

# UAE Corporate Tax - “Qualifying Group Relief” Guide and “Business Restructuring Relief” Guide

Key Takeaways



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# “Qualifying Group Relief” Guide



The Federal Tax Authority (FTA) has released a comprehensive Corporate Tax (CT) Guide on Qualifying Group (QG) Relief. This guide serves as a significant resource, providing clarifications and insights on many important topics in relation to entities transactions covered within the scope of the relief, conditions to be eligible for the relief, circumstances when the relief will be clawed back and consequences, compliance requirements and interaction with other parts of CT Law.

## Key highlights

Article 26 of the CT Law allows for the tax neutral transfer/restructuring of assets or liabilities between two taxable persons within the same QG subject to satisfaction of certain conditions. The relief is only available if the Transferor has elected for it. It is also subject to being clawed back if within two years the Transferee ultimately disposes of the asset or liability outside of the QG, or the Transferor or Transferee leave the QG.

Some of the critical points the guide sheds additional light on are as follows:

- The relief applies only to the transfer of assets or liabilities held on capital account and recorded on the balance sheet of the Transferor. Whether an asset or liability is held on capital account depends on the facts and circumstances of each case. As the asset or liability is recognised in the financial statements of the Transferor, a key indicator will be whether it is treated as a long term asset or liability under the applicable Accounting Standards (IFRS or IFRS for SMEs).
- A transfer refers to an act by which the legal and economic ownership in an asset or liability is conveyed from one person to another. Examples of a transfer include, but are not limited to sale, exchange, relinquishment, sale-and-lease back treated as a sale, exercise of options to sell or acquire an asset or liability, and transfer under universal title. Where assets or liabilities are transferred as a result of liquidation, dissolution or merger (that is, an entity ceasing to have legal existence), the relief shall not apply.
- QG Relief does not require any consideration to be paid. Where it is paid, it does not need to be in a specific form. Accordingly, no gain or loss treatment under QG Relief can be available if the value of the consideration differs from the net book value or the Market Value or is paid by a Person other than the Transferee. Further, the consideration can be in cash or in kind.
- A qualifying juridical person can be a taxable Resident Person (UAE incorporated, or even foreign incorporated with place of effective management and control in the UAE) or Non-Resident Person with a Permanent Establishment (PE) in the UAE. The relief is not available for transfers between a PE in the UAE and its head office outside the UAE. Unincorporated Partnership cannot be a Transferor or Transferee for the purposes of the relief as it is not a juridical person unlike Incorporated Partnership.
- The Transferor and Transferee can also be members of the same QG if a third person (i.e. a common shareholder) holds an ownership interest (with control and economic right over the ownership interest) of at least 75% in both of them. The third person does not need to be a UAE taxable person and, for example, can be a natural person or a foreign company. Where the ownership interest is held indirectly through one or more intermediaries, it is not necessary that the intermediary is also a member of the QG. For example, if the Transferor indirectly holds 75% ownership interest in the Transferee through an Exempt Person or a Qualifying Free Zone Person, the ownership condition is still satisfied.
- All members of a QG must prepare their financial statements using the same Accounting Standards. The Accounting Standards condition is not a requirement to follow the same accounting policies in the standalone financial statements. Thus, even if all members of the Qualifying Group use the same Accounting Standards, each member may follow different accounting policies.
- An asset or liability will be treated as transferred at its net book value at the date when the transfer takes place (even if the Transferor accounts for it at fair value). There would be no taxable gain or loss on transfer of the asset or liability, and any accounting gain/loss must be disregarded for CT purposes. Any depreciation and amortisation charged by the Transferor up to the date transfer can be deducted against their Taxable Income, even if the transfer itself does not trigger a gain or loss.



