

# CORPORATE GOVERNANCE

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# TABLE OF CONTENT

1. CHAIRMAN'S MESSAGE	03
2. LEGAL AND REGULATORY UPDATE	04
3. INSOLVENCY AND BANKRUPTCY IN UAE	07
4. THE RETAIL PAYMENT SERVICES AND CARD SCHEME REGULATION BY THE CENTRAL BANK OF UAE	15
5. UNRAVELLING THE CORPORATE TAX LAW OF UNITED ARAB EMIRATES	18

# CHAIRMAN'S MESSAGE



**Dear Fellow Professionals,**

**Great connecting with you through ICSI UAE Overseas Centre's 3rd newsletter.**

It has been a hectic time for fellow professionals due to increased compliance requirements for the businesses stipulated by the respective regulatory authorities. In addition to this, the landmark introduction of Corporate Tax in UAE from 1 June 2023 provides a significant opportunity for the professionals to read and implement the various rules and regulations.

Over the last couple of months ICSI chapter, has conducted relevant events including international corporate tax event which was well attended.

Whilst we continue to grow our membership, we require your support in contributing articles to the quarterly newsletter. Even though this newsletter has reduced number of pages, we are committed to publishing it for the benefit of our members.

Many thanks to the publishing team led by CS Raghavendra Verma for the untiring efforts.

**Best regards,**

*R Lakshmanan*

**Chairman**



# LEGAL AND REGULATORY UPDATE

A



## Abu Dhabi Global Market (ADGM)

1. The jurisdiction of ADGM, according to UAE Cabinet Resolution No. 41 of 2023, will be extended to include Al Reem island, in addition to its current location at Al Maryah island.
2. The ADGM Financial Services Regulatory Authority (FSRA) has introduced a new regulatory framework for "Private Credit Funds", which expands the guidelines in the Financial Services and Markets Regulations 2015 and related rules. The rules allow Private Credit Funds to operate from ADGM and lay out a series of restrictions and guidelines for such funds, particularly regarding the types of investors they can accept and the operations they can undertake. This initiative aims to increase the diversity of funds in the ADGM and to attract involvement from start-ups and SMEs.

B



## Dubai International Financial Centre (DIFC)

1. The DIFC Family Arrangements Regulations 2023, which became effective on 31 January 2023, replace the previous regulations for single-family offices. These new regulations provide a structured framework for family-owned businesses, ultra-high net worth individuals, and private wealth, including provisions for certification and accreditation programmes.

C



## United Arab Emirates (UAE)

1. New Regulatory Framework for Foreign Fund Promotion in UAE Changes to the regulation on promoting or distributing foreign funds in the UAE were introduced in January 2023. The new rules restrict the promotion of foreign funds to "Professional Investors" and "Counterparties" on a private placement basis. This means that promotion or distribution of foreign funds to retail investors is now prohibited. The new rules seem to aim at encouraging the establishment of domestic public or private funds for promotion to UAE investors.

2. **New Commercial Agencies Law:-** The new Commercial Agencies Law (Federal Law No.3 of 2022) will come into force in June 2023, replacing the previous Federal Law No. 18 of 1981 on commercial agencies. This law allows more flexibility for international companies, by permitting UAE public joint stock companies with at least 51% ownership by UAE nationals to act as agents. The new regime offers certain protections to registered agents and outlines provisions for the resolution of disputes between parties to a commercial agency.
3. **New Virtual Assets Regulations:-** New Virtual Assets and Related Activities Regulations 2023 were issued by the Virtual Asset Regulatory Authority (VARA) on 7 February 2023. These regulations lay out rules for virtual assets and virtual asset activities in the Emirate of Dubai (excluding the DIFC). The rules include licensing requirements for Virtual Asset Service Providers, prohibitions relating to insider dealing, disclosure, and market manipulation, and provisions relating to VARA's supervision and enforcement powers.

## Indirect Tax

### UAE

United Arab Emirates (UAE) Value Added Tax New criteria for online trade and VAT reporting in the UAE The UAE's Minister of State for Financial Affairs issued Decision No. 26 of 2023, setting the standards for e-commerce record keeping. It also detailed the UAE Federal Tax Authority (FTA)'s public clarification VATP033 regarding changes to the Emirates' VAT reporting. E-commerce transactions qualify when all the listed conditions are fulfilled. These conditions include: online listing and ordering of products and services, delivery to customer-chosen location and the provision of services with little to no human interaction.

Updates to the Input Tax Apportionment Special Methods Guide (VATGIT1) were also published, providing user-friendly instructions and application examples. It noted the need for taxpayers to alert the FTA if results fluctuate more than 10% annually. It also explained that businesses wishing to continue their method after an approved period should apply again at least 40 business days before the end of the current approval period.

