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Spring 2023

FEATURE THE MORE THE MERRIER?
The advantages and disadvantages of using tax groups with UAE corporate income tax

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ANY QUESTIONS
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A ROUND UP OF TAX DEVELOPMENTS ACROSS THE MIDDLE EAST

POINTS OF LAW

UAE Corporate Income Tax Law

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EDITORIAL
Editor
Claire Melvin
+44 (0) 20 7347 3521
claire.melvin@lexisnexis.co.uk

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To join our free controlled circulation contact Marle Van Sandwyk
marle.vansandwyk@lexisnexis.com

MIDDLE EAST REGIONAL SALES
Abbey Bergin
abbey.bergin@lexisnexis.com
+97145601200

PRODUCTION
Senior Designer
Jack Witherden

ENQUIRIES
UK
LexisNexis, Quadrant House,
Sutton, Surrey, SM2 5AS
Tel: +44 (0)20 8686 9141 or
Fax: +44 (0)208 212 1988

France
LexisNexis SA,
141 Rue de Javel,
75015, Paris
France
Tel: +33 (0) 1 45 58 90 43

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Mubeen Khadir


Siegert Slagman


Arubah Ahmad


Salah Gueydi


Halil Erdem


Rami Alhadhrami


Roberto Scalia


Laurent Bertin

NOW THE DETAILS

2022 began with the UAE's surprise announcement that Corporate Income Tax would be issued there and ended in early December with the issue of the actual Corporate Income Tax Law, Federal Decree-Law No. 47/2022. What may have surprised many people when this law was issued was the number of areas which had been covered in some detail in the public consultation in April 2022 but were not covered to the same extent in the actual law. Instead, a number of those areas (and other areas which are needed to flesh out how the new regime will work in practice) are expected to be covered in additional Ministerial Decisions and Tax Authority Decisions that are likely to be issued this year. As a result, we have decided to kick off this issue with an Article which explains what we currently know about how this law will operate and where the gaps are. There have also been other areas including tax residency which cross over with corporate income tax and topics such as the interpretation of double taxation treaties, where the UAE authorities have already taken steps to issue clarifying legislation, which we cover in this issue too.

However, it is not just the UAE government authorities which need to start thinking more about the detail of how this will all work. Companies also need to start considering the best approach for them from a practical perspective. For example, they may not have an actual branch or operation in the UAE but that single employee who makes sales there could mean they are considered to have a presumed establishment with all the new potential tax implications that could bring. They may also want to consider whether it could make sense to become part of a tax group. Although as we also discuss in this issue, as well as benefits, this could have other potential implications. They may also have to start thinking about whether they need to make changes to their company structure in order to fully benefit from this regime.

Thomas Vanhee - Editor in Chief

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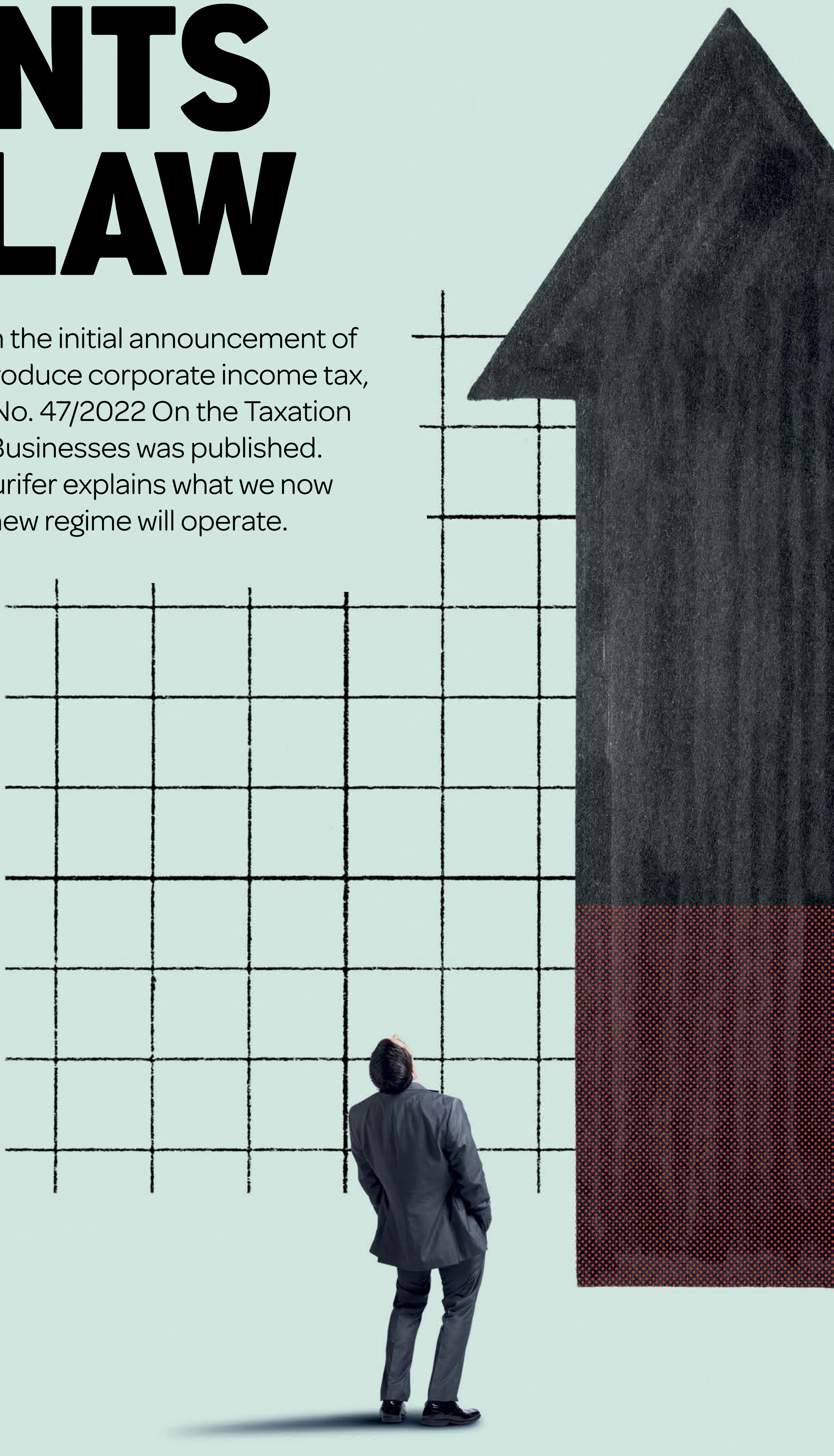
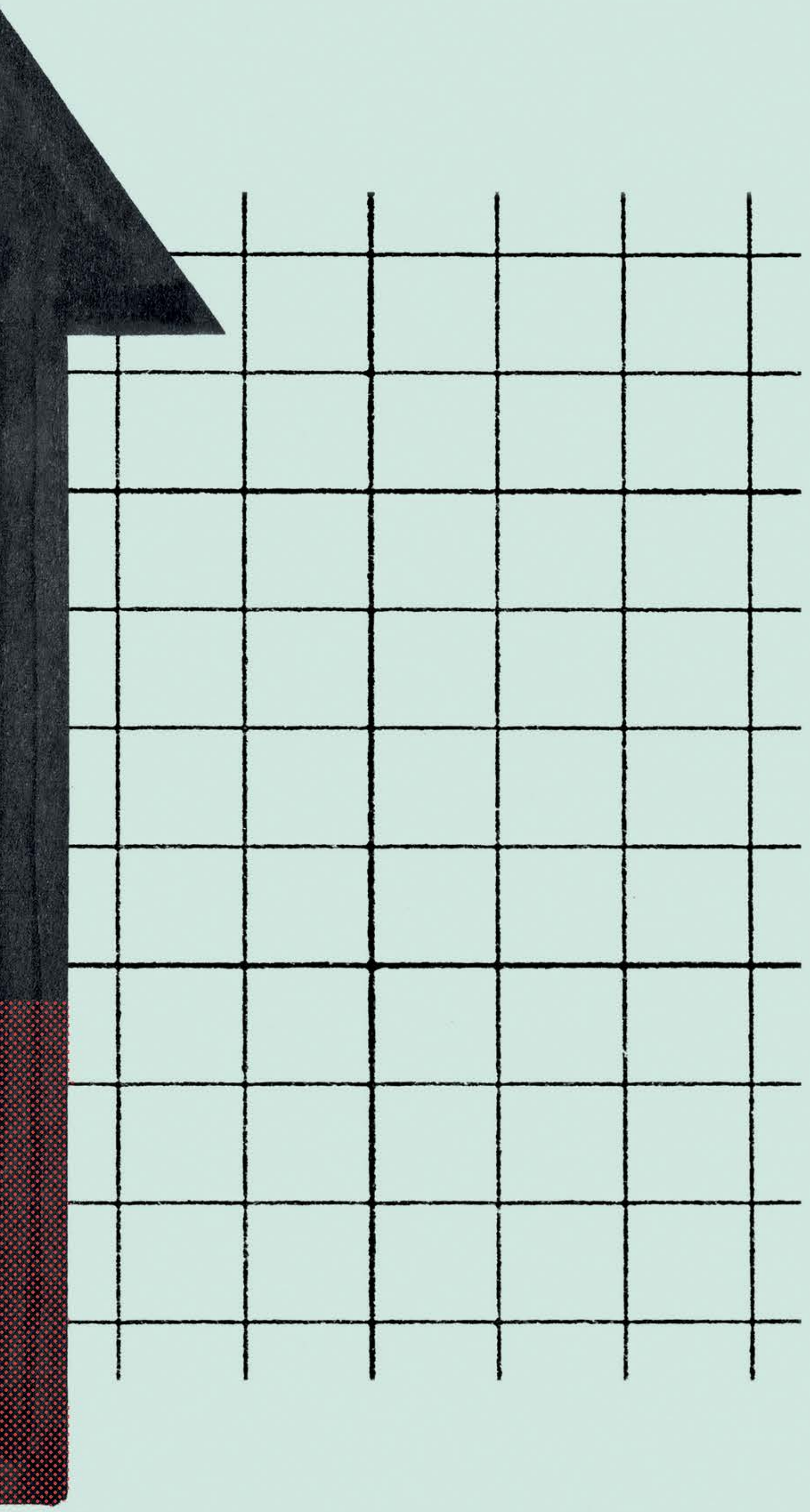
POINTS OF LAW

