Corporate Tax introduction in the UAE

Summary of the Corporate Tax Law

February 2023

Introduction

On 9 December 2022, the United Arab Emirates (UAE) published the Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses (herein referred to as CT Law). This milestone development follows an announcement made earlier this year that the UAE planned to introduce a federal corporate tax (CT) regime effective for financial years (FY) starting on or after 1 June 2023, and the subsequent release of the Public Consultation Document (PCD) in April 2022.

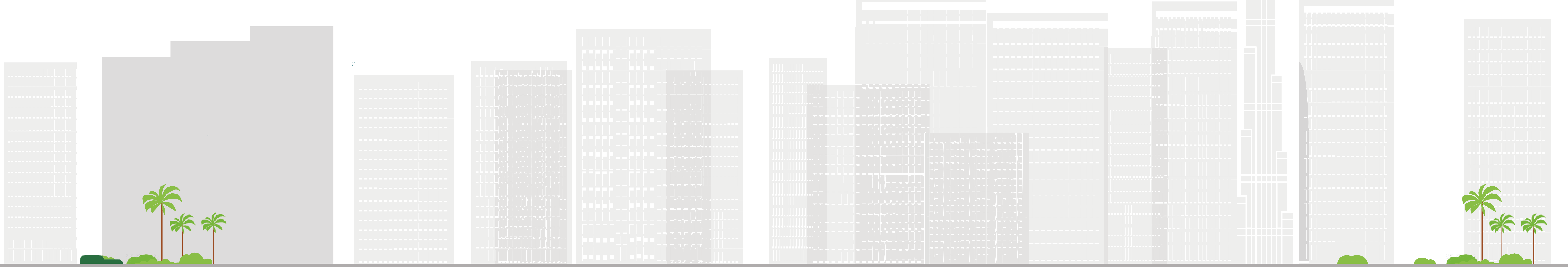
Noticeably, the CT Law has predominantly mirrored the PCD, having expanded the relevant conditions as well as defining critical terms, especially in the space of general anti-abuse rules (GAAR), Transfer Pricing (TP) and transitional rules. Also, the CT Law has taken into consideration of the UAE's extensive network of tax treaties as well as the increasing need to adhere to international standards i.e., specifically the Global anti-abuse Erosion (GloBE) Rules.

For large multinationals (MNCs) subject to Pillar Two under GloBE Rules, the Ministry of Finance (MoF) has indicated in the updated FAQs that until such time Pillar Two is adopted in the UAE, MNCs shall be subject to CT under the regular UAE CT regime. The highly anticipated Qualified Domestic Minimum Top-up Tax (QDMTT) which shall be implemented in multiple jurisdictions has yet to be explicitly mentioned in the CT Law. The unique macro-environment of having significant number of UAE-based large family groups would mean that most of these family groups are more likely than not, to be subject to Pillar Two - it remains to be seen as to how MNCs subject to Pillar Two will be taxed in the UAE.

While Businesses should welcome the clarity the CT Law (including the extensive FAQs) will now provide in relation to the taxation of their income in the UAE, one should still be mindful that these provisions may be subject to varying interpretations by law practitioners, tax professionals, industry subject matter experts (SMEs) and attempts to benchmark against the law of other jurisdictions with a developed tax system such as the United Kingdom, Singapore, Netherlands, etc. This is especially the case for Free Zone (FZ) entities/ presences where the rules surrounding FZ Persons are brief; UAE boosts more than 45 FZs in a space of 83,600km square, with the Jebel Ali FZ (JAFZA) as the largest in the world.

On this note, we would expect to see refinements (such as rules, practice or guidance notes, inclusion of new definitions/ terms, and even a further updated FAQ, etc.) in subsequent Cabinet Decisions at the suggestions of the MoF and/ or the Federal Tax Authority (FTA), as well as relevant authorities and bodies in the coming weeks/ months.

In this document, we have summarised the key features of the UAE CT Law.



CT rate for businesses

- 0% on taxable income not exceeding AED 375,000; and
- 9% on taxable income exceeding AED 375,000.

CT rate for a Qualified FZ Person

- 0% on Qualifying Income; and
- 9% on non-Qualifying Income.
- Note that, FZ Persons qualifying can also make an election to be subject to CT at the normal rate.

Taxable persons

1.Exempt person:
Exempt persons include a Government (and controlled) entity, a person engaged in an extractive business/ non-extractive natural resource business, a qualifying public benefit entity and a qualifying investment fund, a public/ private pension or social security fund and a juridical person incorporated in UAE that is wholly owned and controlled by an exempt person as specified.

