UAE Corporate Tax

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Key Highlights of Draft Law – Public Consultation Document

The Ministry of Finance (MOF) is a welcome move w.r.t. UAE Corporate Tax Law, have released a document providing important law provisions to invite comments from public / businesses / impacted parties.

The document covers provisions related to:

- Taxable Persons
- Basis of Taxation
- Calculation of Taxable Income
- Tax Group
- Transfer Pricing
- Calculation of tax Liability
- International Tax Developments
- Administrations

We have tried to summaries the important provisions and interpretations in the below publication.

#	Head	Provision	Points to Ponder!
Taxable Persons			
1.	**Natural Persons**	Tax only in on Income generated out of any activity that requires a Commercial / Trade License in UAE Partners of unincorporated JVs or associations having taxable income Following income of UAE or Foreign Individuals and Private / Family Trusts having natural persons as beneficiaries are out of scope: i. Employment Income ii. Dividends and Other Investment Incomes iii. Rental Receipts from UAE Real Estate Investment	What about... Individuals involved in any commercial activity outside UAE are not considered as residents for tax purposes, hence should not be taxed

#	Head	Provision	Points to Ponder!
Taxable Persons			
2	**Legal Persons**	**Corporate Tax is applicable on:** i. UAE Companies ii. Limited Liability Partnerships (LLP) iii. Private Shareholding Companies iv. Public Joint Stock Companies **v. Legal persons incorporated in a foreign jurisdiction that are effectively managed and controlled in the UAE will be treated as if they were UAE incorporated entities** **vi. Unincorporate partnerships in cross border context – follow the tax treatment in respective foreign jurisdiction**	What about... Large corporate houses in UAE having business interests in GCC countries or in no tax countries?? Most likely, businesses in countries having tax will get the benefit of DTAA Provision on unincorporated partnerships in cross border context needs more clarity
3	**Exempt Persons – Government or Government Owned Entities**	Government or Government Owned Entities, exempt automatically or by way of application: **Out of Scope on Automatically** Wholly Government-owned UAE companies limited to the activities carried out a sovereign or mandated activity **Out of Scope on Application** Subsidiaries of Government owned entities engaged in sovereign or mandated activity **Within Scope of UAE CT** Any business activity carried out directly by the Government under a trade license	--
4	**Exempt Persons – Natural Resources**	**Outside Scope of UAE** Income from the extraction and exploitation of natural resources directly earned by the Government, or royalties and other fiscal levies raised by the Government from the extraction or production of natural resources by private sector companies **Exemption** Wholly or partially privately owned under long-term concession agreements	No concession to any suppliers, contractors or subcontractors used by the concession holder

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Taxable Persons			
5	**Exempt Persons – Charities and Public Benefit Organizations**	**Exemption** Only if applied and listed in Cabinet Decision issued by Ministry of Finance	Application and eligibility criteria Periodic information reporting obligation
6	**Exempt Persons – Investment Funds**	**Exemption** Subject to fulfillment of criteria prescribed by the MOF	--
7	**Exempt Persons – Free Zone Entities**	**0% CT Rate if**: i. Transactions only with businesses located outside UAE ii. Transactions with same Free Zone or Other Free Zones iii. Transactions in Mainland through a Branch – Income other than sourced from branch iv. Transactions in Mainland without a Branch – only if income from mainland is passive income i.e. interests, royalties, dividend and capital gain v. Transactions in Mainland without a Branch and other than passive income – if free zone is a designated zone under VAT Law **Mainland land company buying from group company in Free Zone – purchase value will be allowed as deductible expense**	**Mandatory requirement of audited financial statements for claiming 0% tax rate** There seems to be a disadvantage in case of transactions between mainland and free zone group companies Free zone cannot have any other income from mainland, otherwise will be taxed as mainland entity **Free zone benefits are subject to test of PE in mainland**
Basis of Taxation			
8	**Residents**	i. All legal person incorporated in UAE ii. Natural person engaged in a business or commercial activity in the UAE, either in their own name or through an unincorporated partnership iii. Foreign company may be treated as a resident person if it is effectively managed and controlled in the UAE iv. UAE resident persons will be taxable in the UAE on their worldwide income except natural person	Natural persons should pay tax on the income earned outside UAE as per the tax law in the country where income is generated

