authority or a Taxable Person to the Taxable Income, the Authority will make a corresponding adjustment to the Taxable Income of the Related Party that is party to the transaction. On the other hand, where an adjustment is made by a foreign competent Authority, the Taxable Person can apply for corresponding adjustment relief. Further guidance is awaited on the exact mechanism of implementation (e.g., potentially through a Mutual Agreement Procedure or other mechanism).

Advance Pricing Agreement

The CT Law provides a Person the option to make an application for advance pricing agreement (existing or proposed transactions). Detailed guidance in this regard will be prescribed by the Authority at a later date.



Tax losses

The CT Law provides that a Business can offset tax losses against the Taxable Income of subsequent Tax Periods when computing the Taxable Income for that period. The set-off during any Tax Period cannot exceed 75% of the Taxable Income for the Tax Period (except in circumstances that may be prescribed in a Cabinet Decision). Any tax loss remainder can be carried forward to a further subsequent Tax Period.

A Taxable Person cannot claim tax loss relief for losses incurred before the date of commencement of the UAE CT regime, losses incurred before it became a Taxable Person under the CT Law and losses incurred from an asset or activity the income of which is exempt, or otherwise not taken into account under the CT Law.

UAE CT allows transfer of tax losses between group entities where there is 75% or more common ownership and where other certain conditions are met such as having the same financial year and using the same accounting standards.

However, the transfer of tax losses will not be allowed between group entities that are either Exempt Persons or Qualifying Free Zone Persons.

In order to curb transfer of tax losses through transfer of ownership in case of Taxable Persons that are not listed on a Recognised Stock Exchange, the CT Law provides that the tax losses can only be carried forward and utilised by a Taxable Person on satisfaction of the following conditions:

- The same Person or Persons continuously owned at least a 50% ownership interest in the Taxable Person 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 Taxable Person continued to conduct the same or a similar Business following a change in ownership of more than 50%.



Tax Group



UAE group entities may elect to form a Tax Group provided all the following conditions are met:

- The UAE parent entity holds directly or indirectly at least 95% of the (1) share capital; (2) voting rights; and (3) entitlement to profits and net assets;
- Have the same financial year and prepares the financial statements using the same accounting standards; and
- Neither the parent company or the subsidiary is an Exempt Person nor a Qualifying Free Zone Person (i.e. is subject to 0% UAE CT rate).

Despite the Exempt Person exclusion above, one or more subsidiaries in which a Government Entity directly or indirectly holds at least 95% of the share of capital, voting rights and entitlement to profits and net assets can form a Tax Group, subject to certain conditions.

When a Tax Group is formed, the parent entity will be responsible for the administration such as submission of one single tax return and settlement of the tax liability for the Tax Group. The joint and several liability can be limited to one or more members of the Tax Group, with an approval from the Authority.

Forming a Tax Group may be more efficient from a tax standpoint when compared to each legal entity in a group filing on a standalone basis. This is mainly due to reduced administration costs, offsetting tax losses and profits within the group and the fact that inter-company balances and transactions between group entities should typically be eliminated on consolidation, thus reducing your TP compliance obligations.

With regards to the offsetting tax losses and profits within the group, pre-grouping tax losses of any joining member will be the carried forward losses of the Tax Group; however, the offset of such pre-grouping loss is limited by the attributable income of the new joining member.

Interestingly, the parent and each of its subsidiaries will individually remain responsible for complying with their WHT compliance obligations (to the extent required).

There are also specific rules in respect to the joining, leaving and discontinuation of a Tax Group amongst others.



Calculation of corporate tax payable



For the purposes of calculation of UAE CT payable, all amounts must be quantified in the UAE dirham. Any amount quantified in another currency must be converted at the applicable exchange rate set by the Central Bank of the UAE, subject to any conditions that may be prescribed in a decision issued by the Authority.

