

---

FEBRUARY 2023

# PRF MANAGEMENT CONSULTANCY

UAE CORPORATE TAX

---

# OUR SPEAKERS



**CA Hema Chawla**  
**Partner Tax and Assurance**



**CA Rashi Golcha**  
**Partner Direct Tax and Transfer Pricing**

# AGENDA



Introduction 1

Taxable Persons 2

Exempt Persons 3

Free Zone Persons 4

Taxable Income 5

Tax losses and reliefs 6

7 Group

8 Transfer Pricing

9 Administration

10 GAAR

11 Next Steps

12 Any questions

# INTRODUCTION- OVERVIEW

- The UAE Ministry of Finance published the Federal Decree-Law No 47 of 2022 on Taxation of Corporation and Businesses on 9 December 2022 (CT Law)
- The CT Law shall come into effect after 15 days of its publication in the official gazette (10 October 2022)
- The CT Law will apply to businesses on tax periods commencing **on or after 1 June 2023**
- The first decision cabinet decision no 116 has been released on 16 January 2023 and will be further followed by series of Executive Regulations/ Cabinet Decisions



# TIMELINES

Announcement of introduction of federal CT and release of FAQs

31 Jan  
2022

UAE CT law along with comprehensive FAQs issued to the public

09 Dec  
2022

Pillar 2 likely to apply

01 Jan  
2024

Release of Public Consultation Document (PCD) outlining the policy background and key principles

28 Apr  
2022

CT applicable for financial years starting on or after 1 June 2023

01 Jun  
2023

# INTRODUCTION – EFFECTIVE DATE [1<sup>ST</sup> JUNE 2023]

CIT Effective for financial years starting on or after 1 June 2023

Financial year ending on	30 June	31 December	31 March
1 <sup>st</sup> reporting year	1 July 2023 to 30 June 2024	1 January 2024 to 31 December 2024	1 April 2024 to 31 March 2025
1 <sup>st</sup> tax return filing date (9 months from end of relevant FY)	31 March 2025	30 September 2025	31 December 2025