#	Head	Provision	Points to Ponder!
Basis of Taxation			
9	**Permanent Establishment**	**Fixed Place of Business Test** Branch, Office, Temp. Field Office or Employee Home, Factories, Workshop – business carried on above 6 months **Fixed Place Exempted from PE** Preparatory or auxiliary services like marketing, promotion, market research or attending seminars also storage place for holding goods for supply to local customers **Dependent Agent Test** Dependent agent test" may be met where business travelers or UAE based persons act on behalf of the foreign company in the UAE and have, and habitually exercise, the authority to conclude contracts in the name of foreign company	Shops / stalls of foreign companies in exhibitions for a period of > 6 months Sales team of Free Zone company operating in Mainland, needs to be closely w.r.t. the powers with sales team to negotiate or conclude contracts
Calculation of Taxable Income			
10	**Calculation of Taxable Income**	**Financial Statements – Book Profits** Corporate tax is proposed on book profits, implies financials books to be true and fair as per the IFRS standards **Financial Year** Flexibility to use financial accounting year as tax period or else Georgian Calendar to be followed **Unrealized Gains or Losses** Capital Items – Should not be considered for tax Revenue Items – Should be considered for tax	Requirement of financial statements as per IFRS is very clear No mention about Depreciation rates, may result in difference in book and taxable profits

#	Head	Provision	Points to Ponder!
Calculation of Taxable Income			
11	**Exempt Income**	**Dividends & Capital Gains** -Dividend & Capital Gain on sale of Share of a Subsidiary Company by Corporate Shareholder - Domestic Dividend earned by UAE Mainland Companies including from Free Zone Companies - Dividends paid by foreign companies, and capital gains from the sale of shares in both UAE and foreign companies subject to 1. UAE Shareholder must own at least 5% in that Company 2. Foreign entity should be subject to minimum 9% of CT **Foreign Branch Exemption** UAE companies having Foreign Branch can either (i) claim a foreign tax credit for taxes paid in the foreign branch country, or (ii) elect to claim an exemption for their foreign branch profits **Other Exemption** Income earned by a **non-resident** from operating or leasing **aircraft or ships** (and associated equipment) used in international transportation, provided the same tax treatment is granted to a UAE business in the relevant foreign jurisdiction under the reciprocity principle.	Understanding Exemption and its conditions are the key for the UAE Businesses. Special care to be taken for business earning Dividends income from Subsidiaries based in Tax Free Countries
12	**Expenses Deduction**	**Interest Capping Provision** Amount of net interest expense to be capped @ 30% of a business' EBITDA, as adjusted for CT purposes Interest Paid to Related Party should be at ALP with proper commercial reason to obtain Loan. Deduction on Interest Expense would be allowed if Related Party Lender is Subject to CT @ 9% on the Interest Income.	Mechanism for Calculation EBITDA as adjusted for CT is still unclear.

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<tr><th>#</th><th>Head</th><th>Provision</th><th>Points to Ponder!</th></tr>
<tr><td colspan="4">Calculation of Taxable Income</td></tr>
<tr><td>13</td><td>Expenses Deduction</td><td>Non-Deductible Expenses
- Related Party payment to FZ entities subject to 0% Taxation.
- Cap on expenditure incurred to entertain customers, shareholders, suppliers and other business partners- 50%
- Block Deduction :
- administrative penalties,
- recoverable VAT,
- donations paid to an organization that is not an approved charity or public benefit organization</td><td>Ambiguity on Why capping 50% On Entertainment Expenses.

Business needs to clearly identify and create proper tagging for such disallowed expenses</td></tr>
<tr><td>14</td><td>Losses</td><td>i. Offset Loss incurred in one period against the taxable income of future periods, up to a maximum of 75% of the taxable income in each of those future periods.
ii. No Limit on Timeframe to carry forward the loss subject to Shareholders holding 50% of Share capital remain the same
iii. No Tax Relief for
- Losses incurred before the effective date of CT;
- Losses incurred before a person becomes a taxpayer for UAE CT purposes
- Losses incurred from activities or assets which generate income that is exempt from UAE CT
- Losses incurred by a Free Zone Person that are not attributable to a PE in the mainland.</td><td>Goods for Business as offset of Losses is allowed but it is subject to capping of 75%

Business having accumulated losses still have to pay Tax on 25% of Unadjusted Profit.

Shareholding structure & change in it to be carefully documented.</td></tr>
<tr><td colspan="4">Group Provisions</td></tr>
<tr><td>15</td><td>Tax Group</td><td>i. Parent holding 95% or more of the share capital directly or indirectly through subsidiaries
ii. No Tax Group with an exempt or Free Zone entity
iii. All group members must have same financial year
iv. Consolidate financial statements for all entities in a Tax group</td><td>It appears that separate financial statements will be required for each member in the tax group, that would be consolidated in the financial statements of the parent company.