### SAUDI ARABIA

Kingdom of Saudi Arabia (KSA) Value Added Tax VAT implications in loyalty programs The Zakat, Tax and Customs Authority (ZATCA) provided information on the VAT consequences related to loyalty programs from KSA's financial institutions. Furthermore, guidance was given on specific transactions, including services supplied by KSA-based financial institutions to overseas customers and incentives provided by international card issuers and payment operators to KSA-based institutions.

ZATCA also proposed eligibility criteria for used cars under the profit margin method for VAT purposes. A Circular was issued detailing the effects of real estate VAT exemption on proportional deduction calculation. Eligible persons could apply for a VAT refund by June 30, 2023, if they have incurred VAT during 2022 and aren't economically active in KSA.

**Real Estate Transaction Tax (RETT)** A guideline was published detailing the interpretation of RETT regulations and related appeal procedures. This guide covers the applicability of RETT, tax exemptions, penalty application, tax evasion, and the appeal process on ZATCA decisions.

**E-invoicing** ZATCA announced the inclusion criteria for Wave 3 of the E-invoicing integration phase. VAT-registered taxpayers with an annual taxable revenue exceeding SAR 250 million in 2022 or 2021 are required to integrate their E-invoicing solutions with the FATOORA platform from October 1, 2023.

## OMAN

**Sultanate of Oman (Oman) Excise Tax** The Digital Tax Stamp system was expanded to include carbonated drinks, energy drinks, and sweetened drinks. The digital tax stamp strengthens tax administration and compliance, and it is obligatory for manufacturers and importers of excise goods to affix seals with special security features on the selected goods.

## BAHARAIN

**Kingdom of Bahrain (Bahrain) Value Added Tax** A manual providing guidance to taxpayers on VAT return submissions for the year 2023 and beyond was issued by the National Bureau for Revenue (NBR). The NBR also updated sections on voluntary VAT registration and the VAT registration process on its website.

**Excise Tax** The NBR expanded its Excise Goods List to include 282 new items. Also, the Digital Stamps Scheme was extended to include more tobacco products.



# INSOLVENCY AND BANKRUPTCY IN UAE



By

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## Introduction

UAE is one of the very strong global economies poised to reach greater economic heights and influence not only due to the extreme oil resources but also the significant non-oil trade and other income, Nevertheless global environment changes such as those in 2008 , Covid, supply demand issues as well as inherent business reasons especially in some sectors such as real estate have given rise to bankruptcy filing and insolvency apart from voluntary liquidations.

Insolvency and Bankruptcy (IB) are vast areas and this article compiles a brief snapshot on the subject



## Framework

In the United Arab Emirates (UAE), the UAE Federal Law by Decree No. 9 of 2016 (the UAE Bankruptcy Law) came into effect in December 2016. Before this UAE Federal Law No. 18 of 1993 (the UAE Commercial Transactions Law). Used to address the restructuring of debts. The UAE Bankruptcy Law was amended by UAE Federal Law by Decree No. 35 of 2021 (the UAE Bankruptcy Decree), which focuses on the liability of members of the board of directors or managers of the company for certain classes of transactions undertaken or approved by them before the initiation of bankruptcy proceedings.

**Business bankruptcy law in the UAE includes coverage on:**

- **Consensual out-of-court settlements/ restructuring**
- **Preventive composition procedures**
- **Financial restructuring**
- **The potential to secure new loans under terms set by the law**
- **The law aims to increase business stability in the UAE and investors' confidence in the UAE market.**



## Overview of the Bankruptcy Law

Bankruptcy Law covers all companies established under the Commercial Companies Law, most free zone companies (except for those free zone companies incorporated in free zones with their own comprehensive insolvency legislation such as the DIFC and ADGM), individuals trading for profit and licensed civil companies of a professional nature. However, the Bankruptcy Law does not apply to companies which are wholly or partly state-owned unless they have chosen to opt into the Bankruptcy Law by providing for its application in their company constitutions.

### The tests for determining when a company is insolvent

**1**

Cash flow test (which applies when a debtor is unable to pay its debts)

**2**

Balance sheet test (which applies when the debtor's assets do not cover its current liabilities).

Generally, the Bankruptcy Law requires a debtor to file for bankruptcy within 30 days of it becoming insolvent under either test or, alternatively, to apply for protection within that period. Penalties apply to debtors who fail to take action within the prescribed period.

