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Analyzing the Impact of Recent Government Decisions on the UAE Corporate Tax Law: A Comprehensive Overview



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1. Introduction:

The United Arab Emirates (UAE) is a leading business hub and a global financial centre, offering various incentives and benefits to attract foreign investment. In December 2022, the UAE government introduced the Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses, also known as the "Corporate Tax Law," as a legislative basis for the implementation of the Federal Corporate Tax. The Corporate Tax Law is effective from 1 June 2023, and its implementation is expected to support the UAE's strategic objectives, accelerate its development and transformation, and enhance its competitive position as a business destination.

This paper examines the implementation of the Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses, also known as the "Corporate Tax Law," in the United Arab Emirates (UAE) along with the recent Cabinet Decisions, Ministerial Decisions and FTA Decisions issues. The paper explains the overview of the UAE CT and also the impact of the various decisions issued in this regard. Additionally, the paper describes Corporate Tax, the types of taxable persons subject to it, and the scope of the law.

The introduction of Corporate Tax in the UAE is primarily aimed at diversifying the country's revenue streams, reducing its reliance on oil revenues, and supporting its economic growth and development. The Corporate Tax Law also aims to ensure a competitive Corporate Tax regime that adheres to international standards and promotes transparency and compliance. The law incorporates principles that are widely accepted and understood globally, making it clear and predictable for taxpayers. Further, the UAE seeks to align itself with new international standards, particularly the move toward a global minimum tax on multinational corporations endorsed by the G20.

2. Scope of the Law

The Corporate Tax Law applies to taxable persons, including those established in a UAE Free Zone, subject to certain conditions. A Taxable Person as defined in the CT Law, is an individual and/or entity that is subject to UAE CT. For the purposes of the CT Law, a distinction is made between a Resident Person and a Non-Resident Person, and the applicable Tax base will depend on the nature of the Taxable Person.

A Resident Person is any of the following Persons:

- A juridical person that is incorporated or otherwise established or recognised under the applicable legislation of the State, including a Free Zone Person.
- A juridical person that is incorporated or otherwise established or recognised under the applicable legislation of a foreign jurisdiction that is effectively managed and controlled in the State.
- A natural person who conducts a Business or Business Activity in the State.
- Any other Person as may be determined in a decision issued by the Cabinet at the suggestion of the Minister.

A Non-Resident Person is a Person who is not considered a Resident Person under Clause 3 of this Article and that either:

- Has a Permanent Establishment in the State as under Article 14 of this Decree-Law.
- Derives State Sourced Income as under Article 13 of this Decree-Law.
- Has a nexus in the State as specified in a decision issued by the Cabinet at the suggestion of the Minister.

The CT Law provides for the following statutory tax rates:

| Taxable Income | Rate of Tax |
|--|--------------------|
| Taxable income not exceeding the amount specified in a Cabinet Decision* Qualifying Income of a Qualifying Free Zone Person** | 0% |
| Taxable income exceeding the amount specified in a Cabinet Decision Non-Qualifying Income of a Qualifying Free Zone Person | 9% |

* AED 375,000 as specified in Cabinet of Ministers Decision No. 116 of 2022

** Definition of qualifying income is awaited.

Non-resident persons that do not have a Permanent Establishment in the UAE or that earn UAE-sourced income not related to their Permanent Establishment may be subject to Withholding Tax @0%.

3. List of Major Decisions Issued:

- Cabinet of Ministers Decision No. 116 of 2022 on the annual Taxable Income subject to Corporate Tax
- Cabinet Decision No. 37 of 2023 Regarding the Qualifying Public Benefit Entities
- Ministerial Decision No. (43) of 2023 Concerning Exception from Tax Registration
- Ministerial Decision No. 68 of 2023 on the Treatment of all Businesses and Business Activities Conducted by a Government Entity as a Single Taxable Person
- Ministerial Decision No. 73 of 2023 on Small Business Relief
- Ministerial Decision No. 82 of 2023 on the Determination of Categories of Taxable Persons Required to Prepare and Maintain Audited Financial Statements