Almost a year on from the initial announcement of the UAE's plans to introduce corporate income tax, Federal Decree-Law No. 47/2022 On the Taxation of Corporations and Businesses was published. Thomas Vanhee of Aurifer explains what we now know about how the new regime will operate.





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In January 2022, the UAE announced its plans to introduce Corporate Income Tax and issued a set of FAQs giving broad details of how the new regime would operate. These were then followed by a Public Consultation in April which provided more information. However, it was not until the actual law, Federal Decree-Law No. 47/2022 On Taxation of Corporations and Businesses was published on 9 December 2022, that tax practitioners had a fuller picture.

Federal Decree-Law No. 47/2022 was issued on 3 October 2022 and took effect 15 days after it was gazetted on 10 October 2022. Article 69 of Federal Decree-Law No. 47/2022 states the Law will apply to Tax Periods starting on or after 1 June 2023, so businesses with a financial year starting 1 January will be subject to UAE Corporate Income Tax from 1 January 2024.

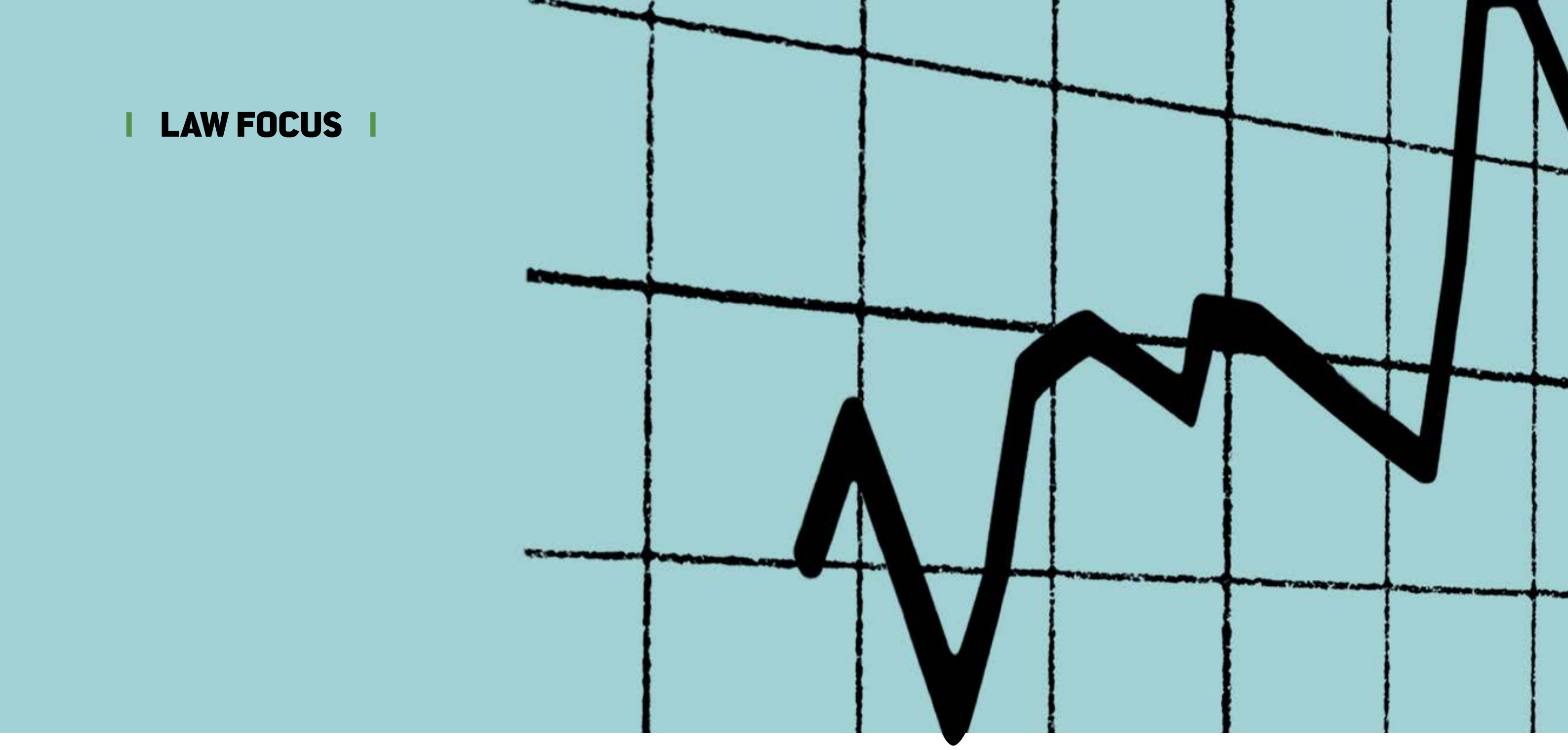
SCOPE

UAE Corporate Income Tax will apply on business's adjusted worldwide accounting net profits. Two different rates have been introduced - a 0% tax rate will apply to taxable profits up to 375,000 AED and there will be a standard statutory tax rate of 9% (which is low enough to ensure that the UAE continues to be highly competitive globally).

