

Tax Grouping under UAE Corporate Tax (“CT”) Law

Background

The UAE Corporate tax law, which will take effect from June 2023, allows the business groups having multiple companies to form ‘tax group’ and treat it as ‘single tax payer’.

The concept of tax group appears to have genesis from the international tax laws which allows for similar grouping (also sometimes referred to as tax consolidation or fiscal unity).

Whilst the introduction of the said concept in the UAE Corporate tax law is a welcome step, the business houses would have to evaluate and make a business case to form the tax group, as grouping would have its pros and cons.

The most common advantage of having a tax group is the ease of the reporting, consolidated income statement which would merge the profitable and loss making operations, coupled with reduction in compliance cost. However, the businesses would have to forgo the individual thresholds of maximum income not subject to tax.

Further, similar concept is also found under the UAE VAT law. However, the conditions of grouping under UAE VAT law is different viz-a-viz UAE Corporate tax law.

The conditions for forming tax group under UAE Corporate tax law are discussed below:

Key conditions:

- All the group members shall be tax resident in the UAE;
- There requires to be parent-subsidary relationship;
- The parent entity must hold at least 95% of the share capital, voting rights, right to profits and net assets in its subsidiaries, directly or indirectly;
- The parent company or its subsidiaries should not be an exempt person;
- The parent company or its subsidiaries should not be a qualifying free zone entity;
- All the members of the tax group should use the same financial year and same accounting standards for financial reporting purposes.

Apart from the above key conditions, there are other administrative conditions and procedures to be met.

Considering the conditions for formation of tax group and other administrative conditions and procedures, few points of deliberations are discussed as under:

Key deliberations:

- Tax Group shall be considered as 'single tax payer';
- Entity owned by Government could be part of Tax Group, subject to certain conditions;
- There shall be joint and several liability of all the Group members;
- Primary responsibility to undertake compliance obligation would be of the parent entity;
- Reasonable flexibility is provided for eligible entities to enter or leave the Tax Group, subject to certain conditions;
- FTA has the powers to dissolve the Tax Group, suo moto, based on available information in hand

Way forward:

Whilst the condition of tax grouping are already provided, the businesses may consider below before electing to form a tax group:

- Cost benefit analysis i.e. outflows (including tax outflows) with or without tax group
- Change in the holding structure where there are UAE subsidiaries without any intermediate parent entity in UAE

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