

# Doing Business in the United Arab Emirates **2023**

**A Tax and Legal Guide**

March 2023



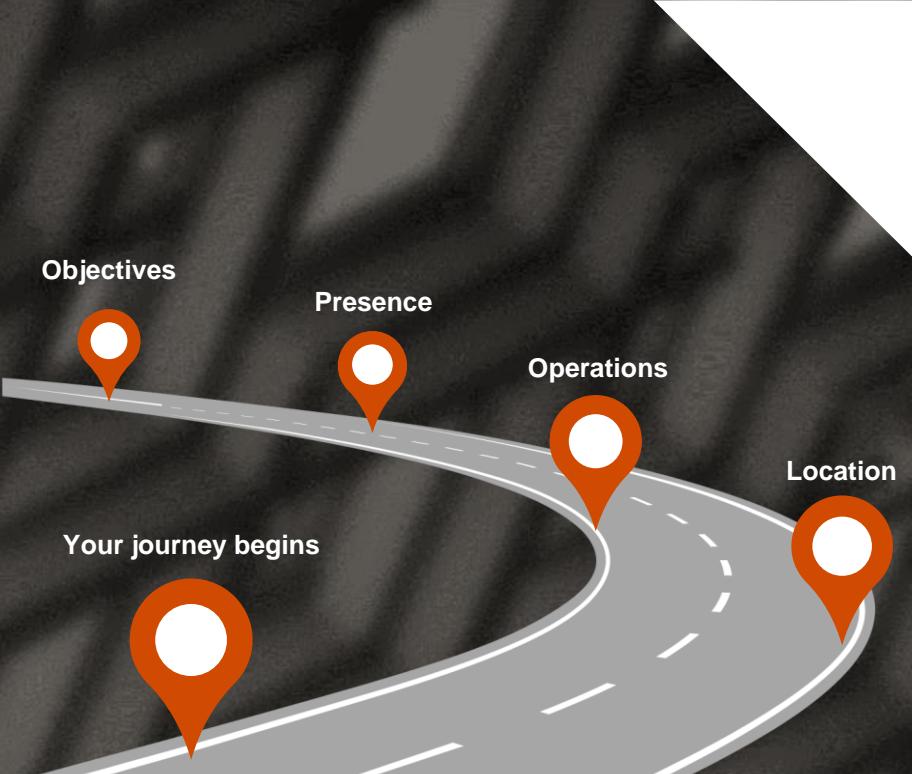
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# Welcome to this guide

As a place to do business, and as a hub for the region and beyond, the United Arab Emirates (**UAE**) continues to be increasingly important, relevant and attractive to businesses from around the world.

Legislative reforms in foreign ownership restrictions, the economic substance and country-by-country reporting rules as well as the recent introduction of corporate tax in the UAE, make this guide timely. Following the implementation of the most recent UAE Commercial Companies Law in 2022, a number of free zones across the UAE (and in particular, Dubai) have also recently updated their company laws and regulations to ensure legislation in the UAE is following international best practice.

The various company laws and regulations sit alongside other fundamental issues such as employment visas, accounting requirements and taxation issues (including customs and excise) that should be considered when establishing or developing businesses in the UAE.

This guide is intended to provide an introduction to the taxation and legal aspects of doing business in the UAE, particularly from the perspective of items an inbound investor may typically have in mind.

We hope you find the guide useful.

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## Introduction

The UAE is a federation of seven Emirates comprising of Abu Dhabi, Ajman, Dubai, Fujairah, Ras Al Khaimah, Sharjah, and Umm Al Quwain and was formed on the 2nd of December 1971.

The UAE is one of the youngest nations in the Middle East, with an estimated population of 10.2 million, a high proportion of whom are expatriates employed in a wide range of industries (88.5%). Although an oil rich state, the UAE has diversified its economy, becoming a regional and global centre for business, trade and finance.

Arabic is the official language, although English is widely spoken and used in business.

## Legal and regulatory framework

### Federal and Emirate level legislation

The UAE Federal Constitution provides for an allocation of powers between the Federal government and the government of each Emirate.

In addition, the Constitution provides the legal framework for the Federation and is the basis of all legislation promulgated at a Federal and Emirate level. Pursuant to the Constitution, the Federal government has exclusive jurisdiction in various substantive matters, including foreign policy, defence and security. Legislation passed at a Federal level has primacy over the local laws of each Emirate.

The local government of each Emirate is, however, permitted to regulate all local matters which are not subject to Federal legislation. As such, the governments of each Emirate retain powers to regulate commercial activities, issue business licences and effect the registration of legal entities to the extent that such activity is not already regulated under Federal legislation.

### Free Zones

Abu Dhabi and Dubai are home to the vast majority of free zones established in the UAE. These are special economic zones, often industry specific, each existing in a defined geographic area in the UAE.

Mainland UAE and most free zones are subject to UAE federal and applicable Emirate-level laws, with some of those free zones either applying such laws directly or adopting these to a varying degree.

The UAE also has two financial free zones, the Dubai International Financial Centre (**DFIC**) and the Abu Dhabi Global Market (**ADGM**). These are characterised by their independent regulator and judicial system, common law framework, global financial exchange and tax-friendly regime.

Only some of the federal laws apply in the financial free zones (i.e. the UAE Penal Code, and those federal laws that expressly include their jurisdiction to include the financial free zones, i.e. the UAE Economic Substance Regulations).

## Islamic Shari'ah law

Whilst the Constitution provides that Shari'ah is a main source of law, it is not the only source of law and its application is generally limited to the following:

- being used by courts as an interpretative aid where there is no express legislation governing a particular question;
- religious, morality and personal law matters, particularly involving Muslims (e.g. inheritance, divorce, etc.); and
- transactions that are intentionally expressed to be Shari'ah-compliant (e.g. Islamic banking transactions).

Save where such provisions would be contrary to UAE law (including Shari'ah law and public policy), the UAE recognises and allows the concept of freedom of contract. This allows contractual counterparts to regulate their relationship as they choose.

## Establishing a business in the UAE

The law requires businesses to either (i) obtain the necessary licenses prior to commencing business activities in the UAE or (ii) appoint an appropriately licensed local agent or distributor in lieu of having a local business registration.

Depending on the nature of products or services, and the jurisdictions in which these are made available in the UAE, multiple licenses may be required, or a combination of both licenses and appointment of distributors.

Obtaining a local license can be structured in one of the following ways:

- setting up a local entity (free zone vs. onshore);
- establishing a joint venture (**JV**); or
- acquiring an existing local entity.

We will look at each one of these options in further detail below, starting with the agency/distribution model.

### Conduct business through an agent / distributor

This option avoids the need for foreign companies to establish a physical presence in the UAE and provides an opportunity to leverage the local market connections of the agent or the distributor.

The terms 'agent' and 'distributor' are used interchangeably in the UAE, but typically these depict a contractual structure where the local agent/distributor acquires legal title to the foreign products before supplying these within a designated territory in the UAE. As part of this contractual relationship, it is also common to provide certain services in return for a fee.

In international terminology, this is more akin to a 'distribution' model, as opposed to an 'agency' one, where in the latter scenario, the agent would have the authority to bind its principal into customer contracts, instead of acquiring the products and reselling them to customers.

Having said that, a distinction does need to be drawn in respect of agents that fall within the scope of the UAE Commercial Agencies Law. Although the law has gone through a significant reform recently, it still retains a position whereby UAE Commercial Agents enjoy notable rights and protection under the legislation. Before entering into such arrangements, advice should be taken.

## Set up of a local entity

In general, there are two main options available to a foreign investor:

- establishment in 'onshore' UAE (also commonly known as 'mainland'); and
- establishment in one of the free zones in the UAE.

The decision to establish a presence onshore versus setting up in a free zone depends on customer locations and the nature of the business activity to be carried out in the UAE.

It is also possible to set up a business presence 'offshore'. These offshore companies are not issued with a license (only a certificate of incorporation) and, as such, cannot carry out business in the UAE.

### a) Onshore / Mainland

The UAE Commercial Companies Law (**CCL**) applies to most economic activities in onshore UAE.

Foreign businesses wishing to operate in onshore UAE usually do so either through a limited liability company (**LLC**) or a branch / representative office, although the CCL does allow for other forms of entity types to be established (e.g. joint stock companies and sole establishments).

The main benefit of having an onshore entity is that there are fewer restrictions on how business activities are undertaken, and there is no restriction on the location of the business premises provided it is located onshore (i.e. outside any of the free zones).

### UAE Limited Liability Companies

Historically, foreign investors were only able to establish an LLC in onshore UAE, provided that at least 51% of the shares in the LLC were owned by a UAE national or a company wholly owned by a UAE national(s).

Following various recent amendments to the UAE Commercial Companies Law, foreign investors can now own up to 100% of the share capital in companies incorporated in onshore UAE, depending on the specific license activity and the location of registration of the business. This applies to all newly incorporated companies as well as existing companies

### UAE branches (or representative offices) of foreign companies

A foreign company is permitted to establish a branch (or a representative office) in the UAE. An onshore branch (or representative office) does not have a legal personality separate or distinct to its foreign principal. There is no legal protection afforded to the branch (or the representative office) in the form of limited liability.

Branches are restricted to carrying out the same activities as their foreign principal, and certain activities require an LLC to be established rather than a branch. The recent changes pertaining to restrictions on foreign ownership also repealed the requirement of a foreign company to appoint a UAE national as their national service agent in order to register the branch entity at the respective Department of Economic Development.

A representative office is a cost centre and is restricted predominantly to marketing and promotional activities on behalf of the foreign principal.