**The Bankruptcy Law repeals certain previous insolvency-related criminal offences and expands the protective composition and bankruptcy procedures into two key court-driven procedures:**

- 1. Preventive Composition**
- 2. Bankruptcy** (including a restructuring process and insolvent liquidation)

## Preventive composition

**Preventive Composition is a debtor-led, court-supervised process where debtors is**

- In financial difficulties but not yet insolvent**
- Is insolvent for a period of less than 30 consecutive business days.**



The procedure aims to facilitate the rescue of a business by helping a debtor reach a settlement with its creditors. Preventive Composition Applications can be made only by the debtor or ordered by the court but cannot be used where the debtor has entered into such a procedure within the past year, or entered bankruptcy proceedings. The composition application must include detailed information on the debtor, including an overview of its financial situation, assets, employees, creditors and debtors, copies of financial books and statements, proposals for preventive composition and selection of a trustee to carry out the procedure along with a shareholders' resolution approving the application.



A court-appointed expert will report on the financial position of the debtor, determining whether the necessary conditions have been met. If the court accepts the debtor's application, the debtor will be placed under the supervision of a court-appointed expert – or trustee – and all bankruptcy proceedings etc are suspended. Creditors with specific security are required to obtain court approval in order to make, or continue to make, claims against the trustee in relation to the specific assets over which they hold security. The trustee needs to publish the court's decision and invite creditors to submit their claims within 20 working days.

The procedure allows the debtor an initial period of 45 working days from publication of the court's decision to submit a draft preventive composition plan which should elucidate debtor's proposal, a timeline for implementation which must not exceed three years and prospects of success. On approval by the court, a creditors' meetings will vote on the plan by at least two-thirds of the total debt by value to be approved. Secured creditors will only be bound by the plan if they relinquished their security rights and expressly voted in favour of it. The debtor retains the right to continue running the business under the supervision of the trustee who, if required, has wide ranging powers to act on behalf of the debtor in relation to preservation of assets, dealing with claims etc.

### Composition procedure gives following support



**Prevention of insolvency related contractual termination by the debtor's counterparties**



**The ability to raise priority funding on a secured or unsecured basis in order to allow the business to continue**



**Appointment of a creditor-led supervisory committee to monitor the implementation of the composition plan**



## Bankruptcy

Bankruptcy has two parts

- 1 Formal restructuring
- 2 Insolvent liquidation

An application for a bankruptcy declaration can be made the debtor, the public prosecutor; a court or a creditor or group of creditors, who hold an unpaid debt of not less the 100,000 AED, if a statutory demand has been served on the debtor and has remain unpaid for at least 30 consecutive business days.

A debtor is required to file for bankruptcy if it has ceased payment of due debts for over 30 consecutive business days due to financial difficulties or where the debtor's assets are insufficient to cover due liabilities at any time.

A court-appointed expert will then prepare a report on the financial position of the debtor, which must include their opinion on whether restructuring would be possible and whether the debtor's assets are sufficient to cover the costs of the process. The court will then decide whether to approve the application and start bankruptcy proceedings if all necessary conditions are met.

The debtor will be placed under the supervision of a court-appointed expert who will take control of the management of the company and is granted wide ranging powers in relation to preservation of assets, dealing with claims and any other actions required to achieve the purpose of the procedure. All bankruptcy proceedings, other claims and enforcement actions relating to the debtor are suspended. Mortgaged holders need to claim with the trustee Once appointed, the trustee will publish the court's decision and invite creditors to submit their claims within 20 working days.



The trustee will submit to the court a report on the debtor's business including his assessment of either restructuring or selling the debtor's business in case of liquidation. A restructuring plan may be prepared. Following this, court will examine the report and decide whether to initiate either restructuring proceedings or liquidation. The court will only initiate restructuring proceedings if the debtor expresses a willingness to continue the business and the court believes there is a possibility for the debtors business to be profitable again within a reasonable period. The deadline for implementation of a restructuring is longer (five years which may be extended for another three years with majority creditor approval).

The courts may permit the Debtor, under the supervision to continue its business until the bankruptcy is declared, particularly in circumstances where it is best to try to sell the business as ongoing concern. Through the bankruptcy, the trustee, under the supervision of the Courts, will start selling the assets of the business, to liquidate the business gradually through a very speedy process to pay for the creditors and the costs.

## Liquidation

Liquidation is to terminate the company and can be ordered by court if

- A preventive composition or restructuring scheme within bankruptcy is inappropriate, not approved or terminated
- A debtor is evading financial obligations.