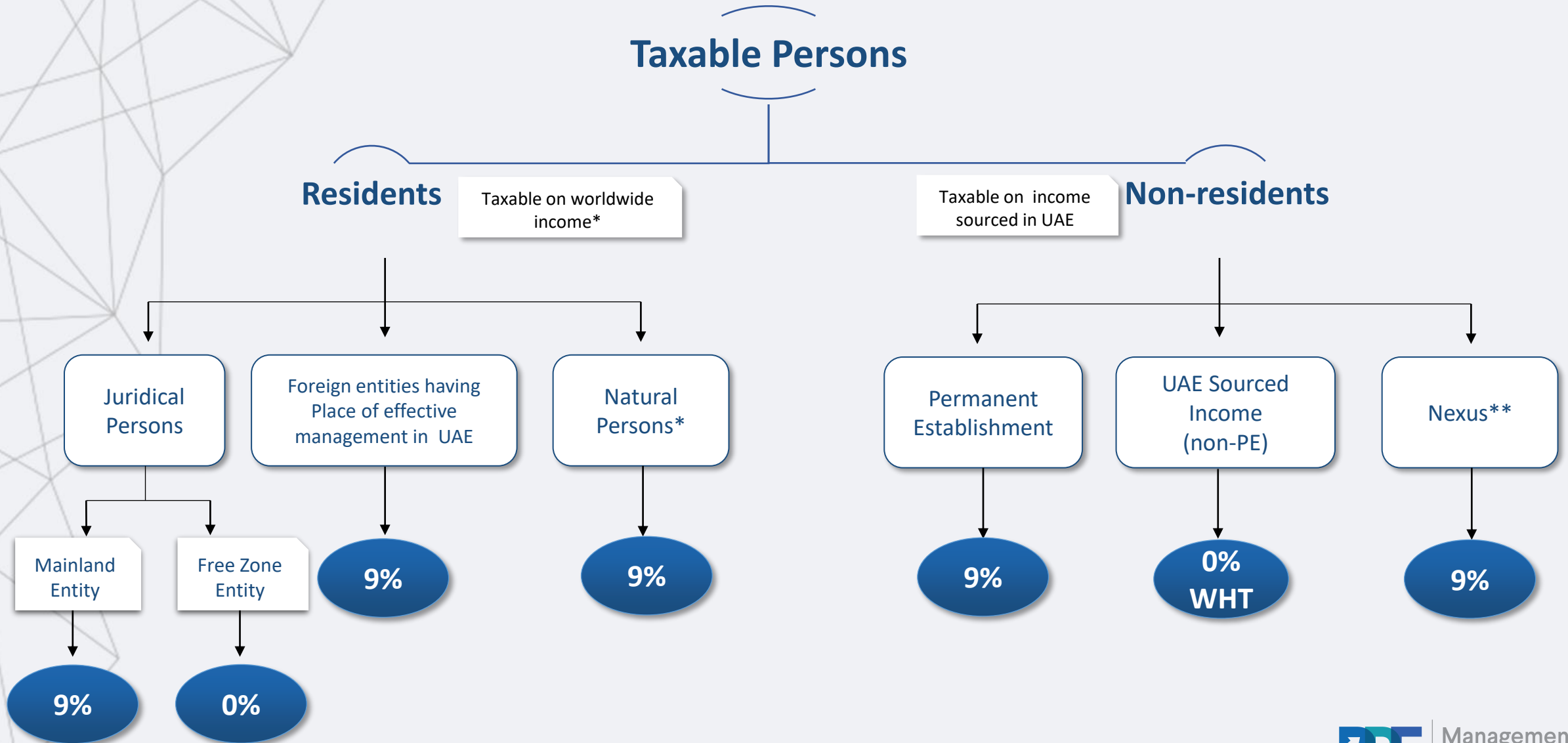


# CORPORATE TAX RATES

	Taxable Income	Rate of Tax
<b>Taxable Person</b>	Taxable income up to AED 375,000	0%
	Taxable income above AED 375,000	9% (on portion of taxable income exceeding AED 375,000)
<b>Free Zone Person</b>	Qualifying Income*	0%
	Other Income	9%

- *For large Multinationals (having consolidated business revenues in excess of EUR 750M) a different rate of will be prescribed once Pillar Two rules are adopted by UAE*
- *Meaning of Qualifying income not specified in the law, clarification awaited*
- *Small business relief (threshold yet to be prescribed)*

