



# UAE CORPORATE INCOME TAX

Commentary on Ministry of  
Finance Consultation Paper



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# KILLING THE COMPLEXITY

## 1. No Withholding tax

Deduction of withholding tax on each payment an entity receives without taking into account its actual profit is a reflection of lack of trust between the tax regulator and the tax payer. It also results in shifting the burden of tax compliance from regulator to the business community, cash flow issues for the tax payer and unnecessary administrative hassle of handling the refunds.

It is encouraging to see that UAE Corporate tax is free from this repressive tool and the companies/business individuals would be paying tax only annually based on the actual profits, if applicable.



## 2. Company's fiscal year to be the tax year

In general tax authorities themselves determine the "tax year" and companies then will have to adjust if the two are not aligned and prepare 12 months accounts twice during a year. In UAE whatever the company's fiscal year end is will be considered as their tax year too.



## 2. Minimum adjustments

Minimum adjustments for the purposes of calculating taxable income from accounting profit/loss are proposed in the consultation paper. The Ministry for examples has refrained from giving their own rates for assets depreciation and not touched upon deferring various provisions for tax purposes till the time actual cash impact takes place.



# DEFERRED » TAX IMPLICATION

## 1. Previous year losses

Previous year losses effective from the date of the CT will be allowed for adjustment against the future profits that triggers the accounting for deferred tax asset.



## 2. Unrealized gain/loss on capital items

Adjustment will also be made for any unrealized gain or loss on capital items that obviously would have deferred tax assets/liability implication as the case may be





# WHAT COMPANIES NEED TO DO NOW



## 1. Group Structure Assessment

Companies can form a Tax group to file the consolidated tax return if the parent company holds at least 95% of the share capital and voting rights of its subsidiaries. To form a tax group, neither the parent company nor any of the subsidiaries can be an exempt person or a Free Zone Person that benefits from the 0% CT rate.

In light of the above companies may wish to make an assessment as to whether it is beneficial to have free zone entities in the group, if they are loss making and restrict group's ability to adjust these losses against the taxable profits of the group, if any.



## 2. Revisit application of accounting policies

UAE CT regime is inclined towards minimum adjustments to accounting profits/losses for creating tax friendly environment. It essentially means that financial statement components like provisions - asset impairment, decommissioning costs, receivables, obsolete inventory etc - for tax purposes will be accepted as reported in financial statements as per the applicable accounting standards.

These estimates require a lot of judgment and entail a degree of subjectivity. Finance teams need to be aware that the assessment of these estimates would now also have cash flow impact with respect to discharging tax liabilities.

## » POINT OF CONSIDERATION FOR THE MINISTRY OF FINANCE



As per Clause 6.17 of the Consultation paper "Where intra-group relief is claimed, the relevant assets and liabilities will be treated as being transferred at their tax net book value, so that neither a gain nor a loss needs to be taken into account when calculating the taxable income of the transferor and the transferee company. "

This in our opinion contradicts with the Arms length principle under the transfer pricing rules referred to in the same document.