A previously mentioned 15% global minimum tax rate applicable to Multinational Enterprises (MNEs) that fall within the scope of 'Pillar Two' of the OECD Base Erosion and Profit Shifting project) is not currently listed in Article 3 of Federal Decree-Law No. 47/2022 which details the Corporate Tax Rate. This rate would have applied to MNEs with consolidated global revenues in excess of EUR 750m (3.15 billion AED), in any two of the previous four years. However, the FAQs still refer to the possibility of adoption in the UAE of these rules. Individuals are subject to corporate income tax insofar as they engage in business activity. The definition of business is 'any activity conducted regularly, on an ongoing and independent basis by any Person and in any location, such as industrial, commercial, agricultural, vocational, professional, service or excavation activities or any other activity related to the use of tangible or intangible properties', which is inspired by the VAT definition, and is therefore broad. A further Cabinet Decision will also be published on the application of Corporate Income Tax to a natural person. In fact, it looks likely that further Cabinet Decisions and Implementing Regulations will be issued to provide fuller detail on a whole range of matters.

FREEZONES

There is a carve-out regime for businesses which are established within UAE freezones that '(1) maintain adequate substance, and (2) earn qualifying income'. However, what constitutes qualifying income, will also



be determined in a future Cabinet Decision. Presumably this is a reference to the requirement for freezone based companies and businesses not to conduct business with mainland UAE which was covered in the Public Consultation. It has also been confirmed that freezone businesses can voluntarily elect to be subject to Corporate Income Tax and will be required to comply with Arm's Length Principle (ALP) and Transfer Pricing (TP) documentation.

Thomas Vanhee
Aurifer

FOREIGN ENTITIES AND INVESTORS

There will be a 0% withholding tax on categories of State Sourced Income derived by a Non-Resident. This means foreign investors who do not carry on business in the UAE will in principle not be subject to tax in the UAE.

However, foreign entities, could be considered a resident in the UAE if they are managed and controlled in the UAE. In the case of foreign entities which are not considered resident in the UAE, but who may have a Permanent Establishment in the country, the Permanent Establishment (PE) definitions encompass definitions of fixed PE and agency PE. It seems likely there will be further details on PEs in a later Ministerial Decision.

TRANSFER PRICING

Article 34 of Federal Decree-Law No. 47/2022 confirms the requirement for related party transactions to be conducted in accordance with the Arm's Length Principle (ALP). In addition, it outlines the five traditional OECD transfer pricing methods as being appropriate to support the arm's length nature of related party arrangements, but also allows other methods to be used where required.

Article 34 of Federal Decree-Law No. 47/2022 states in the event of an adjustment imposed by a foreign tax authority which impacts a UAE entity, an application must be made to the Federal Tax Authority (FTA) for a corresponding adjustment to provide the UAE company with relief from double taxation. However, corresponding adjustments related to domestic transactions do not require such an application.

Article 55 of Federal Decree-Law No. 47/2022 covers transfer pricing documentation requirements. UAE businesses must comply with the transfer pricing rules and documentation requirements set with reference to the OECD Transfer Pricing Guidelines. This means three tier reporting, (master file, local file and country-by-country reporting). There is also a reference to a controlled transactions disclosure form, details of which are yet to be clarified.

At present no materiality thresholds have been provided. Separate legislation on this area is expected to be issued later.

Advanced pricing arrangements will also be available, through the regular clarification process which is already in place.

While this is not necessarily transfer pricing, the UAE has implemented provisions which require payments and benefits to be made to connected persons at market value, in order for those amounts

EXEMPT INCOME AND RELIEF

Under Article 22 of Federal Decree-Law No. 47/2022 the following income is exempt from Corporate Income Tax.

1. Capital Gains, Dividends and other profit distributions from a Resident Person.
2. Capital Gains, Dividends and other profit distributions from a Qualifying shareholding in a foreign legal person, subject to a holding period of 12 months, minimum participation of 5%, at a minimum subject to 9% CIT in the source country.
3. Income from a Foreign PE, subject to conditions and an election to apply the exemption (rather than a credit).
4. Income derived by a non-resident Person from operating aircraft or ships in international transportation.

The following are subject to specific relief, i.e. effectively a deferral of taxes.

5. Qualifying intragroup transactions and restructurings - entities qualify if they have 75% common ownership.
6. Business restructuring relief - subject to certain conditions.

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to be tax deductible. When applying this this principle, the same principles are applied as in Article 34 of Federal Decree-Law No. 47/2022 have been retained in Law which refers to a transfer pricing methodology.

EXEMPTIONS

The law has confirmed a number of exemptions which were covered in the Public Consultation. For example, in the financial sector the Investment Manager Exemption found in the Public Consultation has been retained in Federal Decree-Law No. 47/2022. Specific rules also apply for Partnerships, which can be transparent, and Family Foundations can also apply for tax transparency.

Government entities and government-controlled entities will also be exempt from the UAE Corporate Income Tax, as will qualifying public benefit entities and qualifying investment funds. In addition, extractive businesses (e.g. upstream oil and gas businesses) will also be exempt, to the extent they earn income from the extractive business.

However, in principle, even though they pay income tax at Emirate level, banking operations will be subject to Corporate Income Tax (unless the institution is in a freezone and qualifies for the 0% rate).

DEDUCTIBLE EXPENSES

Expenses incurred wholly and exclusively for business purposes, and which are not to be capitalised, are deductible immediately. However, deductions are not allowed for expenditure incurred in order to obtain exempt income. In cases where there is a mixed purpose, the deduction is only partially allowed. Interest expenses are deductible subject to a cap of 30% of the Earnings Before Interest, Taxes, Depreciation and Amortisation (EBITDA).

So-called financial assistance rules have been put in place, which prevent businesses from obtaining financing to pay out dividends or profit distributions. Entertainment expenses are also capped at 50% deductibility.

OTHER KEY POINTS

1. Foreign tax will be allowed to be credited against UAE corporate income tax payable, as described in the Public Consultation. Businesses can claim the lower of the corporate income tax, or the withholding tax amount effectively deducted. There is no carry forward and no credits for taxes paid to an individual Emirate.
2. UAE companies will be able to form a ‘fiscal unity’ or Tax Group for Corporate Income Tax Purposes. The most important condition for a Tax Group is the (in)direct shareholding requirement of 95%.
3. Losses can be carried forward up to 75% of the Taxable Income.
4. Tax deductible losses can be lost if there is a change of control (50% or more) unless the new owner conducts the same or a similar business (for which conditions have now been defined).
5. The UAE’s i General Anti-Abuse rule, or GAAR applies if one of the main purposes of a Transaction is to obtain a Corporate Tax Advantage that is not consistent with the intention or purpose of the UAE Corporte Income Tax Law. The FTA will counteract or adjust the transaction.

ADMINISTRATION AND ENFORCEMENT

The Ministry of Finance (MoF) seems to remain the competent authority for the purposes of multi-lateral or bilateral agreements and the international exchange of information in a tax context.

However, the FTA will be responsible for the administration, collection and enforcement of the new corporate income tax regime. Penalties and fines are determined by the Tax Procedures Law, Federal Decree-Law No. 28/2022. There are a number of steps businesses will be required to take including having to obtain a Tax Registration Number from the FTA.

In addition, businesses which are subject to Federal Decree-Law No. 47/2022 will have to file a Corporate Income Tax return electronically for each financial period within nine months of the end of the Financial Period. A financial period is generally any 12-month financial period year. Freezone businesses which are subject to a 0% Corporate Income Tax Rate are also required to file a Corporate Income Tax return.

THE MORE THE MERRIER?