# TAXABLE PERSONS AND BASIS OF TAXATION

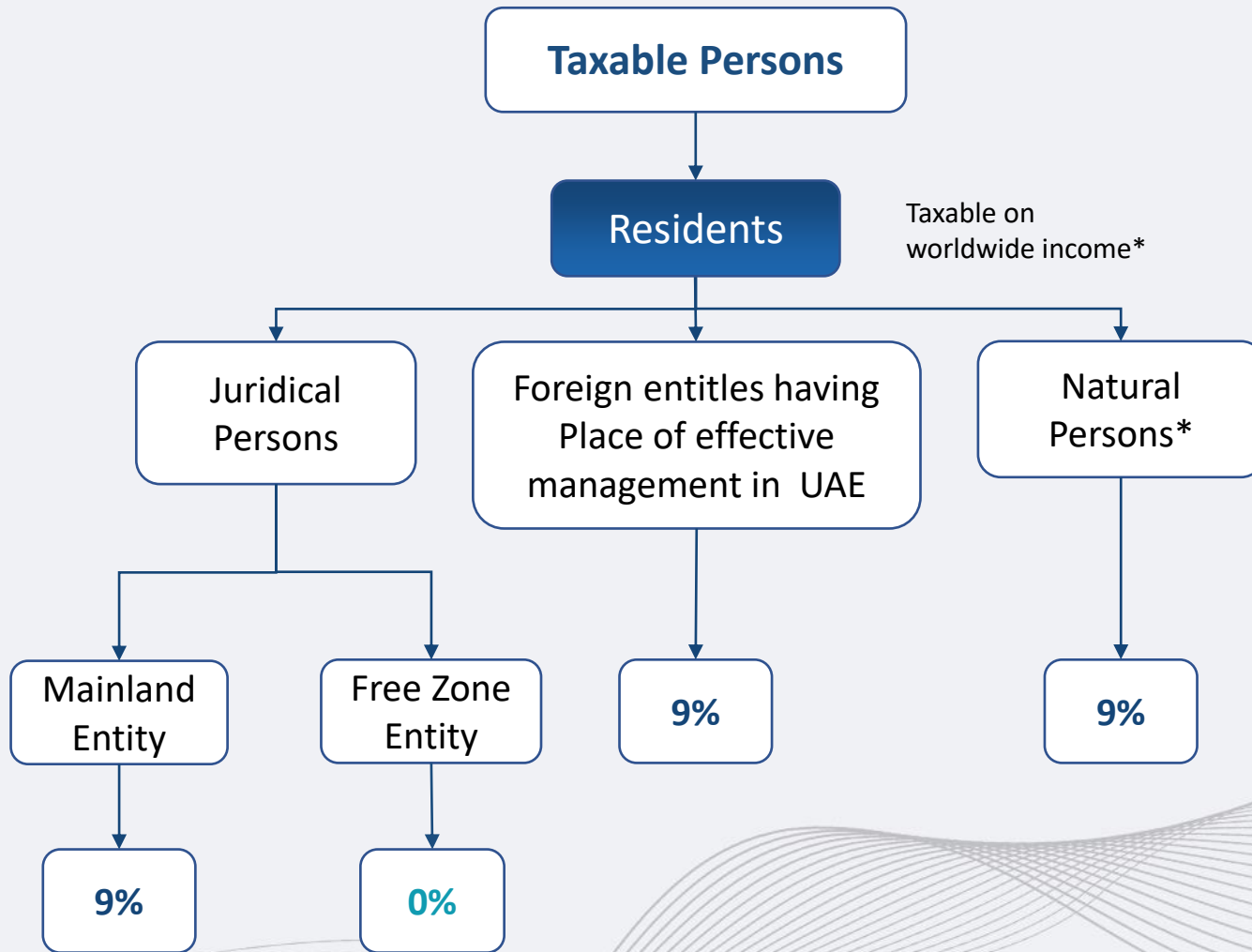


\*Natural Persons taxable on income derived from outside UAE only if it relates to the business activity conducted in UAE

\*\*Nexus – yet to be defined



# TAXABLE PERSONS - RESIDENTS



Taxable on worldwide income\*

## 1. Juridical Persons

- Include LLC, Foundation, Joint Stock Company

## 2. POEM

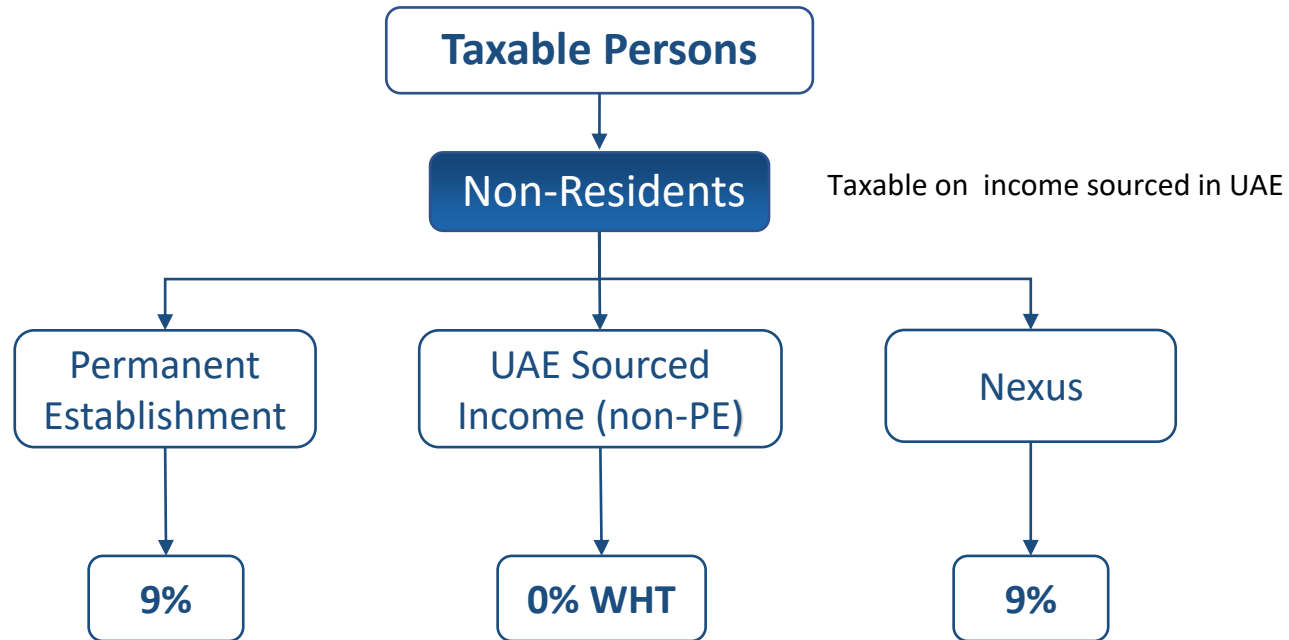
- A foreign company that is effectively managed and controlled in the UAE
- All facts and circumstances must be considered in determination.
- A relevant indicator is the place where the strategic decisions affecting the business are made.
- Further guidance awaited

