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UAE CORPORATE TAX

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PREFACE

The corporate tax in the United Arab Emirates (the "UAE") is the most awaited regulation change in the country's tax and business communities. The "Taxation of Corporations and Businesses Law" (also known as the "UAE CT") was most recently published by the government through Federal Decree Law No. 47 of 2022.

The UAE CT is divided into 70 Articles from 20 Chapters. The Frequently Asked Questions (or "FAQs") section adds more information and explanations to the UAE CT. Additionally, decisions made by the Cabinet and the Ministers on particular issues will enhance this.

The taxation period beginning on or after June 1, 2023 are covered by the UAE CT. After 15 days from the date of publication in the official gazette, the UAE CT will go into force.

Team PRF has made an effort to present a concise overview of the UAE CT in the following pages so that our clients and other professionals may quickly comprehend and understand it.

Happy Reading!

Best Regards,
Team **PRF Consultancy**

Important Definitions

Corporate Tax : The tax imposed by this Decree-Law on juridical persons and Business income.

Qualifying Income : Any income derived by a Qualifying Free Zone Person that is subject to Corporate Tax at the rate specified.

Exempt Person : A Person exempt from Corporate Tax

Taxable Person : A Person subject to Corporate Tax in the State.

Taxable Income : The income that is subject to Corporate Tax

Tax Return : Information filed with the Authority for Corporate Tax purposes in the form and manner as prescribed by the Authority, including any schedule or attachment thereto, and any amendment thereof.

Tax Period : The period for which a Tax Return is required to be filed.

Free Zone : : A designated and defined geographic area within the State that is specified in a decision issued by the Cabinet at the suggestion of the Minister.

Free Zone Person : A juridical person incorporated, established or otherwise registered in a Free Zone, including a branch of a Non-Resident Person registered in a Free Zone.

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.

Important Definitions

Corporate Tax Payable : Corporate Tax that has or will become due for payment to the Authority in respect of one or more Tax Periods.

Foreign 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 laws of a foreign jurisdiction.

Foreign Tax Credit : Tax paid under the laws of a foreign jurisdiction on income or profits that may be deducted from the Corporate Tax due

Tax Registration : : A procedure under which a Person registers for Corporate Tax purposes with the Authority.

Tax Registration Number : A unique number issued by the Authority to each Person who is registered for Corporate Tax purposes in the State.

Tax Deregistration : A procedure under which a Person is deregistered for Corporate Tax purposes with the Authority.

Tax Procedures Law : The federal law that governs tax procedures in the State.

Administrative Penalties : Amounts imposed and collected under the Tax Procedures Law.

Tax Rates

Corporate Tax shall be imposed on the Taxable Income at the following rates:

Tax Rate	Taxable Income
0%	When income does not exceed AED 375,000/- *
9%	On taxable income that exceeds AED 375,000/- *

Corporate Tax shall be imposed on a Qualifying Free Zone Person at the following rates:

Tax Rate	Taxable Income
0%	On Qualifying income *
9%	For not Qualifying income *

*subject to confirmation in Cabinet Decision

Withholding Tax : Withholding tax shall be applicable at 0% or a prescribed rate on categories of state sourced income derived by non-resident person which is not attributable to a Permanent Establishment of the Non-Resident Person in the State.

Corporate Tax shall be payable to the Federal Tax Authority of UAE.

Deductions

Conditions for Deductible Expenditure:

Deduction of expenditure/losses shall not be allowed if they are:

- Not incurred for business purposes; or
- Incurred to derive exempt income.

Apportionment of Expenditure:

In case expenditure is incurred for more than one purpose, a deduction shall be allowed for the expenditure exclusive to Taxable Income and for appropriate proportion of any unidentifiable expenditure incurred determined on a fair and reasonable basis.

Non-Deductible Expenditure:

Deduction of following expenditures is barred and thus, shall be included in taxable income:

- Bribes or other illicit payments;
- Donations/grant to a non-Qualifying Public Benefit Entity;
- Dividends, profit distributions or benefits of a similar nature paid to an owner of the Taxable Person;
- Fines and penalties, other than amounts awarded as compensation for damages or breach of contract;
- Withdrawals by a natural person who is a Taxable Person; or
- Corporate Tax, Recoverable Input VAT and Tax on income imposed outside the State.