2.Resident person:
Resident persons will include a juridical person (i) incorporated in UAE (including FZ Person), (ii) incorporated in a foreign jurisdiction that is effectively managed and controlled in UAE and (iii) a natural person who conducts a Business or Business Activity in UAE.

3.Non-resident person:
A non-resident person is a person who is not considered a resident person and that either (i) has a permanent establishment (PE) in UAE, or (ii) derives UAE sourced income, or (iii) has a nexus in UAE.

4.Qualified FZ Person:
A FZ Person that (i) maintains adequate substance in UAE, (ii) derives Qualifying Income, (iii) has not elected to be subject to CT and (iv) complies with the Arm's length principle and TP documentation.

CT base

- Resident person (i) juridical and (ii) natural (if relates to Business or Business Activity conducted in UAE) shall be subject to CT on taxable income derived from UAE or from outside UAE.
- On the other hand, a non-resident person is subject to CT on the taxable income that is attributable to (i) the PE of the non-resident person in UAE, (ii) the nexus of the non-resident person in UAE, and/ or (iii) UAE sourced income that is not attributable to a PE of the non-resident in UAE.

Currency

All amounts must be in AED. Any non-AED amounts must be converted to AED following exchange rates set by UAE Central Bank.

Calculating taxable income

- Taxable income is determined by making adjustments to net accounting income,such as unrealized gain or loss, exempt income, reliefs, deductions, TP adjustments, tax loss relief, incentives or special reliefs as specified.
- A taxable person who prepares financial statements (FS) on an accrual basis may elect to take into account gains and losses on a realisation basis in relation to assets and liabilities (i) subject to fair value or impairment accounting or, (ii) held on capital account at the end of the tax period.

Foreign PE exemption

A resident person can make an election to not take into account the income, and associated expenditure of its foreign PE. The exemption shall apply to all foreign PE that are subject to tax at a rate not less than 9%.

Participation exemption

- Dividends paid by a foreign subsidiary, and capital gains on the sale of shares in a foreign subsidiary are exempt, subject to meeting the conditions.
- Domestic dividends from UAE companies including dividends from FZ Persons are exempt from CT.
- Capital gains on the disposal of shares in a FZ company may be exempt subject to meeting the conditions.

Transfers within a Qualifying Group

Subject to meeting the conditions, no gain or loss shall arise for the transfer of one or more assets or liabilities between two taxable persons that are members of the same Qualifying Group. Note that a holding period of a minimum two years post date of transfer is applicable.

Business restructuring relief

Subject to meeting the conditions, no gain or loss shall arise in a qualifying business restructuring exercise between two taxable persons.

Deductible expenses

Expenditure incurred are tax deductible in the tax period incurred if,
- wholly and exclusively for the production of the taxable person's business;
- not capital in nature; and
- not disallowed or partially disallowed in the CT Law.

Non-deductible expenses

- Deductibility of entertainment expenses is capped at 50% subject to exclusions.
- No deductions allowed for non-qualifying donations, fines or penalties, bribes or related payments, dividends or profit distribution, certain taxes, etc.

Interest deductibility cap

- Deductibility of net interest expenses is capped at 30% of the Earnings before interest, taxes, depreciation, and amortization (EBITDA) subject to exemptions and exclusions.
- The Net Interest Expenditure disallowed may be carried forward and deducted in the subsequent ten Tax Periods in the order in which the amount was incurred.
- Interest capping is not applicable to banks, insurance businesses and other regulated financial services entities.

TP

- Transactions and arrangements between RPs must meet the arm's length standard, subject to exceptions and exclusions.
- TP adjustments may be made if RP transactions (RPTs) are not considered to be at arm's length.
- A taxable person may be required to file a disclosure Form for RPTs with its RPs and Connected Persons together with their tax return.
- TP documentations must be maintained if a taxable person's transactions with its RPs for a tax period meet certain conditions. If requested by the FTA, these must be submitted within 30 days.

Tax loss reliefs

- Subject to meeting the conditions and limitations in place, tax losses can be carried forward indefinitely.
- Tax loss used to reduce the taxable income for any subsequent tax period cannot exceed 75% of the taxable income for that tax period before any tax loss relief.
- No tax loss relief available for losses incurred before the commencement of CT.

