

UAE Corporate Tax: “Tax Resident and Tax Residency Certificate” Guide

Key Takeaways



October 2024



“Tax Resident and Tax Residency Certificate” Guide

The Federal Tax Authority (FTA) has released a Corporate Tax (“CT”) Guide titled Tax Resident and Tax Residency Certificate (“TRC”). This Guide serves as a significant resource, providing clarifications and additional insights on the concept of place of effective management and tax residency in UAE. Here is our **overview of the guide** followed by the **next steps**.

Overview of the Guide

CT Resident Person vs UAE Tax Resident

Being a “Resident Person” subject to CT is not the same as being “Tax Resident” in the UAE for the purposes of a double taxation agreement (“DTA”) entered into between the UAE and another jurisdiction. The Guide provides useful reminders and clarifications on these concepts.

CT Resident Person

A juridical person is a Resident Person who is in scope for CT purposes if:

- it is incorporated or otherwise established or recognised under the applicable legislation of the UAE, irrespective of where its effective management and control is exercised, or
- it is incorporated or otherwise established or recognised under the applicable legislation outside the UAE but its effective management and control is exercised in the UAE.

In the UAE, juridical persons include Limited Liability Companies (LLCs), Private Shareholding Companies (PSCs) with one single interest holder, Public or Private Joint Stock Companies (PJSCs), foundations or trusts that have been established under the UAE “mainland” legislation, civil companies, companies that are labelled as “offshore companies”. However, whether a person is juridical will ultimately be assessed based on the establishment law of each entity.

The CT rules for a juridical person also apply to a Free Zone Person, and a juridical person incorporated or formed in a Free Zone in the UAE is also a Resident Person.

An Exempt Person for CT purposes is not considered a Resident Person, unless that Person conducts a Business or Business Activity that is outside the scope of their exempted activity.

CT residence due to place of effective management and control (“POEM”)

The POEM refers to where the key management and commercial decisions essential to the business are made. These decisions include: setting general policies, determining strategic direction, deciding on major transactions, appointing and overseeing c-suite and senior executives to manage/carry out routine business, or handling key financial matters such as profit allocation and dividend declaration. Broadly, effective management and control relates to where the strategic level of control (as opposed to day-to-day management) is conducted.

The following are not considered to be key management and commercial decisions, and, therefore, do not constitute effective management and control: formal finalisation or approval of decisions made by others, mere implementation of decisions made by others, day-to-day conduct and management of a company’s activities and operations, or legal and administration matters such as keeping a share register or undertaking minimum acts necessary to maintain a company's registration.

A juridical person may have multiple management locations, but only one POEM, which is where key decisions affecting the business as a whole are regularly and predominantly made.





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When determining who makes the key management and commercial decisions for a juridical person, it is crucial to focus on those who genuinely make the decisions, rather than those who simply formalise or approve them. The analysis should consider who holds the legal authority to make these decisions, whether they exercise this power, and, if not, who actually does.

The Guide further lays down three tests to identify the persons who make key management and commercial decisions:

- **The board of directors test**: The effective management and control of a juridical person is determined by reviewing the relevant legal framework, including company laws and governing instruments like the memorandum or articles of association. Typically, management and control are legally entrusted to the board of directors, though in some cases, it may be a single individual such as a managing director. It's important to assess whether the board genuinely makes key decisions or simply formalizes decisions made by others. Other considerations include the board's qualifications, independence in decision-making, and whether they follow instructions from another person. If decisions are not made by the board, it's necessary to identify who actually makes them and where.
- **Delegation of authority test**: Legal authority alone does not determine who exercises effective management and control of a juridical person; it is the individuals who actually make key management decisions that matter. In some cases, those with legal authority, like the board of directors, may delegate decision-making to others, such as senior management or executive committees. To assess who truly exercises control, it's important to examine whether the board independently evaluates decisions or merely approves recommendations without scrutiny. Key factors include the delegation of day-to-day management, the role of senior management in decision-making, and whether the board actively assesses and decides on key matters based on the company's needs.
- **Shareholders activity test**: Shareholders typically make fundamental decisions, such as appointing directors or approving major corporate actions, which usually do not impact the place of effective management and control. However, if a shareholder's involvement extends beyond influence or guidance into making key management decisions, this may amount to exercising effective control. This is especially relevant when a shareholder unduly influences the board or limits its decision-making autonomy. For the board to exercise effective management, it must act independently in key decisions without merely following shareholder directives, particularly when the board consists of shareholder members.