## 3. Natural Persons

- Engaged in business or specified business activities directly or through Sole Proprietorships, unincorporated partnership etc
- Personal income is out of scope

For qualifying income of Qualifying FTZs

# TAXABLE PERSONS – NON RESIDENTS



## 2. UAE Sourced income

- The definition is wide and includes following income:
  - Derived from UAE residents
  - Derived from UAE PEs of non-residents
  - Derived from activities performed, assets located, capital invested, rights used, or services performed in the UAE
- Whilst currently WHT is at 0% , UAE sourced income could be subject to WHT in future

## 1. Permanent Establishment

**Definition of PE based on the OECD Guidelines (BEPS Action 7 report) and includes:**

- Fixed or Permanent place in the state to carry out business
- Construction or installation PE
- Dependent agent
- No service PE clause
- Exclusions
  - Independent agent (unless working exclusively for non-resident or not legally or economically independent)
  - Temporary presence of employees engaged in non-core activities
  - Preparatory or auxiliary activity

## 3. Nexus

Currently not defined, could have wide application

# EXEMPT INCOME

- a. **A Government entity**
- b. **A Government controlled entity**
- c. A person engaged in **extractive business**
- d. A person engaged in **non-extractive business**

- e. A Qualifying **Public Benefit Entity**
- f. A Qualifying **Investment Fund**
- g. A public / private **pension or social security**

- h. A UAE juridical person that is wholly owned and controlled by an **Exempt** Person in (a), (b), (f), (g) and conducts its whole or part of business activities
- i. Any other Person specified by Cabinet decision

May be subject to tax in relation to **Business or Business Activities** conducted. In such a case:

- **Separate financial statements** are required and will be treated as independent business
- Any dealings with exempted business activities shall be considered as **Related Party transactions**

- Person in (f), (g), (h) and (i) are required to submit application to the FTA
- Exemption to be effective from the beginning of the Tax Period

# FREE ZONE PERSONS

Who is a Free Zone Person?

Companies and Branches registered in a Free Zone

Taxability of Free Zone Person

FZ entities are subject to 0% CT if they are considered **Qualifying Free Zone Person (QFZP)** and earn **Qualifying income\***

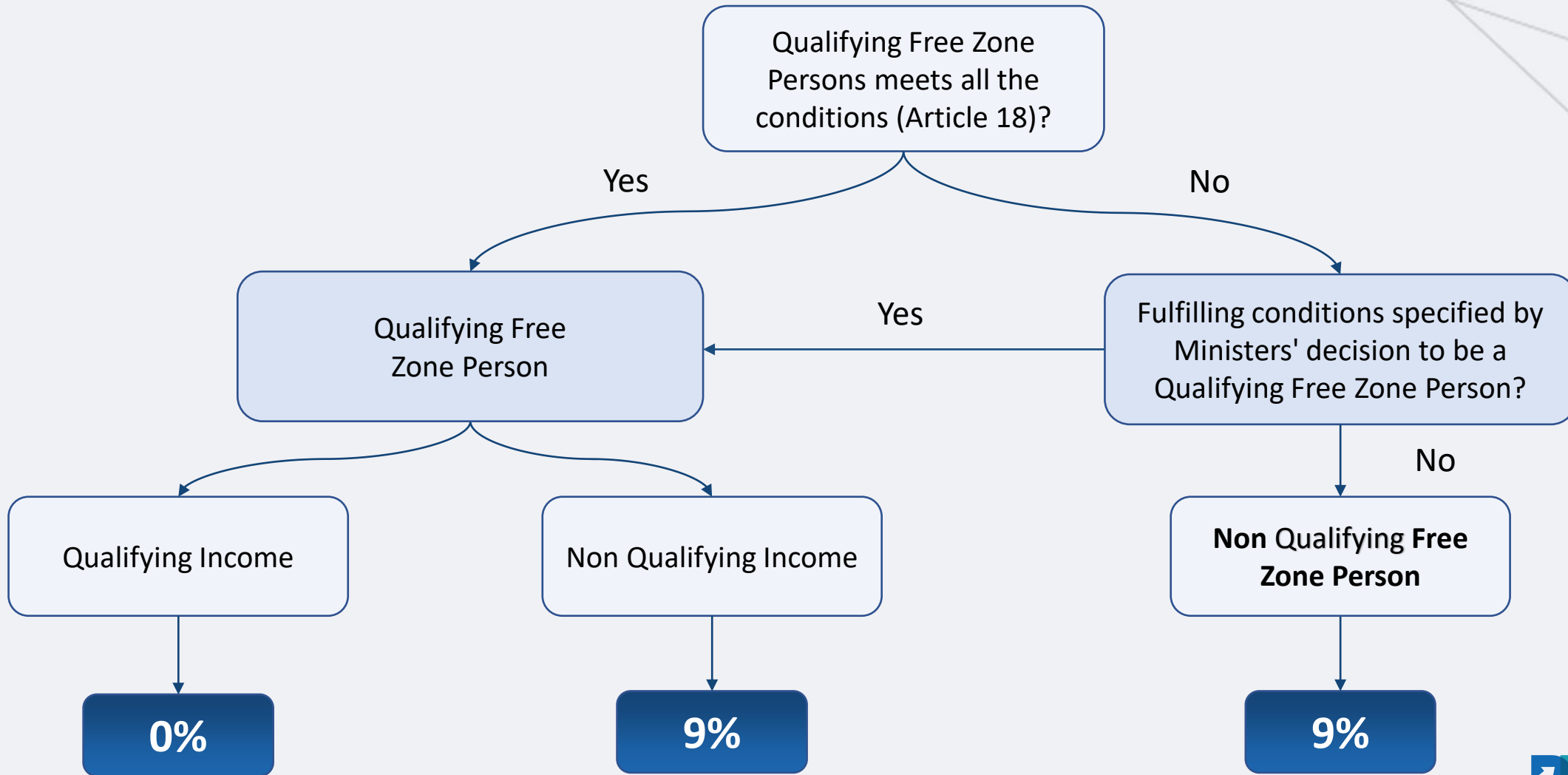
FZ entities are considered **Qualifying Free Zone Persons** if it meets all of the following conditions:

