

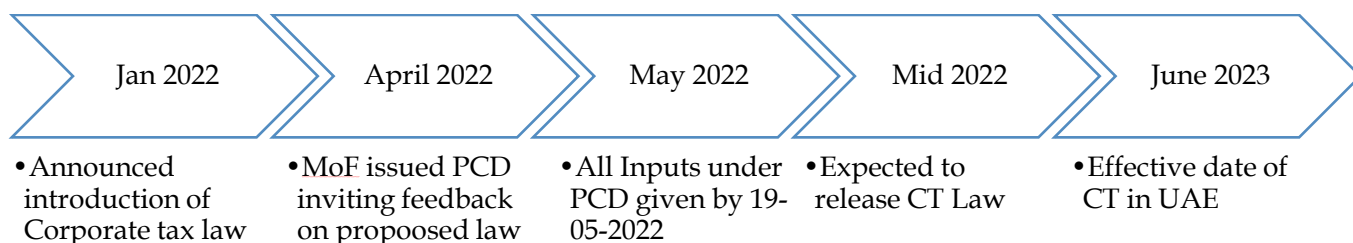


The UAE Ministry of Finance (MoF) on 31st January 2022, announced the introduction of the Federal Corporate Tax (CT) on business profits effective for financial years starting on or after 1 June 2023. While the UAE MoF is finalizing the UAE CT legislation, on 28th April 2022, it issued a Public Consultation Document (PCD) covering various aspects of the proposed law and seeking feedback from business stakeholders.

The consultation outlines the rationale for a federal CT regime and the key principles. It aims to share updates and gather information on a number of key topics.

The PCD helps to give us an idea of the direction for the roll out of CT in the UAE in 2023. **However, this guidance document should not be relied upon to make business decision as this could be subject to change based on the feedback from the consultation. This document doesn't reflect final CT law and full text of law will be issued in due course.**

CT Landscape and Timelines



TAXABLE PERSON



Legal Persons - UAE CT will apply to legal persons incorporated in the UAE, as well as to foreign legal entities that have a Permanent Establishment (PE) in the UAE or if they are controlled and managed from the UAE.

Natural Persons - UAE CT will apply to Individuals engaged in a business or commercial activity in the UAE. Employment income and other personal income earned by UAE and foreign individuals will not attract CT.

UAE resident persons will be taxable in the UAE on their worldwide income, which for a natural person will be limited to the income earned from their business activity carried out in the UAE.

EXEMPT PERSONS

The following persons shall be exempt from UAE CT:



1. Federal and Emirate governments;
2. Wholly government-owned UAE companies carrying out a sovereign activity;
3. Businesses engaged in the extraction and exploitation of UAE natural resources that are subject to Emirate-level taxation;
4. Charities, other public benefit organizations; pension funds; investment funds.
5. Public and regulated private social security and retirement pension funds
6. Investment funds, subject to meeting the conditions

BASIS OF TAXATION

Tax residency is the first criteria to check if the Business profits will be subject to CT or not in the UAE.



Residents - A UAE resident is a legal person incorporated in the UAE or a foreign company that is effectively managed and controlled in the UAE. UAE resident legal persons are in principle taxable on their worldwide income.

Non-residents - NR will be subject to UAE CT on taxable income from their Permanent Establishment (PE) in the UAE and income which is sourced in the UAE. The concept of a PE under the proposed UAE CT regime will be based on Article 5 of the OECD Model Tax Convention, notably:

- Fixed place of business test;
- Dependent agent test;

CALCULATION OF TAXABLE INCOME



The UAE CT regime proposes to use the accounting net profit (or loss) as stated in the financial statements of a business as the starting point for determining their taxable income with limited tax adjustments. The financial accounting period should be used as the tax period

Dividends - Domestic dividends from UAE companies including dividends from Free Zone Persons are exempt from CT in the UAE. Dividends and capital gains on sale of shares in a foreign subsidiary are exempt provided that the shareholding is at least 5% and subsidiary is subject to CT of at least 9%.

Capital Gains - Capital gains on the disposal of shares in Free zone person are exempt if it is a holding company and substantially all of its income is derived from shareholdings in subsidiary companies that meet the participation exemption condition

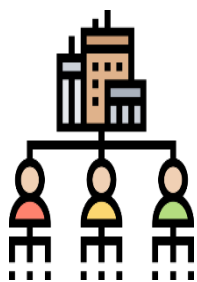
Interest deduction - Expenses on account of interest payments have been limited to 30% of EBITDA. Interest capping is not to apply to banks, insurance businesses and other regulated financial services entities. Interest paid on related party borrowings to be at arm's length.