# “Qualifying Group Relief” Guide

## Key highlights (cont'd)

- The Transferor shall treat the consideration received as being equal to the net book value. To the extent consideration paid by Transferee differs from the net book value of the asset or liability, the difference is ignored for the calculation of both the Transferor's and Transferee's Taxable Income. In case the consideration paid by the Transferee is in the form of another asset or liability held on capital account, the transaction would be treated as two separate transfer transactions and the relief would apply separately to each transfer. There are multiple examples in the guide on the tax adjustments of IFRS accounted transfers and related depreciation.
- The relief will be clawed back if, within two years of the transfer, there is a subsequent transfer of the asset or liability outside of the QG, or the Transferor or Transferee cease to be members of the same QG (the Guide includes a number of examples). The reason for the subsequent transfer outside of the QG is not relevant. For example, the clawback can be triggered even if the Transferee ceases to exist upon liquidation or on merger (i.e. where the asset or liability is transferred as liquidation proceeds or as consideration for merger).
- The no gain or loss treatment within the QG is only available if the Transferor makes an election in the Tax Return. Once the election is made by the Transferor, it is irrevocable in the hands of the Transferor and cannot be reversed without the FTA approval. Such election will not only apply to the specific transfer, but to all transfers of assets and liabilities held on capital account within a QG which take place in the reporting tax period and subsequent tax periods. An election made by the Transferor shall not be binding on any future transfer of the same asset or liability by another member of the QG, i.e. each Transferor in a QG is required to make its own election.
- Both the Transferor and the Transferee are required to maintain a record of the agreement to transfer the asset or liability and evidence of the value prescribed under Article 26 of the CT Law. Additionally, the Transferee must document the requirements necessary for making any adjustments prescribed under MD #134 of 2023.
- A transaction can be eligible for both QG Relief and Business Restructuring Relief (see next section) where all the conditions are met. If an election has been made for QG Relief or Business Restructuring Relief, the transaction will be subject to the condition of that elected relief only, including its clawback rules. However, if a Transferor has elected for QG Relief and it also makes an election for Business Restructuring Relief in respect of a specific business restructuring, the no gain or loss treatment would be clawed back in the case of a clawback triggered by either of the reliefs.
- The Guide also discusses interactions with the transitional relief rules. Ownership by a Taxable Person of the relevant assets shall include the ownership by any other member of the QG for purposes of applying the transitional rules, including the pre-CT period ownership. If an asset or liability is transferred on a no gain or loss basis within a QG after CT has entered into force, the transfer is not a disposal for the purposes of the transitional relief, and the ownership period of such an asset or liability is considered to continue.



# “Business Restructuring Relief” Guide



The FTA has also released a comprehensive CT Guide on Business Restructuring (BR) Relief. Like the QG Relief Guide, this guide also serves as a significant resource, providing clarifications and insights on many important topics in relation to entities transactions covered within the scope of the relief, conditions to be eligible for the relief, circumstances when the relief will be clawed back and consequences, compliance requirements and interaction with other parts of CT Law.

## Key highlights

Article 27 of the Corporate Tax Law in the UAE allows for BR Relief, enabling the tax-neutral restructuring or reorganisation of a business subject to satisfaction of certain conditions.

Some of the critical points the guide sheds additional light on are as follows:

- Unlike QG Relief, there is no condition regarding the existing ownership of the Transferor and Transferee. The relief therefore covers BR transactions between Related Parties and between third parties.
- BR Relief applies to two categories of transactions. The first category is where there is a transfer of an entire Business or an independent part of the Business from one Taxable Person to another. The second category is where there is a transfer of an entire Business from one or more Taxable Persons to another, and the Transferor then ceases to exist. As each category has specific conditions attached, they are discussed separately in the guide.
- An important requirement for the relief is a consideration received for the transfer;
  - shares or other ownership interests of the Transferee;
  - part of the consideration may be in a form other than shares or ownership interest;
  - consideration may be received by the Transferor, or by a shareholder (juridical or natural person, UAE or foreign) that has at least 50% direct or indirect ownership interest in the Transferor;
  - consideration may be paid/issued by the Transferee, or by a shareholder that has at least 50% direct or indirect ownership interest in the Transferee;
  - an exception here is when the partners of an Unincorporated Partnership apply to treat the Partnership as a Taxable Person and the application is approved by the FTA; such transaction qualifies for the relief even without payment of consideration.
- The following transactions are examples of transactions that are not covered under the BR Relief: a liquidation; a subsidiary merges into its parent company and is dissolved (its shares are cancelled by law); a parent company transfers its business or its part to a wholly owned subsidiary (or vice versa) without issuing shares or other ownership interests. As the consideration is required to be in the form of shares or other ownership interests in the Transferee or its shareholder(s), the Transferee cannot be a natural person.
- The definition of Business covers any activity conducted regularly on an ongoing and independent basis. If the Transferor transfers only part of its assets and liabilities to the Transferee, it should be assessed whether it can be considered as an “independent part of a Business” in order to qualify as BR. It refers to a part of the Business that may be operated independently and separately from the other Business of the Taxable Person (going concern accounting concept, level of operational support required from other Business, etc.).
- In addition to shares or other ownership interests, if any other form of consideration is paid such as cash, a transfer will still be considered to meet the conditions of the Business Restructuring Relief if the Market Value of the other form of consideration does not exceed the lower of: (i) the net book value of the assets and liabilities transferred, or (ii) 10% of the nominal value of the ownership interest issued.
- One of the conditions for the relief is that the transfer should be legally compliant. The CT Law itself does not provide the legal basis for restructuring, hence this condition requires that the business restructuring complies with all applicable other legislation in the UAE (any UAE Federal and/or Emirate laws and regulations) or even foreign law not conflicting with UAE law. If the transaction is not permissible under the applicable UAE law, then the relief would not be available.



