

Unlocking the Power of Tax Treaties - A UAE Perspective

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1) Introduction:

Tax treaties are bilateral agreements between countries that seek to prevent double taxation and fiscal evasion. In the globalized economy, tax treaties have become a fundamental tool for businesses and individuals to navigate the complex web of tax laws in different countries. However, tax treaties cannot be read in isolation. To fully understand their implications and benefits, it is crucial to also consider domestic tax laws that may interact with them. This is where the art of conjointly reading tax treaties and domestic law comes in. This article will explore the importance of conjoint reading of tax treaties and domestic law and how it can help taxpayers unlock the maximum benefits from tax treaties. The analysis is being done for the definition of residence of a natural person and juridical person in the UAE domestic law and the India-UAE Double Tax Avoidance Agreement (DTAA). The determination of tax residency status is an important aspect of the taxation system.

2) Tax Residence of a natural person in the domestic law of the UAE

Federal Decree-Law No. 47 of 2022 (Corporate Tax Law)[\[1\]](#)

As per Article 11 of the corporate tax law of the United Arab Emirates (UAE) which was released on 9th December 2022, a natural person who conducts a Business or Business Activity in the UAE is a resident of UAE.

Cabinet Decision No. 85 of 2022 - Issued 2 Sept 2022[\[2\]](#)

Per the above-mentioned decision, a natural person will be regarded as a tax resident in a state if any of the following three conditions are met.

- The first condition stipulates that the individual's usual or primary place of residence and the centre of his financial and personal interests are in the UAE. Additionally, it allows for the possibility of the Minister establishing the conditions and criteria required for meeting this requirement.
- The second condition is met if the individual has spent a minimum of 183 days in the state within a relevant 12-month period.
- The third condition is met if the individual has spent a minimum of 90 days in the state within a relevant 12-month period, the individual is a UAE national, holds a valid residence permit in the state or holds nationality of any GCC member and satisfy the following conditions:
 - He has a Permanent Place of Residence in the State.
 - He carries on an employment or Business in the State.

These criteria help to establish an individual's connection with the UAE, which is relevant for determining their tax liability. Overall, the provision provides clear guidelines for determining the tax residency status of natural persons.

3) Tax Residence of a natural person in the India-UAE DTAA^[3]

As per sub-para (b) of para (1) of Article 4 of the India-UAE Double Tax Avoidance Agreement (DTAA), the United Arab Emirates (UAE) has a specific provision for determining the tax residency status of individuals. An individual will be considered a tax resident in the UAE if they are physically present in the country for a total of at least 183 days during the relevant calendar year. This condition helps establish a connection between the individual and the UAE, making them liable to pay taxes on their income earned within the country. The provision is in line with international standards for determining tax residency, and it is an important consideration for individuals who spend significant time in the UAE. Although, the Article 4(1) deviates from both the OECD and the UN model tax convention. It is also relevant for businesses that employ individuals in the UAE and are required to comply with tax laws and regulations. The provision ensures that the UAE's taxation system is fair and equitable, with tax liabilities being established based on an individual's nexus to the country.

4) Interim Analysis- Residential Status of Natural Person

International agreements are a critical part of the legal framework governing relations between nations. In the context of taxation, international agreements can help to establish standards for tax treatment and prevent double taxation of individuals and businesses.

Article 66 of the Federal Decree-Law No. 47 of 2022 (Corporate Tax Law) and Article 6 of the Cabinet Decision No. 85 of 2022 – Issued 2 Sept 2022, recognize the importance of such agreements by stipulating that if there is an inconsistency between the provisions of a Decree-Law and an international agreement that is currently in force in the State, the terms of the international agreement will prevail. This ensures that the State complies with its obligations under the international agreement and that individuals and businesses are treated fairly and equitably. The provision helps to ensure that the State's tax laws are in harmony with international norms and standards and that the State's tax system is consistent with its obligations under international agreements.

In other words, the India-UAE DTAA will supersede the provisions of the domestic corporate tax law. Thus, an individual will only be a resident of the UAE if his/her stay in the UAE is of at least 183 days in a calendar year i.e. from 1st January to 31st December. This condition of the DTAA overrides the conditions mentioned in the cabinet decision regarding the usual or primary place of residence and the centre of financial and personal interests. Further, the stay of 183 days is to be in a calendar year and not in any relevant 12 months period.

