

UAE: INTRODUCES NEW CORPORATE TAX

CT, at a main rate of 9%, will apply to companies with financial years starting on or after 1 June 2023

In brief

The UAE Ministry of Finance ("MoF") yesterday announced the introduction of a corporate tax ("CT") regime that will apply to businesses. It will become effective for financial years starting on or after 1 June 2023.

The headlines are that the tax rate will be 0% for taxable income up to AED 375k and 9% on taxable income above AED 375k. Large businesses (expected to be those with revenue above EUR 750m) may be subject to a different tax rate (potentially 15%) in line with the Pillar Two OECD BEPS project. Group tax consolidation would be permissible.

Entities which solely operate in free zones (in compliance with the regulatory requirements) are expected to retain the existing tax holidays, although there will still remain a filing obligation for free zone entities. Extraction of natural resources will continue to be subject to Emirate level taxation. Banking operations will be subject to the tax, but further details on the current Emirate level corporate taxation will be provided in due course.

There will be no withholding taxes on payments to non-residents.

We expect that the government will release further details by mid-2022. More details of yesterday's announcement are set out further below.

Immediate consideration for businesses

UAE CT could have a significant impact on most businesses particularly on their domestic UAE operations, cross-border transactions and the interface with their overall global structures. Pending the issuance of the applicable tax law within the next six months (by mid-2022), we shall be assisting our clients in reviewing the legal and financial impact and to plan ahead to ensure that their corporate and business structures are efficient and optimally placed, in preparation for the new UAE CT regime.

Furthermore, reviews of legal positions, contracts and operating models may be desirable to ensure that these are robust from a tax perspective, in advance of the implementation of the new regime.

In more detail

Who is expected to be in scope?

All UAE established businesses are currently expected to be in scope of the UAE CT law except for those operating in the extraction of natural resources (which will remain

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subject to Emirate level corporate taxation). Furthermore, it is referenced in the FAQs issued by the UAE MoF that exemptions may be available to certain entities and this will be outlined in due course.

Treatment of freezone entities

Freezone entities will have a registration and filing obligation under the UAE CT law, however existing tax holidays offered by freezones are expected to be retained provided that the freezone entity(ies) operate solely within the freezone and in line with the regulatory requirements.

What are the thresholds?

The UAEF intends to operate a three-tier CT framework whereby

- The first AED 375,000 of taxable income is subject to 0% CT;
- 9% CT will apply to taxable income exceeding AED 375,000; and
- or businesses that exceed EUR 750m revenue, a different tax rate (which is yet to be announced) will apply in line with the Pillar Two OECD BEPS project. This rate could be expected to be 15%, in line with the rate outlined in the OECD Model Rules.

To the extent that an entity generates a tax loss this should be carried forward to offset against taxable income arising in future taxable periods.

How is taxable income calculated?

The starting basis of determining taxable income will be the accounting net profit (in line with internationally acceptable accounting standards). The specific CT adjustments that can be made will be announced in due course although the expectation is that ordinary and necessary business expenses incurred in the production of taxable income should be deductible.

Income from (i) dividends (ii) capital gains and (iii) qualifying intra-group transactions and reorganizations will not be included within taxable income, subject to satisfaction of certain conditions (which are likely to include an ownership threshold and a minimum holding period).

Group tax consolidation

A group of UAE entities are able to elect to form a tax group. It is not clear upon the minimum ownership requirement in order to form a tax group however these thresholds are typically quite high (90%+).

The taxpayer is expected to be able to determine its own tax group, subject to satisfying the ownership criteria. Entities within a group will be able to transfer tax losses between other group entities.

A single tax return will be filed by a consolidated tax group, subject to certain conditions.

How is CT expected to be administered?

The filing date for the tax return has not been confirmed, however only one CT return is required per financial period (i.e., a year) and this is to be filed electronically.

No detail has been provided regarding the due date for payment of any CT, however it has been confirmed that there will not be an advanced payment regime.

Does this mean that there will be personal tax?

The UAE does not currently intend to introduce personal tax and the remit of the CT framework will not apply to individuals and their personal income unless the individual holds (or is required to hold) a commercial license or permit (e.g., freelancers).

To speak to us in relation to the new Corporate Tax, please feel free to contact one of the lawyers above or your usual contact at Habib Al Mulla & Partners, a member firm of Baker & McKenzie International.

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