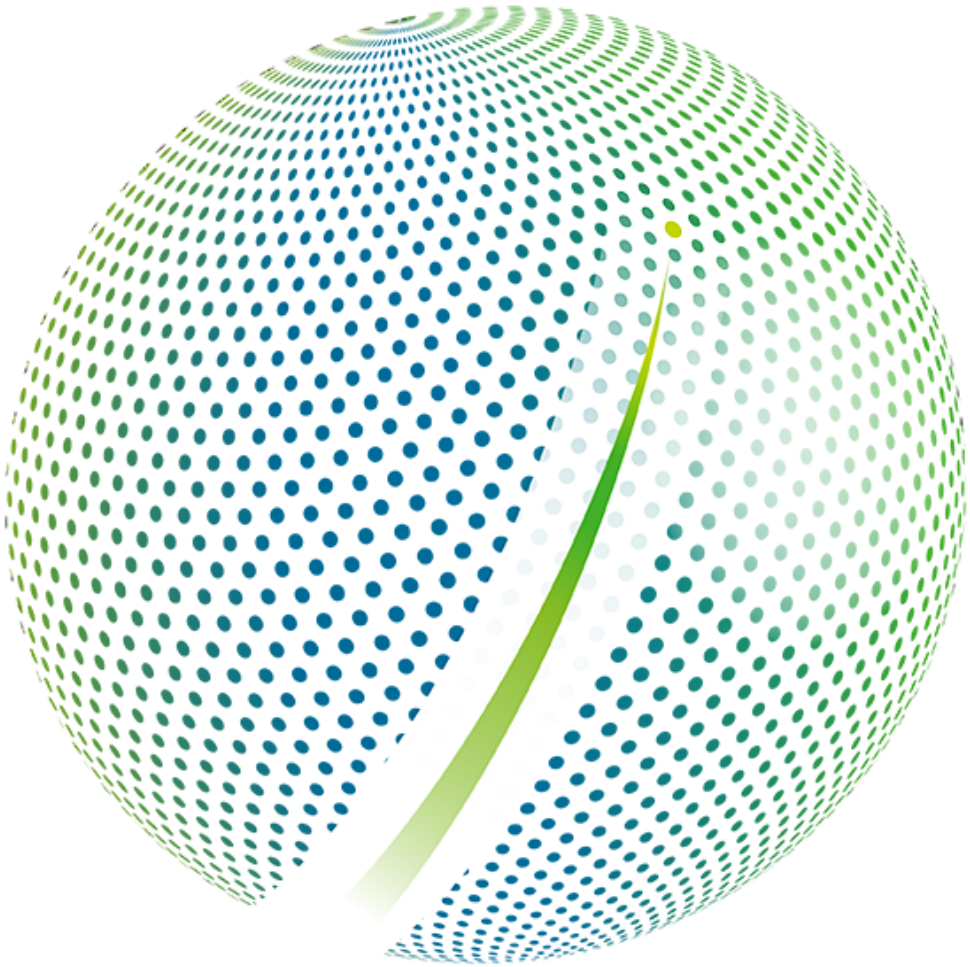
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UAE Fixed Establishment risk for non-residents

Have you considered your residency status for UAE tax purposes?

October 2026

100 Years in the Middle East

Overview

UAE non-residents often undertake business activities in the UAE through third-party service providers or locally based dedicated staff. Where this arrangement constitutes a Fixed Establishment for UAE VAT purposes, the non-resident may already be exposed to UAE VAT obligations without realizing it.

The Federal Tax Authority (FTA) is closely reviewing specific staffing arrangements, specifically where overseas businesses rely on locally employed individuals to carry out specific business functions in the UAE. Regardless of who formally signs their employment contracts, the FTA may classify the overseas entity as having a Fixed Establishment in the UAE as a result of this arrangement. There have been instances where the FTA has viewed an overseas entity as having a UAE establishment for VAT purposes, even where the UAE non-resident has no direct employees, premises or assets of their own in the UAE.

The consequences of a Fixed Establishment in the UAE can be significant and, in many cases, unexpected.