- Ministerial Decision No. 83 of 2023 on the Determination of the Conditions under which the Presence of a Natural Person in the State Would not Create a Permanent Establishment for a Non-Resident Person
- Federal Tax Authority Decision No. 5 of 2023 on Conditions for Change in Tax Period
- Federal Tax Authority Decision No. 6 of 2023 on Tax Deregistration Timeline
- Federal Tax Authority Decision No. 7 of 2023 on Provisions of Exemption from Corporate Tax

4. Key Takeaways and impact analysis

4.1 Cabinet of Ministers Decision No. 116 of 2022 on the annual Taxable Income subject to Corporate Tax

Key Take Aways & Analysis

- The threshold of income of a taxable person that is chargeable to tax @0% is AED 375,000/-
- Artificial fragmentation of business operations to obtain the benefit of the minimum threshold is squarely covered under the GAAR provision of Article 50 of the CT Law and such arrangement shall be disregarded. Thus, the maximum income chargeable to 0% tax will be only AED 375,000.
- The FTA will consider the commercial validity and similarities of the Business or Business Activity of multiple Persons to determine if they have artificially separated their arrangement.
- Only the income exceeding AED 375,000 will be chargeable to tax @9%

4.2 Cabinet Decision No. 37 of 2023 Regarding the Qualifying Public Benefit Entities

Key Take Aways

- Corporate tax exemption for Public and Community Welfare entities
- Government Entities must inform the Ministry of any changes affecting public benefit entities listed in the schedule, which may impact the entity's ability to meet the conditions specified in the Corporate Tax Law within 20 business days.
- Government Entities can apply to suggest amendments to the schedule attached to the decision, providing all relevant data and information, while the Cabinet can also amend the decision and schedule as suggested by the Minister.
- A Qualifying Public Benefit Entity shall provide all relevant documents, data and information to the MOF and the FTA to verify that the Qualifying Public Benefit Entity meets the requirements stipulated in the Corporate Tax Law.

Analysis

- To be exempt from corporate tax, Qualifying Public Benefit Entities must meet the conditions outlined in Article (9) of the CT Law and continue to comply with relevant laws, and must also register with the UAE FTA and obtain a tax registration number.
- As per clause 2 of Article 51 of the CT Law even if a Qualifying Public Benefit Entity is exempt from corporate tax, it must still meet the registration requirements set by the UAE FTA to obtain a tax registration number.
- As per Article 33 of the CT Law, the donations and gifts made to a Qualifying Public Benefit Entity listed in the Decision are deductible expenditures.

- The entities listed in the decision are scattered in the UAE as follows 95 from Abu Dhabi, 53 from Dubai, 94 from Sharjah, 25 From Ajman, 15 from Umm Al Quain and 11 from Ras al Khaimah.
- This ruling is set to spark a wave of charitable deeds in the UAE, promoting financial security for non-profit organizations and nurturing a thriving philanthropic culture.

4.3 Ministerial Decision No. (43) of 2023 Concerning Exception from Tax Registration

Key Take Aways

- The following persons are exempt from registering under corporate tax law:
 - A Government Entity,
 - A Government Controlled Entity,
 - A Person engaged in an Extractive Business,
 - A Person engaged in a Non-Extractive Natural Resource Business &
 - A Non-Resident Person that derives only State Sourced Income and does not have a PE in the UAE

Analysis

- Non-residents generating income from the UAE without a permanent establishment (PE) in the country qualify for this exemption. This implies that only non-residents with a PE in the UAE will be required to pay taxes.
- Also, an NR person who is earning only state-sourced income will not be taxed in the UAE in the absence of a withholding tax (WHT).
- As withholding tax rates are expected to rise from 0% in the future, the WHT could become the final liability for non-residents.
- This decision does not establish a principle that all exempt person under Article 4(1) of the CT Law is not required to obtain a TRN.
- This contention has been supported by the registration requirements for the other exempt person mentioned in Article 51(2) of the CT Law. Further, it has also been clarified in the Cabinet Decision No. 37 of 2023 & Federal Tax Authority Decision No. 7 of 2023.