A liquidation is undertaken by one or more court-appointed liquidators. Once the liquidator is appointed, all the powers and authorities of the company's board of directors vest in the liquidator who has vast powers. Liquidator has to notify creditors to present any final claims in 10 days from the date of notice. Liquidator is required to liquidate all the debtor's assets and distribute the proceeds amongst the creditors according to the new order of priority under the Bankruptcy Law. Secured creditors will be paid according to the amount of their security prior to any unsecured creditors. If the liquidated assets of the company are not sufficient to meet at least 20% of its total debts, the court may compel the board of directors, jointly or severally, to pay all or some of the company's debts where it is shown that they are liable for the company's losses. The court is also able to compel directors to contribute payments where it is shown that they have acted improperly within the two years prior to the date of the liquidation order.



Once the liquidator has made the final distribution, the court will issue a decision to close the proceedings. The liquidator is then required to publish a notice including a list of creditors whose debts were accepted, the amounts of those debts and any unsettled amounts.

## Directors



Civil and criminal liabilities which apply when the conduct of directors, general managers and shadow directors has contributed to the company's failure. Importantly, failure to file for bankruptcy within the 30-business day time period no longer incurs criminal liability on the part of the directors. Failure to file within the prescribed timeframe may constitute a ground for disqualification of the director(s) concerned from the management of a company in the UAE, for a period up to 5 years and/or the levying of fines.

## Waterfall and Suspension of Proceedings

The Bankruptcy Law clarifies by means of a claims waterfall which claims obtain priority in a Preventive Composition, bankruptcy and liquidation, and also identifies a class of creditors with privileged debts who may obtain priority over all other creditors (including secured creditors). These privileged debts include judicial fees or expenses (including the fees of court-appointed officials such as trustees and experts), amounts owed in respect of employees' salaries and certain other employee benefits, and amounts owed to governmental authorities.

Under the Bankruptcy Law, judicial proceedings are suspended once the court has accepted an application for Preventive Composition or formal restructuring within bankruptcy.

## Insolvent Natural Persons

The Federal Decree-Law No. 19 of 2019 effective from January 2020 on Insolvency protects the debtors from legal prosecution, decriminalizes the financial obligations of the insolvent person and gives them an opportunity to work, be productive and provide for their families.

The following are the main provisions of the law:

Support individuals who are facing existing or anticipated financial difficulties that make them unable to settle their debts

Help individuals reschedule their debts and give them the opportunity to take new concessional loans

Protect the debtors from legal prosecution, decriminalize the financial obligations of the insolvent person and give them an opportunity to work, be productive and provide for their families

One or more experts will be appointed by the court to settle the financial obligations debtor. The expert will coordinate with the debtor and creditor to come up with a plan to settle the financial liabilities within three years.

The new amendments to the bankruptcy law follow the landmark judgment in the Marka Holdings PJSC case. The said company was declared bankrupt by Dubai Court's judgment, and liquidation of assets was ordered. In addition, the board members of the company were ordered to pay Aed 448 Million to their creditors and also held the company's directors personally liable for the debt.



## Documents to be Submitted for Declaring Bankruptcy in UAE as Debtor

In order for the debtor to be eligible to open an application for declaring bankruptcy in UAE, certain documents need to be submitted to the court under Article 73:

1

Whether the application is for restructuring, or to get a legal ruling for bankruptcy and liquidation detailed justifications to be provided

4

Financials

2

A memorandum containing a brief description of the financial and economic situation, asset information, and detailed data of employees.

5

Debtor's cash flow and profit and loss expectations for 12 months following the submission of the application.

3

Certified copy of the debtor's commercial, industrial or professional license and his commercial register that is issued by the competent authority at the Emirate.

6

A statement detailing the names of the creditors, their addresses, amounts due and the guarantees offered to them in return (if any).

7

A detailed statement of all movable and immovable property, approx. value of each of these properties on the date of submission of application, and statement of any guarantees or rights given to others.

## Family Business

A family business does not cease to exist due to the death, interdiction, bankruptcy or insolvency of one of the partners.

[www.thenationalnews.com/business/economy/2022/11/28/uaes-new-family-business-law-to-come-into-effect-in-january/](http://www.thenationalnews.com/business/economy/2022/11/28/uaes-new-family-business-law-to-come-into-effect-in-january/)

## Employee Benefits

In case a company is wound up due to due to insolvency/bankruptcy, a liquidator would be appointed to distribute the assets as all employees will be considered preferential creditors. "In such circumstances, it would be advisable for the employee to file a labour complaint in the courts in order to obtain a judgment to enforce against the assets of the company. It is also worth noting that an employee's entitlement to gratuity is capped at two years' annual wages and it is likely that on account of his length of service he has reached the statutory cap and is no longer accruing gratuity." **The topic is covered in Article 51 of the new labour law, clause 6, which states: "The end-of-service benefits for the foreign worker in its entirety does not exceed two years' wage."**

[www.thenationalnews.com/business/money/2022/11/06/will-my-father-lose-his-gratuity-if-his-company-shuts-down/](http://www.thenationalnews.com/business/money/2022/11/06/will-my-father-lose-his-gratuity-if-his-company-shuts-down/)



## Some prominent cases

Abraaj group was a private equity group with over US\$ 13 billion of assets. In 2019, partners complained of fraudulent practices. In January 2022, the Dubai Financial Services Authority fined the former CEO, Arif Naqvi, a record US\$ 135.6 million, and its former COO, Waqar Siddiqui, a further US\$ 1.2 million over their roles in Abraaj's demise.

