

Applicability of UAE Corporate Tax (“CT”) Law to Resident and Non-resident Natural Persons



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Background

The United Arab Emirates’ (“UAE”) Ministry of Finance (“MoF”) issued the Federal Decree-Law No. 47 of 2022 (“CT Law”) on 3 October 2022 (published in public domain in December 2022).

Article 11 of the CT Law brings the specified business activities of the resident and non-resident natural persons (hereinafter referred to as ‘individuals’) within the scope of the law.

Recently, the MOF has issued Cabinet Decision No. 49 of 2023 (“the Decision”) which provides statutory framework in connection with the applicability of the UAE Corporate Tax to individuals in the UAE.

Key highlights of the Decision are as under:

Applicability

Businesses or business activities conducted by individuals shall be in-scope of UAE corporate tax provided that the total revenues derived from all the businesses or business activities exceeds AED 1 million, within a Gregorian calendar year.

The Decision does not define the term Business or Business Activity and thus, the reliance shall be place on the definition of the said words, as provided in the CT Law.

Exclusion

Irrespective of the revenue threshold of AED 1 million, income from activities shall not be considered as businesses or business activities conducted by individuals, provided that the revenues are arising from below mentioned sources:

- **Wages and related emoluments** – shall be pursuant to employment contracts
- **Income from Personal Investments** – shall not be pursuant to (i) Licensed (or requiring License) activity and (ii) not considered as commercial business
- **Income from Real Estate Investment** – shall not be pursuant to Licensed (or requiring License) activity related to sale, leasing, sub-leasing, and renting of land or real estate property



The Decision specifically defines the above terms. Further, it shall also be noted that definition of the term Personal Investment also gives reference to the term ‘commercial business’ as elaborates in the Federal Decree Law No. 50 of 2022.

Exception to the Registration requirements

The Decision states that the individuals who are not conducting a ‘Business’ or ‘Business Activities’ subject to CT, shall not be required to register for the Corporate Tax.

PB Comments

- The essence of the applicability of the CT to individuals is the ‘Business or Business Activity test’.

Any activity which, de facto, does not satisfy the definition of Business or Business Activity as stated under the CT Law, would prima facie drive the individual out of scope from CT Law.

- Whilst presuming that Business or Business Activity test is met, the revenue threshold of AED 1 million will provide major relief to many individuals undertaking business or profession at small scale.

Nevertheless, if the revenue surpasses AED 1 million, one may consider small business relief with limited compliance requirements.

- License from the Licensing authority has been made a key to claim exclusion from the Business or Business Activity test.

This needs to be thoroughly evaluated, as specific licensing authority regulations (eg. RERA Regulations) may be required to be assessed.

- Apart from Licensing requirements, the second key aspect from Personal Investment perspective is the ‘commercial business’ consideration as per Federal Decree Law No. 50 of 2022.

The definition of ‘commercial business’ is very wide under Federal Decree Law No. 50 of 2022 and could have bearing under the CT Law.

For the sake of examples, speculation works are considered as commercial business whereas few agricultural related activities as not considered as commercial business.

- The Decision makes separate and specific reference for income from ‘Real Estate Investment’.

Going by the common principle of ‘specific over general’, it appears that activities which may qualify as ‘commercial business’ as per the definition stated in Federal Decree Law No. 50 of 2022, the exclusion could still be evaluated, if it related to sale, leasing, sub-leasing, and renting of land or real estate property. Of course, the Licensing requirements needs to be checked.

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