Expenses with Capped Deduction:

- Interest Expenditure: Deduction of interest shall be capped to 30% of Earnings before interest, tax, depreciation and amortization (EBITDA) calculated for purpose of UAE CT.
- Net Interest Expenditure disallowed can be carried forward and claimed as deduction for subsequent 10 tax periods.
- This capping is not applicable to banks, insurance providers and natural persons
- Entertainment Expenditure: 50% of expenditure incurred to receive and entertain the customers, shareholders, suppliers or other business partners shall be allowed as deduction.

Specific Interest Deduction Limitation Rule:

Interest on Related Party Loan for following purpose shall not be deducted

- for distribution of dividend or profit to a Related Party.
- for redemption, repurchase, reduction or return of share capital to a Related Party.
- for capital contribution to a Related Party.

for the acquisition of an ownership interest in a Person, who will become a Related Party following the acquisition

Exempt Person

The following Persons shall be exempt from Corporate Tax:

- A Government Controlled Entity. A Person engaged in an Extractive Business, that meets the conditions of the Decree-Law.
- A Qualifying Public Benefit Entity under the Decree-Law.
- A Qualifying Investment Fund under the Decree-Law.
- A juridical person incorporated in the State that is wholly owned and controlled by an Exempt Person.
- 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 State.
- A Person engaged in a Non-Extractive Natural Resource Business, that meets the conditions of the Decree-Law

Free Zone Person

- **Qualifying Income:** Income derived by a Qualifying Free Zone Person that is subject to corporate tax at a rate of 0%.
- **Corporate Tax Rates:** Corporate Tax shall be imposed on a Qualifying Free Zone Person at the following rates:

    0% on Qualifying Income

    9% on taxable income that is not Qualifying Income.

Qualifying Free Zone

- Where a Free Zone Person fails to meet the conditions required to be a qualifying free zone person during a tax period, its income shall be taxed at 9% from the beginning of the tax period.
- The income of a Qualifying Free Zone shall be taxable at 0% only for the period stipulated as per the legislation of the respective free zone which could be further extended by a period not exceeding 50 years.
- A Qualifying Free Zone Person shall meet following conditions:

    Derives qualifying income;

    Free zone has not elected to be subject to UAE CT

    Complies with arm's length principle and maintains adequate transfer pricing documentation.

    Maintains adequate substance in state i.e., managed and directed in the UAE, have adequate employees, possess physical assets and incur expenditure relatable to the revenue earned;

Corporate Tax Base

The following Persons shall be exempt from Corporate Tax:

- A resident juridical person is subject to Corporate Tax on its taxable income derived from the UAE or from outside UAE.
- A resident natural person is subject to tax on his income derived from business activity in the UAE or outside the UAE.
- A Non-Resident Person is subject to Corporate Tax on the following:

  Taxable Income attributable to the Permanent Establishment

  Any other income sourced in the UAE

  Taxable income attributable to the nexus of the Non-resident in UAE

Exempt Entities

- Government Entities or Government controlled entities are exempt from CT.
- A person engaged in extractive business or natural resource business subject to certain conditions are also exempt from CT.
- Similarly, a qualifying public benefit entity, investment fund and a social security or pension fund are also exempt (subject to applicable terms) from CT.
- Exempt Income: The following incomes are not taken into consideration for determining the CT:

