

On 09 December 2022, the UAE Ministry of Finance released the long-awaited Corporate Tax Law (Federal Decree Law No. 47 of 2022, "CTL"). It will come into effect 15 days after its publication and will be applicable to tax periods commencing on or after 01 June 2023. This legal briefing will provide an overview on the important points and recommended action points.

General & Administrative Matters

Corporate income tax (CIT) will be applicable **starting from financial years commencing on or after 1 June 2023**. Businesses with a financial year starting on 1 January, will be subject to CIT starting from 01 January 2024.

All taxable persons (see definition below) have to register with the Federal Tax Authority to **obtain a tax registration number** (different from the current TRN issued for VAT purposes) and login credentials for the online portal.

Tax returns have to be submitted within 9 months from the end of the respective financial year / tax period. **CIT (if any) has to be paid – also –**

within 9 months from the end of the respective financial year / tax period. **All records and documents related to CIT have to be maintained for a period of 7 years** (following the year to which they are related).

Taxable persons have to prepare and provide the Federal Tax Authority (upon request) **audited financial statements**.

The CTL clarifies many items related to the introduction of CIT in the UAE. However, many details are still subject to additional provisions which are to be included in **Implementing Regulations to the CTL**. These Implementing Regulations have not been published yet.

Taxable Persons

The CTL defines the following Resident Persons and Non-Resident Persons which will be taxable under the law

Resident Persons:

- Any incorporated or established entity in the UAE (including free zone entities)
- An entity duly incorporated under a foreign jurisdiction but effectively managed and controlled from the UAE
- Natural persons conducting business activities (freelancer, sole establishment) in the UAE (?)
- Unincorporated partnerships (if elected to be a taxable person)

Non-Resident Persons:

- Foreign entities or persons with a permanent establishment in the UAE (incl. branch, office, factory, workshop, real estate, building or construction site for at least 6 months)
- Foreign entities deriving income from the UAE
- Foreign entities with a nexus in the UAE

Free Zone Companies

Companies incorporated in free zones, can elect to be excluded from corporate tax under the following the following conditions:

- Maintains adequate substance in the UAE (meeting ESR standards);
- Derives qualifying income;
- Has elected not to be subject to corporate tax;
- Complies with arm's-length-principle and transfer pricing documentation.

Unfortunately, the CTL does not

specify which income will be classified as "qualifying income"; the definition will be provided in the implementing regulations which still have to be issued.

The advantage of such an exclusion is a corporate income tax rate of 0% on taxable income. Income that does not qualify for exclusion will be taxed at a rate of 9%. However, free zone companies choosing to be excluded from corporate income tax cannot be part of a tax group and/or benefit from any tax loss transfer between group companies.

Taxable Income

As per the CTL, the taxable income which is the basis of the calculation of the CIT, is defined and calculated as follows:

Accounting profit / loss

- unrealised gain or loss
- exempted income (dividends from resident persons)
- reliefs
- deductions (expenditures)
- transactions with related parties and connected persons
- tax loss

= Taxable Income

Summary & Recommendations

Although the long-awaited CTL has been finally published and brings some clarity, one of the central questions remains unanswered: How exactly income of free zone companies will be taxed remains unclear. The respective – unpublished – **Implementing Regulations** are expected to shed more light on this topic.

Foreign companies operating in the UAE either through a branch or another form of a permanent establishment will be subject to CIT. Especially, structures where consultants and freelancers have been working for a foreign company in the UAE will be now subject to

corporate income tax.

Companies have to prepare their accounting / finance department for the upcoming tax registration, submission and payment as it will be independent of VAT. Those entities that have not been required to prepare and/or submit audited financial statements until now, will have to start doing it latest in the financial year 2023 (as it will be the opening balance for the first taxable period in 2024).

Furthermore, companies operating in the UAE are advised to review their corporate structures and existing intercompany agreements with

regard to their activities in the UAE.

SCHLÜTER GRAF will monitor the legal development around the newly

issued Corporate Income Tax. In case of any queries please reach out to your usual contact person or to the authors mentioned below.

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