### b) Free zones

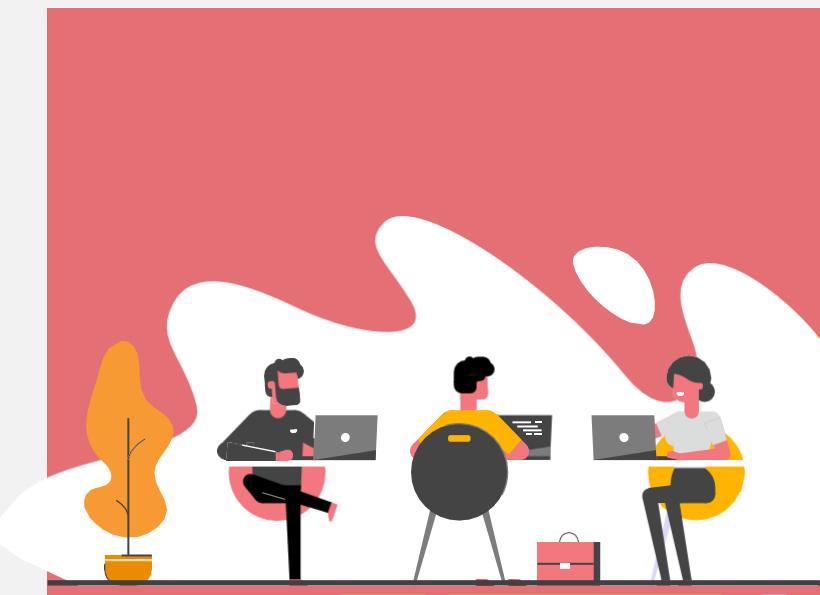
As an alternative to setting up in onshore UAE, it is also possible to establish a 100% foreign owned company, or branch, in one of the many free zones across the UAE.

Each free zone is administered and governed by its own regulatory authorities with their own rules and regulations. The licensing authority within each free zone is responsible for issuing free zone licenses.

Licenses issued by a free zone authority only provide a permit for business activities within that particular free zone jurisdiction, however this does not mean that a free zone entity is not allowed to do business with customers based in an alternative jurisdiction (i.e. another free zone or onshore UAE). Where this is the case, consideration should be given to the licensing and contractual structure in which the products and/or services are delivered to the customer.

Most of the free zones offer three main types of entities:

- free zone establishment (i.e. single shareholder company);
- free zone company (i.e. a company with two or more shareholders); and
- branch of a foreign company (similar to onshore branches).



### c) Offshore establishments

Companies not intending to engage in business within the UAE (whether onshore or within one of the free zones) can set up an entity under the offshore regulatory system. These types of entities should not be confused with free zone entities.

Typically, offshore businesses act as holding companies and do not carry on commercial activities, nor can they open a bank account / obtain a UAE tax residency certificate. Under the offshore regulations of certain free zones, these companies can act as a vehicle to own freehold property in onshore UAE.

Jebel Ali Free Zone (**JAFZA**) and Ras Al Khaimah International Corporate Centre (**RAK ICC**) offer the concept of offshore companies in the UAE. The general benefits of these types of structure are:

- no foreign ownership restrictions;
- no need for shareholders/directors to reside in the UAE either at the time of incorporation or subsequently; and
- no requirement to rent a physical office space or premises in the UAE.

Offshore companies are not permitted to trade within the UAE.

### Establish a Joint Venture

Foreign companies wishing to enter the UAE market or develop their existing operation beyond an agency or distribution arrangement often favour a JV. A JV enables the foreign investor to take an equity stake and a role in the operation and management of their UAE entity, whilst still benefiting from the participation of a local partner. The local partner may contribute financially, by way of technical skills or local connections and reputation.

### Acquire an existing local entity

A final market entry strategy for foreign investors is to acquire or invest in an existing UAE company or business. In addition to typical considerations required for an acquisition of a company / business, the following regional factors should be borne in mind:

- the limited amount of publicly available information (and, as such, the need for thorough due diligence);
- the impact of foreign ownership restrictions in place for certain license activities;
- the likelihood of any regulatory consents or approvals being required (e.g. UAE Central Bank consent);
- the need to deal with the transfer of employee contracts and visas as part of any asset sale and purchase; and
- the impact of UAE end of service benefits in the case of business transfers.

### Process and time for establishment

The process and time for establishing a company in the UAE varies depending on the (i) jurisdiction in which the company is being established; (ii) type of the legal entity; and (iii) nature of its activities.

Generally, the process of establishing a company in the UAE includes steps that are similar across all jurisdictions, namely:

- submitting an initial approval application to the relevant authority;
- reserving a trade name; and
- submitting the required documents which includes, among other things: (i) shareholders' constitutional documents; (ii) draft articles of association; and (iii) required resolutions.

The time it takes to establish a mainland company varies depending on the complexity of the business and whether there are any third party approvals required. It can take anywhere from 4 weeks to 4 months.



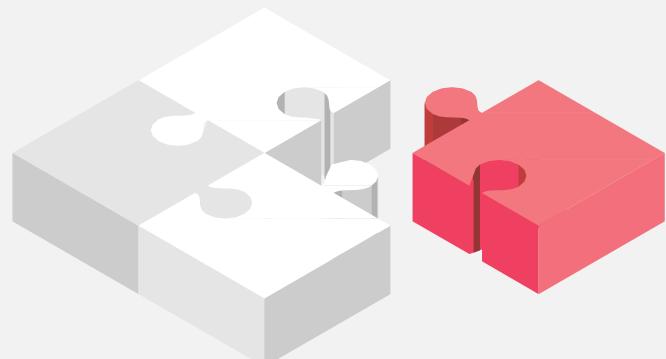
### Key considerations

The law requires businesses to either (i) obtain the necessary licenses prior to commencing business activities in the UAE; or (ii) appoint an appropriately licensed local agent or distributor in lieu of having a local business registration.

Depending on the nature of products or services, and the jurisdictions in which these are made available in the UAE, multiple licenses may be required, or a combination of both licenses and appointment of distributors.

Due to the heavy jurisdictional segmentation of the UAE, a detailed market entry strategy should be devised which need to take into account:

- the nature of products and/or services to be supplied;
- the nature and location of customers and suppliers;
- the required license activities;
- the number and domicile of legal entities required;
- the need for any intra-group arrangements; and
- the office and employee arrangements.



## Taxation

### Corporate taxation

#### Emirate level corporate taxation

Under the existing Emirate level tax decrees, income tax is payable under a progressive rate system, with rates up to 55%. However, in practice, these tax decrees have not been applied. Instead, branches of foreign banks are subject to income tax at a flat rate of 20% under separate Emirate level bank decrees. Companies engaged in UAE oil and gas upstream petroleum and petrochemical activities are subject to income tax at varying rates under their individual UAE concession agreements or fiscal letters.

#### New Federal UAE Corporate Tax (CT)

The Federal UAE CT Law was signed in October 2022 and will be applicable to the taxpayers' new financial years beginning on or after 1 June 2023. It will be applicable across all Emirates and will apply to almost all UAE tax residents and non-residents, subject to certain exceptions.

#### Tax rates

The general CT rate is 9% for taxable income exceeding a threshold AED 375,000, and 0% for below the threshold.

UAE Free Zone entities satisfying all prescribed conditions may be subject to 0% CT on their 'Qualifying Income', the definition of which to be specified in a Cabinet decision. Non-qualifying income of Free Zone entities will be subject to 9% CT.

A withholding tax (WHT), currently set at 0%, will apply to certain categories of UAE sourced income of non-residents not attributable to a permanent establishment (PE), as well as to any other income as may be specified in a Cabinet decision.

#### Source model

UAE resident taxable persons will be subject to UAE CT on their worldwide taxable income.

Non-resident taxable persons will be subject to UAE CT only on taxable income attributable to PE or 'nexus' in the UAE, or to WHT on certain categories of UAE sourced income not attributable to a PE.

#### Tax residency rules

UAE resident taxable person is:

- An entity that is incorporated in the UAE (including a Free Zone entity);
- A foreign entity that is effectively managed and controlled in the UAE;
- A natural person/individual who conducts a business or business activity in the UAE (to be specified in a Cabinet decision);
- Any other person as may be determined in a Cabinet decision.

A non-resident taxable person is a person not considered as a resident person and that either:

- Has a PE in the UAE;
- Derives UAE sourced income;
- Has a 'nexus' in the UAE (definition to be specified in a Cabinet decision).

### Permanent Establishment (PE)

The UAE CT Law has provisions on PE which are broadly aligned with the OECD Model Tax Convention. A non-resident person would generally be considered to have a PE in the UAE where it has a fixed or permanent place in the UAE through which the business of the non-resident person, or any part thereof, is conducted or where a person has and habitually exercises an authority to conduct a business or business activity in the UAE on behalf of the non-resident person.

Besides this, a PE can be created where a non-resident has any other form of 'nexus' in the UAE (definition to be specified in a Cabinet decision).

#### Exempted persons

The following persons are exempt from CT (subject to meeting all prescribed conditions) only in respect of the relevant exempted income (whereas non-exempted income is still subject to CT):

- UAE Government Entity;
- UAE Government Controlled Entity;
- Person engaged in an Extractive Business in the UAE;
- Person engaged in a Non-Extractive Natural Resource Business in the UAE;
- Qualifying Public Benefit Entity;
- Qualifying Investment Fund;
- Public pension or social security fund, or a private pension or social security fund that is subject to regulatory oversight of the competent authority in the UAE and that meets any other conditions that may be prescribed by the Minister;
- Juridical person incorporated in the UAE that is wholly owned and controlled by an exempt person; and
- Any other person as may be determined in a Cabinet decision.