The Guide further emphasises that in order to determine the POEM of a juridical person, it's essential to identify where key management and commercial decisions are made, considering relevant facts and circumstances.

Factors include the location of board meetings, whether decisions are made virtually, and whether key decisions are made outside formal meetings or via written resolutions. Board minutes and other evidence may help pinpoint where decisions are made. If authority is delegated to senior management or others, the location where they make decisions is relevant. Legal, administrative, and operational factors like the place of incorporation or registered office are typically not determinative.

Occasional or temporary decision-making in the UAE, due to exceptional circumstances, may not establish effective management there. If decisions are made in multiple locations, further examination is required, potentially considering where the business has the strongest economic nexus, including employee, asset, and revenue factors.

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UAE Tax Resident

A juridical person is considered to be a Tax Resident of the UAE if it is:

- incorporated or otherwise formed or recognised in the UAE, or
- it is considered a Tax Resident of the UAE under UAE Tax Laws (e.g. UAE CT Law).

If a juridical person is incorporated or otherwise formed in a Free Zone in the UAE, this person is a UAE Tax Resident and able to apply for a TRC. If a foreign company is effectively managed and controlled in the UAE, it is a Resident Person for the purposes of the CT Law and, therefore, Tax Resident in the UAE.

Tax Residency for DTA

Each DTA has its own rules and criteria for determining when juridical and natural persons are considered to be tax resident in the countries which are party to the DTA. This may differ from the criteria for determining who is a UAE Tax Resident under domestic law, or a Resident Person under the CT Law. Therefore, each scenario should be considered on a case-by-case basis and in light of the wording of the specific DTA.

If a juridical person is considered to be a tax resident in the UAE under the applicable DTA, it is eligible to apply for a TRC in the UAE in order to obtain the benefits of the applicable DTA, if required. Foreign companies with POEM in the UAE (and thus UAE Tax Residents) may need to deal with dual residence rules in UAE DTAs.

In the context of DTAs, Government Entities and Government Controlled Entities are generally considered as UAE tax resident and should accordingly be eligible to avail benefits under the DTAs, wherever relevant. However, if the relevant DTA defines Government for the purposes of the DTA, this shall prevail. Where a DTA's criteria is based on being liable to tax, Exempt Persons will be able to benefit from its provisions, as they are all considered liable to tax in the UAE.

UAE TRC

The Guide states that applicants for TRC must include which Tax Period or other 12-month period to be covered by the TRC, depending on the specific situation. If a Tax Period is selected, it can only be the current Tax Period or a prior Tax Period. For juridical persons, the Tax Period is the Financial Year. Generally, this is the 12-month period for which the Taxable Person prepares Financial Statements.

Where a TRC is required for the current period, the application will only be considered by the FTA as follows:

- Juridical person - after three (3) months into the period,
- Government Entities and Government Controlled Entities - one day into the period.

A TRC cannot be obtained for a future period (i.e. for a Tax Period or a 12-month period that has not commenced), as the FTA cannot certify that a Person will continue to be UAE Tax Resident for a future period. A TRC cannot be obtained for a period longer than 12 months. A TRC is only applicable to the period selected by the applicant.

Newly incorporated companies who have yet to file a CT Return must be established for 12 months before being eligible to apply for a TRC. As Exempt Persons are considered to be liable to tax, they are, therefore, able to apply for a TRC.

The Guide provides documentation requirements for a TRC. The FTA takes, in general, 10 business days to respond from the date the completed application was received. A CT registered person pays AED500 for review of the application and issuance of an electronic TRC (and stamping of any additional foreign tax form).

Next steps

- Taxpayers need to carefully consider the relevance and application of these guidelines to their business.
- For further assistance, you can reach us at CT.UAE@pwc.com.





Thank you



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