- Maintains adequate substance in the UAE
- Derives Qualifying income (to be detailed in cabinet decision)
- Has not elected to be subject to Corporate Tax at 9%
- Complies with Arm's length principles and TP documentation
- Meet any other condition as may be prescribed by the Minister

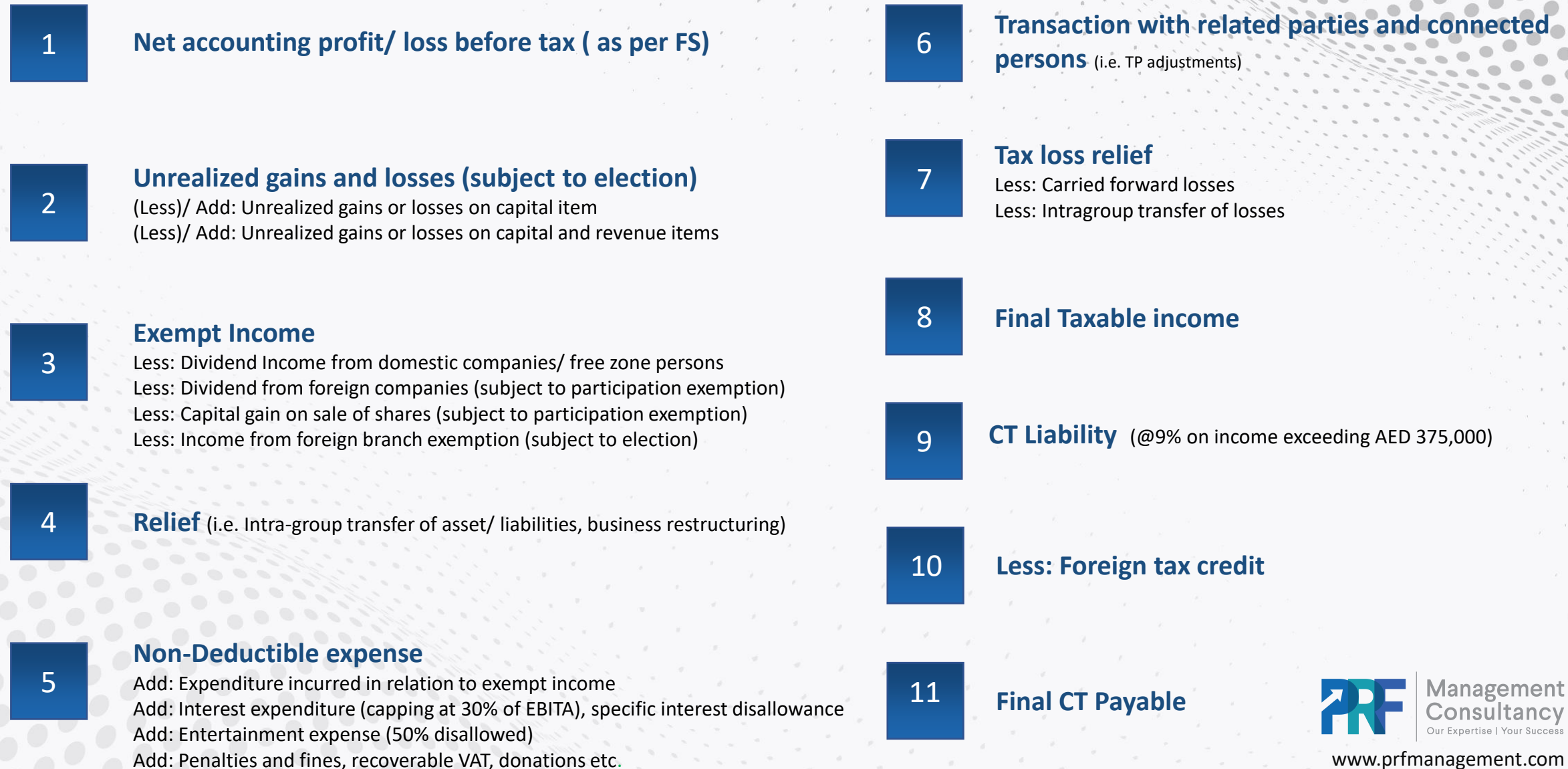
**Mandatory to file Corporate Tax Return**