4.4 Ministerial Decision No. 68 of 2023 on the Treatment of all Businesses and Business Activities Conducted by a Government Entity as a Single Taxable Person

Key Take Aways

- As per Article 5(6) of the CT Law, the Businesses and Business Activities conducted by the Federal Government Entities shall be treated as a single Taxable Person.
- The conditions to be fulfilled for such treatment have been mentioned in this decision and are as follows:
 - The application shall include all Businesses and Business Activities conducted by Federal Government Entities.
 - These businesses shall be conducted under a Licence issued by a Licensing Authority.
 - A single application needs to be made by the representative government entity.
- The FTA shall be notified as to who is the representative federal government entity for making all the compliances.

- The representative federal government entity can be changed with an application to the FTA.
- The representative federal government entity shall notify the FTA within 20 business days if any new Businesses or Business Activities are conducted by the federal government entity.
- Similarly, the representative federal government entity shall notify the FTA within 20 business days if any Business or Business Activity is no longer conducted by the federal government entity or is not conducted under a licence.
- The treatment as a single taxable person for a federal government entity ceases if the representative federal government entity makes an application for the same or it fails to meet the requisite conditions.
- All the above-mentioned conditions stand true even for a local government entity. There is only one additional condition i.e., the Businesses and Business Activities of the Local Government Entities shall be conducted within the same Emirate.
- The treatment as a single government entity commences from the beginning of the Tax Period specified in the application submitted or any other date determined by the FTA.
- Similarly, cessation of such treatment shall end from the beginning of the Tax Period specified in the application submitted or any other date determined by the FTA.
- Consolidating the financial results, assets, and liabilities of a single taxable person's business and activities for a particular tax period will be done by the Representative Federal Government Entity or the Representative Local Government Entity. They will remove transactions that occurred between the government entities within the same single taxable person.

Analysis

- The clarifications provided in this decision are in line with the tax grouping provisions available to the taxable person under Chapter 12 of the CT Law.
- This decision puts the business conducted by government entities at par with private businesses.
- It will also reduce the compliance cost, time, and effort for the government entity business.

4.5 Ministerial Decision No. 73 of 2023 on Small Business Relief

Key Take Aways

- The revenue threshold for the purpose of small business relief as per Article 21 is set at AED 3,000,000/-.
- This threshold applies from 1st June 2023 to 31st December 2026.
- The threshold has to be checked for any of the taxable years under question.
- A qualifying free zone person and a constituent entity of an MNE group (Revenue > AED 3.15 billion) are not eligible for small business relief.
- Small businesses that opt for relief in a tax period cannot carry forward any tax losses incurred in that period but can carry forward unutilized losses from previous periods where relief was not elected.
- A similar treatment is made for disallowed net interest expenditure.
- Artificial fragmentation of business for obtaining advantage of this relief will trigger the GAAR provision under Article 50 of the CT Law.

Analysis

- Article 21 of the CT Law provides that a Resident Person may elect to be treated as not having derived any Taxable Income for a Tax Period where its revenue is below the threshold specified by the minister. The same has been specified in this decision at AED 3 million.
- A 9% corporate tax rate impacts only those businesses whose revenue exceeds AED 3 million and the taxable income exceeds AED 375,000.
- From the text of the decision, it can reasonably be concluded that the taxpayer is free to opt-in or opt out of this relief at its choice for each year.
- Further, this relief is aimed at encouraging small businesses and start-ups.
- Also, this keeps small businesses outside the ambit of preparing Transfer Pricing documentation which can be a costly affair.