Why this matters

From a VAT perspective, a non-resident's Place of Residence affects various areas. However, key implications include:

01

The non-resident's supplies may become subject to UAE VAT

5% VAT

Under UAE VAT law, the default place of supply of services is the supplier's Place of Residence. Where an overseas entity is deemed to have a Fixed Establishment in the UAE, its supplies made through that establishment are treated as UAE supplies – and therefore subject to UAE VAT at the standard rate of 5%.

Crucially, this exposure is not limited to future supplies. Registration obligations would arise from the date UAE supplies first commenced from the Fixed Establishment (potentially dating back years before any inquiry is raised by FTA) with VAT liabilities and therefore potential penalties applying since such time.

02

The non-resident falls in-scope of UAE e-invoicing

Non-residents are subject to UAE e-invoicing where they are undertaking a business in the UAE (with specific exceptions) and are required to issue a tax invoice to a business or government customer. However, obligations can drastically change where the non-resident is considered to have a Fixed Establishment in the UAE, as the entity will no longer be considered "non-resident". This may require changes to internal systems and processes to align with UAE regulatory requirements.

Non-compliance with e-invoicing requirements could lead to significant penalties, emphasizing the importance for non-residents to assess whether they are considered to have a UAE Fixed Establishment.

03

Zero-rating positions may no longer hold

UAE-based suppliers who zero-rate services to overseas clients on the basis that the recipient is a non-resident must ensure that condition is fulfilled. One of the requirements for zero-rating is that the recipient does not have a Place of Residence in the UAE that is most closely connected to the supply in question. Where a recipient is found to have a UAE Fixed Establishment that effectively receives the benefit of those services, zero-rating is denied and a supply previously treated as zero-rated becomes subject to 5% VAT. For suppliers or recipients who have not priced this in, and for commercial arrangements structured without UAE VAT in mind, this represents a material and often overlooked risk.

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Substance over form in practice

The FTA appears increasingly willing to look past contractual structure and focus instead on economic reality. Where individuals in the UAE (formally employed by a third party such as a local distributor or service provider) are effectively dedicated to carrying out the functions of an overseas entity, the FTA may treat those individuals as satisfying the "sufficient human resources" criterion in the definition of Fixed Establishment for VAT purposes, regardless of who the legal employer is.

How a Fixed Establishment can arise

Overseas entity
No direct employees, premises or assets in the UAE

Local third party
Distributor or service provider is the legal employer

Dedicated UAE staff
Carry out the functions of the overseas entity

Fixed Establishment
"Sufficient human resources" criterion may be met

This risk is particularly prevalent in:

Exclusive Distribution Agreements

Where a UAE-based distributor dedicates personnel to supporting or promoting an overseas principal's business.

Outsourced or managed service structures

Where a local entity provides dedicated personnel to a foreign business on an ongoing basis.

The FTA's focus is not on who signs the employment contract. It is on who controls, directs, and derives commercial benefit from the individuals' activities on the ground in the UAE.

Less decisive

Who signs the employment contract

The FTA's focus

Who controls, directs and derives commercial benefit

A matter of legal interpretation
However, this position is not without nuance. The statute does not expressly require a direct, legal employment relationship to establish "sufficient human resources." Nonetheless, it equally does not confirm that indirectly employed individuals can satisfy this criterion. The matter remains one of legal interpretation, and there is currently limited precedent on the matter.

As a result of the above, navigating this effectively requires a proactive, well-documented position (not a reactive one). Additionally, such arrangements may also have implications from a broader tax perspective including Corporate Tax (as briefly discussed below).

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The intersecting risk: UAE Corporate Tax

The FTA is expected to strictly mirror its VAT focus on economic reality by enforcing a parallel "substance over form" approach under the Federal Decree-Law No. 47 of 2022 on Corporate Tax ("UAE CT Law"). Accordingly, if an overseas business relies on UAE-based personnel, whether through exclusive distribution channels, managed services, or locally outsourced dedicated staff, this presence may also trigger a **Permanent Establishment (PE)** risk under the provisions of Article 14 of the UAE CT Law (unless such activities performed in the UAE are preparatory or auxiliary in nature).

