

# UAE Ministry of Finance announces public consultation on corporate tax framework

## In brief

The UAE Ministry of Finance ("MoF") announced on 28 April 2022 a public consultation on the proposed federal corporate tax ("CT") framework. The consultation will run until 19 May 2022 and businesses are encouraged to make their submissions online. The submission link can be found here: <https://www.mof.gov.ae/en/resourcesAndBudget/Pages/Corporate-Tax-Submission-Public-Consultation.aspx>

It should be noted that the content of the public consultation document is not intended to reflect the final view of the UAE government. Therefore, the positions outlined in the consultation document and this client alert should not be relied upon to make firm decisions at this stage.

One key takeaway from the consultation document, which is relevant for those multinational companies that may be subject to the Pillar 2 framework, is that the consultation document does not offer any further insight into the interaction of the UAE CT regime with the Pillar 2 Model Rules. This work remains ongoing.

We have outlined below some of the key points raised in the consultation document.

### ***Immediate consideration for businesses***

The consultation document offers insights into potential conditions that may need to be satisfied to achieve certain treatments under the UAE CT framework, mainly in relation to the formation of a fiscal unity group, the transfer of tax losses between affiliates and the exemption of certain income streams.

From the consultation document, businesses that operate in a UAE free zone that trade with the UAE mainland are unlikely to qualify for the 0% CT rate. Therefore, businesses will need to consider the segregation of free zone and mainland activities to achieve the 0% CT rate.

In addition, the consultation document seems to confirm the need for businesses to have financial (accounts) and other record keeping procedures in place - even if the business is exempt from UAE CT.

Businesses are encouraged to consider key pertinent issues on the UAE CT framework, including aspects that are unclear and that could materially impact their businesses, and provide their comments on the application of the consultation document to those issues, improvements and optimizations accordingly.

## In more detail

### ***In scope entities***

As expected, all UAE established businesses are within the scope of the UAE CT law. The consultation document does highlight the potential exemption from UAE CT for the following businesses:

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- governments;
- wholly-owned government entities listed in a Cabinet Decision;
- natural-resource extraction and exploration that are subject to Emirate-level decrees;
- charities and other public benefit organisations;
- public and regulated private social security and retirement pension funds; and
- investment funds.

The consultation document provides some initial details on the applicability of each exemption.

Furthermore, the consultation document highlights that limited partnerships, general partnerships and other unincorporated vehicles are to be treated as transparent for UAE CT purposes. Limited liability partnerships and other types of partnerships (where there is limited liability) are to be subject to the UAE CT framework.

### ***Treatment of free zone entities***

Free zone entities are expected to be treated as subject to 0% CT provided that they maintain adequate substance and comply with the regulatory requirements. This applies to income generated from outside the UAE and from other entities in any other free zone.

The income of a mainland branch of a free zone entity will be subject to UAE CT, without the free zone entity losing the 0% CT rate for its free zone income.

Passive income (such as dividends, interest, royalties and capital gains) generated from mainland entities by a free zone entity will be subject to 0% CT applicable to the free zone.

However, other payments made by a mainland entity to a free zone entity are expected to be treated as non-deductible in the mainland entity. Income from those payments would also disqualify the free zone entity from eligibility to the 0% CT rate.

### ***Overview of UAE CT framework***

A number of key features are set out in the consultation document. The key ones are:

- A fixed place of business and dependent agent permanent establishment provisions (in line with OECD guidelines) are to be included in the UAE CT framework.
- Exemption of dividend income and/or capital gains if more than 5% shareholding is held, and the foreign subsidiary has been subject to at least 9% corporate tax (or equivalent).
- Foreign branch exemption may be available.
- Interest expense is expected to be limited to 30% of EBITDA.
- Inclusion of transfer pricing regulations, the application of the arm's length principles (in line with OECD guidelines) and the need to have transfer pricing documentation (including making a disclosure of transactions with related parties and connected persons) in place.

### ***Treatment of tax losses***

Tax losses could offset 75% of taxable income within a tax year. Excess tax losses are to be carried forward indefinitely, although could be subject to a change in ownership provision.

Tax losses incurred prior to the introduction of UAE CT or registration for UAE CT are not expected to be available for utilisation.

Tax losses can be shared between entities that have at least 75% common ownership. Tax losses of free zone entities that enjoy the 0% CT rate cannot be shared.

### ***Group tax consolidation***

A fiscal unity can be formed between group entities where there is at least 95% ownership in the entities. This will allow for a single consolidated tax return to be filed by the group.

Entities within the fiscal unity are jointly and severally liable for the tax position.

***How is CT expected to be administered?***

The deadline for the filing of the tax returns and payment of the tax is expected to be 9 months after the end of the financial year.

The CT return would be on a self assessment basis and will be reviewed by the FTA in line with the Tax Procedures Law.

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Our UAE tax team, [Reggie Mezu](#) and [Ben Phillips](#), would be happy to support you with drafting and/or reviewing any submissions to the public consultation. Please feel free to contact Reggie or Ben for any queries relating to the UAE CT, any tax related matters, or issues generally.

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