#### Taxable income

To reduce complexity and compliance costs, the UAE CT regime uses the accounting net profit (or loss) as stated in the financial statements of a business as the starting point for determining its taxable income. For this purpose, the adequate and standalone financial statements should be prepared in accordance with accounting standards accepted in the UAE.

While largely based on the accounting results, CT Law prescribes a number of adjustments, certain incentives and special reliefs to the accounting net profit (or loss) in order to compute the taxable income.

In order to arrive at taxable income, expenditure incurred wholly and exclusively for the purposes of the taxable person's business that is not capital in nature may be deductible in the tax period in which it is incurred. CT Law disallows / restricts the deduction of certain expenses, such as interest and entertainment expenses. This is to ensure that relief can only be obtained for expenses incurred for the purpose of generating taxable income only, and to address possible situations of abuse or excessive deductions.

The Minister may additionally prescribe any of the following:

- The conditions for cash basis of accounting;
- Any adjustments to the accounting standards to be applied for the purposes of determining the taxable income;
- A different basis for determining the taxable income of a Qualifying Business Activity.

## Exempted income

The following income and related expenditure shall not be taken into account in determining the taxable income:

- Dividends and other profit distributions received from a juridical person that is a resident person;
- Dividends and other profit distributions received from a participating interest in a foreign juridical person which meet participation exemption conditions.
- Any other income from a participating interest which meet participation exemption conditions.
- Income of a foreign PE where election is made and certain conditions are met.
- Income derived by a non-resident person from operating aircraft or ships in international transportation that meets certain conditions.

## Interest deduction rules

General and specific interest deduction limitation rules are part of the CT Law.

Net interest expense (where it exceeds taxable interest income) is deductible up to a taxable person's 30% tax adjusted EBITDA, or based on a safe harbour / de-minimis threshold (to be specified in Cabinet decision).

Interest expense may be non-deductible if incurred on a loan obtained, directly or indirectly, from a related party for certain types of transactions, unless it can be demonstrated that the main purpose of obtaining the loan and carrying out the transaction was not to gain a CT advantage.

## Controlled foreign companies (CFCs)

There are no CFC rules in the UAE.

## Foreign tax credit

UAE CT due may be reduced by the amount of foreign tax credit. The foreign tax credit is limited to the amount of CT due on the relevant income. Any unutilised foreign tax credit cannot be carried forward and or back and will ultimately be lost.

## Capital gains tax

Capital gains will be taxed as part of taxable income, no separate taxation.

Capital gains on shares or other ownership interests may qualify for participation exemption on meeting prescribed conditions.

Capital gains of non-residents with no PE in the UAE may be subject to WHT (currently set at 0%) as UAE sourced income.

## Tax losses

Businesses can offset tax losses up to 75% (or any other % that may be specified in a Cabinet decision) of the taxable income for the tax period. Any tax loss remainder can be carried forward indefinitely.

Taxable persons (that are not listed on a recognised stock exchange) can carry forward tax losses provided that:

- The same shareholder(s) hold at least 50% of the share capital from the start of the period that the loss is incurred to the end of the period in which a loss is offset against taxable income.
- If there is a change of more than 50% in ownership, the taxable person continued to conduct the same or a similar business.

A tax loss relief may not be claimed for: (i) losses incurred before the date of commencement of the UAE CT regime, (ii) losses incurred before becoming a taxable person, and (iii) losses incurred from an asset or activity the income of which is exempt, or otherwise not taken into account under the CT Law.

Also, tax losses can be transferred between juridical resident persons where either taxable person has a direct or indirect ownership interest of at least 75% in the other, or a third person has a direct or indirect ownership interest of at least 75% in each of the taxable persons, plus additional qualifying conditions to be met.

## Small business relief

The CT Law provides tax relief for small businesses. A tax resident person may elect to be treated as not having derived any taxable income where the revenue for the relevant and previous tax periods do not exceed a threshold and meet certain conditions (to be confirmed by Cabinet decision).

If a tax resident person applies for "small business relief", certain provisions of the CT Law will not apply such as exempt income, reliefs, deductions, tax loss relief, transfer pricing compliance requirements, as specified in the relevant chapters of the CT Law.

## Tax grouping

A group of UAE tax resident companies can elect to form a tax group (i.e. treated as a single taxable person) if all of the following conditions are met:

- The parent company holds at least 95% (directly or indirectly) of the subsidiary's: (i) share capital; (ii) voting rights; and (iii) profits and net assets;
- The parent company and subsidiary have the same financial year, and prepare their financial statements using the same accounting standards;
- Neither the parent company or the subsidiary is an Exempt Person nor a Qualifying Free Zone Person (i.e. benefits from 0% UAE CT rate).

The tax group must prepare consolidated financial statements in accordance with accounting standards applied in the UAE. The parent company shall consolidate the financial results, assets and liabilities of each subsidiary for the relevant tax period, eliminating transactions between the parent company and each subsidiary that is a member of the tax group.

## Accounting and financial statements

All companies are required to maintain proper accounting records. There is no national generally accepted accounting practice (GAAP) in the UAE and no specific language requirement for the purpose of keeping books and records, although English is widely used.

International Financial Reporting Standards (IFRS) are mandated by the SCA and the Central Bank of the UAE and adopted as the default GAAP by most of the companies.

The requirement to prepare statutory financial statements (SFS) varies within each regulatory authority. Most authorities ask for an audited SFS at the time of the renewal of the annual trade licence.

For UAE CT purposes, the Minister may issue a decision requiring categories of taxable persons to prepare and maintain audited or certified financial statements.

FTA may, by notice or through a decision, request a taxable person to submit the financial statements used to determine the taxable income for a tax period in the form and manner and within the timeline prescribed.

For UAE CT purposes, all amounts must be quantified in AED. Any amount quantified in another currency must be converted at the applicable exchange rate set by the Central Bank of the UAE, subject to any conditions that may be prescribed in a decision issued by FTA.

Taxable persons shall maintain all records and documents for a period of 7 years following the end of the tax period to which they relate.

## Tax filing and payment

CT return and payment are due 9 months after the end of the tax period.



## Key Considerations

The 9% UAE CT rate, which is one of the lowest in the region and in the world, combined with a minimal compliance burden for businesses is expected to further strengthen the UAE's position as a global hub for business and investment.

The 0% UAE CT possibility for residents of 45+ UAE Free Zones is another important factor to consider.

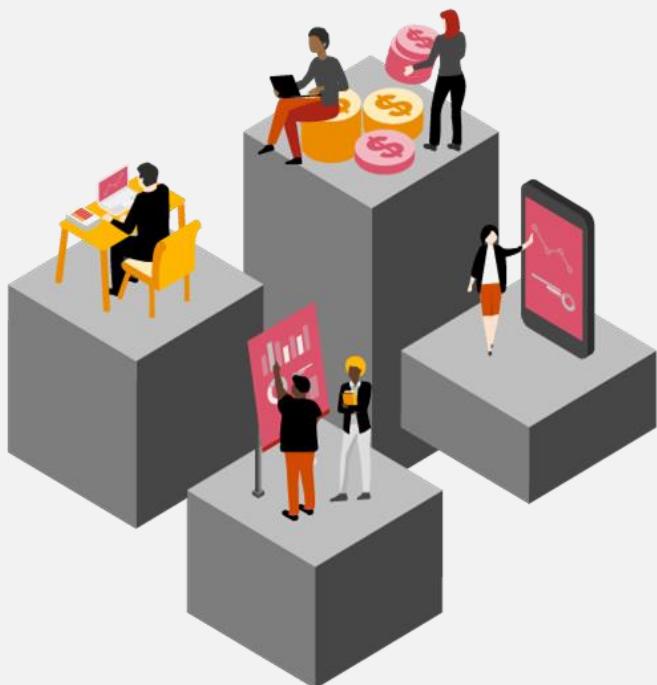
The first CT year for most businesses will be from 1 January 2024 to 31 December 2024, with the first tax payment and tax return due by September 2025.

UAE VAT implications should be considered as part of overall decision making. The base rate is 5%, with 0% and out-of-scope regimes also available.

In addition, UAE companies that are within the scope of the UAE's economic substance and country-by-country reporting regulations should assess their compliance obligations to these regulations.

With regard to customs, it should be considered whether any preferential treatment, suspension arrangement or exemption is available to mitigate cash outflows.

Social security contributions are applicable to all GCC nationals employed under a UAE labour contract.



## Transfer pricing

### Transfer Pricing rules and regulations

The Federal UAE Corporate Tax Law introduces Transfer Pricing ('TP') rules and regulations, which are broadly in line with the OECD TP Guidelines.

Both cross border and domestic transactions and arrangements with Related Parties and Connected Persons will need to adhere to the arm's length standard. This includes transactions undertaken by Free Zone entities. Free Zone entities will also need to comply with all transfer pricing rules and documentation requirements in order to be considered a Qualifying Free Zone Person.

The following TP documentation requirements may be applicable for businesses (in both Mainland and Free Zone):

- The Authority may require businesses to file a disclosure form along with the Tax Return, containing information regarding the transactions and arrangements with Related Parties and Connected Persons;
- In case conditions prescribed by the Minister are met, a master file and local file must be maintained. The master file and local file should be submitted within 30 days upon request of the Authority.

Further clarifications are expected through Ministerial decisions.

### Other points to consider

Under the Resolution's section on the "Use and confidentiality of the CbCR information", the Competent Authority in the UAE has the right to use the CbCR information for the following objectives:

- Assess the risks of transfer pricing on "high risk" transactions;
- Assess other risks associated with base erosion and profit shifting; and
- Assess the risks of non-compliance by the MNE's affiliates with the applicable transfer pricing regulations.