The FTA may evaluate this cross-border risk through two distinct domestic statutory tests:

Fixed Place PE

If the local staff operate continuously from a specific workspace, office, or facility that is effectively at the disposal of the foreign business, it may create a physical taxable presence in the UAE for the non-resident person.

Dependent Agent PE

If the UAE-based individuals habitually exercise authority to negotiate or conclude commercial contracts on behalf of the non-resident person, and such contracts are routinely concluded without material modification by the head office, a taxable nexus may be construed to have been established.

Once a PE is triggered

9%

statutory CT rate on profits directly attributable to the UAE presence/operations

- The non-resident person may be construed as a taxable person for the purposes of the UAE CT Law.
- All dealings between the UAE PE and the head office must be determined in accordance with the UAE Transfer Pricing (TP) rules, including attributing the appropriate profits (or losses) and associated costs to the PE in line with the arm's length principle.
- The non-resident person must also comply with annual TP documentation requirements, subject to applicable thresholds, including submission of the TP Disclosure Form alongside the CT return, as well as maintaining a Local File and Master File.

Place of Effective Management (POEM)

Beyond PE exposure discussed above, businesses must also evaluate the significant risk of Corporate Tax residency as per provisions of the UAE CT Law concerning POEM [Article 11(3)(b)]. The FTA applies POEM to determine where key management and commercial decisions necessary for the conduct of the business as a whole are, in substance, made.

If executive directors, senior managers, or key decision-makers reside in the UAE or habitually conduct strategic meetings from within the country, the non-resident person can be reclassified as a resident person for UAE CT purposes. It is important to note that the POEM assessment is based on where key management and commercial decisions are, in substance, made – not merely on the physical location of individuals.

PE	Unlike a PE, which only targets profits allocated to local presence in the UAE
POEM	**a POEM determination brings the non-resident person's entire worldwide income directly into the scope of the UAE CT Law, resulting in such worldwide income being taxed at the rate of 9% in the UAE.**

Therefore, taking a holistic and proactive approach to reviewing and managing such positions is key.

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Practical implications for taxpayers

If your business has cross-border operations involving UAE-based personnel, the following questions are worth considering carefully:

From a UAE VAT perspective

1. Do any individuals based in the UAE carry out functions that primarily serve or benefit an overseas entity in your group or supply chain? If so, who exercises real control over those individuals day-to-day?
2. Has the VAT treatment of your cross-border supplies been reviewed in light of the FTA's current focus on substance over contractual form for potential Fixed Establishments?
3. Are any zero-rating positions applied by UAE entities in your supply chain contingent on a recipient's non-residency status in UAE that has not been recently tested?
4. Where a non-resident entity in the group is considered to have a Fixed Establishment in UAE, could a retrospective assessment by the FTA create a material exposure for the concerned business(es) or transaction(s)?

From a UAE CT perspective

1. **PE Assessment:** Has the business conducted a functional analysis to determine if local staff activities (such as negotiating or concluding contracts) inadvertently create a taxable PE for the non-resident person?
2. **POEM Exposure:** Are key strategic, operational, and commercial decisions for any non-resident person being made by personnel or directors while physically present in the UAE, potentially exposing such non-resident person to UAE CT on its worldwide income?
3. **TP Compliance:** Are the arrangements and recharges between the non-resident person and its UAE presence conducted in compliance with the arm's length principle, and is this backed by proper local TP documentation?
4. **Registration and Audit Exposure:** Is the non-resident person prepared for any potential retrospective tax assessments and penalties from the FTA if a PE is deemed to have existed historically without proper CT registration and compliance?

These are not hypothetical questions. They reflect the lens through which the FTA is actively examining cross-border structures in the UAE today.

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Contacts

If you have any questions or would like to discuss the potential impact of deemed fixed establishments on your business, please reach out to your Deloitte contact or any of the contacts below:



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Deloitte Middle East would be happy to help readers understand how to apply the principles set out in this guide to their specific circumstances.

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