# KEY POINTS SUMMARY



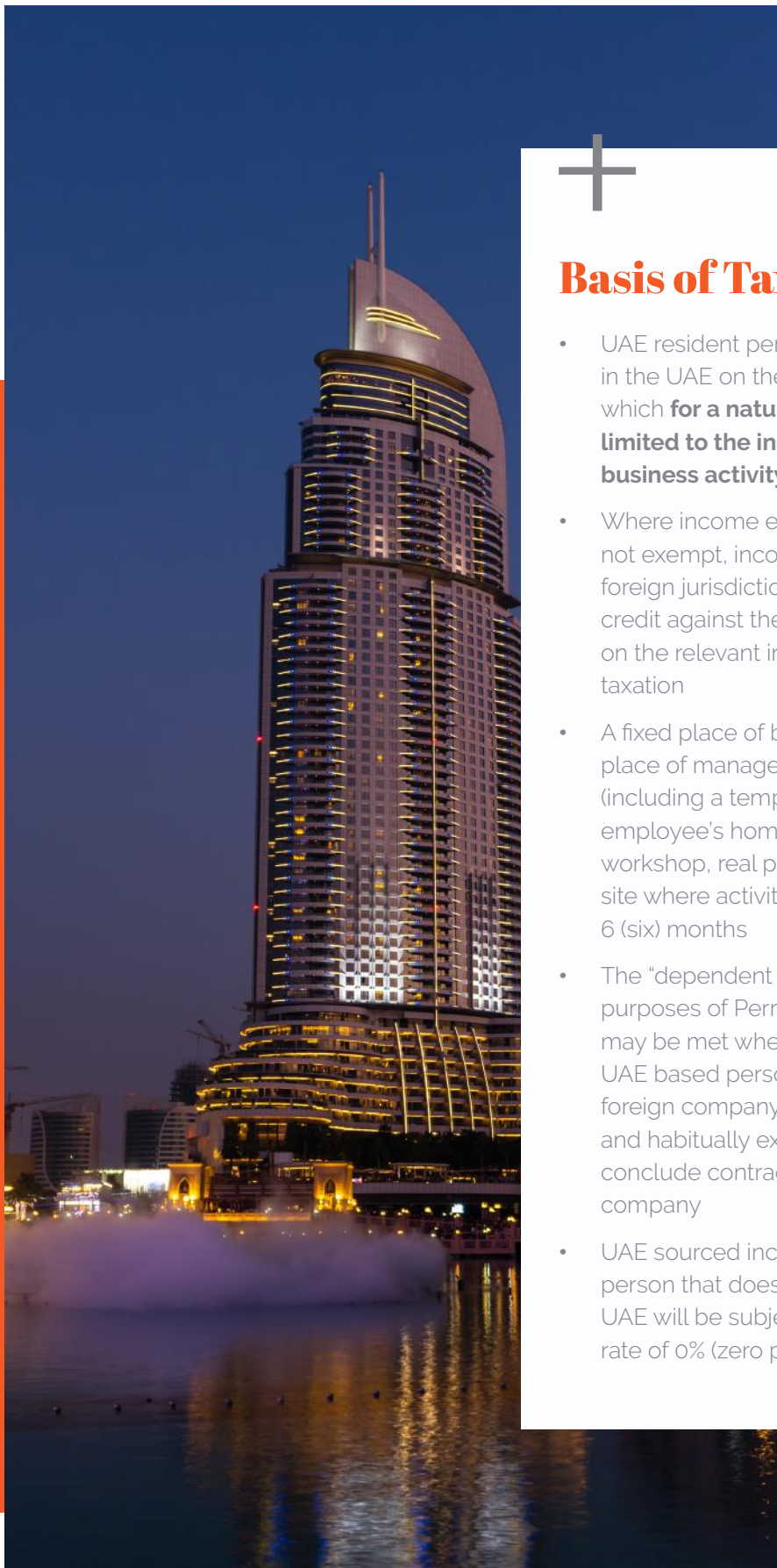
## Taxable Persons

- Individuals are taxable up to the extent of their business income
- Whether an individual is engaged in a business that is subject to UAE CT would generally depend on whether the activity requires the individual to obtain a commercial licence
- For the application of UAE CT, legal persons incorporated in a foreign jurisdiction that are effectively managed and controlled in the UAE will be treated as if they were UAE incorporated entities.
- Partnerships\* will not be taxpayers in their own right, but their income will instead 'flow through' and be taxed in the hands of the partners or members only.
- Any business activity carried out directly by the Government under a trade licence will be within the

scope of the UAE CT regime

- Free Zone Person can continue to benefit from the 0% CT rate if its income from mainland UAE is limited to 'passive' income. This would include interest and royalties, and dividends and capital gains from owning shares in mainland UAE companies
- Payments made to the Free Zone Person by a mainland group company will not be a deductible expense





## Basis of Taxation

- UAE resident persons will be taxable in the UAE on their worldwide income, which **for a natural person will be limited to the income earned from their business activity carried out in the UAE.**
- Where income earned from abroad is not exempt, income taxes paid in the foreign jurisdiction can be taken as a credit against the CT payable in the UAE on the relevant income to prevent double taxation
- A fixed place of business will include a place of management, a branch, an office (including a temporary field office or an employee's home office), a factory, a workshop, real property, and a building site where activities are carried on for over 6 (six) months
- The "dependent agent test" (for the purposes of Permanent establishment) may be met where business travellers or UAE based persons act on behalf of the foreign company in the UAE and have, and habitually exercise, the authority to conclude contracts in the name of foreign company
- UAE sourced income earned by a foreign person that does not have a PE in the UAE will be subject to withholding tax at a rate of 0% (zero percent).





## Calculation of Taxable Income

- Accounting standards other than IFRS will be considered for tax purposes as well.
- Unrealised gains or losses on capital items are not taken into account when calculating taxable income.
- A UAE corporate shareholder will generally be exempt from CT on dividends received, and capital gains earned from the sale of shares of a subsidiary company
- Recognising the potential complexities associated with attributing income and expenses to foreign branches, UAE companies can either (i) claim a foreign tax credit for taxes paid in the foreign branch country, or (ii) elect to claim an exemption for their foreign branch profits.
- To prevent the different tax treatment of equity and debt being exploited through the use of excessive levels of debt, the proposed UAE CT regime will cap the amount of net interest expense that can be deducted to 30% of a business' earnings before interest, tax, depreciation, and amortisation (EBITDA), as adjusted for CT purposes
- Interest capping rules will also not apply to businesses carried on by natural persons.
- Businesses will be allowed to deduct up to 50% of expenditure incurred to entertain customers, shareholders, suppliers and other business partners
- No deduction will be allowed for certain specific other expenses such as administrative penalties, recoverable VAT, and donations paid to an organisation that is not an approved charity or public benefit organisation.
- A business will be able to offset a loss incurred in one period against the taxable income of future periods, up to a maximum of 75% of the taxable income in each of those future periods.



## Groups

- A UAE resident group of companies can elect to form a tax group and be treated as a single taxable person if the parent company holds at least 95% of the share capital and voting rights of its subsidiaries.
- For the period during which the entities are members of the tax group, the parent company and each subsidiary will be jointly and severally liable for the group's CT. This joint and several liability can be limited to one or more named members of the tax group, with approval from the FTA.
- Where intra-group relief is claimed, the relevant assets and liabilities will be treated as being transferred at their tax net book value,







FOR ANY  
QUESTIONS & DISCUSSIONS

[faheem.piracha@hyphenconsultancy.com](mailto:faheem.piracha@hyphenconsultancy.com)



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