Further, the Resolution highlights that the Competent Authority may not use the CbCR information for transfer pricing adjustment purposes.

These aspects of the Resolution provide an insight into UAE's view on the necessity for having properly substantiated, well documented, intercompany transfer pricing arrangements, even though not stated explicitly.

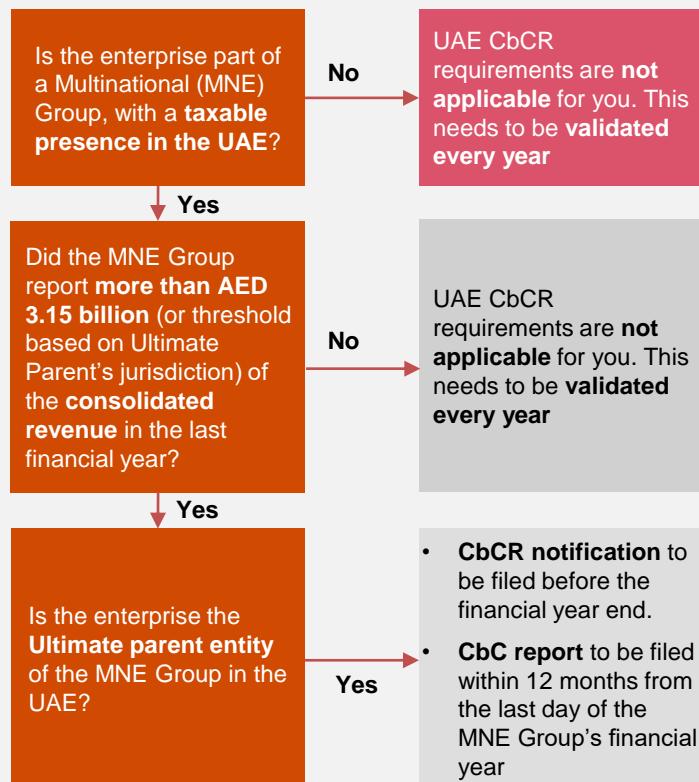
### Country-by-country reporting

On 30 April 2019, the Cabinet Resolution No. 32 of 2019 (the Resolution) on Country-by-Country Reporting (**CbCR**) was issued in the UAE.

The CbCR rules outlined under the Resolution are in line with the guidance issued by the OECD on CbCR. According to the Resolution, CbCR requirements are **applicable to 'financial reporting years' starting on or after 1 January 2019**.

### Requirements

The requirements under the resolution are summarized below:



### Consequences

The following administrative penalties have been prescribed for non-compliance with the CbCR requirements:

Failure to file CbCR / CbCR notification in time	Failure to provide full, accurate information
An administrative fine of AED 1,000,000 (plus AED 10,000 for each day of failure up to a maximum of AED 250,000)	An administrative fine of no less than AED 50,000 and not exceeding AED 500,000 is applicable
Failure to maintain documentation for 5 years	Failure to provide any other information requested
AED 100,000	AED 100,000

## UAE Economic Substance Regulations

In 2019, the UAE issued Economic Substance Regulations (Regulations) (amended in 2020) introducing a requirement for certain UAE juridical persons and unincorporated partnerships (UAE Licensee) to have adequate "economic presence" in the UAE, relative to the activities they undertake.

Save for some limited exceptions, the Regulations apply to all UAE Licensees that undertake one or more "Relevant Activities" listed below:

- Banking Business
- Insurance Business
- Investment Fund Management Business
- Lease-Finance Business
- Headquarters Business
- Shipping Business
- Holding Company Business
- Intellectual Property (IP) Business
- Distribution and Service Centre Business

The Regulations apply to financial periods commencing on, or after, 1 January 2019. UAE Licensees that undertake one or more "Relevant Activities" need to comply with limited ESR reporting obligations on an annual basis. However, only UAE Licensees that undertake one or more "Relevant Activities" and earn income from such "Relevant Activities" are required to satisfy the applicable economic substance test.

To satisfy the economic substance test requirements (unless the UAE Licensee is carrying on either (i) a "Holding Company Business", or (ii) an "IP Business" Relevant Activity) UAE Licensees must:

- Conduct the relevant 'core income generating activities' (**CIGAs**) in the UAE;
- Be 'directed and managed' in the UAE; and
- With respect to the level of activities performed in the UAE:
  - have an adequate number of qualified full-time employees in the UAE;
  - incur an adequate amount of operating expenditure in the UAE, and
  - have adequate physical assets in the UAE.

It is possible for a UAE Licensee to carry on more than one "Relevant Activity" at a time, in which case the economic substance test requirements will need to be satisfied for each "Relevant Activity".

Different economic substance test requirements apply to UAE Licensees that (i) only undertake a "Holding Company Business" Relevant Activity, which would be subject to a "reduced" level of substance requirements, or (ii) undertake a "high risk" IP Relevant Activity, which would be subject to an "increased" level of economic substance test requirements.

### What do UAE Licensees have to do, and when?

Every UAE Licensee that undertakes one or more "Relevant Activity" (regardless of whether it earns income from the "Relevant Activity") will need to submit an Economic Substance ("ES") Notification on an annual basis.

UAE Licensees that undertake one or more "Relevant Activities", are not subject to meet any of the available ESR exemptions and earn income from the respective Relevant Activities will also need to file an annual ES Annual report, self-assessing whether they met the applicable economic substance test.

Any claim for the ESR exemption should be applied on an annual basis and is subject to approval by the authorities.

The annual reporting deadlines are set out below:



<b>ES Notification due date</b>	The ES Notification is required to be submitted through the Ministry of Finance portal within 6 months from the financial year end of the UAE Licensee.
<b>ES Annual Return due date</b>	The ES Annual report is required to be submitted through the Ministry of Finance portal within 12 months from the financial year end of the UAE Licensee.  For example, for entities with a calendar year end (31 December), the first return will be due by 31 December 2020.

### What are the consequences of non-compliance?

Late / non-reporting or willfully providing inaccurate information, as well as failing to meet the economic substance test requirements could result in the financial penalties, spontaneous exchange of information with foreign authorities, and potentially a suspension, withdrawal or non-renewal of the UAE Licensee business licence.

# Value Added Tax (VAT)

## Summary

In January 2017, the GCC States agreed on a common legal framework (the **GCC VAT Framework Agreement**) to introduce VAT in the GCC region. Following the formal GCC VAT framework announcement, each Member State worked towards issuing its own national VAT legislation based on agreed common principles.

The UAE and Saudi Arabia were the first Member States to implement VAT effective from 1 January 2018, followed by Bahrain from 1 January 2019 and Oman from 16 April 2021. Qatar and Kuwait have not yet implemented VAT.

## Scope of the tax

The UAE has a complete VAT system, with most supplies of goods and services being taxed. Specifically, VAT is applicable on:

- Supply of taxable goods and services (including deemed supplies) by a taxable person unless specifically exempt under the VAT Law.
- Import of taxable goods and services unless specifically exempt under the VAT Law.

## Tax rates

- Standard rate of VAT - 5%
- Zero-rate of VAT - 0%
- A certain category of supplies are exempt from VAT.

Although VAT is not accounted for in respect of both zero-rated and exempt supplies, there is an important distinction between the two in relation to input VAT recoverability (see below). Please note, VAT registered persons must report zero rated and exempt supplies in the UAE VAT return.

## Zero-rated supplies

Zero-rated supplies are taxable supplies of goods or services which are subject to VAT at 0%.

Although VAT charged on a zero-rated supply is nil, the supply is still treated as a taxable supply and the person making the supply is eligible to recover the VAT on expenses incurred in making the zero-rated supply.

The following categories of supplies are considered as zero-rated supplies for VAT purposes (non-exhaustive list):

- Qualifying export of goods and services.
- Exported telecommunications services.
- International transportation services for passengers and goods.
- Specific education supplies.
- Specific healthcare supplies.
- Crude oil and natural gas supplies.
- First sale/lease of residential buildings (within three years of completion).
- Supply or import of investment precious metals.

## Exempt supplies

Exempt supplies are not taxable supplies for VAT purposes.

Similar to zero-rated supplies, no VAT is collected in respect of exempt supplies. However, the supplier cannot normally recover any of the VAT on expenses incurred in making exempt supplies. Therefore, input VAT incurred will represent a cost to businesses involved in making supplies exempt from VAT.

The following are considered as exempt supplies:

- Specific financial services.
- Sale / lease of residential buildings (other than the first supply of 'new' buildings constructed within the last three years).
- Supply of bare land.
- Local passenger transport.

## Deemed supplies

Goods or services that are bought for business purposes but are later used for private use, used as gifts or samples, or provided free of charge (without a consideration) are known as deemed supplies.

Where a deemed supply takes place, a taxable person may be required to account for VAT as though they have made a taxable supply of goods or services. For example, gifts or the private use of business assets may give rise to a liability to account for VAT.

## Imports

VAT is due on the import of goods into the UAE (except where these goods would ordinarily be zero-rated or exempt from VAT).

Import VAT is calculated on the value of the goods inclusive of any customs duty and excise tax that may also be due.

The manner in which import VAT should be paid, and the timing of payment, is dependent on the status of the importer:

- Where the import is made by an individual or a business which is not registered for VAT in the UAE, VAT is due to be paid prior to the goods being released at the customs point.
- Where the import is made by a VAT registered person, the import VAT should be accounted for on the person's VAT return using the reverse charge mechanism (i.e. goods are cleared through customs and VAT is accounted for at a later stage in the VAT return).