The collapse, administration and recent exit from administration of the NMC group is also notable. In 2018, NMC – principally a collection of health-related businesses in the UAE – was worth over US\$ 11 billion and was included in the FTSE 100. Allegations of financial mismanagement including an understating of group debt by over US\$ 4 billion led the group filed for bankruptcy.



## Summary of Discussion and Role of Company Secretaries

UAE insolvency law provides a sound framework and encourages early restructuring of indebtedness for distressed companies. The law contributes to enhancing the creditworthiness of the country in the long run and ensures an enabling environment that facilitates entrepreneurship and provides favourable conditions for doing business.

Company Secretaries have significant opportunities to be insolvency and bankruptcy professionals given their competencies in the legal and compliance field.



# THE RETAIL PAYMENT SERVICES AND CARD SCHEME REGULATION BY THE CENTRAL BANK OF UAE



By

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Taking a leap in the digital payments regulatory regime, the United Arab Emirates (“UAE”) is emerging as a global leader in the payments industry with the enforcement of its fourth regulation governing payment systems- the Retail Payment Services and Card Scheme Regulation (“RPSCS Regulation” or the “Regulation”) by the Central Bank of United Arab Emirates (“CBUAE”). The CBUAE issued a circular no. 15/2021 on 6th June 2021 and the RPSCS Regulation came in force upon its publication in the official gazette on 15th June 2021. The Regulation is applicable to all entities providing retail payment services in the UAE. The said law also mandates global card schemes operating in the UAE to be licensed by the CBUAE.

Banks that are licensed under the Central Bank Law, do not need a payment license for providing payment account issuance services, payment instrument issuance services and domestic and cross-border fund transfer services. However, for all other retail payment services, a Bank is required to obtain a prior no objection letter from the CBUAE.

Finance companies licensed in accordance with the finance companies’ regulation are exempted for the service of issuance of credit card but will required to be licensed for providing Retail Payment Services.



## Scope of the Regulation

Briefly, the Regulation mainly sets out:



The mandatory licensing requirements for entities providing any of retail payment services stated in the Regulation and card schemes operating in the UAE;



Conditions of participating in wage protection system;



Rights and obligations of the users of Retail Payment Services and payment services providers;



Scope of powers of the CBUAE for supervising payment service providers and the ongoing reporting requirements of the card schemes.

## Exclusions:

### The Regulation does not apply to:

- Payment Transactions involving Stored Value Facilities, Commodity or Security Tokens, Virtual Asset Tokens or Remittances;
- Currency exchange operations where the funds are not held on a Payment Account;
- Any service other than payment initiation and payment account information service.

## Retail Payment Service Categories

### Following are the nine categories under the said Regulation:

- payment account issuance services
- payment instrument issuance services
- merchant acquiring services
- payment aggregation services
- domestic fund transfer services
- cross-border fund transfer services
- payment token services
- payment initiation services
- payment account information services



If a payment service provider intends to provide any ancillary services, it must obtain CBUAE's prior approval to do so and the CBUAE may require it create a separate entity for the same.

## Licensing Categories

An Applicant may apply for one of the four categories (Category I, Category II, Category III, Category IV) of licenses under the Regulation. Usually, the two main factors of consideration in choosing the license category is the scope of the retail payment services to be provided by the Applicant and the initial capital required to be held by the Applicant.

## Capital Requirement

The capital requirement can be categorized as the initial capital and aggregate capital funds required to be maintained by the licensee. The initial capital is required to be held upon grant of the license and the aggregator capital funds is to be maintained by the licensee at all times.

**Initial Capital:** The initial capital requirement for each of the License Categories varies depending on the monthly average value of Payment Transactions and for Category IV is at least one (1) hundred thousand regardless of the monthly average Payment Transactions.

It has been clarified in the Regulation that the monthly average Payment Transaction volume is calculated on the basis of moving average in the preceding three (3) months or where such data does not exist at the time of license grant then it will be calculated basis the business plan and financial projection provided by the Applicant.