Federal Decree-Law No. 47/2022 On the Taxation of Corporations and Businesses allows UAE companies to form tax groups. As Laurent Bertin, Regional Head of Tax at Airbus Africa and Middle East explains this can make life easier from a tax management perspective but tax groups are sophisticated mechanisms that need to be fully understood.

Federal Decree-Law No. 47/2022 On the Taxation of Corporations and Businesses (the new UAE Corporate Income Tax law) has taken a business-oriented approach by allowing groups of UAE companies to potentially make the management of their Corporate Tax obligations more efficient and easier by introducing a Tax Group Regime. Tax Group regimes can be advantageous for many businesses, but they are also a sophisticated tax mechanism which can be complex, so require a proper understanding of the law and its implications.

WHAT IS A TAX GROUP REGIME?

Tax Group regimes are found in many jurisdictions, including France, the Netherlands, Japan and Australia, with some variations. However, one key point to note if you are a tax group novice is that as corporate income tax and VAT are two very different taxes which do not have the same criteria, scope, concepts, philosophy or most importantly mechanisms, tax and VAT groups are not the same. It is possible for a particular business entity, for example, to be subject to VAT without being subject to Corporate Income Tax. Therefore, a Tax Group Regime, provided for under Chapter 12 (Article 40-42 of Federal Decree-Law No. 47/2022) only applies for UAE Corporate Income Tax purposes and must not be confused with the VAT group regime which may have a different scope. In addition, although a Tax Group is known as a 'fiscal unity' that does not mean it is a 'legal unity'. Although there is an apparent identity, each of a Tax Group's Members must be considered and behave in their financial, operational and compliance obligations as independent companies. However, there is a fiscal unity implied by law, as all a Tax Group's Members, have joint and several liability for the Tax Group's payable corporate income tax liability, but this can be limited to appointed Tax Group Members, with the UAE Federal Tax Authority (FTA)'s approval. In addition, to allow the proper calculation of the consolidated taxable base, a Tax Group must prepare consolidated financial statements, in order to allow the representative head of the Tax Group (Parent

Company) to submit one tax return on behalf of the entire Tax Group.

GROUP REQUIREMENTS

In order to apply to the FTA to create a Tax Group, a Parent Company and its qualifying Subsidiaries must comply with several requirements. All Tax Group Members must have the same Financial Year and apply the same accounting standards. In addition, all Tax Group Members must be UAE taxable resident companies, which are commonly controlled by the Parent Company. The Parent Company must also own 95%, in vote and capital, of all the Tax Group Members, either directly or indirectly through other subsidiaries.

After the Parent Company has made their application to the FTA, qualifying Subsidiaries can only join or leave, a Tax Group as of the first day of the common Financial Year following the application. They must also continuously meet all these criteria or must leave the Tax Group. If a Parent Company no longer meets these requirements, it triggers the cessation of the Tax Group, unless it is being replaced by a new qualifying Parent Company.

Under Federal Decree-Law No. 47/2022 it appears to be accepted that qualifying subsidiaries become part of a Tax Group, even if their shareholder is not part of the Tax group, as long as the shareholding company meets the Tax Group criteria. At first sight, this implies that no foreign, exempt or Free Zone qualifying companies can be part of the structure. It is also questionable whether it is possible for a UAE Permanent Establishment/branch of a foreign company to be part or the Parent Company of the Tax Group, if they match these-criteria, so clarification on this type of structure would be helpful.

Therefore, in order to benefit most from the Tax Group regime, UAE Groups operating through qualifying freezone and mainland companies may have to consider reshaping their shareholding structure, in a way in which the qualifying freezone companies do not hold taxable subsidiaries and therefore, do not prevent the inclusion of mainland companies in the Tax Group, by breaking the chain of detention.

ADVANTAGES AND DISADVANTAGES

The main advantage of creating a Tax Group is obviously to allow consolidation of the taxable results of all the Tax Group Members. As a result, tax grouping allows substantial tax savings, and cash savings, via the offset of Tax Group Members' taxable profits and losses, and eliminations of intra-group transactions for tax purposes. This may bring an overall Tax Group effective Corporate Income Tax which is lower than it would be if individually paid by the group members. However, in order to prevent abuse of Tax Group benefits (e.g. artificial inclusion of a 'tax losses box', Federal Decree-Law No. 47/2022 provides for some specific limitations to the benefits of this regime).

In addition to the general limitation of the use of carried forward tax losses (i.e. which is allowable up to 75% of the subsequent Tax Group taxable profits), subsidiaries' losses generated prior to the grouping (called pre-grouping losses) can only be used, within the

Laurent Bertin
Regional Head of Tax, Airbus Africa and Middle East

RELEVANT LEGISLATION

Article 42(1) of Federal Decree-Law No. 47/2022
For the purposes of determining the Taxable Income of a Tax Group, the Parent Company shall consolidate the financial results, assets and liabilities of each Subsidiary for the relevant Tax Period, eliminating transactions between the Parent Company and each Subsidiary that is a member of the Tax Group
(Source: Lexis Middle East Law)

Tax Group, by the Parent Company, against the profit generated by the relevant Tax Group Member. However, if this 'siloed' use is not possible, these pre-grouping losses are carried forward until, and if, the relevant Tax Group Member leaves the Tax Group, for its own use, against its own profit, generated after exiting the Tax Group. Pre-existing Tax Group carried forward losses also cannot be used against the profit generated within the Tax Group by a new joining company. The changes in the life of a Tax Group can also have an important impact on the calculation of the taxable base and exiting a Tax Group can have consequences for the relevant member. A key principle of the Tax Group Regime is that all (carried forward) tax losses generated during the Tax Group's life are transferred and remain with the Tax Group's Parent entity. Therefore, when a Tax Group Member leaves a Tax Group, their tax losses remain with the Tax Group (except for pre-grouping losses). In addition, if a Tax Group ceases to exist, all (carried forward) tax losses remain with the Parent Company. If a Tax Group ceases to exist and the Parent Company ceases to be a taxable person without being replaced, the carried forward losses of the Tax Group are lost. Finally, even though all transactions should be eliminated for Corporate Income Tax purposes within the Tax Group, Federal Decree-Law No. 47/2022 also provides for the taxation of intra-group transfers of an asset, if one of the Tax Group Members which is a party to the transaction exits the Tax Group less than two years after receiving or selling the asset. In such cases the theoretical related taxable profit (which would most probably be a capital gain) becomes finally taxable.

WHAT TO ANTICIPATE WHEN APPLYING?

As a result of these strict loss and profit allocation rules, it is important to have robust internal documentation, which allows tracking of all internal transactions and carried forward losses when applying to create a tax group, in order to avoid omitting declaring taxable transactions or using tax losses, in the case of Tax Group structure modifications. More importantly, it is highly recommended to put a Tax Group Agreement in place between the Parent Company and each Tax Group Member.

The main purpose of this agreement is to determine the allocation of the tax burden (and tax savings) among the Tax Group Members. Even though Federal Decree-Law No. 47/2022 frames the treatment of the tax losses accruing before and during the grouping period, in the case of Tax Group exiting or disbanding, the law does not deal with how the tax savings and the tax burden should be shared among the Tax Group Members.

