Ministerial Decision No. 302 of 2024:
Participation Exemption and Foreign Permanent Establishment Exemption

Key Takeaways

January 2025

MD 302 on Participation Exemption and Foreign Permanent Establishment Exemption

On 10 December 2024, the Ministry of Finance ("MoF") published the Ministerial Decision No. 302 of 2024 ("MD 302") on the Participation Exemption ("PEX") and Foreign Permanent Establishment Exemption ("FPEEX") for the Purposes of the Federal Decree-Law No. (47) of 2022 on the Taxation of Corporations and Businesses ("CT Law").

MD 302 updates and clarifies several provisions that were initially addressed in Ministerial Decision No. 116 of 2023 ("MD 116"), and the language is generally more precise. We have set out the key points below.

Key highlights

- **Article 4** "Transfer of Ownership Interests": the decision clarifies the exchange of ownership interests, emphasising that for the purpose of meeting the 12 months holding period requirement for PEX, ownership interests shall be treated as continuous when the exchange qualifies as a "no gain or loss transfer" under the Business Restructuring Relief ("BRR"). Additionally it clarifies that the original ownership interest must constitute the Participating Interest.

  New clauses were added to this article, detailing the following:

  - Where a transfer of ownership interests is exempt under the BRR provisions, the commencement of the two-year clawback period referenced in clause 9 of Article 23 of CT Law shall be calculated from the date of the initial transfer that qualified for the BRR exemption and shall continue in respect of subsequent transfers.

  - It is permitted to reverse any income previously taken into account due to the clawback period applied per clause 9 of Article 23. This adjustment applies in cases where:

    - A Participation was acquired by a taxable person in exchange for the transfer of an ownership interest that was exempt under the "Transfers within Qualifying Group" provisions (Article 26 of CT Law) or under the BRR provisions (Article 27 of CT Law); and

    - The clawback provision of the two-year period was subsequently applied to that transfer under Article 26 or 27.

- **Article 6** "Subject to Tax": the decision clarifies that for another country to be eligible to meet the criteria of the subject to tax condition, it shall levy tax at a **statutory** rate of not less than 9%.

- **Article 8** "Minimum Acquisition Cost": the decision clarifies that an acquisition cost of AED 4 million meets the ownership interest test (where it is below 5%) under Clause 2 of Article 23, including the requirement for share in profit distribution and liquidation proceeds under paragraph (c) of the same clause.

- **Article 9** "Application of the Asset Test": a new article has been introduced to clarify that, for the Asset Test to be applied per paragraph (d), Clause 2 of Article 23, the participation must be a Related Party of the taxable person.

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Key highlights

- **Article 13** (the old Article 12) “Liquidation Proceeds and Losses”: this article retains the provisions of MD 116 while introducing clarifications and adjustments to the treatment of liquidation losses. The key updates include:
  - **Adjustments to liquidation losses:** additional adjustments were added to reduce the amount of loss realised on the liquidation of a Participation.
  - **Adjustments in the context of a Tax Group:** additional adjustments to liquidation losses are outlined for cases where the Participant was a member of a Tax Group.
  - **Application period:** the article specifies that these adjustments apply to the relevant tax period and the preceding (7) seven tax periods.
- **Article 14** “Foreign Permanent Establishment Exemptions”: This article replaces Article 13 of MD 116, previously titled “Foreign Permanent Establishment Tax Losses”. It introduces new provisions and clarifications regarding the treatment of tax losses related to Qualifying Foreign Permanent Establishments (QFPEs). The key highlights are:
  - **Offsetting tax losses:** Before applying a FPEEX, a taxable person must fully offset all tax losses used from their QFPE(s). There are different methods for this to be applied.
  - **Transfers and termination of Permanent Establishments:** If a taxable person transfers all assets and liabilities of a QFPE (or a Non-QFPE) to another entity (Participation), leading to the closure of the PE, the person can benefit from FPEEX subject to certain limitations on the amounts that can be used.
- **Articles 15 and 16:** specify that this decision repeals MD 116; however, MD 116 will continue to apply to tax periods that commenced before 1 January 2025. It is specified that MD 302 shall apply to tax periods commencing on or after 1 January 2025.

Key takeaways and next steps

MD 302 introduces additional definitions and more detailed provisions on the application of PEX and FPEEX. Careful consideration and application of these guidelines are necessary for taxpayers.

For further assistance, you can reach us at CT.UAE@pwc.com.

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