For the purpose of calculating the CT payable, available withholding tax credits, foreign tax credits, or other form of relief (to be specified by a Cabinet Decision) can be deducted from the calculated CT payable in the specified order and to the extent available.

Withholding Tax

With the broader objective of having a simplified yet robust UAE CT regime to reduce the compliance burden for taxpayers, a 0% withholding tax will apply to certain types of UAE sourced income derived by non-residents insofar as it is not attributable to a PE of the non-resident. The applicable withholding tax rate as well as the categories of income to which withholding tax applies may be set out in a decision issued by the Cabinet.

Given the 0% withholding tax rate, it is not expected that there will be any registration or filing obligation.

Withholding Tax Credits

A credit (i.e. a deduction against CT payable) is available for withholding tax suffered by a Taxable Person to reduce the CT payable. This Withholding tax credit is limited to the lower of the amount of Withholding tax deducted by the Taxable Person under the UAE CT Law and the CT due under this law.

Any excess of the Withholding tax credit will be refunded to the taxable Person.

Foreign Tax Credits

A credit is available for any foreign taxes paid on a UAE Taxable Person's income. The foreign tax credit is limited to the amount of CT due on the relevant income. Any unutilised foreign tax credit cannot be carried forward and or back and will ultimately be lost.

The necessary records to support a foreign tax credit must also be maintained and even though no specific guidance is provided, we expect the records to show the amount of tax due in the foreign jurisdiction, the payment thereof and the fact that the foreign tax is not refundable.



General Anti Abuse Rule



In line with international best practice, the CT Law includes general anti-abuse rules ('GAAR'), which apply to transactions giving rise to a tax advantage where no valid commercial reason exists and where the tax advantage was the main or one of the main purposes of the transaction.

Where the GAAR applies, the Authority can make a determination that one or more specified CT advantages are to be counteracted or adjusted. If such a determination is made, the Authority must issue an assessment giving effect to the determination and can make compensating adjustments to the UAE CT liability of any other Person affected by the determination.

For the purpose of determining whether the GAAR applies to a transaction or arrangement, specific facts and circumstances should be analysed, such as form and substance of the transaction or arrangement, the manner in which the transaction or arrangement was entered into, the timing of the transaction or arrangement, whether the transaction or arrangement has created rights or obligations which would not normally be created between Persons dealing with each other at arm's length in respect of the relevant transaction or arrangement.

In any proceeding concerning the application of the GAAR, the Authority must demonstrate that the determination made is just and reasonable.

Considering that GAAR aims to counteract any abusive tax arrangements, taxpayers should ensure that all their transactions have a bona fide business purpose and are properly documented.



Administrative provisions

CT registration/deregistration, Tax return and Payments

Every Taxable Person will be required to electronically register for UAE CT with the Authority within a prescribed timeline and obtain a Tax Registration Number. The registration would need to be undertaken even if the Taxable Person has already been registered for VAT purpose.

In order to keep the administrative burden on taxpayers to a minimum, the CT Law requires a Taxable Person to file only one tax return for each Tax Period.

Please see examples in the table below:

Fiscal Year End	First Reporting Period	Registration date	Due Date of filing first CT Return and payment	Due Date for first TP disclosure form
Dec	Jan 2024 to Dec 2024	To be determined	30 Sep 2025	30 Sep 2025
Jun	Jul 2023 to Jun 2024	To be determined	31 Mar 2025	31 Mar 2025

The filing will need to be done electronically no later than nine months from the end of the relevant Tax Period. Any UAE CT payable will also need to be settled within these timelines.

While further guidance on the form of the UAE CT return will be provided by the Authority, the CT Law prescribes certain specific details, which inter alia includes the Tax Period to which the UEA CT return relates, the accounting basis used in the financial statements, the Taxable Income for the Tax Period, the amount of tax loss relief claimed, the available tax credits claimed and the UAE CT payable for the Tax Period.

Financial Statements

A Taxable Person may be required to submit the financial statements used to determine the Taxable Income for a Tax Period in the form and manner and within the timeline prescribed by the Authority.