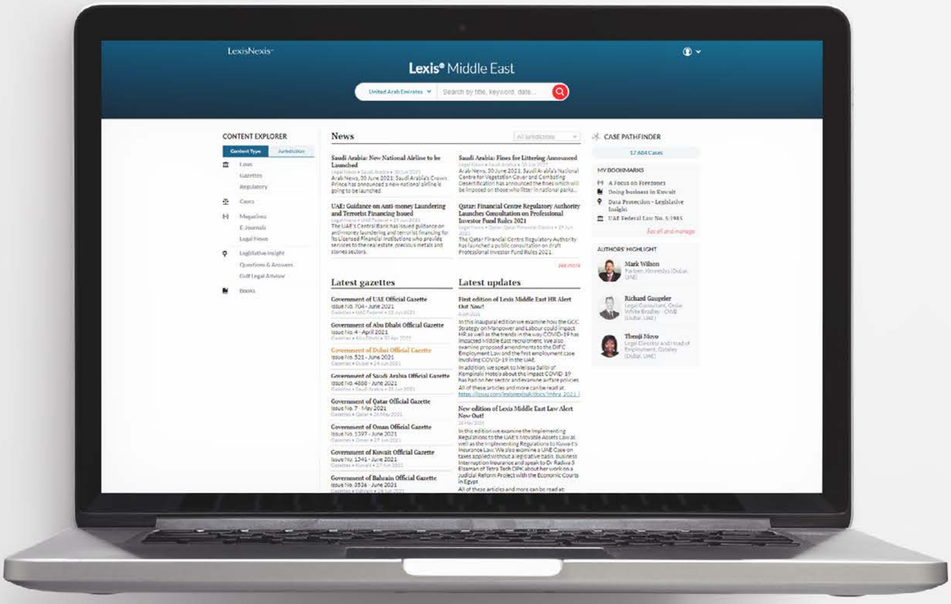
Therefore, an Agreement of this type will allow the Parent Company, as the Tax Group Representative, to apportion and allocate to the Tax Group Members, the Corporate Income Tax to be paid on their behalf. Few variations might be considered, among which a mere split of the actual paid Tax Group Corporate Income Tax, between the Tax Group Members, based on their participation in the generated profit; or a calculation of the theoretical Corporate Income Tax the Tax Group Members should have had paid without the Tax Group neutralization effect are possible options. These agreements can also provide for compensation for tax losses (if any) of companies leaving the group, as it would no longer be possible for them to benefit anymore from their own losses after exiting the Tax Group (except for pre-grouping losses), definitely 'consumed' by the Parent Company as the Tax Group Representative.

DOMESTIC TRANSFER PRICING

As an important part of the UAE Corporate Income Tax regime, Transfer Pricing rules must be considered in light of the Tax Group Regime. Federal Decree-Law No. 47/2022 requires companies to ensure arm's length pricing for domestic transactions between related parties which means implementing robust documentation for all related parties' transactions (a Transfer Pricing local and master file), including domestic transactions, and a proper retention of all the underlying justifications (e.g. contracts, invoices, delivery confirmation, benchmarks and transfer pricing methods used). With the Tax Group Regime available, domestic transactions could be considered de facto out of the scope of the Transfer Pricing obligations, since all Tax Group transactions will be offset or neutralized for Corporate Income Tax purposes. This would be without taking into account the 'de-neutralization' of the intra-group transfer of assets under very specific circumstances. If the transfer of an asset within the Tax Group cannot be eliminated anymore, and is subject to Corporate Income Tax, it will probably be necessary to justify the arm's length nature of this transaction.

However, the Transfer Pricing Guidelines which are expected to be published will most probably bring more clarity on these areas.

This comprehensive Tax Group regime, along with the other tax relief mechanisms, such as the Transfer Within Qualifying Group Relief (which is detailed in Article 26 of Federal Decree-Law No. 47/2022), the Business Restructuring Relief (found in Article 27 of Federal Decree-Law No. 47/2022) or the Transfer of Tax Losses provision (found in Article 38 of Federal Decree-Law No. 47/2022), pave the way for an efficient Corporate Income Tax regime in the UAE, which will enforce adeptly proven Tax Group mechanisms, that are already found in various mature tax jurisdictions. These different tools including the Tax Group mechanism should allow the UAE to remain a competitive and attractive tax jurisdiction, and also enable tax lawyers and specialists to handle proven legal and subtle regimes.



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TAX NEWS ROUND-UP

COVERING RECENT KEY DEVELOPMENTS – REGION-WIDE

UAE

FREEZONE ENTITIES TAX REGISTRATION

The UAE's Finance Ministry has called on all entities in the country's freezones to register for tax purposes. Freezone entities will have to submit corporate income tax returns regardless of whether they are classed as a qualifying person or not. In the case of freezone entities a 0% rate will apply on what is classed as 'qualifying income' and a 9% rate will apply on income subject to UAE corporate income tax which does not fall within the definition of qualifying income.

ATTESTION AND IMPORT INVOICES

A new rule came into force on 1 February 2023 which requires UAE companies to have import invoices of 10,000 AED and above attested by the UAE Ministry of Foreign Affairs and International Cooperation (Mofaic) The rule has been brought in as a result of Cabinet Decision No. 38/ 2022 on fees for certification of invoices and certificates of origin for imports into the UAE. A 150 AED fee will be payable per commercial invoice. There will be a 14-day grace period after declaring goods in which to take the necessary steps. Failure to attest a relevant invoice will result in a penalty of 500 AED per invoice being payable. However, exemptions will apply in some cases, including on invoices below 10,000 AED, those involving personal imports, goods imported from the GCC, and goods brought into the freezones. There will also be exemptions for transit goods' imports, B2C e-commerce movements, and diplomatic persons, the police and military, charitable societies, and international organisations' goods. Invoice attestations will be carried out electronically by uploading PDF documents on to an online portal. A reference number will be generated as proof of attestation. This number will then be integrated with the UAE Customs' system to confirm the attestation is completed before the customer's import declaration.

ABU DHABI

CUSTOMS CLEARANCE

The Abu Dhabi General Administration of Customs has revealed there will be a new service on the TAMM system which will enable non-resident individuals and unregistered companies to clear their goods from abroad at Abu Dhabi land, sea and air borders. The new method will be available to individuals and companies and allows users to log into the system using UAE Pass. Benefits include automated form-filling for some fields when using specific templates, and the ability to complete the clearance request via a single e-page when using all smart devices. The service is part of Abu Dhabi's Programme for Effortless Customer Experience. It will help customers who do not reside in the country to clear their personal goods by creating an account using their passport number on the digital identity platform.

The service can also be used by companies to clear their goods when they are entering or leaving the country's borders, going into or out of free zones in the country or other countries. This system can be used on goods that have been imported via commercial entry, personal entry, clearance import, in temporary admission of exported and re-exported goods cases, and for re-export clearance cases, or transit goods.

TAX TREATY UPDATE

UAE: The amending protocol to the UAE's Double Taxation Treaty with Austria has come into effect.

Oman: The Double Taxation Treaty with Qatar has come into force.

DUBAI

IRON IMPORT CUSTOMS FEE EXTENSION

Dubai Customs has issued a Decision which states the application of a 10% customs tariff on imports of iron will be extended until 7 November 2023. The decision was found in an annex to Dubai Customs Notice 10/2022. It follows a memo issued by the Federal authority for Identity Citizenship, Customs and Ports Security dated 16 January 2023 which covered extending customs tariffs imposed on iron imports. The rate was originally 5% and was put in place to prevent foreign companies from flooding the market.

SAUDI ARABIA

FINANCIAL SERVICES VAT

The Zakat, Tax and Customs Authority (ZATCA) has published a Circular which covers the VAT treatment of certain supplies in the financial services industry. Areas covered include the supply of services by Saudi based financial institutions to customers located outside Saudi Arabia and incentives provided by international credit card issuers and payment network operators to Saudi based financial institutions. It also covers interchange services and associated fees. It provides definitions of terms such as interchange fee, issuer bank, and acquirer bank which are useful in the interchange services' context but were not available in the VAT law (Saudi Arabia Cabinet Decision No. 654/1438) and Implementing Regulations (Saudi Arabia Administrative Decision No. 3839/1438).