**Audit of Financial Statements**

# RATE OF TAX FOR QFZP



# CALCULATION OF TAXABLE INCOME





# EXEMPT INCOME

- Dividends and other profit distribution from domestic source
  - Available irrespective of level of ownership
  - Includes dividend received from UAE juridical person or Free zone entity subject to 0% CT rate
- Dividend and other profit distribution from a participating interest in a foreign juridical person
- Any other income from a participating interest
- Income of a foreign permanent establishment subject to tax in foreign jurisdiction
- Income of a non-resident from operating aircraft or ships in international transportation

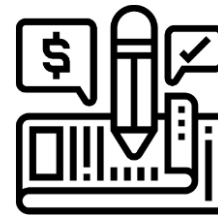


# FOREIGN PERMANENT ESTABLISHMENT EXEMPTION

UAE Companies with foreign PE can either:



Elect to claim **exemption for foreign PE profits** subject to conditions (Foreign PE subject to tax at a rate not less than 9%)



Claim **foreign tax credit** for taxes paid in foreign PE country

# DEDUCTIBLE EXPENSE

Expense only deductible if **wholly and exclusively** for purpose of generating taxable income and not **capital** in nature

Expense not deductible:

- Expenses **not incurred for taxable business**
- Expenditure **incurred for deriving Exempt income**
- **Losses not connected** with or arising out of **taxable person's business**
- Any other expense as may be specified

If expense incurred for more than one purpose, **apportionment of expense** incurred for taxable and exempt income



# DEDUCTIBLE EXPENSE – LIMITATIONS

- **Entertainment expenditure deductible up to 50%:**

- Expenditure incurred to entertain Customers, Suppliers, Shareholders or other business partners (include meals, accommodation, transportation, admission fees, facilities connected to entertainment, etc.)

- **No deduction for:**

- Fines and penalties
- Bribes or illicit payments
- Donations to non qualifying public benefit entity
- Dividends, profit distributions or benefits of a similar nature paid to the owner
- Amounts withdrawn from the Business by a natural person who is a taxable person
- Corporate Tax
- Recoverable Input Value Added Tax
- Other expenses specified by the Minister