## Designated Zones

A designated zone is a VAT free zone which is specified in a UAE cabinet decision and that meets the conditions prescribed in the UAE Executive Regulation. Designated zones are considered to be outside the UAE for the purpose of VAT. Designated zones are typically fenced zones with customs controls controlling the movement of goods into and out of the zone.

Though it is treated as outside the UAE, not all supplies will be outside the scope of VAT; some supplies still attract VAT at 5%. The reason being, only the supply of goods will be outside the scope of VAT subject to certain conditions and depending upon the place of supply (few types of supplies of goods made from or to the designated zone will be taxable).

While special rules apply to supplies of goods made in the designated zones, businesses established in such zones may still need to register for VAT provided the criteria for registration is met.

## Recoverability of Input VAT

Input VAT is the VAT that is charged on purchases and expenses, including the following:

- Goods and services supplied in the UAE.
- Goods and services imported from outside the UAE.

Input VAT is fully recoverable in the case of taxpayers carrying out fully taxable activities, subject to meeting the conditions stipulated in the VAT legislation. Taxpayers carrying out VAT exempt activities are not entitled to claim input VAT. Taxpayers simultaneously carrying out taxable and exempt activities can recover VAT on residual inputs on an apportionment basis.

A taxable person is able to recover input tax in the first tax period in which both of the following conditions are met:

- the taxable person has received and retained a valid tax invoice or other documentation evidencing the supply or import;
- and the amount of VAT in question has been paid in whole or in part (or there is an intention to pay within 6 months).

If the taxable person has not recovered input VAT in the tax period in which the conditions have been met, the person will be able to recover this input tax in the following tax period. Otherwise a voluntary disclosure may be submitted to the tax authority to recover the VAT.

Input VAT on certain expenses incurred by a person is specifically blocked from being recoverable. Such expenses include for example:

- Entertainment expenses.
- Motor vehicles used for personal purposes.
- Employee-related expenses.

## Special VAT refund schemes

The UAE legislation incorporates various special VAT refund schemes where certain specified persons are entitled to claim refund of VAT paid on purchases made in the UAE, even if they are not taxable persons in UAE.

For each of these schemes, certain conditions need to be fulfilled by these persons in order to avail the refund of VAT.

Special VAT refund schemes are applicable to:

- foreign governments, diplomatic bodies and missions, and certain international organizations.
- business visitors.
- exhibition and conferences.
- tourists.



## Registration for VAT

The VAT Law provides that any business established in the UAE with total annual taxable supplies (including imported services and goods), exceeding (in the previous 12 months, or next 30 days) the mandatory registration threshold of AED 375,000 (approximately USD 100,000) should apply for VAT registration within 30 days from the date they were required to register.

Further, a business can register on a voluntary basis if the total value of the taxable supplies (including imported services and goods), or their expenses which were subject to VAT in the previous 12 months, or next 30 days exceeds AED 187,500 (approximately USD 50,000).

Non-resident persons may be required to register for VAT if the person makes any taxable supplies or imports in the UAE, unless there is another person in the UAE who is responsible for accounting for VAT on such activities. The registration will be effective from the date on which the person started making supplies in the UAE. A nil VAT registration threshold applies to non residents.

Upon registration, businesses should issue compliant tax invoices, charge the appropriate rate of VAT on supplies made, file VAT returns and pay the correct amount of VAT due to the Tax Authority.

## VAT grouping

The VAT law allows for VAT grouping where two or more persons carrying on a business share economic, financial and organisational ties and meet the required conditions (including control criteria).

## Tax returns

For each tax period, a taxable person will be required to submit a VAT return which contains details regarding the supplies made or received by the taxable person.

The standard tax period is quarterly for businesses with an annual turnover below AED 150 million and monthly for businesses with an annual turnover of AED 150 million or more.

The due date for submitting VAT returns and making a payment of payable tax to the Tax Authority is the 28th day following the end of the tax period to which the tax return relates.

VAT returns should be submitted online using the Tax Authority portal.

The VAT return can be submitted by the taxable person, or another person who has the right to do so on the taxable person's behalf, such as the taxpayer assigned tax agent or legal representative.

Submitting a VAT return or making a payment of VAT late will result in an administrative penalty levied by the Tax Authority.

## Books and records

VAT records must be kept for a minimum of five (5) years from the tax period to which the records relate. Documents relating to real estate properties should be kept for a minimum of 10 years.

The records may be kept either electronically or on paper. In addition, the records kept should be accurate, complete, and readable.



## Excise Tax

Introduced on 1 October 2017 in the UAE, Excise Tax is a form of indirect tax imposed on selected goods that are deemed harmful to human health or the environment, as well as luxury goods. Although imposed at GCC level through a Common Agreement, each implementing GCC Member State, including the UAE, has published its own national Law and Executive Regulations, to set out specific policies in alignment with the key principles agreed upon at GCC level. The Excise Tax Law has been expanded on the 1 December 2019 to include Sweetened Drinks, Liquids used in Electronic Smoking Devices and Tools as well as Electronic Smoking Devices and Tools.

### Excise goods

**1. Tobacco and tobacco products** that are imported, cultivated or produced in the UAE and listed within Chapter 24 of the GCC Unified Customs Tariff. Examples include:

- All forms of tobacco (stemmed or stripped);
- Cigars and similar products;
- Cigarettes containing tobacco; and
- Water pipe tobacco.

**2. Liquids used in electronic smoking devices and tools**, defined as all liquids used in such devices and tools and the like whether or not containing nicotine in accordance with the following Customs code(s):

- 38249999 - Others

**2. Electronic smoking devices and tools**, defined as all electronic smoking devices and tools and the like whether or not containing nicotine or tobacco in accordance with the following Customs Codes:

- 85437031 – Electronic cigarettes
- 85437032 – Electronic water pipe “Shisha”
- 85437039 - Others

**4. Carbonated drinks**, defined as any aerated beverage except for unflavored aerated water. Carbonated drinks also include any concentrates, powder, gel or extracts intended to be made into an aerated beverage.

**4. Energy drinks**, defined as any beverages marketed or sold as an energy drink that may contain stimulant substances that provide mental and physical stimulation, which include, without limitation, caffeine, taurine, ginseng and guarana. Energy drinks also include any concentrates, powder, gel or extracts intended to be made into an energy drink.

**4. Sweetened drinks**, defined as any product to which a source of sugar or other sweetener is added that is produced as a ready-to-drink beverages intended to be used as a drink, or concentrates, powders, gel, extracts or intended to be made into a sweetened drink.

### Taxable event

Excise Tax is due upon the release of the Excise goods for consumption. Excise goods are deemed released for consumption in any of the following cases:

- Production of Excise goods in the UAE, where such production was in the course of doing business and outside a tax suspension arrangement;
- Import of Excise goods;
- Release of Excise goods from a Designated Zone (e.g. tax suspension arrangement); and
- Stockpiling of Excise goods in the UAE, where such stockpiling was in the course of doing business.

### Tax rates

Excise Goods	Tax Rate
Tobacco and tobacco products	100%
Liquids used in electronic smoking devices and tools	100%
Electronic smoking devices and Tools	100%
Carbonated drinks	50%
Energy drinks	100%
Sweetened drinks	50%



The tax rate will be imposed on the Excise price, which is the higher of the following:

- The price published by the FTA for the Excise goods in a standard price list, if available.
- The designated retail sales price for the Excise goods, minus the tax included therein.

### Tax suspension arrangement

1. Production of Excise goods or the processing, possession, storage or receipt of locally produced Excise goods by a licensee in a tax warehouse.

2. Transport of Excise goods under a tax suspension arrangement in any of the following cases:

- From one tax warehouse to another tax warehouse in the UAE;
- From a tax warehouse in the UAE to another tax warehouse in another implementing GCC Member State;
- From a tax warehouse to the place where goods exit the GCC Territory for export or re-export; or
- Upon import to a tax warehouse in the UAE.

## Liability to tax

The persons who conduct activities relating to the taxable event, or the licensee (warehouse keeper) in the specific case of released Excise Goods from Designated Zones, are liable to pay the Excise Tax due.

## Registration

Any person conducting activities mentioned in the "Taxable event" section will be required to register.

Such a person will apply to the FTA within 30 days from the end of the month in which the person carries out or intends to carry out activities mentioned in the "Taxable event" section above.

The Taxable person in the UAE needs to meet the following requirements for the purpose of the Excise tax registration:

- Submit an application for the Excise tax registration containing all the information needed by the FTA;
- Provide a financial security, as specified by the FTA; and
- Comply with any additional requirements in terms of keeping records or reports or resolutions that the FTA specifies.

The FTA will respond to the person's application for the Excise tax registration within 20 business days of receipt of application.

The effective date of the Excise tax registration is the first day of the month in which the person starts to conduct business activity within the scope of the Excise tax.

## Exemptions

Specific persons such as Diplomatic and Consular bodies as well as Excise goods accompanied by travellers entering Member States are exempted under certain circumstances.



## Designated Zones

Excise goods stored, preserved or processed in a Designated Zone or transferred between Designated Zones will be treated as suspended.

A "Designated Zone" is any of the following:

1. A free zone that meets the following conditions:
  - It has security measures in place to restrict entry and exit of individuals and movement of goods to and from the Designated Zones;
  - It is controlled and supervised by the Customs Authority; and
  - A licensee (tax warehouse keeper) is appointed.
2. Any area specified by the FTA provided it meets the following conditions:
  - It has a specific geographical area;
  - It has security measures in place to restrict entry and exit of individuals and movement of goods to and from that area, according to controls specified by the FTA; and
  - A licensee (tax warehouse keeper) is appointed.

## Tax refund

Excise goods stored, preserved or processed in a Designated Zone or transferred between Designated Zones will be treated as suspended.