RETT APPEALS

The General Secretariat of Zakat, Tax and Customs Committees (GSZTCC) has issued guidelines explaining their interpretation of the Real Estate Transaction Tax (RETT) regulations and the related appeal procedure. The guidelines include details on RETT general principles, RETT exemptions, penalties and tax evasion within the RETT context. There are also details on situations where taxpayers can raise an appeal to the Tax Violations Disputes and Resolution Committee (TVDRC) and when either taxpayers or ZATCA have the right to raise an appeal with the Appellate Committee of Tax Violations and Dispute Resolution (ACTVDR).

USED CARS AND VAT

Zakat, Tax and Customs Authority (ZATCA) has published proposed criteria which would enable 'used cars' to be classified as 'eligible goods' when applying the profit margin method under Article 48 of Saudi Arabia Administrative Decision No. 3839/1438. The used car would have to be registered in the Saudi, it must have been driven on the road for personal or work purposes. It must also be suitable for reuse as it is in its current condition, or after some repairs or improvements have been made to it, provided it has not undergone modifications or repairs which changed its basic nature. The supply of the used car must also be by a taxable person registered with ZATCA and licensed to practice car trading in their commercial registration or any similar license. Used cars which qualify for the use of this method cannot include new cars or cars imported into Saudi, even if they have been used outside the country or any used car purchased by a taxable person who applies the profit margin method but for which a tax invoice has been issued showing that VAT was calculated separately using the normal rules for non-used goods.

QATAR

PERSONAL ITEMS

The Qatari General Authority of Customs has confirmed personal items, gifts and used household appliances brought in by nationals and residents from abroad are exempted from customs fees if a number of conditions are met. The personal items, gifts, used household appliances must not be of a commercial nature and must meet the controls and conditions set out in the executive regulations of the Customs Law.

The exemption can also be given when nationals or residents are relocating to Qatar for the first time. The items must be brought in from their country of residence, and residents must prove they are coming to work or to reside in Qatar for no less than 365 days.

OMAN

WITHOLDING TAX

On 11 January 2023 Royal Orders were issued to abolish withholding tax on stock dividends and interest for non-resident investors. These Orders end the application of tax deducted at source (TDS) on dividends and income from sukuk and bonds for foreign investors. The Omani government imposed a 10 per cent withholding tax on dividends and income from sukuk and bonds in 2017. Although the withholding tax was suspended for three years, starting on June 2019, this was later extended to 2025.

TURKEY

TAX RESTRUCTURING

A Draft Law on the Restructuring of Certain Receivables and Amending Certain Laws, which has been called 'tax amnesty of the century' by the Government, has been submitted to the Turkish Parliament. It involves the restructuring of various public receivables, including tax receivables and tax base increases. The aim is to provide taxpayers with the opportunity to benefit from tax reductions and reduce penalties if they act or pay relevant amounts by particular dates. It covers tax receivables related to periods before 31 December 2022, delay interest and tax penalties resulting from these tax receivables and other penalties not derived from a tax principal.

However, advance taxes which are to be paid in 2022 through offsetting from income and corporate income tax are excluded. It also introduces a tax/tax base increase mechanism for income and corporate income tax, and other certain taxes for only the financial years from 2018-2021.

The 2022 Financial year is out of scope.

IN BRIEF

SAUDI ARABIA: Zakat, Tax, and Customs Authority (ZATCA) has started implementing a customs' initiative which will see them releasing goods within two hours in all customs ports...

SAUDI ARABIA: Under the rules issued by Zakat, Tax, and Customs Authority (ZATCA), assets owned by a Waqf will not be subject to Zakat collection if they are owned fully by the Waqf directly or indirectly....

SAUDI ARABIA: The Zakat, Tax and Customs Authority (ZATCA) has published a Circular explaining the VAT implications of various types of loyalty programmes offered by Saudi financial institutions ...

UAE: VAT amendments which took effect on 1 January 2023 mean that the functions of a member of a board of directors are no longer considered to be a supply of services...

UAE: The UAE's new tax procedure law Federal Decree-Law No. 28/2022 takes effect from 1 March 2023 and repeals Federal Decree-Law No. 7/2017...

BAHRAIN: Bahrain Decision No. 207/2022 on money disclosure in Customs Departments has been issued...

TURKEY: Turkey Presidential Decree No. 6652/2023 has provided a clarification on the application of the corporate income tax deduction for R&D and design centres and extended the effective period for the additional corporate income tax deduction to 31 December 2028...

EGYPT: A decision has outlined the procedures for suspending taxes due on machinery and equipment meant for industrial production, imported from abroad or purchased locally for factories and production units...

EGYPT: Changes have been made to Egypt's Executive VAT Regulations to allow incentives to be given to end consumers, retailers and service providers which will encourage use of electronic tax receipts...

EGYPT

GOLD DECLARATION

The General Director of Cairo International Airport Customs has stated passengers arriving in Egypt must disclose any gold they are carrying with them to the Customs Committee Officer to protect themselves from accusations of attempting to evade customs duties. Passengers may carry gold worth up to 10,000 Egyptian pounds under the gifts category.

FOCUS ON RESIDENCY

Cabinet Decision No. 85/2022 on the Determination of Tax Domicile was issued to help clarify the legal parameters involved with tax residency for 'natural and legal persons' in the UAE. Article 2 of Cabinet Decision No. 85/2022, states its purpose is to specify the requirements and conditions for determining whether a legal or natural person qualifies as a Tax Resident in the UAE. This law will come into force on 1 March 2023. Before Cabinet Decision No. 85/2022 was issued, the UAE did not have a clear or statutory definition of 'tax residency' under its own laws. The Cabinet Decision now sets out rules to determine whether a natural or legal person may be considered a 'tax resident'. Tax residency has also become important to clarify in the context of Federal Decree-Law No. 47/2022 On Taxation of Corporations and Businesses as under this law and the Corporate Income Tax regime persons who fall under the ambit of tax residency will be liable to pay income tax on taxable income generated inside and outside the UAE.

Cabinet Decision No. 85/2022 clarifies, and broadens, the criteria of UAE tax residency. in particular for natural persons. Article 1 of Cabinet Decision No. 85/2022, defines a 'business' as 'any activity that is practiced regularly, continuously, and independently by any person, such as industrial, commercial, agricultural, professional, craft or service activities, exploration activities, or related to the use of tangible or intangible properties.'

CRITERIA FOR TAX RESIDENCY

Under Article 3 of Cabinet Decision No. 85/2022, legal persons (i.e. corporations) are considered to be a Tax Resident if they are established, formed, or recognised in accordance with the laws of the UAE; and are not a branch registered by a foreign legal person. While under Article 4 of Cabinet Decision No. 85/2022, a natural person is a Tax Resident if their principal place of residence is the UAE and the centre of their financial and personal interests is in the UAE, or they meet conditions specified by the Minister of Finance (which are still to be determined). Alternatively, they must also have been physically present in the UAE for a period of 183 days or more during the relevant 12-month period; or have been physically present in the UAE for 90 days or more during the relevant 12-month period and be either a UAE national, hold a valid UAE residency permit, be a GCC national who has a permanent place of residence in the UAE or have a job or business in the UAE. In this context 'Place of Permanent Residence' is a place located in the UAE which is deemed available to the individual at all times and 'Activities' include any activity practiced on a regular, ongoing and independent basis by a natural person. Under Article 5 of Cabinet Decision No. 85/2022 if a legal or natural person qualifies as a Tax Resident, they may apply for a tax domicile certificate from the UAE Federal Tax Authority (FTA).

