

# UAE Corporate Tax: Federal Tax Authority Decisions No. 5, 6 & 7 and Ministerial Decisions No. 82 & 83 releases

Key Takeaways



May 2023



# UAE Federal Tax Authority Decisions



On 7 April 2023, the Federal Tax Authority (“FTA”) issued 3 Decisions as follows:

1. Decision No (5) of 2023 with regards to conditions for change in Tax Period;
2. Decision No (6) of 2023 with regards to the Tax Deregistration timeline; and
3. Decision No (7) of 2023 with regards to the provisions of exemption from corporate tax.

All as mentioned under the Federal Decree-Law No. (47) of 2022 on the Taxation of Corporations and Business (hereinafter referred to as the ‘CT Law’). These Decisions will come into effect as of 1 June 2023.

## Key highlights

### Decision No (5) of 2023: Conditions for change in Tax Period

Article 58 of the CT Law indicates that a Taxable Person can make an application to the FTA to change its Tax Period. Further clarity was awaited on the mechanism and conditions to do so. This has now been addressed in FTA Decision No (5) of 2023.

A Taxable UAE resident Person (as defined under the CT Law) may apply for a Tax Period change to the extent any of the following conditions are met:

- The change is for liquidation purposes.
- The change is for aligning the Taxable Person’s Financial Year either for tax grouping, financial reporting or domestic and foreign tax relief purposes.
- There is valid commercial, economic, or legal reason to change the Tax Period.
- The UAE resident person has not yet filed the tax return with the FTA for which he is requesting a change in tax period.
- The application is made no later than 6 months after the end of the original tax period (i.e. 3 months before the original tax return is due).

It is important to note that a taxable UAE resident person may only change the relevant tax period by means of either (i) extending the **current** tax period to be a maximum of 18 months; or (ii) shortening the **following** tax period to be a minimum of 6 months and a maximum of 12 months.

### Decision No (6) of 2023: Tax Deregistration Timeline

Article 52 (1) of the CT Law indicates that a Taxable Person shall apply with the FTA for a deregistration for CT purposes in the event the Taxable Person no longer carries out business activities (as defined under the CT Law) by means of liquidation, etc. Further clarity was awaited on the mechanism and timelines to do so. This has now been addressed in FTA Decision No (6) of 2023.

A Taxable UAE resident Person (be it a natural or juridical person as defined under the CT Law) may apply for a Tax Deregistration within 3 months from the date of cessation of Business or Business activity, dissolution, liquidation or otherwise.



# UAE Federal Tax Authority Decisions



## Key highlights

### Decision No (7) of 2023: Provisions of Exemption from Corporate Tax

FTA Decision No (7) of 2023 sets out provisions relating to the CT registration and exemption for certain taxpayers as follows:

1. A Qualifying Public Benefit Entity (“QPBE”) should register with the FTA for CT purposes and obtain a registration number as of 1 October 2023.
2. The below entities (reference to be made to paragraphs (f), (g), (h) and (i) of Clause 1 of Article 4 of the CT law) should obtain a tax registration number as of 1 June 2024:
  - A Qualifying Investment Fund;
  - A public pension or social security fund;
  - A juridical Person incorporated in the State that is wholly owned and controlled by an Exempt Person and undertakes part or whole of the activity of the Exempt Person, is engaged exclusively in holding assets or investing funds for the benefit of the Exempt Person or carries out activities that are ancillary to those carried out by the Exempt Person; and

In the event of a successful tax registration, the entities mentioned under point 2 above may apply for an exemption from CT given the conditions set out in the CT Law are satisfied. The exemption application should be made within 60 days from the end of the Tax Period in which the Person met the conditions for exemption. After approval by the FTA, the CT exemption will apply from the start of the tax period specified in the application (the FTA can apply a different effective date in certain cases). The FTA may request an annual declaration confirming that the exemption conditions are maintained.