# INTEREST EXPENDITURE

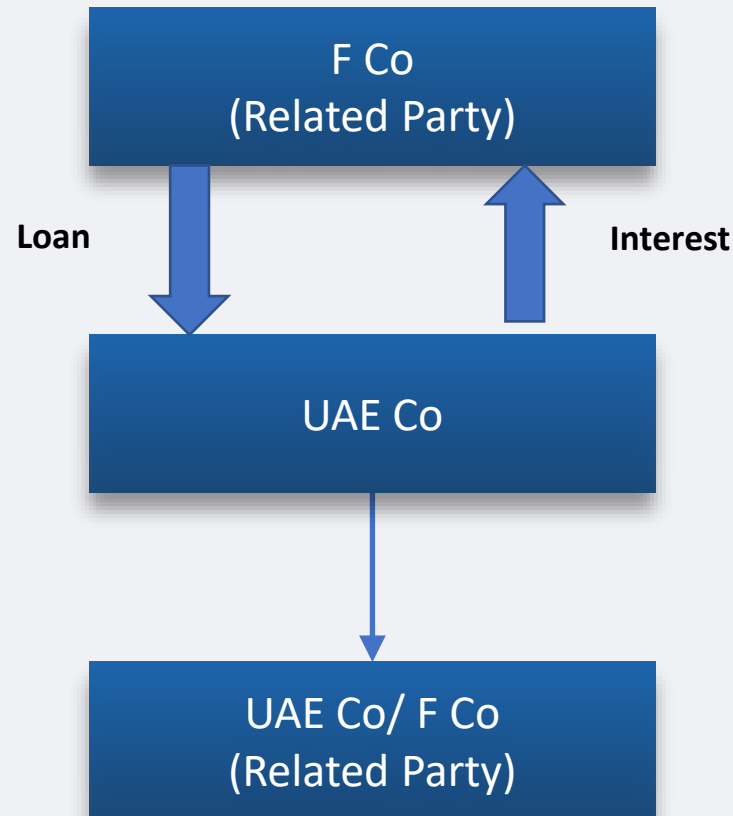
## GENERAL INTEREST DEDUCTION LIMITATION RULE:

- **Interest capping rule** - Net Interest Expenditure shall be deductible up to 30% of EBITA or amount specified by the Minister, whichever is higher
- **Not Applicable to** - Banks, Insurance businesses, business carried on by natural persons & any other prescribed person
- **Carry forward** - Disallowed Interest can be carried forward and deducted in subsequent 10 tax period
- **Net Interest Expenditure** - (CY Interest expenditure + carried forward net Interest expenditure) in excess of taxable interest income

Note: Specific directions on interest capping for Groups to be issued (persons through ownership or control)



# INTEREST ON RELATED PARTY BORROWING



## SPECIFIC INTEREST DEDUCTION LIMITATION RULE:

- **Inadmissible Interest** – No deduction is allowed for Interest on Loan from Related Party if it is incurred for -
  - Dividend or profit distribution to Related Party
  - Capital contribution to a Related Party
  - Redemption, repurchase, reduction or return of share capital to a Related Party
  - Acquisition of ownership Interest of a Related Party
- **Not applicable** - If the main purpose of obtaining the loan is not to gain a Corporate Tax advantage
- No corporate tax advantage shall be deemed to arise if related party is subject to CT rate not less than 9% in foreign jurisdiction



# TAX LOSSES

## What is tax loss:

A 'Tax loss' for Corporate Tax Purpose would arise when the total deductions that a business can claim are greater than the total income for the relevant financial period

## Ineligible loss:

- Losses before the effective date of UAE CT or before person becomes tax payer
- Loss from activities / assets otherwise exempt from UAE CT

## Set off and carry forward of tax losses:

- Tax losses can be carried forward **indefinitely**
- Offset carried forward losses in future periods only up to maximum of **75% of taxable income**
- **Carry forward allowed** to subsequent periods subject to conditions and change of control provision
  - If change in control (50% share capital) losses lost, except, if same or similar business is carried on by the restructured entity

## Transfer of tax losses between group entities

- Both the companies are UAE resident juridical person
- Companies are directly or indirectly under 75% or more common ownership
- Financial statements prepared using same financial year and using the same accounting standards
- Neither company is Exempt Persons or Qualifying Free Zone Persons.

# TAX GROUP

## UAE group entities may elect to form Tax Group provided all following conditions must be met:

- All are **Resident juridical persons**
- Parent company holds minimum 95% of share capital, voting rights and entitlements to profits (direct or indirect)
- No companies should be an Exempt person or a Qualifying Free Zone person
- All group members adopt the same financial year and accounting standards

- Tax Group is treated as **Single Taxable Person** represented by Parent company
- To form a tax group, application to be submitted to the FTA parent and each subsidiary

- Consolidation FS and tax liabilities (loss and intra group offset)
- Parent company responsible for administration and payment of CT

