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UAE CORPORATE TAX: TAXATION OF FAMILY FOUNDATIONS

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Introduction



To whom does Corporate Tax apply?

- **All legal entities** (including Family Foundations) are subject to CT;
- **Natural persons** (individuals) engaged in a business or business activity in the UAE are subject to CT



When does it apply?

- Effective for the financial year **starting from 1 June 2023**
Businesses with **standard (January to December) financial year subject to UAE CT starting January 2024*



Ongoing Obligations

- **Register once** for CT purposes
- **Maintain** accounting records in accordance with IFRS
- **Ensure** all transactions with related parties and connected persons **are at arm's length**
- **Obtain** transfer pricing documentation/ benchmark studies
- **Submit tax returns annually** (9 months from the end of the Tax Period)
- **Submit country-by-country (CbC) Notification/Report** (with data on the global allocation of income, profit, taxes paid, and economic activity), **if the Entity is the Ultimate Parent Entity/Alternate Parent Entity**
- **Comply** with other requirements that the FTA may publish

High-level Corporate Tax Reliefs/Exemption

Free Zone Relief

Being a free zone entity, a **Family Foundation can benefit from the 0% tax regime**. This would **require fulfillment** of the conditions of a Qualifying Free Zone Person.

Specifically:

- Maintaining **adequate substance**.
- **Non-Qualifying Income is less than AED 5 million or 5% of Total Income**, whichever is lower.
- **Not elected** to be taxed at a standard 9% CT rate.
- **Complying with Transfer Pricing** rules and documentation.
- **Maintaining audited financial statements** (refer to page 5).

Participation Exemption

Considering that a **Family Foundation is an asset-holding entity**, dividend income and occasional capital gains are common sources of income.

As such, these income streams **can benefit from the participation exemption** rules. **“Domestic” dividends** distributed by the UAE subsidiaries are **exempt unconditionally**.

When the **dividends from foreign** subsidiaries and capital gains (foreign and domestic) are exempt if these **conditions are met**:

- At least **5% of ownership** interest and economic rights.
- **Held (or has the intention)** for an uninterrupted period of **12 months**.
- **Subject to CT** (or equivalent) at a rate of at least 9% in a foreign jurisdiction.
- **Not more than 50%** of the direct and indirect assets consist of ownership interests or entitlements that **would not have qualified for an exemption** if held directly by the UAE shareholder.
- **Any other** conditions as may be prescribed by the Minister.

Tax Transparency Status

A Family Foundation can **submit an application** to be treated as an unincorporated partnership, effectively obtaining **“tax transparency”** status. In this way, the **founder and beneficiaries** of the Foundation would be **considered beneficiaries** of any income generated by the Foundation.

If the Foundation’s founder or beneficiaries are **individuals**, **specific tax exemptions applicable** to natural persons may be available. For example, **rental income from real estate in the UAE is exempt from CT** at the hands of the natural person.



High-level Corporate Tax Reliefs/Exemption

Small Business Relief

Small businesses with total revenue of **less than AED 3 Million** in the relevant and previous Tax Period may **elect** to be treated as not having derived any Taxable Income.

This relief could be availed if **the entity is not eligible for the Free Zone relief.**

Taxable Income Threshold

CT at 9% is imposed on **the taxpayer's Net Income** exceeding the threshold of **AED 375,000**. If the Net Income of the Tax Period does not exceed the above threshold, CT would be applied at a **0% rate**.

If the tax transparency status is applied, the individuals generating business revenues **exceeding AED 1 million** are only subject to CT.

Final Thoughts

If **planned** and executed correctly, Family Foundations are **unlikely to pay any CT**.

It is **essential** that such **planning** and execution is conservative and **should be completed in advance**.



Other matters to consider

Maintaining Accounting Records

With the introduction of the CT legislation, **all legal entities** in the scope of CT are obliged to **maintaining audited financial statements** as specified in the legislation to assess and **pay CT**.

In practical terms, this means maintaining accounts in accordance with International Financial Reporting Standards (**IFRS**), although businesses with revenue less than AED 50 Million may apply **simplified IFRS** and below AED 3 Million, **cash accounting is permitted**.

Audit of Financials

The conditions of the Free Zone CT Regime require a Qualifying Free Zone Person to **prepare and maintain audited financial statements that are audited by an independent audit firm**.

If a Qualifying Free Zone Person **does not prepare and maintain audited financial statements**, the Free Zone entity can be **disqualified from the Free Zone CT regime for five (5) Tax Periods**.

Transfer Pricing (TP)

TP is an unknown concept for most UAE businesses. In the absence of historical precedent of the authorities as guidance, many taxpayers may be unsure as to how to meet this new obligation.

In brief, the **TP rules aim** to ensure that the transactions between affiliated parties are not affected by any relation other than business and are **demonstrably arm's length and commercial in nature**.

The burden of proof is with the taxpayer, who must carry out the specified transfer pricing/ benchmark studies, if applicable, and maintain transfer pricing documentation. In some cases, **detailed Master and Local files** will have to be maintained.

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