The Minister may issue a decision setting out which categories of Taxable Persons are required to prepare and maintain audited or certified financial statements.



Administrative provisions

TP Documentation

The following TP documentation requirements could be applicable for Taxable Persons (in both Mainland and Free Zone):

- The Authority may require a Taxable Person to file a disclosure form along with the Tax Return, containing information regarding the transactions and arrangements with Related Parties and Connected Persons;
- In case conditions prescribed by the Minister are met, a master file and local file must be maintained. The master file and local file should be submitted within 30 days upon request of the Authority.
- 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.

The threshold/exemption conditions have not yet been set and are likely to be mentioned under a separate decision of the Minister. It is to be seen if a consolidated local file could be prepared for a Tax Group which could significantly reduce the administrative burden for many taxpayers.

Furthermore, the above TP documentation requirements will not be applicable to a Taxable Person that would be eligible for Small Business Relief.

Record Keeping

A Taxable Person must maintain all relevant records and documents for a period of seven years following the end of the Tax Period to which they relate.

Tax Period

A Taxable Person's Tax Period is the financial year (the Gregorian calendar year, or the twelve-month period for which financial statements are prepared) or part thereof for which a UAE CT return is required to be filed.

A Taxable Person can make an application to the Authority to change the start and end date of its Tax Period, or use a different Tax Period, subject to conditions to be set by the Authority.

Clarifications and Advanced Pricing Agreements

A Person can make an application to the Authority for a clarification regarding any part of the UAE CT Law or for concluding an advance pricing agreement for a transaction or arrangement. The form and manner of the application is to be confirmed by the Authority.



Administrative provisions

Tax Assessment

A Taxable Person may be subject to a UAE CT assessment in accordance with the Tax Procedures Law. In case a non-compliance to the CT Law will be identified during the assessment, penalties and fines determined per Tax Procedures Law could be imposed.

Other Points

The Authority will be responsible for the administration, collection, and enforcement of UAE CT, while the MOF will remain the 'competent authority' in terms of international tax agreements and the exchange of information for tax purposes.





Transitional Rules



Taxable Person's opening balance sheet for UAE CT purposes will be the prior period closing accounting balance sheet for many financial statement line items, subject to any conditions or adjustments prescribed by the Minister in subsequent Decrees.

This should generally simplify calculation of deferred tax, which needs to be evaluated by taxpayers going forward. However, the CT Law leaves some uncertainties as:

- this principle is “subject to any conditions or adjustments that may be prescribed by the Minister”;
- the balance sheet of an entity should be prepared taking into consideration the arm's length principles, i.e. where there are intercompany balances, their recorded value should be after the applications of transfer pricing principles.

Taxpayers must therefore carefully consider their approach to tax accounting under IAS 12, which requires any legislation which is ‘substantively enacted’ by the end of the reporting period to be taken into account when calculating the current and deferred tax balances for financial statement purposes. This may result in companies that would only become subject to UAE CT for financial years commencing after 1 June 2023 recognising deferred tax in their financial statements in earlier periods. Companies will need to carefully assess the point at which ‘substantive enactment’ occurs, giving due consideration to outstanding Cabinet Decisions critical to the operability of the law.



International tax developments - Pillar Two



As a member of the OECD Inclusive Framework on BEPS, we expect that the UAE will actively adopt and implement Pillar Two, including the introduction of a global minimum effective tax rate of 15% for large multinational groups (referred to as the “GloBE” rules).

The GloBE rules impose an additional ‘top-up’ tax on the profits earned in each jurisdiction that large multinational groups operate in, where the effective tax rate in these jurisdictions is lower than 15%.

The GloBE rules provide for two mechanisms for the collection of the additional top-up tax, the Income Inclusion Rule (‘IIR’), the Undertaxed Payments Rule (‘UTPR’).