### Aggregate Capital Funds:

The Aggregate Capital Funds do not fall below the requirements of initial capital but the CBUAE may impose higher requirements taking into consideration the scale and complexity of the Payment Service Providers business or in case of the monthly average Payment Transactions exceed threshold of ten (10) million Dirhams in three (3) consecutive months.



## Ongoing Requirements

Irrespective of the category of license there are similar ongoing requirements stipulated in the Regulation to be complied by all licensees of Retail Payment Services that includes (a) maintaining a robust and well documented corporate governance; (b) risk management to comply with the applicable UAE anti-money laundering laws and regulation, and take preventive measures for terrorist financing risks; (c) appointing an auditor on an annual basis to prepare finance statements and conduct an audit of the licensee systems; (d) maintaining all records for a period of upto 5 years from the date of receipt of such data; (e) notifying the CBUAE of any material change affects the accuracy and completeness of information provided; and (f) to hold a professional indemnity insurance for an amount decided upon by the Central Bank applicable for licensees providing Payment Initiation and Payment Account Information Services.



## Concluding Remarks

With enforcement of the Regulation fosters a more secure, regulated financial infrastructure, financial stability, building consumer protection and confidence in the digital payments market that is aligning with the UAE's vision of creating a cashless ecosystem. There are a few key Fintechs in the country that have already been licensed by the CBUAE, are providing digital payment solutions under the regulated regime and this has opened doors for many others in getting their business regulated by the CBUAE.

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### **Disclaimer:**

*This article is for information purpose only with individual views of the author and does not constitute a legal advice in any manner whatsoever.*

# UNRAVELLING THE CORPORATE TAX LAW OF UNITED ARAB EMIRATES



By

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The United Arab Emirates (UAE) announced the Federal Decree-Law No. (47) of 2022 on the Taxation of Corporations and Businesses, popularly known as the "Corporate Tax Law", on December 9, 2022. This legislation is a game-changer in the financial landscape of the UAE. It provides a robust framework for the implementation of Federal Corporate Tax in the region, effective from financial years starting on or after June 1, 2023. With its introduction, the UAE aims to accelerate its transformation, solidifying its role as a leading jurisdiction for global business and investment.



## Grasping the Basics: What is Corporate Tax?

Corporate Tax, often referred to as "Corporate Income Tax" or "Business Profits Tax", is a direct tax imposed on the net income of corporations and businesses. It applies to specific "Taxable Persons," including UAE companies and other juridical persons effectively managed and controlled within the UAE, and natural persons conducting specified business activities. Non-resident juridical persons with a Permanent Establishment in the UAE also fall within this category. Entities established in a UAE Free Zone are considered "Taxable Persons" as well, with specific conditions outlined under section 14 of the Corporate Tax Law.

## Delineating the Taxable Person

Understanding the classification of the Taxable Person is fundamental as it dictates the basis of taxation. Resident Persons are taxed on income derived from both domestic and foreign sources, aligning with the residence basis. Conversely, Non-Resident Persons are taxed solely on income derived within the UAE, adhering to the source basis. Importantly, Corporate Tax residence is determined not by personal residence but by specific conditions laid down in the Corporate Tax Law.



Corporate Tax is levied on a Taxable Person, defined under this Decree-Law as either a Resident Person or a Non-Resident Person. A Resident Person could be a juridical person, a natural person conducting business, or any other person determined by the Cabinet. A Non-Resident Person is anyone who doesn't meet the criteria of a Resident Person but has a Permanent Establishment in the State, derives State Sourced Income, or has a nexus in the state.

Juridical persons include those incorporated or established under the applicable legislation of the State or a foreign jurisdiction but effectively managed and controlled within the State. A branch in the State of a person referred to in Article 11 is considered the same Taxable Person.

## Determination of the Corporate Tax Base

The Corporate Tax Base refers to the income upon which a Taxable Person is taxed. For a Resident Person, who is a juridical person, the Tax Base includes its Taxable Income derived from both inside and outside the State. If the Resident Person is a natural person, the Taxable Income is income derived from the State or outside, as long as it relates to the business activities conducted by the natural person within the State.

On the other hand, a Non-Resident Person is subject to Corporate Tax on income attributable to their Permanent Establishment in the State, State Sourced Income not attributable to a Permanent Establishment, or Taxable Income attributable to the nexus of the Non-Resident Person in the State.



## Defining Residency

A Resident Person for Corporate Tax purposes includes companies and juridical persons incorporated under the UAE's laws. Foreign companies may be deemed Resident Persons if effectively managed and controlled within the UAE. Natural persons are subject to Corporate Tax on domestic and foreign-sourced income, provided it is derived from a business activity conducted within the UAE.