4.6 Ministerial Decision No. 82 of 2023 on the Determination of Categories of Taxable Persons Required to Prepare and Maintain Audited Financial Statements

Key Take Aways

- Under the powers vested by Article 54(2) of the CT Law, the MOF has given a list of persons who are required to prepare and maintain audited financial statements.
- The list of persons include:
 - A taxable person who has revenue exceeding AED 50 million
 - A qualifying free zone person

Analysis

- In Dubai the micro, small & medium enterprises are defined as follows:

| SME DEFINITION FOR DUBAI | | | | | | |
|--------------------------|-----------|---------------|---------------|---------------|-----------|---------------|
| | TRADING | | MANUFACTURING | | SERVICES | |
| | Employees | Turnover | Employees | Turnover | Employees | Turnover |
| Micro | <=9 | & <=AED 9mn | <=20 | & <=AED 10mn | <=20 | & <=AED 10mn |
| Small | <=35 | & <=AED 50mn | <=100 | & <=AED 100mn | <=100 | & <=AED 100mn |
| Medium | <=75 | & <=AED 250mn | <=250 | & <=AED 250mn | <=250 | & <=AED 250mn |

- The threshold to prepare and maintain audited financial statements is kept at a higher level in order to protect micro & small businesses from falling into this ambit.
- Further, now a free zone person who wishes to take advantage of the beneficial CT rate of 0% will also have to maintain audited financial statements.
- The major developed free zones already require the free zone entities to prepare audited financial statements in order to obtain the benefits of the Freezone, but this decision makes it a general principle across the UAE.

4.7 Ministerial Decision No. 83 of 2023 on the Determination of the Conditions under

which the Presence of a Natural Person in the State Would not Create a Permanent Establishment for a Non-Resident Person

Key Take Aways

- This decision aims to define when the presence of a natural person in the UAE shall be considered a consequence of a temporary and exceptional situation.
- All of the following conditions must be met in order to fall into this category:
 - The presence is a consequence of exceptional circumstances of a public or private nature.
 - The exceptional circumstances cannot reasonably be predicted.
 - The natural person did not express any intention to remain in the UAE when the exceptional circumstances end.
 - The non-resident did not have a PE before the exceptional circumstances.
 - The non-resident considers that the natural person is not establishing a PE in the UAE or is not deriving income from the UAE as per the tax law of the home country.
- An exceptional circumstance refers to an unforeseeable event that is beyond a person's control and prevents them from leaving a state as originally intended.
- Exceptional circumstances of a public nature are defined as circumstances that may prevent a natural person from leaving a state including the adoption of public health measures, travel restrictions, legal sanctions, acts of war, terrorist attacks, natural disasters, force majeure, and any other unforeseeable circumstances.
- Exceptional circumstances of a private nature are defined as a health emergency affecting the natural person or its relative up to the 4th degree of kinship.

Analysis

- Article 14(7)(a) of the CT Law lays out the exception in which a PE of a non-resident will not be created by the mere presence of a natural person in the UAE if such presence is a consequence of a temporary and exceptional situation.
- This decision seeks to define when such circumstances will be of temporary and exceptional nature.
- The decision is very comprehensive and covers both natural causes and personal reasons.

4.8 Federal Tax Authority Decision No. 5 of 2023 on Conditions for Change in Tax Period

Key Take Aways

- As per the powers vested with the FTA as per Article 58 of the CT Law, it has brought out the conditions under which a taxpayer can change its tax period.
- A taxpayer can change their tax period or use a different Tax Period, where all the following conditions are met:
 - The change is either due to liquidation or for aligning the tax period with the tax period of another Resident Person to form a Tax Group/joining an existing Tax Group or aligning the Taxable Person's tax period with the tax period of its domestic/foreign head office/subsidiary/parent/ultimate parent company, for financial reporting, or to benefit from a tax relief available under the CT Law.

- If none of the above reasons applies then the existence of any other valid Commercial, Legal or Economic reason to change the Tax period is to be justified.
- The Taxpayer has not yet filed a tax return for the tax period for which he is requesting a change.
- The application for change in Tax Period allows for either extending the current Tax Period up to 18 months or shortening the next Tax Period between 6 and 12 months.
- The application must be submitted before 6 months have passed since the end of the original Tax Period.

Analysis

- Article 57 of the CT law states that the Financial Year of a Taxable Person shall either be the Gregorian Calendar Year (i.e., January-December) or the 12 months period for which the FS is prepared.
- Usually, the 12-month period is mentioned in the incorporation documents of the entity.
- However, Article 58 of the CT law allows a Taxable person to make an application to the FTA for a change of Tax Period or selection of a different Tax Period. This decision has notified the conditions to do the same.
- This decision limits the options of the taxpayers to change their tax period to certain situations and this decision will come into force from 1st June 2023.
- However, this decision is not applicable at this time, it is important to note that GAAR provisions under Article 50 of the CT Law are still applicable, and therefore a commercial reason is still required to alter the tax period.