Concept of combined financial statements of multiple entities in a tax group may not be accepted.</td></tr>
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#	Head	Provision	Points to Ponder!
Group Provisions			
16	**Transfer of Losses**	i. Common holding of 75% ii. No transfer from exempt or 0% Free Zone entity iii. Tax loss offset will not exceed 75% of the taxable income	Specifically for entities not in a tax Group
17	**Intra-group Transfer of Assets and Liabilities**	i. Common holding of 75% ii. Assets / Liabilities will be transferred at book values iii. Assets / Liabilities transferred to remain for a minimum period of 3 years	--
18	**Restructuring Relief**	i. Qualifying restructuring transaction ii. Whole business, or independent parts of a business, are transferred in exchange for shares or other ownership interests iii. Assets / Liabilities will be transferred at book values iv. Assets / Liabilities transferred to remain for a minimum period of 3 years or else restructuring relief will be 'clawed back'	--
Transfer Pricing			
19	**Related Parties**	**Rules for Determining Related Parties** i. Individuals - related to Fourth Kinship or affiliation ii. Individual & Legal Entity – Individual alone or together with other Related Parties owns directly or indirectly more than 50% in share capital or control iii. Two or more Legal Entity – One Legal entity alone or together with other Related Parties owns directly or indirectly more than 50% in share capital or control iv. Two or more legal entities- taxpayer alone, or with a related party, directly or indirectly owns a 50% share of each or controls them. v. Taxpayer and branch or PE vi. Partners of Unincorporated partnership vii. Exempt and non-exempt business activities of the same person	Related Parties need to be carefully identified as it would be having impact on Transactions entered with them. Family tree and legal organization chart needs to be maintained carefully and would require regular updation.

#	Head	Provision	Points to Ponder!
Transfer Pricing			
20	**Connected Person**	Connected Person are different from Related Party It includes i. An individual who directly or indirectly has an ownership interest in, or controls, the taxable person ii. A director or officer of the taxable person iii. A Individual related to director, owner or officer of Taxable person iv. Related party of the above Payment made to Connected Person allowed as deduction only if business can demonstrate - corresponds with the market value of the service provided & - incurred wholly and exclusively for business purpose	Benchmarking the **Market value** for the services rendered by the Connected Person would be key to claim the deduction. Documentation on Benchmarking these transaction
21	**Arm's Length Principle & TP Documentation**	**All Related Party** transactions and transactions with Connected Persons will need to comply with transfer pricing rule. ALP Principle set out in OECD TP Guidelines will be required to follow. Documentation required - Master File - Local Files as per OECD Guidelines	Domestics Transfer Pricing will follow on Domestic related Party Transaction without any monetary limit set. Will increase the compliance & Documentation burden on Taxpayer to prove ALP for transaction with Related Party & Connected Person
Calculation of Tax Liability			
22	**Applicable CT Rates**	**Tax Rates as below:** Taxable Income Up to than 375,000- 0% Taxable Income exceeding than 375,000- 9% Relief to SME – Simplified Tax reporting obligation	Slab wise Tax rates is Applicable

#	Head	Provision	Points to Ponder!
Transfer Pricing			
23	**Withholding Tax**	Withholding Tax @ 0% on domestic and cross-border payments made by UAE businesses.	Relief provision for the UAE Business
24	**Tax Credit**	Tax Paid in Foreign Jurisdiction will be allowed as Tax Credit against UAE CT Liability. The max cap on Tax credit is : - The amount of tax that paid in the foreign jurisdiction; or - The UAE CT payable on the foreign sourced income Limitation to carry forward unutilized Foreign Tax Credit or ask for the refund of the same	It would be important to have proper set of documentation to claim the Foreign Tax Credit.
Administration			
25	**Registration, Deregistration**	i. Business Subject to CT needs to register with FTA and obtain Tax Registration Number. ii. Deregistration application within 3 months from the date of cessation iii. Deregistration after all Return have been filed and All Taxes/ penalties due settled	Details required for CT Registration is still pending. Businesses needs to adhere to Deregistration timelines to avoid penalties
26	**Filing, Payment & Refund**	**Return** i. Single Tax Return for each Tax period ii. No Provisional CT Return iii. No Advance Payment **Due Dates** i. CT Return to e filed and payment to be made within 9 months from the end of Tax Period	Sufficient timeline available for Businesses to asses and compute Tax liability
27	**Assessment, Clarifications & Documentations**	i. Self-Assessed tax computation and filing ii. Clarification can be sought if clarity is required on taxation on the proposed or agreed transaction from Authority. iii. Audit of FS as per applicable Company law and FZ regulations iv. Audited FS Mandatory for FZ who wanted to claim 0% CT Benefit.	Businesses needs to take be careful in calculation and sufficient backup/ documentation to be available. Audited FS would play an important role

About US:

- **NIRA** is boutique consulting firm drawing strength from NIMAI's strong presence and proven credentials in GCC region specifically in UAE and RAMA's expertise on business process management, technology and compliances.
- Widening Nimai's vision "To be the Financial Consultant of choice by virtue of its superior service quality", in 2017 NIRA came into existence integrating RAMA's expertise & credentials on Business Consulting services.
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