Non-deductible expenses - Expenses only deductible if for purpose of generating Taxable income. Deductibility of entertainment expenses are capped at 50%. No deductions for penalties, recoverable VAT, donations to unapproved organizations/charities.

Set-off and carry forward of Losses - From CT effective date onwards, businesses can utilize losses to offset up to a maximum of 75% of the taxable income. Tax losses maybe carried forward indefinitely. If there is a change in ownership of more than 50%, tax losses may still be available if same business is carried out by the new owner.

UAE FREE ZONE

Free Zone Persons will be subject to UAE CT. However, a 0% CT rate may apply subject to conditions on following:



- On income earned from entity located outside UAE, or same or other Free Zone.
- On 'passive' income (e.g. interest, royalties, capital gains from owning shares in mainland UAE companies) from mainland UAE.
- To transactions between Free Zone Persons and their mainland group companies. However, such payments made to the Free Zone will not be a deductible expense.
- On Income on sale of goods to Mainland entity by entity in Designated Zone for Value Added Tax (VAT) purposes.

Any other mainland sourced income will disqualify a Free Zone Person from the 0% CT in respect of all their income.

Free zone entities will also have an irrevocable option to move to regular tax regime.

CORPORATE TAX GROUP



- Group companies can opt to form a tax group and be treated as a single taxable person where the parent company holds at least 95% of a subsidiary's shares. UAE branches of companies within the tax group may be included.
- (to clarify if companies with same shareholding can form a Tax Group)
- Parent or subsidiary should not be an exempt persons or in Free zone availing benefit of 0% CT rate
- All group companies should have same financial year

INTRAGROUP TRANSFER OF ASSETS AND LIABILITIES WITHIN GROUP



- Intra-group transfer relief will be available for transfers of assets and liabilities between UAE resident companies that are at least 75% commonly owned, provided such assets and liabilities are held for a minimum 3 years period from the date of transfer
- If such conditions are not met in any year, gain or loss on such transfer shall be subject to CT in the hands of transferor in that year.
- Exemption will be allowed for a deferral of taxation where a whole business, or independent parts of a business, are transferred in exchange for shares or other ownership interests. Any relief will be 'clawed back' if within three years of the restructuring, there is a subsequent transfer to a third party

INTRODUCTION OF TRANSFER PRICING



UAE businesses will be required to comply with the Transfer pricing rules and Arm Length's Principle (ALP) as set out in the OECD Transfer Pricing Guidelines.

TP Documentation -

- Submission of disclosure containing information regarding their transactions with Related Parties and Connected Persons,
- Master file & Local file where ALP exceeds certain threshold in relevant tax period.

WITHHOLDING TAXES



- Currently, 0% withholding tax is proposed to apply to all types of domestic and cross-border payments.
- UAE businesses will not need to deduct taxes while making payments.
- There will be no obligation to file withholding tax returns.

CORPORATE TAX RATES



There will be progressive tax rate as follows:

- 0% for taxable income upto AED 375,000:
- 9% for taxable income above AED 375,000 and
- a different tax rate for large multinationals that meet specific criteria set with reference to 'Pillar Two' of the OECD Base Erosion and Profit Shifting project.

UAE resident companies are subject to CT on their worldwide income and hence in order to avoid double taxation, a foreign tax credit will be allowed in UAE which will be the lower of :

1. Tax paid in the foreign country and
2. UAE CT payable on foreign-sourced income

ADMINISTRATION



- Businesses shall have to obtain a Tax Registration Number ("TRN").
- Filing of one tax return and related supporting schedules for each tax period
- Timeline to pay the CT and file the CT return is 9 months from the end of the relevant tax period.
- UAE CT regime will be based on a self-assessment principle
- Option to apply to FTA for clarification in case of uncertainty on tax treatment
- Maintenance of financial and other records supporting the CT return and other documents submitted to the FTA
- The UAE CT regime will require a Free Zone Person to have audited financial statements if it wants to benefit from the 0% CT regime

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Disclaimer - The above is only a brief summary of the current update and is based only on information currently available in the public domain which is subject to change. Please note that this is for information purposes only and should not be construed as a professional advice.



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