

TRC - Ministerial Decision

Ministerial Decision No.27 of 2023 on implementation of certain provisions of Cabinet Decision No. 85 of 2022 on Determination of Tax Residency.

Background

In the past, UAE had no formal legislation towards determining the tax residency of a legal / individual person in the UAE. The same was dealt by issuing Tax Residency Certificate as per the procedures and guidelines set by the Ministry of Finance (lately delegated to Federal Tax Authority).

The entire procedure of determining the tax residency was formalized by the Cabinet Decision No. 85 of 2022 (dealing with the requirements and conditions for identifying a Person as a Tax Resident in the UAE) issued on 2 September 2022 (made effective from 1 March 2023).

On 1 March 2023, the Ministry of Finance issued Ministerial Decision No. 27 of 2023 (the Decision) on implementation of certain provisions of Cabinet Decision No. 85 of 2022 thereby defining some important terms concerning tax residential status of individual persons.

Key highlights of the decision:

Article 2: Dealing with (i) Usual or Primary Place of Residence and (ii) Centre of Financial and Personal Interests in the State:

- An individuals' usual or primary place of residence would be in the UAE if, the UAE is the individual's habitual or normal place of residence.

Habitual or normal place of residence has been clarified to mean the place where individual spends most of his time (i.e. not short / temporary stay) when compared to any other country / jurisdiction as part of his settled routine.

- An individuals' centre of financial or personal interest would be in the UAE if, the UAE is where the individuals' personal and economic interests are the closest or of the greatest significance

In determining individuals' personal and economic interests, factors such as person's occupation, familial and social relations, cultural or other activities, place of business, place from which the property of the natural person is administered and any other relevant facts and circumstances should be taken into account.

Article 5: Dealing with Permanent Place of residence

- The permanent place of residence is a furnished home, apartment, room or any other form of dwelling (not required to be owned by the natural person but can be rented) which is continuously available to the individual which is continuously available to him.

The place would be said to be continuously available to individual where the natural person has the continuous right of occupation therein at all times and on a regular basis with some degree of permanency and stability and not just temporary / short stay

Article 6: Dealing with Employment

- An individual would be said to be under employment in the UAE if:
 - ✓ there is a contract with the employer;
 - ✓ services are offered to the employer under the said contract, and
 - ✓ the individual is under administration or supervision of the employer for a promised remuneration from the employer

OR

- ✓ the individual (referred to as labourer) is in a continuing relationship with one party
- ✓ all or substantially all of his income for his work (i.e. labour) is derived from that one party, and
- ✓ the income received by him constitutes remuneration for his labour performed in the UAE

It shall be noted that employment could be limited or unlimited carried on part time or full time basis. Further, a voluntary role without a contract would not constitute employment.

Other Articles:

- The Decision also clarifies manner of calculation of thresholds of 90 days / 180 days.
- The Decision also clarifies exclusion of days from the calculation of thresholds which arise due to exceptional circumstances.

Exceptional circumstance is defined as an event or situation beyond the individuals' control, occurring while he is already in the UAE, which he could not reasonably have predicted or prevented and, which prevents him from leaving the UAE as originally planned.

PB comments:

The definition of the terms is in line with the internationally known principles which in turn would facilitate the application of Tax Treaties signed by the UAE with many countries and would further strengthen UAE's position internationally.

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