# TRANSFER PRICING

## Coverage:

- 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

## Arms length Principle:

- Transactions must be undertaken as if they are carried out between independent parties under similar circumstances
- Payments and benefits provided should be similar to prices that third or independent parties would agree to deal

## Who is a Related party?

- Two or more individuals related up to fourth degree of kinship
- An individual and a legal entity related by ownership (50% or greater) or control
- Two or more legal entities related by ownership (50% or greater) or control
- Taxpayer and its PE or foreign PE
- Partners in the same unincorporated partnership or any person that is related party of that partner
- Trustee, founder, settlor or beneficiary of a trust or foundation and its related parties

‘Control’ defined for determining relationships



# TRANSFER PRICING

## Accepted TP Method:

- Broadly aligned with OECD TP Guidelines the CT law prescribes five methods – CUP, RPM, CPM, TNMM and PSM
- Taxpayer allowed to apply any other method if the prescribed method cannot be reasonably applied
- Combination of methods permitted
- Most appropriate method to be selected after considering:
  - contractual terms
  - characteristics of the transaction
  - economic circumstances
  - functions performed, assets, risks assumed
  - business strategies

## TP Adjustments:

- Adjustment to arrive ALP by taxpayer or Tax Authority
- Corresponding adjustment to income of related party

## Advance Pricing Agreement:

- Application for advance pricing agreement (existing or proposed transactions)

## TP Documentation:

- Disclosure form to be submitted with CIT return\*
- Master file (high level overview of group business) and local file (information about specific transactions) to be submitted within 30 days of request\*\*
- Not applicable for small businesses

\*Threshold and format to be prescribed

\*\* Threshold to be prescribed, expected to be OECD Format

# PAYMENT MADE TO CONNECTED PERSON



Payments and benefits provided to **Connected Persons** deductible only if it meets –

- **Business purpose test:** Expense is incurred wholly and exclusively for business and;
- Satisfies “**arms length**” principle: Corresponds to market value (MV) of service/ benefit provided

*MV to be determined as per Transfer Pricing principles*

## Who is connected person?

- Owner of the Taxable Person
- Director or officer of the Taxable Person
- Partners in the same unincorporated partnership
- Related party(ies) of any of the above

# GENERAL ANTI ABUSE RULES

## In any transaction or arrangement, if reasonable concluded that:

- Entered without **valid commercial or non-fiscal reason**, and **does not reflect economic reality**
- (one of the the) main purpose of (or any part of) transaction to **obtain a CIT advantage**, inconsistent with intention or purpose of law

## FTA may:

- Disallow exemption, deduction or relief
- Allocate exemption, deduction or relief to another person
- Re-characterize transaction
- Disregard effect resulting from application of other provision

## Applicability of GAAR provisions - Taxable Income subject to 0% Tax Rate:

- Multiple business or business activity single AED 375,000 is exempt
- GAAR can provisions to be invoked if CT advantage arises due to artificial separation of business activity



# ADMINISTRATION

## Registration:

- Business including FZ entities required to register for CT purposes
- Certain exempt person may be required to register and obtain TRN
- FTA can register business automatically (at its discretion)

## CT liability:

- Payment of CT liability within 9 months of the end of the tax period
- Request of refund to FTA

## Tax return:

- Electronic file CT return and supporting schedules within 9 months of the end of tax period

## Assessment:

- Self-assessment principle
- FTA may issue an assessment

## Clarification:

- A business may apply to the FTA for a clarification or conclusion of advance pricing agreement

## Documentation:

- Maintain records (also exempted person) for a period of 7 years
- MoF may issue a decision requiring categories of Taxable Persons to prepare and maintain audited or certified financial statements



# NEXT STEPS FOR BUSINESS



## Organization structure

- Review the legal structure of the group and assess the need for any changes
- Conduct impact analysis of the bottom-line and profit after tax
- Allocating resources to undertake compliances



## Free Zones

- Satisfy conditions for QFZP
- Consider TP provisions



## Related Party Transactions

- Framing TP policies, maintaining documentation and meeting compliance requirement



## Groups

- Forming optimal tax groups



## System readiness

- Evaluate system readiness for data collation and reporting



## Contact our team



**CA Hema Chawla**

**Partner Tax and Assurance**

[hema@prfmc.com](mailto:hema@prfmc.com)

+971 56 459 3907



**CA Rashi Golcha**

**Partner Direct Tax and Transfer Pricing**

[rashi@prfmc.com](mailto:rashi@prfmc.com)



# Management Consultancy

Our Expertise | Your Success