- In the event of export or re-export for business purposes outside the GCC Territory, if they had been released previously for consumption in the UAE; or
- If they are used in the production of other liable Excise goods.

## Excise tax records and documentation

Taxable persons are required to keep and maintain the following records:

1. Records of all produced, imported or stockpiled Excise goods;
2. Records of exported Excise goods and evidence of such export;
3. Records of stock levels, including details of lost or destroyed items; and
4. Tax records that include the following:
  - Due Excise tax on imported Excise goods;
  - Due Excise tax on produced Excise goods; and
  - Due Excise tax on Excise goods that have been stockpiled.

## Penalties

In addition to any applicable penalties in the UAE per other tax regulations, the following violations would result in penalties to Taxable persons:

- Failure to display prices inclusive of the Excise tax;
- Failure to comply with the conditions and procedures related to the transfer of Excise goods from a Designated Zone to another, and the mechanism of preserving, storing and processing such Excise goods; or
- Failure to provide the FTA with the price lists of Excise goods produced, imported or sold by the Taxable person.

## Other taxes

### Customs duties

The UAE is part of the GCC Customs Union, which was established in 2003 to remove customs and trade barriers among the GCC Member States.

The GCC Member States apply a Common Customs Law and a Unified Customs Tariff with a standard customs duty rate of 5% of the goods' cost, insurance and freight (CIF) value, except for certain special purpose goods (e.g. tobacco), although the Unified Customs Tariff is not applied consistently across the GCC.

The GCC Customs Law does not levy export customs duties.

The GCC Customs Law sets out the general legal framework for customs regulations and procedures; however, the practical application of the Law is subject to the interpretation of the local customs authorities in the GCC Member States. This has sometimes led to discrepancies and contradicting practices among the Member States ultimately affecting businesses.

UAE free zones are areas within the territory of the UAE but considered outside the scope of the customs territory. Therefore, goods imported into a UAE free zone are not subject to customs duty. Customs duty is suspended until the goods are imported into the GCC local market. UAE free zones do not levy export customs duty and thus, goods leaving the free zone to a destination outside of the GCC Customs Union should not incur customs duty.

In addition to importing goods into onshore UAE, UAE businesses may also import goods into UAE free zones, which are under the UAE Customs Authorities' control; therefore, any transaction, consumption/use or disposal of goods must be communicated to the Customs Authorities to avoid any non-compliance fines and penalties.

As the UAE is a member of the World Trade Organisation and the World Customs Organisation, most of the applicable customs procedures, suspension arrangements, exemptions, etc. are in line with the relevant international agreements and protocols.

The UAE grants duty free imports to most national goods originating in other GCC Member States, the member countries of the Greater Arab Free Trade Agreement, Singapore, and the European Free Trade Association countries (Norway, Switzerland, Iceland and Liechtenstein) and India. At the time of drafting this guide, the Comprehensive Economic Partnership Agreements ("CEPA") signed with Indonesia and Israel are yet to enter into force.

In August 2022, Dubai Customs launched a new voluntary disclosure program ("Self-Audit Finding Service"), with the aim to encourage importers and exporters to voluntarily disclose errors and report irregularities that may have been committed while reporting import and export transactions. This may be used by importers as a mechanism to report any error in their customs declarations, avoiding any associated potential penalties, as long as the requirements established for this program are met.

### Municipal or property tax

Most Emirates impose a municipality tax on properties, mostly by reference to the annual rental value. It is generally the tenants' obligation to pay the tax. In some cases, separate fees are payable by both tenants and property owners. For example, in the Emirate of Dubai, it is currently imposed at 5% of the annual rental value for tenants or at 5% of the specified rental index for property owners.

Further, a registration fee may also be levied on transfer of ownership of land or property. For example, a land registration fee is levied in the Emirate of Dubai at a rate of 4% of the sale value of the property (shared between the buyer and seller), payable to the DLD. These levies are imposed and administered differently by each Emirate.

### Property transfer fees

Most Emirates impose a fee on the transfer of freehold and long term leasehold interests in real estate located within that Emirate. The rate of the property transfer fee varies between Emirates, with some Emirates also apply a lower transfer fee where real estate is transferred between certain family members or within a qualifying group of companies.

### Stamp taxes

Currently, the UAE does not levy stamp duty or other transactional taxes on the incorporation of entities, the issuance of shares and on loan or other transaction documents.

### Hotel tax and tourism levies

Most Emirates impose a hotel tax up to 7% on the value of hotel services and entertainment. In addition, there may be tourist fees/charges of up to 7% levied for practice of certain tourist/entertainment activities (e.g. events and shows). These levies are imposed and administered differently by each Emirate.



## Personal taxes for nationals and expatriates

The UAE's personal tax system is very limited. There is currently no personal income tax law enacted in the UAE or at the various Emirate levels. As such, there is no domestic legislative definition of personal tax residence in the UAE.

Individuals are not subject to any personal taxes in the UAE by reason of their income or capital gains arising from the UAE or anywhere else in the world. As such, there is no requirement to submit UAE personal tax returns and individuals are not issued with a UAE Tax Identification Number (**TIN**).

Employees who are qualifying UAE/other GCC nationals are subject to a Federal social security regime in the UAE.

Generally, the social security payment is applicable on the employee's gross remuneration, as stated in an employee's employment contract and applies regardless of the free zone tax holidays. The withholding obligation is on the employer and applicable rates are as follows:

- Abu Dhabi – Total 20% (Employee 5% and Employer 15%).
- Dubai & Other Emirates – Total 17.5% (Employee 5% and Employer 12.5%).

There are no social security payments for expatriates.

## Payroll

Although there are no personal income tax obligations in the UAE, it is important to comply with all labour law requirements together with certain mandatory requirements such as the Wages Protection System (**WPS**).

WPS applies to employees registered with the UAE MOHRE and those in JAFZA. A key requirement under WPS is to pay employees in local currency, into their local bank accounts and from a local bank account. Employers that are not complying with WPS could face financial penalties and issues with renewing or processing new visas for their workforce.

## Obtaining an individual tax residency certificate

Although there is no legal definition of tax residency written into the UAE's domestic law, definitions do exist in double tax treaties (**DTTs**) the UAE has signed with other jurisdictions.

An individual tax residency certificate (TRC) can be issued for any 12 month period to confirm an individual's UAE tax residence by reference to the provisions of a specific double tax treaty between the UAE and another country.

The UAE Ministry of Finance requires individuals applying for a TRC to provide certain documentary evidence, including bank statements, a salary certificate and a report evidencing that they have spent not less than 183 days in the UAE - within the period for which the TRC is sought. Once the necessary documents have been submitted on the Ministry of Finance's online portal, it typically takes around two to four weeks for a TRC to be approved and issued.

## DEWS - DIFC Employee Workplace Savings Plan

All companies registered under DIFC will have to follow the recently introduced DEWS -DIFC Employee Workplace Savings Plan.

Employer will have to register for the scheme via a portal administered by Zurich and then register the employees also.

Generally, the DEWS contribution is applicable on the employee basic salary, as stated in the employees contract which should be 50% of the total salary.

The percentage of contribution will be based on the length of the services as follows:

- Employer
  - Less than 5 years of service: 5.83% of the basic salary.
  - More than 5 years of service: 8.33% of the basic salary.
- Employee
  - Can contribute voluntarily, but the contribution will have to be deducted from the salary.



## Additional legal considerations

### UAE Corporate Restructuring

Corporate restructuring is the process through which the legal and operational structures of a company or a group of companies are reorganised in order to optimise its UAE presence. The drivers behind a restructuring exercise are highly bespoke, however these typically include the requirement to reduce liabilities, improve financial performance, simplify the structure, optimise shareholder's protection, and/or streamline management.

We have seen an uptick in restructuring projects due to:

- the recent introduction of Corporate Tax in the UAE in order to maximise tax benefits and efficiencies;
- the relaxation of foreign ownership restrictions in relation to onshore LLCs in order to (i) terminate the relationship with the local shareholder; and (ii) transfer all the shares to the foreign parent.

The corporate restructuring of a company or group of companies can result in improved efficiencies and flexibility with regards to operations. However, to obtain optimum results, it is important that the rationale and the objectives behind the restructuring are precisely identified.

### Mergers and Acquisitions

As indicated above, creating a business presence in the UAE may be achieved through the acquisition of an existing company or business. These sale and purchase transactions, commonly referred to as mergers and acquisitions (**M&A**), are vibrant in the UAE with M&A activity seeing a marked revival as the negative effects of the COVID-19 pandemic wear off. Foreign direct investment reforms such as the relaxation of local ownership restrictions has further encouraged foreign investment.

Technology remains a key driver of M&A transactions across all sectors. Companies are looking to gain a competitive advantage by acquiring technology capabilities to develop their digital strategies particularly in fintech, healthcare, education and retail. Energy, which is central to the economic success of the region, accounts for the major capital inflows. Looking ahead, commitment by Middle East governments to reduce dependence on energy revenues and mitigate climate change means ESG assets will be an important M&A theme going forward.

Given the intricate legal and regulatory framework, investors seeking to enter the UAE market through M&A will be minded to conduct a thorough legal due diligence exercise of the target and engage legal counsel with local expertise to guide them through the M&A process.

### Family Business

Family businesses play a critical role in the UAE economy, contributing around 85% to the region's non-oil GDP and employing a substantial percentage of the regional workforce. Most families are in the second or third generation and many will undergo generational change in the next five to ten years with significant wealth being transferred to the next generation.