The IIR imposes a top-up tax on a parent entity in its jurisdiction of tax residence with respect to a low-taxed foreign subsidiary, while the UTPR imposes a top-up tax through a denial of deductions or other adjustment.

The GloBE rules also allow implementing jurisdictions to introduce a ‘domestic’ top-up tax to ensure that entities in their jurisdiction that are a part of a large multinational group have an effective tax rate of at least 15%.

The CT Law, has no reference or details in respect of Pillar Two or a potential higher tax rate for large multinational groups (this was referred to however in the initial announcement). Until such time as the Pillar Two rules are adopted by the UAE, UAE entities that are part of multinationals will be subject to CT under the regular UAE CT regime.

This does not mean however that UAE based multinational groups with operations outside the UAE will not be impacted by the GloBE rules until the UAE implements such rules. These groups’ top-up tax could be potentially collected under the GloBE rules by tax authorities other than the UAE, i.e. where their subsidiaries and branches are established.



Take-away



The introduction of the UAE's first federal corporate income tax regime represents a profound change for companies operating in the United Arab Emirates. The low corporate tax rate combined with a minimal compliance burden for businesses is expected to further strengthen the UAE's position as a global hub for business and investment.

Although the CT law provided more clarity on a number of key areas, a number of areas will only be clarified in subsequent Cabinet decisions. We are confident that greater clarity will emerge in the near future on some of the hot topics such as Exempt Persons, Free Zones and BEPS 2.0 application.





Next steps

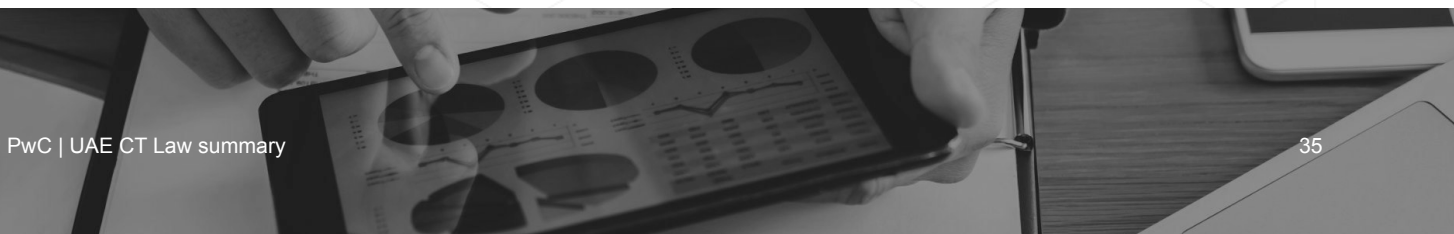


The introduction of UAE CT is expected to have an impact on the tax and compliance costs of most UAE businesses. Persons that may be subject to UAE CT therefore need to consider the financial and operational impact of the law.

For those who have not already started assessing the impact, we recommend a proactive approach is taken to ensure a smooth transition as the implementation date approaches. Businesses will need to assess the technical impact of the law, and then consider the readiness of their operations to manage the compliance, reporting and strategic needs associated with this. This should involve assessing the adequacy of their finance and tax functions, reporting systems, accounting policies, legal agreements and TP documentation.

Our team is already working on tax impact assessments, transfer pricing reviews, and on planning operational implementation, such as systems and process updates for a variety of businesses in the UAE. Please refer to the following page on how PwC can assist.

To address the upskilling needs of regional tax professionals, PwC's Academy, the talent and skills development business of PwC, has introduced a globally recognised UAE Corporate Tax Diploma that will provide comprehensive knowledge of the new regulations, legislation requirements and their practical application. PwC's Academy can also support you with tax e-learns, assessments and customised training programmes.





The PwC UAE Team



Camiel Van der Meij
Senior Executive Advisor
UAE CT Leader



Driaan Ruppung
Partner
UAE CT



Charles Collett
Partner
UAE CT



David van der Berg
Director
UAE CT



Muzaffar Salaev
Director
UAE CT

Scan the QR code
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