## Key takeaway and next steps

The mechanism to change the Tax Period provides UAE entities with the opportunity to align their Financial Year for reporting and tax purposes. Under the CT Law, a Parent Company and the Subsidiary would not be able to form a Tax Group if they don't have the same Financial Year. Tax Grouping is a great tool that can achieve reduced administrative and compliance costs. This is why entities wishing to form a Tax Group should assess their position and check whether a change to their Tax Period is needed.

On another note, the information provided around registration of certain Exempt Persons is also a step in the right direction in providing more clarity for taxpayers on how to proceed onwards from an administrative and compliance perspective.



# UAE Ministerial Decisions Release



On 10 April 2023, the Ministry of Finance (“MoF”) issued 2 Ministerial Decisions as follows:

1. Decision No.82 with regards to the the Determination of Categories of Taxable Persons Required to Prepare and Maintain Audited Financial Statements; and
2. Decision No. 83 with regards to the Determination of the Conditions under which the Presence of a Natural Person in the State would not Create a Permanent Establishment for a Non-Resident Person.

All as mentioned under the Federal Decree-Law No. (47) of 2022 on the Taxation of Corporations and Businesses (hereinafter referred to as the ‘CT Law’). These Decisions shall come into effect 13 May 2023.

## Key highlights

### Decision No (82) of 2023: Determination of Categories of Taxable Persons Required to Prepare and Maintain Audited Financial Statements

Article 52 of the CT Law provides that the Minister may issue a decision indicating the categories of Taxable Persons that are required to prepare and maintain audited or certified financial statements. This has now been addressed in Ministerial Decision No (82) of 2023.

Taxable Persons that recognise revenue exceeding AED 50,000,000 during a relevant tax period **and** Qualifying Free Zone Persons as defined under the CT Law are required to prepare and maintain audited financial statements.

### Decision No (83) of 2023: Determination of the Conditions under which the Presence of a Natural Person in the State would not Create a Permanent Establishment for a Non-Resident Person

Article 14 (7) of the CT Law provides that the Minister may issue a decision indicating the conditions were the mere presence of a natural person in the UAE should not constitute a permanent establishment (“PE”) in the UAE - such as in the event the presence (of the natural person in the UAE) is due to a temporary and exceptional circumstance. The definition of “temporary and exceptional circumstance” has now been addressed in Ministerial Decision No (83) of 2023.

As per the Ministerial Decision, “exceptional circumstance is defined as follows “*a situation or an event beyond the natural person’s control, which occurred while he was already in the State, which he could not reasonably predict or prevent and which prevented him from leaving the State as originally planned..*”.

Based on the above, the presence of a natural person in the UAE should be considered the result of a “temporary and exceptional situation” in the event all the following conditions are met:

- The exceptional circumstance is public or private in nature (examples\* of which have been provided in the Ministerial Decisions) that cannot be reasonably predicted by the natural person or Non- Resident Person (as defined under the CT Law);
- The natural person intends to leave the UAE when the exceptional circumstance comes to an end;
- The Non- Resident Person does not already have a PE in the UAE; and
- The Non-Resident Person does not consider the natural person is deriving UAE sourced income that may lead to the creation of a UAE PE (as provided under the CT Law).

*\* Examples provided under the Ministerial Decision are non-exhaustive. Such examples include adoption of health measures by the UAE (or relevant foreign jurisdiction), travel restrictions, acts of war, emergency health conditions, etc.*



# UAE Ministerial Decisions Release

## Key takeaway and next steps

UAE Taxable Persons now have clarity as to who should prepare and maintain audited financial statements in order to be compliant with the CT Law. This should be a reminder that businesses need to align their records with Generally Accepted Accounting Principles so that they are ready to present audited financial statements.

The information provided around the creation of a UAE PE for a natural person also provides clarity for Non-Residents on how to interpret “exceptional circumstance” as per the CT Law. We will be awaiting further clarity on the treatment of natural persons that are tax resident in the UAE.

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](mailto:CT.UAE@pwc.com).



# UAE Ministerial Decisions Release

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