



# Key UAE CT considerations for family businesses

May 2023



## Federal Corporate Tax in the UAE

On 9 December 2022, the UAE issued the Federal Decree-Law No. (47) of 2022 on the taxation of corporations and businesses (the “CT law”), which will be effective for financial years starting on or after 1 June 2023.

This will have a substantial impact on family owned businesses operating in the UAE.

A number of complexities can arise in relation to mainland UAE entities, free zone entities operating in the UAE and foreign entities with a place of effective management in the UAE, in relation to their tax position once the CT law becomes effective. We have summarized a number of key UAE CT considerations below.



### General UAE CT considerations

#### Principles of UAE CT

- UAE CT will be applicable across all Emirates and will apply to all business and commercial activities alike, except for the extraction of natural resources, which will continue to be subject to Emirate level taxation only.
- A 9% tax rate will apply on income exceeding 375,000 AED.

#### Multinational Enterprises (MNE)/Pillar Two

- The CT law, has no reference or details in respect of Pillar Two or a potential higher tax rate for MNEs (however, this was referred to in the initial announcement).
- The CT FAQs published indicate that the regular UAE CT regime will apply to large multinational enterprises (MNEs) that meet the criteria under “Pillar Two” of the OECD Base Erosion and Profit Shifting project until the UAE adopts the Pillar Two rules. Further detail is expected on this during the course of 2023.
- To be categorised as an MNE the annual global consolidated revenues of the MNE should be above €750m and the group should operate in more than one jurisdiction (including through branches).
- Family businesses operating in the UAE (whether in mainland or in free zones) that are part of a large multinational group, need to assess first whether they are categorised as an MNE and accordingly assess the tax position for the UAE subsidiaries, branches, etc.

#### Transfer Pricing

- The UAE CT regime introduces Transfer Pricing rules and compliance requirements with reference to the OECD Transfer Pricing Guidelines for financial years starting June 2023 onwards.

#### Free zone businesses

- Companies and branches registered in a Free Zone are considered Taxable Persons under the CT law and are required to meet normal compliance obligations, including transfer pricing requirements. However, provided a Free Zone entity meets the conditions to be considered a Qualifying Free Zone Person (QFZP), it should be eligible for a 0% UAE CT rate on its Qualifying Income. The income of a QFZP which is not Qualifying Income will be taxed at the standard 9% CT rate. We are however still expecting further detailed information through the issuance of a Cabinet Decision for Free Zones.

## Key UAE CT considerations for family businesses

- **Individuals:** The UAE CT law is not just applicable to companies - individuals who conduct a Business or Business Activity in the UAE are also subject to the CT rules.
- **Foundations:** Prima facie, foundations and similar entities/arrangements, which meet the definition of a Taxable Person will fall within the remit of the UAE CT law. However, subject to certain criteria being met, it is possible for the entity to apply to be treated as a transparent “unincorporated partnership” for UAE CT purposes. This would generally prevent the income of the foundation from being subject to UAE CT meaning they continue to be a tax efficient holding structure to enhance asset protection and facilitate succession planning.
- **Family Offices/investment companies:** Such entities will be within the scope of UAE CT where they meet the definition of a Taxable Person.
- **Real estate investments:** We await further clarification on what constitutes a Business or Business Activity when it comes to profits from real estate. However, where rental is deemed to constitute a Business Activity in the UAE, the resulting profits will be subject to UAE CT.
- **Foreign companies managed and controlled from the UAE:** Entities incorporated overseas, which are deemed to be managed and controlled from the UAE, will be considered a Resident Person and subject to UAE CT on their worldwide profits. Governance policies relating to overseas entities may need to be reviewed to ensure any such risk is identified and, where possible, mitigated.
- **Onshore versus free zone entities:** Those with entities incorporated in the UAE mainland but with income which is not UAE sourced may wish to review whether the use of a free zone company would be more appropriate.
- **Personal assets/investments:** Profits from any personal assets/investments held within the corporate structure will potentially be exposed to CT going forward. More broadly, this may not be appropriate from an asset protection and succession planning perspective. As part of the family’s wider ownership strategy, thought should be given to segregating non-business assets into a separate structure.
- **Remuneration policy:** Historically, many UAE business owners have not paid themselves a salary, opting to simply receive dividends instead. The introduction of UAE CT means it may be time to review this remuneration policy such that a market rate salary as this would qualify for a CT deduction.
- **Transfer Pricing:** Transfer pricing rules and regulations will be applicable for any payment or benefit provided by a Taxable Person to, for example, a business owner or a director, i.e. Connected Person. If salaries and management fees paid do not correspond to the market value of the service or benefit and are not incurred wholly and exclusively for business purposes, a deduction will not be allowed. The market value should be determined by applying the arm’s length standard and transactions should be reported as per the applicable documentation requirements in the form of a disclosure form and other appropriate transfer pricing documentation.





## Data, systems, processes and people considerations

Family businesses tend to have a large number of IT systems and complex reporting structures, which has led to challenges when compiling VAT returns. Questions to consider the readiness from a CT perspective,

- Do your financial systems have **enough detail** in place for your Corporate Tax calculations? Is it available for each entity including for the foundations?
- Can you track asset **depreciation for tax** values for all real estate investments?
- Do you have **multiple financial systems** and will you change each of them? Or can you buy a solution that can address Corporate Tax as well as other tax reporting functionalities for all different parts of the business?
- How will you address **data access** for different parts of the organisation (the family office vs. the business)?
- Who will be **responsible** for Tax matters within the organisation and **sign off the returns**?
- Are there **documented policies** and **procedures** in place?
- To what extent could you be able to **outsource** certain compliance tasks?

### How can we help?

Our Entrepreneurial Private Business & Family Office team works with local and global clients and has a deep understanding of the UAE CT issues typically faced by the sector. We would be delighted to arrange an introductory call to discuss these issues in more detail and how we may be able to support you.



# Contact us



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