TAX TREATIES

At the time of writing there were around 137 Double Taxation Treaties which the UAE had entered into with other States. Cabinet Decision No. 85/2022 provides additional clarity that will assist on the application of the principles in these DTTs. If an international agreement exists which specifies the determination of tax domicile, Article 6 of Cabinet Decision No. 85/2022 states that the specifications of the international agreement are to be applied to determine tax domicile for the purpose of that international agreement. The Tax Minister will determine the form and method of issuing tax domicile certificates for the purposes of an international agreement. Article 7 of Cabinet Decision No. 85/2022 also grants the FTA broad powers to request information, data, and documents from all government agencies for the purposes of implementing Cabinet Decision No. 85/2022 and all these agencies must cooperate fully with the FTA on these requests.

CORPORATE TAXABILITY

In terms of the UAE Corporate Income Tax Law, and in line with Cabinet Decision No. 85/2022, taxable persons, both Resident and Non-Resident Persons are subject to UAE Corporate Income Tax. Federal Decree-Law No. 47/2022 defines 'Persons' as both natural and juridical persons. Under Article 11(3) of Federal Decree-Law No. 47/2022 a Taxable Resident Person includes a juridical person incorporated, established, or recognised in UAE; a juridical person who is not incorporated in the UAE but effectively managed and controlled in the UAE; or a natural person who is engaged in a Business or Business Activity in the UAE (e.g. a sole establishment or proprietorships and individual partners in an unincorporated partnership that conducts business in the UAE); or any other persons determined as such by a forthcoming Cabinet Decision. Federal Decree-Law No. 47/2022's definition of the term 'business' conforms with that in Cabinet Decision No. 85/2022, as it is 'any activity conducted regularly, on an ongoing and independent basis by any Person and in any location, such as industrial, commercial, agricultural, vocational, professional, service or excavation activities or any other activity related to the use of tangible or intangible properties'. 'Business activity' is then defined as 'any transaction or activity, or series of transactions or series of activities conducted by a Person in the course of its Business'. Therefore, Federal Decree-Law No. 47/2022 is in line with Cabinet Decision No. 85/2022 on the principle of tax residency. Reading these two pieces of legislation together, a tax resident is liable to tax on their UAE and out of state sourced taxable income insofar as it relates to business or business activity conducted by such natural person in the UAE. It is also expected the position on natural persons specifically, will be covered in more detail in a future Cabinet Decision. However, non-residents may also be subject to corporate income tax if the income generated falls within certain parameters as set out in Federal Decree-Law No. 47/2022. Freezone entities will be subject to 0% corporate income tax if they meet the requirements of a 'Qualifying Free Zone Person' on any income that constitutes 'qualifying income' even though they would ordinarily be recognised as UAE residents under Federal Decree-Law No. 47/2022 and Cabinet Decision 85/2022. However, where the free zone entity does not meet the requirements of a 'qualifying free zone person' or the income generated by the free zone person does not constitute 'qualifying income', then any taxable income generated by the free zone person would be subject to corporate income tax at the rate of 9%. This is because the UAE is honouring its commitment to apply 0% Corporate Income Tax for entities located in Freezones for a period of up to 50 years from that freezone's establishment on income perceived to come from activities which are defined as 'qualifying income' as long as those freezone entities also comply with the relevant regulatory requirements and substance rules (and there will be further clarifications of what constitutes qualifying income in a Cabinet Decision). Freezone persons which do not meet the conditions of Qualifying Free Zone Persons, or earn income that does not constitute qualifying income under the Law, will be subject to the 9% tax rate. A branch of a Taxable Resident Persons which is located in the UAE is treated as one and the same Taxable Person as that Resident Person. These tax residency provisions have significant implications for persons who are resident in the UAE, as they determine whether that person is subject to tax and related liability. A UAE resident's taxable income is calculated on income that is derived either from inside or outside the UAE (i.e. worldwide), while non-residents are only taxed on their UAE-sourced income. It should also be noted that a person's tax residency status is determined on a yearly basis so a person can qualify as a tax resident in one tax year but as a non-resident in the next if their circumstances change.

The Minister of Finance is expected to also issue implementing Regulations on Cabinet Decision No. 85/2022 which will provide further detail on the practical aspects of this area.

In addition, the Federal Tax Authority has responsibility for issuing clarifications and directives on the implementation of this law.

This article is based on a Practice Note published in Lexis Middle East Law written by Zain Satardien, Global Trade and Tax Law Leader, Hourani & Partners (Dubai, UAE).

TAX PROFESSIONAL PROFILE
REGIONAL HEAD OF TAX – AEROSPACE

WORKING WHERE TAX IS NEW

Laurent Bertin, Regional Head of Tax at Airbus Africa and Middle East explains the specific challenges of working in jurisdictions where tax is still evolving.

YOUR BACKGROUND

I have an LLM from McGill University, Montreal and a Masters in Tax Law from Paris University. I am a tax lawyer with 12 years' experience of tax practice, which has included time spent working as a tax lawyer, a consultant and as in-house counsel.

Five years ago, I moved to Dubai, where there was demand for tax lawyers with the international experience I had. I was interested in the opportunities there were in the very tax active GCC region.

Initially, I worked as an AME tax consultant at Aurifer. Then around four years ago, I became the in-house counsel leading the AME tax team at Airbus Africa and Middle East. Tax is a constantly evolving area, which requires an analytical mind-set and detailed technical knowledge which you have to keep building on.

I have found my work both in-house and in consulting has been key to me building that knowledge and skill. In consultancy I gained experience of providing the most timely, accurate tax advice, while in-house I have gained operational experience, learnt about communicating understandable and appropriate messages to non-specialist colleagues, while also being able to pass on knowledge and the correct reasoning to my team.

As has been seen with both the UAE Corporate Tax consultation last year and the GCC VAT agreement, recent GCC tax law is being inspired by the positions taken in mature tax jurisdictions, so I have found my experience in Europe helps me when interpreting GCC rules, where there are inevitably grey areas, (as is the case in all tax jurisdictions).

YOUR CURRENT ROLE

Airbus is a global leader in aerospace and has a strong presence in the Middle East market, where its modern aircraft family consistently win most airline orders. Almost all the major carriers in the Middle East have chosen to grow and modernise with Airbus aircraft. With 780 Airbus aircraft in service with every significant airline in the Middle East, Airbus is a chosen partner and leader in aviation innovation. It is constantly introducing the most efficient passenger airliners to serve the needs of this dynamic region. Airbus is also a European leader in defence and security and one of

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the world's leading space businesses. In helicopters, Airbus provides the most efficient civil and military rotorcraft solutions and services worldwide.

As the Regional Head of Tax at Airbus Africa and Middle East, I have a multifaceted role. As we work in a region where tax is evolving quickly, there is a need for more tax awareness and 'hands', which has meant managing and informing a growing tax team, and all the stakeholders in our business who are involved in the tax preparation processes so we can ensure robust tax compliance at every level. In addition, as a tax specialist, I always need to be involved in the business and have accurate knowledge of the tax rules and how they are changing, as I work on the tax strategy and monitor the implementation of new taxes. I also provide tax analysis, support deals and regional restructuring, and participate in negotiations with clients. Finally, but still importantly, preparation of documentation and technical legal reasoning for tax audits and tax litigation is also a big part of my work.

IMPACT OF TAX CHANGES

A tax specialist's objectives and role does not really change with the jurisdiction you are operating in - you still need to understand the tax law and its implications in order to ensure the company's continuity and tax compliance. I have moved from jurisdictions which had comprehensive tax systems to a region where new taxes are being implemented. Each time something new is implemented, there is a lack of awareness

PRACTITIONER PERSPECTIVE

Tyne Hugo
Senior Associate
BSA Ahmad Bin
Hezeem & Associates

Tyne Hugo, Senior Associate at BSA Ahmad Bin Hezeem & Associates looks at recent significant UAE VAT law changes.