# “Business Restructuring Relief” Guide

## Key highlights (cont'd)

- If a Non-Resident Person with a PE in the UAE transfers or is transferred assets or liabilities attributable to its PE to or from another Taxable Person in exchange for shares, this transfer could benefit from the relief. This applies even if the Non-Resident Person transfers all assets and liabilities attributable to the PE and ceases to be a Taxable Person in the UAE. The relief can also apply if assets or liabilities are transferred from one PE to another PE within the UAE. However, the relief is not available for transfers between a PE in the UAE and the head office since the PE and its head office are the same person.
- Similar to QG Relief, for BR Relief the assets or liabilities will be treated as transferred at their net book value at the date when the transfer takes place (even if Transferor accounts them at fair value). There would be no taxable gain or loss on transfer of the assets or liabilities, and any accounting gain/loss must be disregarded for CT purposes. Any depreciation and amortisation charged by the Transferor up to the date transfer can be deducted against their Taxable Income, even if the transfer itself does not trigger a gain or loss.
- There are multiple examples in the guide on the tax treatment and adjustments of IFRS accounted transfers and related depreciation. They are similar to those QG Relief guide.
- Unutilised tax losses incurred by the Transferor in tax periods before the restructuring transaction, can be carried forward and are considered as tax losses of the Transferee. Unlike tax losses, unutilised Net Interest Expenditure cannot be transferred to the Transferee.
- A clawback applies only in respect of those shares or ownership interests that were issued by the Transferor or the Transferee as part of BR Relief. In a business restructuring transaction, it is uncommon for a Transferor to issue any shares or ownership interest, so it is expected to be uncommon that a transfer of shares or ownership interests in the Transferor would trigger the clawback. Any transfer of shares in the Transferee which were issued as part of BR Relief can be considered a transfer of either the whole or part of the shares. This means the transfer of a single share which was earlier issued as part of BR Relief could trigger the clawback, even if the owners of the other shares in the Transferee remain unchanged.
- There are also multiple detailed examples of clawbacks due to transfer of shares or transfer/disposal of the transferred business or its part. The clawback applies in the following situations:
  - transfers of Business within the Tax Group,
  - transfers within a QG Relief,
  - transfers as part of a liquidation or winding up, or
  - transfers as part of another transaction on which BR Relief applies.
- The guide provides examples of situations where BR Relief is not clawed back, including operational changes, consolidation of duplicate functions, alignment with business strategy etc. If no contracts, functions, assets or liabilities are transferred within two years of a restructuring transaction on which BR Relief applied as part of a further restructuring, there is unlikely to be a transfer of an independent part of the Business, so no clawback.
- If a Transferor has elected for QG Relief and it also makes an election for BR Relief in respect of a specific business restructuring, the no gain or loss treatment is clawed back, if a clawback is triggered by either of the reliefs.
- The conditions of the relief are to be evaluated in respect of each business restructuring transaction and should be tested in the tax period in which the transaction takes place. Merely becoming an Exempt Person or Qualifying Free Zone Person in a subsequent tax period does not trigger a clawback of the relief claimed in an earlier tax period.
- The Transferor must make an election to apply the relief. Unlike the election for QG Relief which applies to all of a Transferor's subsequent transfers, an election for BR Relief is required by the Transferor for each applicable business restructuring transaction. This election does not apply to any future restructuring transactions performed by the Transferor or Transferee.



# “Business Restructuring Relief” Guide

## Key highlights (cont'd)

- For transitional relief, the transfer is not a disposal for the purposes of the transitional relief and the ownership period of the asset or liability is considered to continue and include the ownership period of the Transferee. In case of a clawback, the transitional relief should be claimed in the tax period when the clawback is triggered.
- The Transferor and Transferee must maintain appropriate documentation which can show that the Business restructuring transaction was for valid commercial reasons or other non-fiscal reasons which reflect economic reality.

## Next steps

Both Guides provide useful guidance and clarity on Qualifying Group Relief and Business Restructuring Relief. Careful consideration and application of these guidelines are necessary for taxpayers.

For further assistance, you can reach us at [CT.UAE@pwc.com](mailto:CT.UAE@pwc.com).



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# Thank you



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