## The Non-Resident Side

Non-Resident Persons subject to Corporate Tax include juridical entities that are not Resident Persons but have a Permanent Establishment in the UAE or derive state-sourced income. They will be subject to Corporate Tax on taxable income connected to their Permanent Establishment.



## Navigating the Corporate Tax Rates

Corporate Tax in the UAE is charged at a headline rate of 9% on taxable income exceeding AED 375,000. Taxable income below this threshold is subject to a 0% rate of Corporate Tax. For qualifying Free Zone Persons, a 0% Corporate Tax rate applies to qualifying income, while taxable income that doesn't meet this definition is taxed at 9%.

## Unraveling the Withholding Tax

In essence, a 0% withholding tax applies to certain UAE-sourced income paid to non-residents. In practice, no withholding tax would be due, eliminating the related registration and filing obligations for UAE businesses or foreign recipients of UAE sourced income.

## Understanding Tax Groups

The concept of Tax Groups, wherein two or more taxable persons can apply to form a "Tax Group" and be treated as a single taxable person for Corporate Tax purposes, is a novel one. To form a Tax Group, the parent company and its subsidiaries must be resident juridical persons, have the same financial year, and use the same accounting standards. The parent company must also meet specific ownership, rights, and entitlement criteria in the subsidiary.

## Deciphering Exemptions

In recognizing their social and economic contributions, the Corporate Tax Law exempts specific businesses or organizations from Corporate Tax. Exempt Persons include government entities, government-controlled entities, and others listed in a Cabinet Decision. Extractive businesses, non-extractive natural resource businesses, qualifying public benefit entities, and certain investment funds may also qualify for exemptions, provided they meet specific conditions.

## Exploring the Free Zone Scenario

A Free Zone Person that meets specific conditions can become a Qualifying Free Zone Person and benefit from a 0% Corporate Tax rate on their "Qualifying Income." These conditions include maintaining adequate substance in the UAE, deriving 'Qualifying Income,' compliance with the Corporate Tax Law's transfer pricing requirements, and not having made an election to be subject to Corporate Tax at standard rates.



## Understanding State Sourced Income

State Sourced Income, subject to taxation under the Decree-Law, is defined as income derived from a Resident Person, from a Non-Resident Person's Permanent Establishment in the State, or from activities, assets, capital, rights, or services performed or utilized in the State.

This income could originate from several activities, including but not limited to, the sale of goods in the State, provision of services utilized in the State, contracts performed in the State, income from movable or immovable property, disposal of shares or capital of a Resident Person, and use or right to use any intellectual property in the State.



Furthermore, interest from loans secured by property located in the State or borrowed by a Resident Person or Government Entity and insurance or reinsurance premiums related to assets located in the State, Resident Persons, or activities conducted in the State also qualify as State Sourced Income.

## Decoding Deductible Expenses

The Corporate Tax Law allows for the deduction of legitimate business expenses incurred wholly and exclusively for deriving taxable income. Expenditure related to capital assets, like depreciation or amortization deductions, can be recognized over the economic life of the asset. However, expenses with dual purposes, personal and business, must be apportioned accordingly.

Certain expenses, while deductible under general accounting rules, may not be fully deductible for Corporate Tax purposes and thus, need to be added back to the accounting income when determining taxable income. Examples include bribes, fines and penalties, donations to non-qualifying entities, dividends, and Corporate Tax itself. Interestingly, client entertainment expenditure can enjoy a partial deduction of 50% of the expenditure, while interest expenditure can also be deducted, subject to specific thresholds.

## Permanent Establishment: An Essential Notion

The concept of Permanent Establishment plays a pivotal role in determining the Corporate Tax applicability. It helps establish if a foreign person's presence in the UAE warrants their business profits to be subject to Corporate Tax. The Corporate Tax Law builds on the definition provided by Article 5 of the OECD Model Tax Convention on Income and Capital. The concept of a Permanent Establishment plays a pivotal role in international taxation, preventing profit shifting and ensuring that countries receive their fair share of tax revenue. It establishes the right of a country to tax a foreign enterprise when the enterprise's activities in that country surpass a certain threshold. The definitions and exceptions surrounding PE are complex, and non-resident entities should seek professional tax advice to understand their potential tax liabilities in foreign jurisdictions.



## The Circumstances Conducive to Permanent Establishment

### 1. A non-resident entity is viewed as having a PE in the State in the following instances:

- A** The entity conducts its business through a fixed or permanent place in the State.
- B** A person routinely exercises the authority to conduct business activities in the State on behalf of the non-resident entity.
- C** The entity has any other form of connection with the State, as determined by the State's Cabinet.