Transfer of tax loss

- Tax loss may be transferred to another UAE group company with profits, subject to meeting the conditions.
- Tax loss cannot be transferred from exempt companies or those benefitting from a 0% FZ CT regime.

Tax group

- Subject to meeting the conditions, UAE resident group/ branches of companies may choose to form a tax group where the parent company directly/ indirectly holds at least 95%.
- The parent company is responsible for the administration and payment of CT on behalf of the tax group.
- Note neither the parent company nor the subsidiary is an exempt person or a Qualifying FZ Person.
- The parent company and the subsidiaries have the same financial year end and prepare their FS using the same accounting standards.

Taxable income of tax group

- Parent company to consolidate the financial performance and eliminate transactions between the parent company and each subsidiary that is a member of the tax group.
- Where there are changes to the tax group (entry and exit of a Subsidiary), the treatment of the unutilised tax losses varies.

Tax credits

- To reduce double taxation, a credit (FTC) (subject to a cap) will be allowed for the tax paid in a foreign jurisdiction against UAE CT liability arising from the foreign sourced income that has not been otherwise exempted.
- Any unutilized foreign tax credit will not be able to be carried forward or back to other tax periods, nor refunded.

Anti-abuse rules

A GAAR where the FTA may counteract or adjust the taxable basis if it has been found that tax advantages are obtained as result of any transaction or arrangement.

Clarifications

Taxable persons may make an application for (i) concluding an Advanced Pricing Agreement and (ii) clarifying the application of the CT Law.

International agreements

The CT Law will not override the terms of international agreements in force in UAE.

Transitional rules

- The opening balance shall be the closing balance sheet prepared for financial reporting purposes under accounting standards applied in UAE on the last day of the financial year that ends immediately before the first tax period commences, subject to exceptions.
- It should be prepared taking into consideration the arm's length principle.
- The GAAR shall apply to transactions or arrangement entered into on or after the date of the CT Law is published in the Official Gazette.

Registration

A business subject to CT will need to register with the FTA and obtain a Tax Registration Number (TRN) within a prescribed period.

Document requirements

Documents explaining the information contained within the CT return submitted should be retained for a period of seven years.

Filing and payment

- Only one tax return per tax period is required. A provisional CT return or advance CT payment is not required.
- The due date to submit each tax return to the FTA and to settle the CT liability is within nine months from the end of the relevant tax period, or by the date stipulated by the FTA.
- CT payable should be settled within nine months from the end of the relevant tax period, or as stipulated by the FTA.
- A refund for CT can be claimed under certain circumstances.