Historically there has not been any legislation tailored specifically to family businesses. This is changing as in 2022, Abu Dhabi implemented the Abu Dhabi Family Business law. This law introduced a definition for family business where those who qualify under the definition benefit under certain rules, regulations and incentives. It also permits family businesses to prohibit the sale of shares to persons outside of the family business, where prior agreement is required before a shareholder can sell to a third party. This law is a great step in the right direction for family businesses in the UAE as it recognises the important family businesses play in the region. Although, how the Abu Dhabi Family Business law is to be implemented in practice remains to be seen.

The UAE has also now introduced UAE Decree Law No. 37 of 2022, a new federal family business law that alongside a newly introduced DIFC Family Arrangements Regulations aims to support family businesses in the regions through a stronger legislative framework.

### Employment

The overarching legislation regulating employment matters in the UAE's private sector is UAE Federal Law No. 33 of 2021, as amended (**New UAE Labour Law**) together with its Executive Regulations. The employment law framework to date has provided a broad-brush minimal framework of rights, protections and standards, with the UAE's labour courts adopting a pro-employee stance.

Over the years, the UAE has implemented several sector-specific free trade zones designed to encourage and facilitate foreign direct investment, the majority of which are concentrated in the Emirates of Abu Dhabi and Dubai. Some of these free zones have introduced their own employment regulations, but these largely and broadly reflect and mirror the New UAE Labour Law and, in any event, must be read in conjunction with, and not in isolation to, the New UAE Labour Law (being a federal law).

The DIFC and ADGM, being unique financial free zones based on the English common law model, are subject to independent employment regulations: the DIFC Law No.2 of 2019, as amended, and the ADGM Employment Regulations 2019, as amended. The New UAE Labour Law does not have any application in the DIFC or ADGM.

### Real estate

UAE Federal law provides for negotiation on:

- land ownership;
- leasing;
- co-ownership of floors and apartments; and
- creation and operation of owners' associations (also known as Strata Law).

The Dubai Land Department (DLD) has entered into a memorandum of understanding with the following free zones:

- the DIFC free zone;
- the ADGM free zone;
- JAFZA;
- RAK ICC; and
- RAKEZ.

which allows certain entities registered in the above mentioned jurisdictions to purchase properties and register their properties with the DLD.

## Corporate Governance in the UAE

There are a number of rules and regulations that set out corporate governance requirements in the UAE. The CCL and other free zone regulations make reference to corporate governance, but these mainly focus on minimum requirements such as board size, conflicts of interest and the number of board meetings, etc. The Emirates Securities & Commodities Authority (**SCA**) Chairman of Authority's Board of Directors' Resolution No. (7 R.M) of 2016 (**CG Rules**) sets out a comprehensive overview of the corporate governance regime in the UAE. Certain provisions were amended as outlined in the Chairman of the Authority's Board of Directors' Decision No. (25/Chairman) of 2020 and in the Chairman of the Authority's Board of Directors' Decision No. (08 / Chairman) of 2021.

It is important to note that each entity type will have different requirements. The CG Rules are only applicable for listed public joint stock companies listed on the Dubai Financial Market or the Abu Dhabi Securities Exchange. The CG Rules could therefore be viewed as best practice for all other entities in the UAE, regardless of their application.

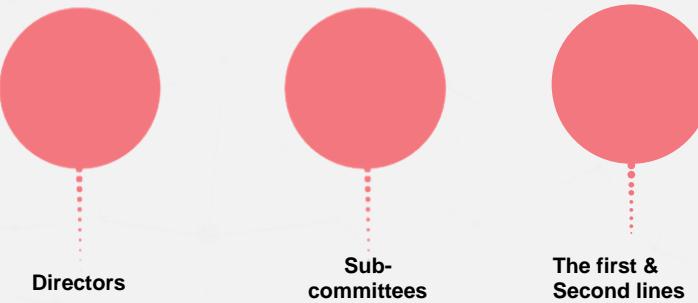
Companies registered in the DIFC which carry out regulated services and / or are listed on the NASDAQ stock exchange are regulated by the Dubai Financial Services Authority (**DFSA**) and are subject to the requirements outlined in the DFSA Rulebook. Likewise, companies registered in ADGM carrying out financial services are regulated by the ADGM Financial Services Regulatory Authority (**FSRA**) and are subject to the requirements as outlined in the FSRA Rulebook. Both the DFSA Rulebook and FSRA Rulebook outline corporate governance requirements.

Available on the website of the SCA and the Securities Market

The report must also be made available to all shareholders before the general assembly



The report should include a statement outlining key information about:



and disclose compensation granted to members of the board and the sub-committees to include bonuses, as well as salaries and details of compensation paid to the first and second lines

### Directors Duties

The CG Rules set out a number of responsibilities of a director and these obligations must be outlined in the articles of association.

There are also additional specific duties for a Chairman and a Non-Executive Director.

### Independence of Directors

The CG Rules set out an independence test which highlights when a director is no longer independent. Some of which include if a board member works, or worked for, the company or its subsidiary companies prior to the date of occupying a seat in the board of directors and if a board member and / or certain members of their family own (10%) or more of the company's capital.

### Permanent Committees

The CG Rules state that there are two mandatory committees of the board that should be formed, which are a nomination and remuneration committee and an audit committee.

### Board Meetings

Under the CG Rules, the board must meet at least four times a year and a majority of directors are required to be physically present. Subject to the articles of association of a company, board meetings may be held using electronic communication methods such as video conferencing.

### General Assembly

The CG Rules focus on a number of areas that were previously not codified. For example, distinct rules have been introduced in relation to convening a general assembly

## New Law

### Legal department transformation

With the "We the UAE 2031" vision, it is now more important than ever for legal teams to rethink their workflows, use of technology and construct a legal department that is strategically aligned to the business they support. Building a fit for future legal function involves optimising ways of working and adopting new or existing technology. Getting this right results in the legal function being able to do more with less, reducing time spent on redundant tasks and the opportunity to focus on the intuitive and high-value matters driving the business.

There's no "one size fits all" approach to legal department transformation but, working alongside their CEOs and CFOs, today's GCs are looking towards cost-based transformation of their function by harnessing enterprise change programmes and focussing on the right level of business partnering, improving how the function operates, introducing legal technology and leveraging managed legal services, in addition to targeted use of outside counsel. Deployment of specific solutions for key costs areas, such as contract review, preparation and execution, external counsel spend management and legal automation remain vital in delivering this transformation.

With a rising demand for smarter, better optimised legal functions, we have a team of lawyers and legal professionals who can help firms improve the way their legal services are delivered. We use data, technology and new delivery models to unlock material, future value. Leveraging our expertise, technology and scalable resources across our network we can deliver a range of services including legal department design and optimisation, managed legal services and legal technology consultancy.



## EU General Data Protection Regulation

From 25 May 2018, organisations in the UAE that process personal information of EU-based individuals in the context of the activities of a European establishment, offer goods or services to, or monitor the behaviour of, EU-based individuals may be caught by the EU General Data Protection Regulation.

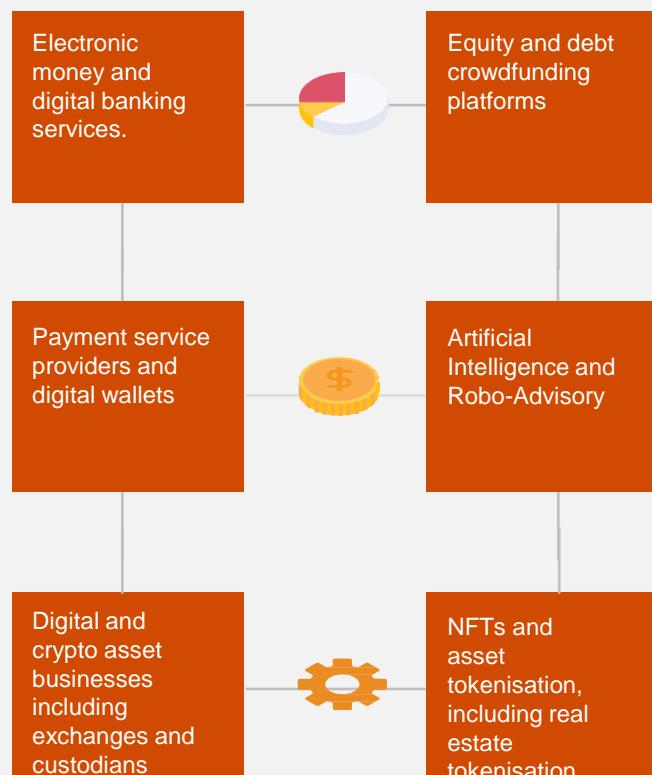
## Fintech, Blockchain and Emerging Technologies

There are three financial jurisdictions within the UAE, namely (i) onshore, (ii) ADGM, and (iii) DIFC.

The primary financial regulatory authorities in onshore UAE are the UAE Central Bank (**Central Bank**) and the Securities and Commodities Authority (**SCA**). The UAE Central Bank is the prudential regulator for onshore UAE and mainly regulates activities relating to payment, banking and lending activities, while the SCA's core responsibility extends to financial markets and investment products such as securities and commodities. The FSRA regulates entities established in the ADGM, whereas the the DFSA in the DIFC free zone. Most recently, in February 2022, the Dubai Virtual Asset Regulatory Authority (**DVARA**) was also set up to regulate entities engaged in virtual asset activities in the emirate of Dubai.

Across the globe, a growing number of fintech firms are raising substantial amounts of capital and are growing, in aggregate, year on year. Innovations in the fintech landscape include leveraging mobile devices and connectivity to make fiat and non-fiat payments a seamless, cashless experience. Recent innovations in this sector, coupled with vast numbers of capital raised and the entry into the mainstream market of established fintech firms demonstrates the expansion and importance of the fintech sector.