Illustration:

Mr. X stays in UAE for 90 days from 01st January 2023 to 31st December 2023, and for 93 days from 01st January 2024 to 31st December 2024. So, Mr. X is not a resident of the UAE as per the India-UAE DTAA, although, he may be a resident of the UAE as per the domestic corporate tax law of the UAE. In such a scenario the India-UAE DTAA will override the domestic law. Thus, Mr. X is not a resident of the UAE for both, 2023 & 2024.

5) Unresolved contradictions

On one hand, under the domestic corporate tax law of the UAE, a juridical person is a resident of the UAE if it is either incorporated in the UAE or incorporated in a foreign jurisdiction but is effectively managed and controlled from the UAE.

On the other hand, as per Article 4(1)(b) of the India-UAE DTAA a company which is incorporated in the UAE, and which is managed and controlled wholly in UAE is a resident of the UAE.

From the above, it can be observed that both the provisions are not contradictory in their essence as they are based on the international best practices of the real seat theory and the incorporation theory of residence. Although, the inconsistency is with the real seat theory as the term effectively managed and controlled is not defined in the domestic law of the UAE, as per the India-UAE DTAA a foreign incorporated company is to be wholly managed or controlled from the UAE in order to become a tax resident in the UAE.

In other words, the term 'wholly' signifies 100% management and control. However, the term 'effectively' signifies the majority. Thus, in the opinion of the author in such an ambiguous scenario a company may be effectively managed from the UAE and yet not become a resident of the UAE as the term 'wholly managed and controlled' in the DTAA will have an overriding effect.

Additionally, there is a gap between the Federal Decree-Law No. 47 of 2022 (Corporate Tax Law) and the Cabinet Decision No. 85 of 2022 as the corporate tax law does not refer to the cabinet decision. In other words, there is no link or bridge between the corporate tax law and the cabinet decision for determining tax residence.

6) Conclusion

In conclusion, tax treaties play a crucial role in providing a clear framework for businesses and individuals to navigate the complex web of tax laws across different countries. The determination of tax residency status is an important aspect of the taxation system, and it is critical to consider both domestic tax laws and tax treaties to unlock the maximum benefits of tax treaties. In the case of the UAE and India, the India-UAE Double Tax Avoidance Agreement provides a specific provision for determining the tax residency status of individuals that supersedes the provisions of the domestic corporate tax law. Further, there could arise a situation where there could be a harsh provision in the tax treaty as opposed to the domestic law. In such a case the provisions of the tax treaty have to be followed as they supersede the domestic law. While tax treaties provide a clear framework, there may still be unresolved contradictions between domestic laws and tax treaties that need to be addressed to ensure fair and equitable treatment of taxpayers.

PS: According to you, what additional elements in the UAE Corporate Tax Law and the Double Tax Avoidance Agreements of other jurisdictions may be contradictory?

[1] <https://mof.gov.ae/wp-content/uploads/2022/12/Federal-Decree-Law-No.-47-of-2022-EN.pdf>

[2] <https://tax.gov.ae/Datafolder/Files/Legislation/Corporate%20Tax/Cabinet%20Decision%2085%20of%202022%20-%20For%20publishing.pdf>

[3] [https://incometaxindia.gov.in/_layouts/15/dit/Pages/viewer.aspx?path=https://incometaxindia.gov.in/dtaa/10869000000000093.htm&grp=DTAA&searchFilter=\[{%22CrawledPropertyKey%22:1,%22Value%22:%22DTAA%22,%22SearchOperand%22:2},{%22CrawledPropertyKey%22:12,%22Value%22:%22true%22,%22SearchOperand%22:2},{%22CrawledPropertyKey%22:41,%22Value%22:%22UAE%22,%22SearchOperand%22:2}\]&k=&IsDIg=0](https://incometaxindia.gov.in/_layouts/15/dit/Pages/viewer.aspx?path=https://incometaxindia.gov.in/dtaa/10869000000000093.htm&grp=DTAA&searchFilter=[{%22CrawledPropertyKey%22:1,%22Value%22:%22DTAA%22,%22SearchOperand%22:2},{%22CrawledPropertyKey%22:12,%22Value%22:%22true%22,%22SearchOperand%22:2},{%22CrawledPropertyKey%22:41,%22Value%22:%22UAE%22,%22SearchOperand%22:2}]&k=&IsDIg=0)