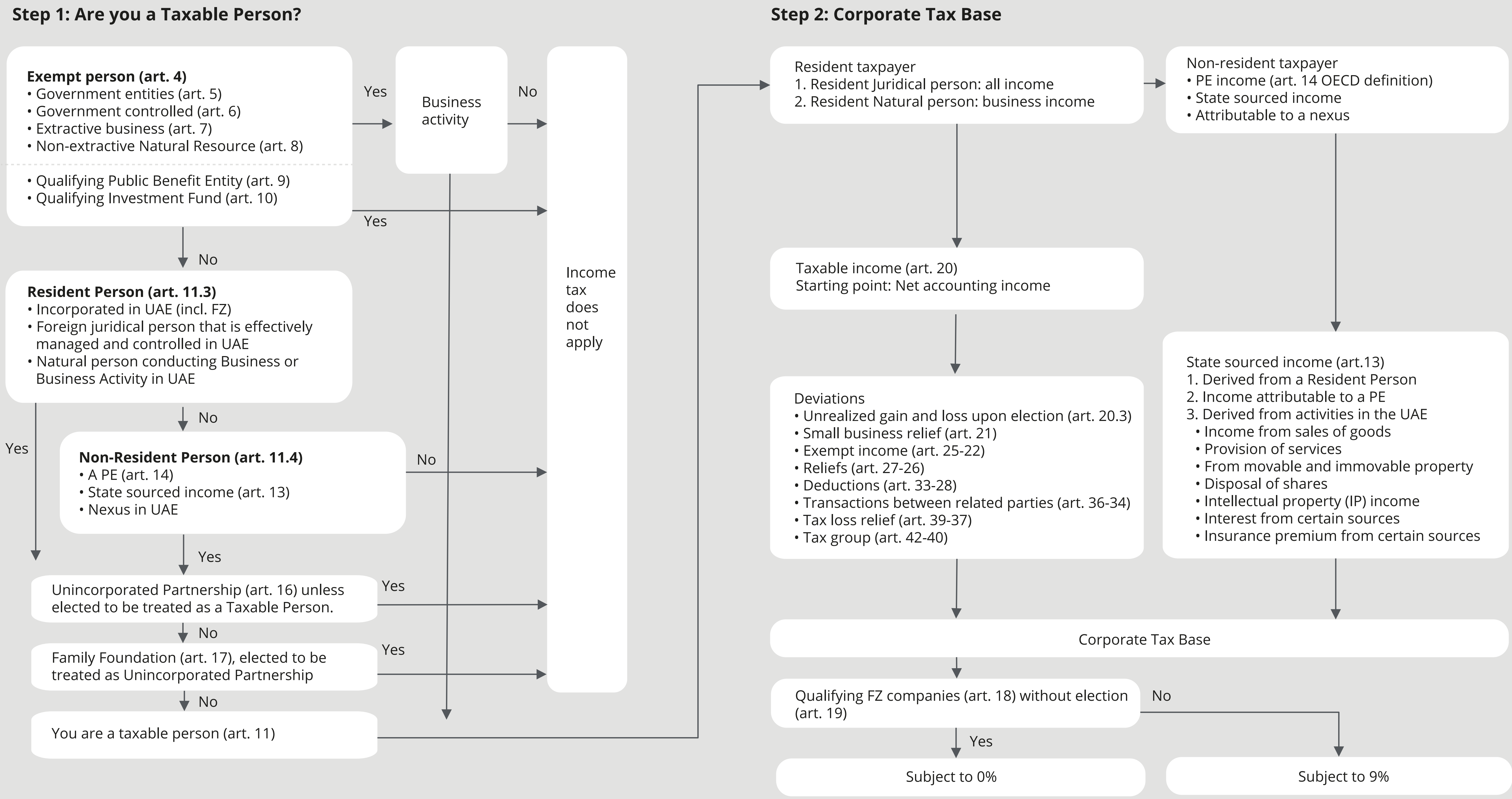
Assessment

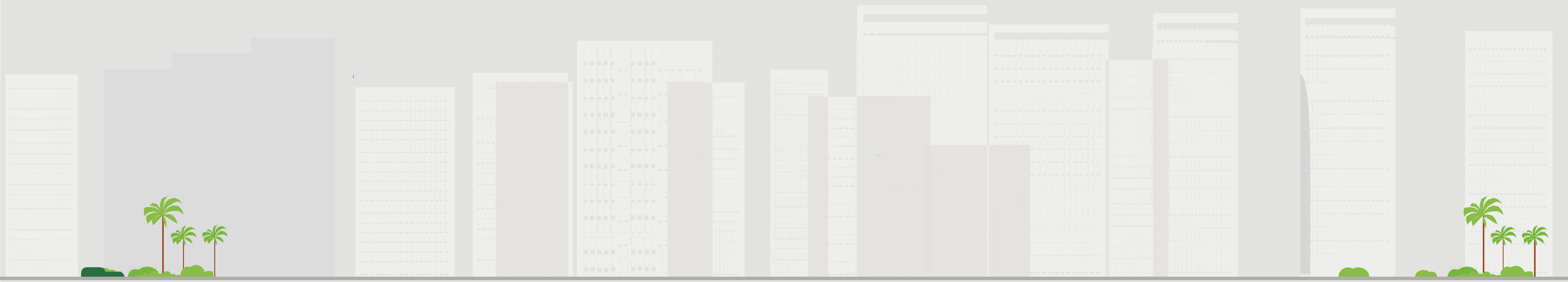
- The UAE CT regime will be based on a self-assessment principle.
- Penalties and fines for any violations will be determined on case-by-case basis.

Other reliefs/ exemptional schemes

- Investment Manager exemption.
- Partners in an unincorporated partnership.
- Family foundation.
- Non-resident person operating aircraft or ships international waters.

UAE Income Tax Law





Contacts

We have a dedicated CT team based in the UAE who have in-depth experience and can support you throughout your readiness journey.

If you require assistance at any stage during the CT implementation, please get in touch with one of our tax experts listed on the following page.

You can also contact us and submit all your queries on this email cituae@deloitte.com. More information:
We have developed a webpage which hosts our full suite of materials dedicated to the implementation of CT in the UAE. The content provides businesses with guidance during this transitional period and will be updated regularly. Access the webpage by clicking here.