Ministerial Decision No. 120 of 2023 Release: Adjustments Under the Transitional Rules

Key Takeaways

May 2023

UAE Ministerial Decisions Release

On 26 May 2023, the Ministry of Finance issued Decision No. 120 of 2023 with regards to the Adjustments Under the Transitional Rules for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses (hereinafter referred to as the ‘CT Law’). This Decision came into effect the day following its publication.

Article 61 of the CT Law provides details on the transitional rules with regard to a Taxable Person’s opening balance sheet for UAE CT purposes. These rules may have the effect in certain circumstances that gains or losses attributed to certain assets prior to entering into the CT regime become taxable or deductible at the time of disposal of such asset. The released Ministerial Decision sets out the adjustments required when determining a Taxable Person’s taxable gains upon disposal of such assets.

Key highlights

The Decision provides that a Taxable Person holding one of the below assets may elect* to adjust its Taxable Income for gains or losses recognised upon disposal:

- Gains upon disposal of **Immovable property** (to be deemed as “Qualifying Immovable Property” in the event the below conditions are met);
- Gains upon disposal of **Intangible assets** (to be deemed as “Qualifying Intangible Asset” in the event the below conditions are met); and
- Gains and losses upon disposal of **Financial assets and liabilities** (to be deemed as “Qualifying Financial Asset” and “Qualifying Financial Liability” in the event the below conditions are met).

A Taxable Person may elect to adjust their Taxable Income to the extent all of the following conditions are met in the context of Immovable Property and Intangible Assets:

1. The assets are owned **before** the first Tax Period (i.e. prior to the Taxable Person’s first fiscal year);
2. The assets are accounted for on a **historical cost basis**; and
3. The assets are disposed of or deemed to be disposed of **after** the CT Law becomes effective for a Taxable Person for a value exceeding the net book value (i.e. for a **profit**).

With regards to Qualifying Financial Assets and Qualifying Financial Liabilities, a Taxable Person may adjust its Taxable Income for the purposes of calculating the gains and losses when the above conditions 1 and 2 apply.

** Election must be made upon the submission of the first Tax Return in respect of each Qualifying Immovable Property, all Qualifying Intangible Assets and all Qualifying Financial Assets / Liabilities. The election is irrevocable except under exceptional circumstances.*

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Key highlights

We provide below an illustration of the options available to Taxable Persons for the relevant asset types in the event they qualify for an adjustment. It should be noted that such treatment should also be applicable in the event the asset is held by a Taxable Person forming part of a Qualifying Group or Tax Group.

Qualifying Immovable Property

Gains recognised upon the disposal of a Qualifying Immovable Property subsequent to the application of the CT Law may be adjusted by using either of the following options:

- **Option 1:** Exclude the gains that would have arisen had the asset has been disposed of at the start of the first Tax Period. Amount of gain to be excluded is the difference between (a) and (b):

  (a) the Market Value ("MV") of the asset at the start of the first Tax Period

  (b) the higher of the original cost and the net book value ("NBV") of the asset at the start of the first Tax Period

- **Option 2:** The amount of gain to be excluded is calculated as (a) x (b):

  a. (Sales Proceeds at time of disposal of the asset) - (Higher of the original cost and the NBV at the start of the first Tax Period).

  x

  b. (Number of days the asset is owned before the first Tax Period) / (Total number of days the asset is owned).

Qualifying Intangible Assets

The only option available to Qualifying Intangible Assets to adjust gains recognised on assets owned prior to the Taxable Person's first Tax Period is **Option 2,** as described under "*Qualifying Immovable Property*" earlier. The only difference for purposes of the calculation, is that the number of days the Qualifying Intangible Asset is owned before the first Tax Period cannot exceed 10 years.

Qualifying Financial Assets and Qualifying Financial Liabilities

A Taxable Person may exclude any gains/losses arising from the sale of Qualifying Financial Assets and Qualifying Financial Liabilities had such asset/liability been disposed at MV with its NBV being its cost at the start of the first Tax Period.

Key takeaway and next steps

The transitional rules apply to certain assets measured on a historic cost basis. They allow Taxable Persons to avoid paying taxes in the future on unrealised gains inherent in assets held on the date of entry into the CT regime. The rules permit these pre-CT regime gains to be excluded from tax when the assets are ultimately sold but will not create or increase any tax losses.

We are expecting additional Decisions to be released to expand on many key provisions of the CT Law, so stay tuned. For further assistance, you can reach us by emailing CT.UAE@pwc.com.

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