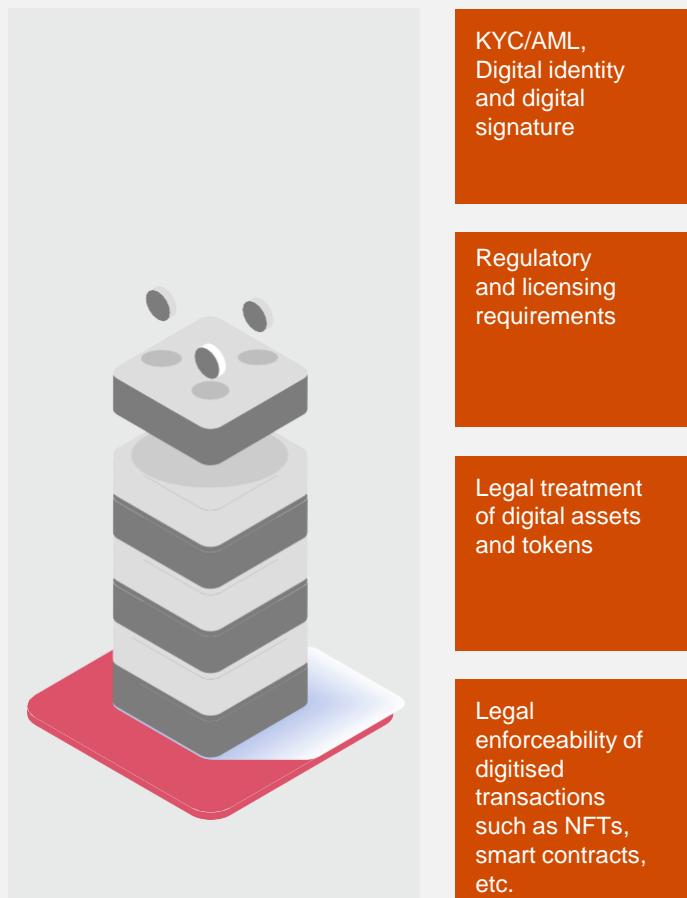
Some of the new fintech trends include:



## Blockchain & cryptocurrencies

Whether comprised of a combination of private, public, permissioned, permission less, open source or proprietary protocols, the possibilities of using blockchain protocols to build decentralised applications are vast and range across a broad range of industries. These industries include, but are not limited to, money, financial services, healthcare, logistics, government affairs (including regtech) and many more.

Emerging fintech business models bring with them a unique set of legal friction points relating to:



The Central Bank, SCA, DVARA, FSRA and DFSA have all shown willingness to embrace fintech business models and have taken steps to regulating various virtual assets and virtual asset activities. The ADGM is widely regarded to offer a leading and comprehensive regulation of virtual assets, while DVARA is the first regulator set up worldwide dedicated to the regulation of virtual assets and virtual asset service providers. The DFSA has also introduced recent changes to its regulatory framework to respond to developments and innovations in the fintech space. The most suitable jurisdiction for your business will depend on a various number of factors such as your business model, the types of activities carried out, the types of virtual assets involved, your capital capabilities and your timeline.



## Key Considerations

The UAE has been an attractive destination for foreign investors with ambitious growth plans, and it continues to be at the forefront of pioneering business practices. Market entry into the UAE, and indeed the wider region, will come with several legal and tax considerations. These will require specialist advice in order to achieve an optimal structure capable of withstanding regulatory and market changes. Once established, we recommend the periodic review of the models in which your business operates.



## Key Tax Indicators in UAE

Tax Indicators	Resident	Non-Resident
Typical fiscal year end	31 December (but can be different depending on company's own financial year)	31 December (but can be different depending on company's own financial year)
<b>Companies</b>		
Corporate Tax	<p>Based on existing Emirate level income taxation regimes, there is income tax at varying rates for UAE concession based upstream oil and gas and petrochemical activities.</p> <p>Federal UAE CT Law (signed in October 2022) will be effective for the financial years commencing on or after 1 June 2023. UAE resident taxable persons will be subject to UAE CT at 9% on taxable income in excess AED 375,000, and 0% if below that amount. Taxable persons in free zones that satisfy certain conditions will be subject to CT at 0% on 'Qualifying Income' (which will be defined in a Cabinet decision), and 9% on non-qualifying income.</p> <p>Foreign entities that are effectively managed and controlled in the UAE will be viewed as UAE resident taxable persons and fully taxed in the UAE.</p>	<p>Currently, Branches of foreign banks are subject to taxation at 20% in certain Emirates under Emirate Bank Tax Decrees.</p> <p>Under the UAE CT Law, a non-resident person will be subject to UAE CT only on taxable income attributable to a PE or a 'nexus' of the non-resident in the UAE ('nexus' to be determined in a Cabinet decision), or WHT (currently set at 0%) on certain categories of UAE sourced income where the income is not attributable to the PE.</p>
Tax on Capital Gains	Capital gains are taxed as part of general taxable income. Participation exemption is available for shares and other forms of ownership interests subject to conditions.	Capital gains may be subject to WHT (currently set at 0%) as UAE sourced income, if not connected to a PE in the UAE.
General Sales Tax	Not applicable	Not applicable
Value Added Tax	<p>Standard rate of VAT - 5%</p> <p>Zero-rate of VAT - 0%</p> <p>A certain category of supplies are exempt from VAT</p>	Non-resident persons may be required to register for VAT if the person makes any taxable supplies or imports in the UAE, unless there is another person in the UAE who is responsible for accounting for VAT on such activities.
<b>Individuals</b>		
Individual Marginal Tax Rate (Max)	Not Applicable. Social security contributions apply to UAE. Rates for the employee contribution and employer contribution vary, depending on the Emirate and whether employed by private or public sector and GCC national employees (local rates)	Not Applicable
Basis of Taxation	Not Applicable	Not Applicable
<b>Withholding Tax</b>		
Dividends		Withholding tax (currently set at 0%) will apply to certain categories (to be defined in a Cabinet decision) of UAE sourced income derived by a non-resident insofar as it is not attributable to a PE of the non-resident.
Interest	Withholding tax (currently set at 0%) may be imposed on "any other income" (to be specified in a Cabinet decision).	
Royalties		
Management Service Fees		
Customs	Standard rate is 5%. Other rates (0%, 50%, and 100%) apply depending on the nature of the goods imported	
Exchange Controls	Not applicable	
Thin Capitalisation	General and specific interest deduction limitation rules are part of the CT Law.	

## Key Tax Indicators in UAE (cont'd.)

Tax Indicators	Resident	Non-Resident *
<b>Transfer Pricing</b>	Transfer pricing rules and regulations are introduced from financial years starting on or after 1 June 2023. Country-by-country-reporting rules were introduced for financial years starting on or after 1 January 2019 and remain applicable for entities falling within the scope of the UAE country-by-country reporting regulations	
<b>Economic substance</b>	UAE entities that undertakes a Relevant Activity (regardless of being exempt or not earning income from the Relevant Activity) will have compliance obligations for financial year commencing on or after 1 January 2019. In addition, UAE entities that derive income from undertaking relevant activities must meet economic substance requirements (including related compliance obligations) for financial year commencing on or after 1 January 2019.	
<b>Double tax treaties in force</b> <b>(Information correct as at 30 January 2023)</b>	Albania, Algeria, Andorra, Angola, Argentina, Armenia, Austria, Azerbaijan, Bangladesh, Barbados, Belarus, Belgium, Belize, Bermuda, Bosnia and Herzegovina, Brunei Darussalam, Bulgaria, Botswana, Brazil, Cameroon, Canada, China (PRC), Comoros Islands, Croatia, Costa Rica, Cyprus, Czech Republic, Egypt, Estonia, Fiji, Finland, France, Georgia, Greece, Guinea, Hong Kong, Hungary, India, Indonesia, Ireland, Italy, Japan, Jersey, Jordan, Kazakhstan, Kenya, Korea (Republic of), Kosovo, Kyrgyzstan, Latvia, Lebanon, Lichtenstein, Lithuania, Luxembourg, Malaysia, Maldives, Malta, Mauritania, Mauritius, Mexico, Moldova, Montenegro, Morocco, Mozambique, Netherlands, New Zealand, Niger, North Macedonia, Pakistan, Panama, Paraguay, Philippines, Poland, Portugal, Romania, Russia, San Marino, Saudi Arabia, Senegal, Serbia, Seychelles, Singapore, Slovakia, Slovenia, South Africa, Spain, Sri Lanka, Sudan, Switzerland, Syria, Tajikistan, Thailand, Tunisia, Turkey, Turkmenistan, Ukraine, UK, Uruguay, Uzbekistan, Venezuela, Vietnam, Yemen and Zimbabwe.	
<b>Treaties awaiting conclusion or ratification</b> <b>(Information correct as at 30 January 2023)</b>	Antigua and Barbuda, Benin, Brazil, Burkina Faso, Burundi, Cameroon, Chad, Chile, Colombia, Ecuador, Equatorial Guinea, Ethiopia, Gabon, Gambia, Ghana, Iraq, Liberia, Libya, Mali, Niger, Nigeria, Palestine, Rwanda, St. Kitts and Nevis, St Vincent and the Grenadines, Sierra Leone, South Sudan, Suriname, Uganda and Zambia	

# About PwC Middle East

Established in the region more than 40 years, PwC has more than 7,500 people in 12 countries across the region: Bahrain, Egypt, Iraq, Jordan, Kuwait, Lebanon, Libya, Oman, the Palestinian territories, Qatar, Saudi Arabia and the United Arab Emirates.





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