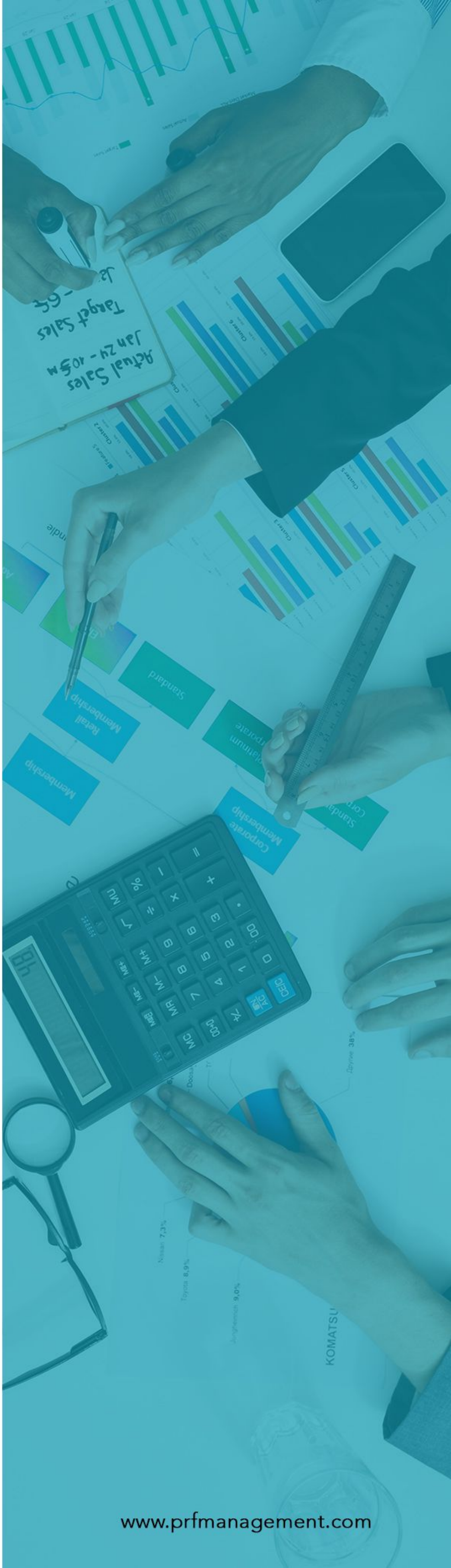
  Dividends and other profit distributions;

  Dividends and other profit distributions from Participating interest

  Income of a Foreign Permanent Establishment ('FPE')

Permanent Establishment

- Non-Resident Person has a Permanent Establishment (such as, a branch, office, factory, workshop, land and buildings and other real property etc.) in the State in the instances such as, where the fixed or permanent place is in the State through which business is being conducted, where the person has a habitual authority to conduct a business in the State, etc.
- A fixed or permanent place in the State shall not be considered a Permanent Establishment of a Non-Resident Person for the activities such as, Storing, displaying or delivering of goods or merchandise belonging to that Person, keeping stock of goods or merchandise belonging to that person for the sole purpose of processing by another person and any other activity of a preparatory or auxiliary nature for the Non-Resident Person.



Calculation of Corporate Tax Payable

Taxable Income

- Financial statements to be prepared in accordance with the accounting standards
- Option for preparation of accounts on cash basis
- Specified adjustment to the taxable Income prescribed
- When accounts are prepared on accrual basis, assets and liabilities to be considered at fair value on impairment basis and unrealised gain and loss.

Calculation and settlement

As per the article, the due Corporate Tax will be settled as per Article 48 after setting off the following available credits in the below order:

- Available Withholding Tax Credit
- Available Foreign Tax Credit
- Any credits or other forms of relief specified in Decisions

Balance amount must be paid and settled

Withholding Tax

The following income shall be subject to WHT at 0% or any other rate as specified by the Minister:

- UAE sourced income derived by non-resident person as prescribed in the decision issued (not attributable to a PE)
- Any other income specified by the Minister
- The CT payable due can be reduced by the amount of Withholding tax credit for the respective tax period.
- Maximum credit available shall not exceed the corporate tax due

Transfer Pricing

- Transactions and arrangements between related parties to meet the arm's length standard.
- Five methods (as prescribed by OECD) to determine the arm's length price. Option to choose any other method also available, provided due justification rendered.
- The Revenue Authority shall adjust the taxable income when the transactions or arrangements are not at arm's length range.
- The Authority shall make a corresponding adjustment to the taxable income of the related party that is party to the relevant transaction or arrangement.
- If a foreign competent authority adjusts a taxable person's income, that person may apply to the authority to make a corresponding adjustment.

Connected Persons

- This Article defines "Connected Person" and payments to connected person.
- A payment or benefit provided by a Taxable Person to its Connected Person shall be deductible only if and to the extent the payment or benefit corresponds with the Market Value of the service or benefit.
- A Person shall be considered a Connected Person of a Taxable Person if that Person is:

    An owner of the Taxable Person.

    A director or officer of the Taxable Person.

    A Related Party of any of the Persons.

Transfer Pricing Documentation

- Documentation (Master file and a local file) to be submitted within 30 days from the request.
- Taxable person to file a disclosure on transactions or arrangements with its related parties and connected person along with their tax return
- If the disclosure filed meet the conditions prescribed by the Minister, the taxable person must maintain both master and a local file

Tax Losses and GAAR

Tax Loss Relief

- A Tax Loss can be offset against the Taxable Income of subsequent Tax Periods.
- Tax loss can be set off in subsequent period only up to 75% of taxable income for that tax period.
- Can't claim tax loss relief for:

    Losses before Corporate Tax commencement date.