4.9 Federal Tax Authority Decision No. 6 of 2023 on Tax Deregistration Timeline

Key Take Aways

- Tax Deregistration application shall be filed per the following timelines:
 - The natural person shall file a Tax Deregistration application within 3 months of the date of cessation of the Business or Business Activity.
 - The juridical Person shall file a Tax Deregistration application within 3 months of the date the entity ceases to exist, cessation of the Business, dissolution, liquidation or otherwise.

Analysis

- Article 52(1) of the CT law states that any person with a TRN shall file a Tax De-Registration Application with the FTA, where there is cessation of its business/business activity by whatsoever reason within the Timeline prescribed by the FTA.
- This decision aims to define the timeline for de-registration with the FTA.
- Broadly, the timeline to file the de-registration application is 3 months from the date of cessation of business.
- For successful deregistration, a taxpayer must settle all CT and penalties dues, and submit all tax returns, including the one for the period up to the cessation date.
- The three-month timeframe is appropriate for submitting the deregistration application. However, the application's required format and submission procedure is yet to be notified.

4.10 Federal Tax Authority Decision No. 6 of 2023 on Provisions of Exemption from

Corporate Tax

Key Take Aways

- A qualifying public benefit entity shall apply for Tax Registration and obtain a Tax Registration Number as of 1 October 2023.
- Qualifying Investment Funds, Pension or Social Security Funds, Juridical Persons wholly owned by Exempt Persons, and any other person as determined by the ministry must apply for Tax Registration and obtain a Tax Registration Number by June 1, 2024.
- Once the tax registration for the above is approved, they are entitled to submit an application for exemption from Corporate Tax within 60 business days from the end of the Tax Period in which the Person met the conditions for exemption.
- The FTA may require such persons to file an annual declaration confirming that it still fulfils the exemption conditions.
- The exemption shall be effective from the start of the Tax Period specified in the application.
- This decision allows for different effective dates of exemption under certain circumstances.
- These circumstances include incorrect tax period information, acquisition by certain entities, and incorrect exemption application information.
- The authority will ensure that the exemption date follows the fulfilment of all remaining tax obligations.

Analysis

- Article 4(1) of the CT law lists down the persons who shall be exempt from Corporate Tax but shall be liable to obtain a TRN.
- The application for exemption from CT for Qualifying Public Benefit Entity is as per the provisions of Cabinet Decision No. 37 of 2023.
- Tax registration for exempt persons is necessary to keep a check on them. Otherwise, these exemptions may be abused by the taxpayers.
- The annual declaration of compliance with the exemption condition supports the annual updating of the exemption benefit.

5. Concluding Remarks

The implementation of the Federal Corporate Tax Law in the UAE is a significant step towards achieving the country's strategic objectives and accelerating its development and transformation. The law provides a competitive Corporate Tax regime that adheres to international standards and promotes transparency and compliance. The scope of the law covers various taxable persons, including companies, juridical persons, and natural persons, subject to certain conditions. The scope of the law applies to both resident and non-resident persons subject to certain conditions, and there are various decisions issued that further clarify the implementation and exemptions of the law.

The law aims to encourage foreign investment and support the country's long-term economic goals, including the creation of new jobs, the development of infrastructure, and the expansion of the private sector. By introducing Corporate Tax, the UAE can generate additional revenue that can be used to fund its social and economic programs, enhancing the country's overall standard of living.

The country's move towards a global minimum tax on multinational corporations endorsed by the G20 highlights its commitment to international tax reform and its readiness to work collaboratively with other countries to ensure a level playing field for all businesses. Overall, the introduction of Corporate

Tax in the UAE is a significant milestone in the country's economic development, and its successful implementation will have positive implications for the country's future economic growth and prosperity.

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