The 'fixed or permanent place' can take many forms - a place of management, a branch, an office, a factory, a workshop, or any land, buildings, or other real property. It also includes installations for exploring natural resources, mines or quarries, and construction or assembly sites, given that these activities last longer than six months.

### 2. The Exemptions to the Rule of Permanent Establishment

Even if a non-resident entity has a fixed place in the State, it won't be regarded as having a PE if the place is used solely for certain activities. These activities include storing, displaying or delivering goods; maintaining a stock of goods for processing by another entity; purchasing goods or collecting information; or any other activity of a preparatory or auxiliary nature.

However, if the same non-resident entity or its related party carries on a business activity at the same place or another place in the State, the above exceptions do not apply. In such a case, if these activities are not of a preparatory or auxiliary nature and form a cohesive business operation, they would constitute a PE.

### 3. The Role of Agents and Natural Persons in the Creation of a Permanent Establishment

If a person habitually concludes or negotiates contracts on behalf of the non-resident entity, they are considered to be exercising an authority to conduct business, thereby potentially creating a PE. Yet, if a person acts as an independent agent in their ordinary course of business and does not act almost exclusively on behalf of the non-resident entity, the provisions of a PE will not apply.

The mere presence of a natural person in the State does not constitute a PE for a non-resident entity, particularly in temporary or exceptional situations, or if the person is employed by the non-resident entity and is not engaged in the core income-generating activities of that entity.

## Grappling with the Corporate Tax Filing and Payment Procedures

All taxable persons will be required to register for Corporate Tax and obtain a Corporate Tax Registration Number. They must file a Corporate Tax return for each Tax Period within nine months from the end of the relevant period, and the same deadline generally applies for the payment of any Corporate Tax due.

In an attempt to demystify the recent Decree-Law outlining tax registration, deregistration, and other aspects of corporate tax obligations, Below are detailed explanation of key sections of the law. It is important to note that these rules apply to taxable persons, which may include businesses, partnerships, and other entities identified by the law.

### Tax Registration (Article 51)

The decree mandates that every taxable person should register for Corporate Tax and receive a Tax Registration Number. This is to be done according to the procedure, form, and timeline set by the Authority. However, exemptions are given in situations that will be specified by the Minister. Moreover, under certain circumstances, the Authority may require specific entities or unincorporated partnerships to register and acquire a Tax Registration Number.

### Tax Deregistration (Article 52)

Any entity with a Tax Registration Number is required to file a tax deregistration application in cases of business cessation, such as dissolution or liquidation. This process must be done according to the Authority's guidelines. All Corporate Tax dues and Administrative Penalties should be cleared, and all tax returns up to and including the cessation date must be filed before deregistration can occur. In case of non-compliance, the Authority reserves the right to deregister the taxable person based on the available information.

### Tax Returns (Article 53)

A taxable person is obligated to submit a tax return to the Authority, no later than nine months from the end of the relevant Tax Period or as directed by the Authority. The Tax Return must detail several elements such as the Tax Period, name, address, Tax Registration Number of the Taxable Person, the accounting basis used, and the Taxable Income for the Tax Period. Furthermore, information about Tax Loss relief and transfer, tax credits claimed, and Corporate Tax Payable for the Tax Period should be included.



## Financial Statements (Article 54)

The Authority may request the submission of financial statements used to determine the Taxable Income within a specific timeline and format. These statements are crucial in determining the total assets, liabilities, income, and expenditure of the taxable person or partnership.

## Transfer Pricing Documentation (Article 55)

The Authority has the right to ask for documentation disclosing information about the taxable person's transactions with its Related Parties and Connected Persons. This is essential for the Authority to understand the nature of these relationships and transactions. The requested documentation should be provided within 30 days following the Authority's request.

## Record Keeping (Article 56)

All records and documents that support the information in the tax return or any other document to be filed with the Authority should be maintained for a period of seven years following the end of the Tax Period. This is essential for both taxable and exempt persons, enabling their taxable income or exempt status to be easily determined by the Authority.

## Tax Period and Changes (Article 57, 58)

A Taxable Person's Tax Period is the Financial Year or part thereof for which a Tax Return is required to be filed. By default, the Financial Year follows the Gregorian calendar year, or the 12-month period for which the taxable person prepares financial statements. However, a taxable person can apply to change the start and end date of its Tax Period, or use a different Tax Period, subject to conditions set by the Authority.

The Decree-Law establishes clear requirements for tax registration, deregistration, and reporting for taxable entities. It is crucial for all entities to understand and adhere to these obligations, to ensure compliance and avoid penalties.







# Get In Touch



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