    Losses before a person becomes taxable person

    A Related Party of any of the Persons.

- Losses incurred from an asset or activity the income of which is exempt.

Transfer of Tax loss

- Tax loss of one taxable person can be set off against tax loss of another taxable person if certain conditions are satisfied.
- In case the transfer is done:

    Taxable person to whom loss is transferred should reduce its taxable income.

    The offset shall not exceed the amount as mentioned in Article 37 above

Conditions on Tax Losses carried forward in case of unlisted corporate

- 50% ownership interest remains same
- Conduct of same business following change in ownership of more than 50%

Date of Formation & cessation of a Tax Group

- Member company may join or leave the tax group from the tax period specified in the application or as determined by the authority.

Taxable Income of a Tax Group

- The relevant provisions of the UAE CT shall apply as the context requires to the Tax Group.
- The Tax Group must prepare consolidated financial statements in accordance with accounting standards applied in the State
- The Parent Company shall consolidate the financial results, assets and liabilities of each Subsidiary for the relevant Tax Period, eliminating transactions between the Parent Company and each Subsidiary that is a member of the Tax Group.
- Unutilized Tax Losses of a Subsidiary that joins a Tax Group (referred to in this Article as "pre-Grouping Tax Losses") shall become carried forward Tax Losses of the Tax Group and can be used to offset the Taxable Income of the Tax Group insofar this income is attributable to the relevant Subsidiary

Payment & Refund of Corporate Tax

Payment of Corporate Tax

- Payment should be done within 9 months from the end of the relevant Tax Period.

Refund of Corporate Tax

- A Taxable Person can apply for Tax Refund, if the Withholding Tax Credit available is in excess of the Corporate Tax Payable by him.
- As of now as per the Decree Law, the Withholding Tax rate is 0% unless the Cabinet issues another higher rate of Withholding Tax

General Anti-Abuse Rule

- It applies to transaction or arrangement which concludes that:
  - It is not for a valid commercial that reflects economic reality
  - purpose is to obtain corporate tax advantage that is inconsistent with intention of law.
- The Authority may make a determination that one or more specified Corporate Tax advantages obtained and issue a Assessment giving effect to the determination that may include:
  - Allowing or disallowing any exemption
  - Allocating any such exemption/ deduction to any other persons
  - Can make compensating adjustments to tax liability of any other person

Violations & Penalties

- Corporate Tax Assessment and penalties will be in accordance with the Tax Procedures Law and decisions issued in the implementation of its provisions.
- Penalty may be imposed in case of non-compliance of Tax return as per the UAE CT

Agreements

- The terms of the International Agreements shall prevail, if provisions of the Decree Law are inconsistent with the terms of such Agreements.

Transitional Rules

- The opening balance sheet shall be the closing balance sheet prepared for financial reporting purposes on the day immediately before the first tax period.
- The balance sheet shall be prepared considering arm's length principle

How can PRF help you?

Corporate Tax

- Conduct High Impact Assessment
- Coporate Tax Advisory
- Corporate Tax Compliance
- Documentation and Reporting
- Representative Services

Transfer Pricing

- Preliminary Assessment on Applicability
- Review/Drafting of Agreements
- Performing Benchmarking Study
- Tax Efficient Restructuring of Supply Chain/IP
- Documentation and Reporting
- Country by Country Reporting

International Tax

- Analysis of benefits arising due to the DTAA
- Analysis of Withholding Tax implications
- Analysis of PE implications
- Global Corporate Structure Planning
- Profit Repatriation Strategies
- Evaluation of Compliance requirements in the foreign country
- Tax Residency Certificate
- Ultimate Beneficial Owner (UBO) Regulations
- Economic Substance Regulations in the UAE

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Thank You....!

UAE

CloverBay Tower, AlAbraj Street, BusinessBay,Dubai P.O.Box: 27961, Dubai

+971 56 459 3907

INDIA

Officeno. 12A, 3rd Floor DowntownCity Vista, FountainRoad, Kharadi, Pune

+91 95 189 94 381

support@prfmanagement.com

www.prfmanagement.com