Federal Decree-Law No. 18/2022 brought in a number of changes to the UAE VAT Law, Federal Decree-Law No. 8/2017 in September 2022. These took effect on 1 January 2023 and there are a number of particularly interesting changes. Firstly, a number of new definitions have been added to the VAT law. These include new definitions of terms including Tax Evasion; Tax Audit; Tax Assessment; and Voluntary Disclosure, and of the terms Relevant Charitable Activity and Pure Hydrocarbons.

To provide the authorities more flexibility a new provision has been added to Article 7 of Federal Decree-Law No. 8/2017 which permits the Executive Regulations on VAT to list any other supplies than those currently permitted to be treated as outside the scope of the VAT Law. There has also been a change which may help registered persons whose position has changed, as if a registered person is now only making zero-rated or exempt supplies and they no longer make any standard taxable supplies, they will be able to apply for deregistration and/or exemption from VAT registration.

Federal Decree-Law No. 8/2017 was not particularly clear in some places, including what was the required time period for issuing Tax Invoices in respect of periodic supplies. The Federal Decree-Law No. 18/2022 amendments have clarified this and now clearly state that the Tax Invoice must be issued within 14 days of each periodic supply. This 14-day time limit also now applies to issuing Tax Credit Notes. There have also been changes on Tax Audits. Article 42 of Federal Decree-Law No. 7/2017 on Tax Procedures states that the Federal Tax Authority cannot generally proceed with an Audit after a period of five years, or 15 years with tax-evasion and non-registration cases. However, the Federal Decree-Law No. 18/2022 amendments have inserted Article 79 into the VAT Law which allows the five-year period to be extended if necessary.

What happens if an unregistered person issues an invoice which they call a 'tax Invoice' has also been tackled. Some unregistered persons in the UAE have been doing this (and have even been charging their customers VAT) although there was no basis for a Tax Invoice. In such cases it will now be obligatory for that VAT to be paid over to the FTA. This will also be the case even if the so called 'Tax Invoice' does not include 'VAT', as the final amount will be deemed to be VAT inclusive.

However, the changes brought in by Federal Decree-Law No. 18/2022 are not the only recent ones. A temporary amendment was also made to the definition of 'Goods' by Article 1 of Cabinet Decision No. 25/2018. The original definition's wording on gold and diamonds was changed from 'Gold, diamonds and any products where the principal component is of gold or diamonds' to 'Gold, diamonds and any products whose main component is of gold or diamonds which may include workmanship services directly related to the supply of these commodities'. The amended definition was applied retrospectively from 1 June 2018 and has been applicable to all transactions until 31 December 2022. However, from 1 January 2023, the original definition of 'Goods' in this context has been reapplied. There have also been some administrative changes which will impact UAE VAT payers. The FTA has created a new system called Emara-Tax (ET) which links up numerous key government bodies such as the UAE Central Bank and national technology programs including UAE Pass. The new ET system is expected to enable faster administration of taxes, including VAT and should lead to more efficient and rapid government decision making in these areas. We may also see faster action by the UAE tax authorities in non-compliance cases, which may help reduce fine levels for taxpayers. Taxpayers who need assistance will also be better supported by this new system which will include better self-help options

John Peacock, Head of Indirect Tax & Conveyancing, BSA Ahmad Bin Hezeem & Associates also contributed to this article.

and the absence of market maturity on the subject which you have to take into account. Implementing a new tax, is about more than applying a percentage to the accounting result, you need to have a better theoretical understanding and greater attention to detail, than possibly in a long established tax system, so a change of business mind-set is required when you move from a low-to-no tax jurisdiction to a modern tax system. Approximation is no longer possible as mistakes can lead to hefty penalties and have serious financial consequences. In the Middle East as a relatively new tax, VAT implementation remains the hot topic. Despite the GCC countries' noticeable efforts to provide guidelines and support to businesses, the newness of this very technical tax means there are still many questions and lessons to learn. The introduction of VAT has led to many changes in areas including the preparation of accounting books as more detailed and robust documentation is needed, the use of new Enterprise Resource Planning (ERP) systems, changes to invoicing processes such as the introduction of e-invoicing in Saudi, Egypt and Bahrain, and to the way deals are structured where for example cross-border VAT, 0% export VAT justifications, non-recoverable VAT for foreign customers and local VAT registration all need to be considered. The arrival of Corporate Income Tax in the UAE is also likely to bring interesting questions and challenges, on areas including different applicable rates and differences between freezone and mainland companies.

ANY QUESTIONS?

DO THEY HAVE INCOME TAX IN OMAN

Shiraz Khan of Al Tamimi & Company explains the latest position on Oman's plans to introduce Personal Income Tax (PIT).

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Currently Oman does not levy any taxes on personal income, or income from capital gains, wealth, death or on property.

However, a Personal Income Tax (PIT) regime is currently being considered by the Government there, following its inclusion in the 2020-2024 Medium Term Fiscal Plan, as part of the plan to diversify and enhance Government revenue.

The PIT legislation is expected to be introduced in Oman in 2023.

HOW WILL THIS NEW PERSONAL INCOME TAX CHANGE THE CURRENT POSITION IN OMAN?

The introduction of PIT law will be a significant change and Oman will become the first GCC member estate to impose personal income tax on the salaries, or income of Omani and foreign nationals who are resident in Oman.

WHY IS THIS HAPPENING IN OMAN?

The fall of oil prices between 2014 and 2022 had been a burden on Oman's finances, and has directly increased the gap between government revenues and expenditure.

Up until now in order to fund this fiscal deficit, the Omani Government has relied on borrowing, particularly from international markets, in addition to reducing its reserves, which has significantly increased the Government's debt levels and debt servicing costs to an unsustainable level.

In addition, the country's fiscal situation had resulted in a consecutive reduction in Oman's credit ratings from international credit rating agencies.

The implementation of the Medium Term Fiscal Plan alongside this new personal income tax aims to raise additional revenue for the government.

As part of the 2020-2024 Medium Term Fiscal Plan, Oman has recognised that the proceeds from personal income tax are usually directed towards public services and social programmes, as this tax is used as a tool to redistribute income within society.

Oman has also indicated that as part of the 2020-2024 Medium Term Fiscal Plan, 'The Government will evaluate the tax from all aspects including societal impacts, economic impacts, and fiscal impacts. In order to ensure the most efficient and equitable tax for all'.

IS ANYTHING KNOWN ABOUT WHO WILL BE LIABLE, WHAT THE RATE MIGHT BE AND WHEN THIS COULD HAPPEN?

It is expected that the Sultanate of Oman will introduce a personal income tax on high earners in 2024.

However, the draft PIT legislation has not yet been published or made available to the public.

Based on limited public information, the personal income tax is expected to be applicable at rates of between 5% and 9% in respect of Oman-sourced income above a $100,000 threshold for foreign nationals.

As for Omani nationals, we understand that in this case a 5% personal income tax may potentially be levied on their net global income above $1,000,000.

BASED ON WHAT IS KNOWN SO FAR, WHAT ARE THE LIKELY NEXT STEPS?

The first draft of the PIT legislation was completed in 2022, and a final a target of 2024 was given for its implementation.

At present we expect to see the final draft of the PIT legislation imminently.

The Omani government is currently assessing areas including the structure, the thresholds which would be used for high income, and how the Medium Term Fiscal Plan can be executed.

The PIT legislation is expected to be promulgated by Oman under a Royal Decree.

All laws in Oman are published in the country's Official Gazette within two weeks of the day of their issuance.

Laws then come into force from their date of publication unless the law has provided for another date.

Contributor

Shiraz Khan, Partner and Head of Taxation. Al Tamimi & Company