DECODING THE UAE'S CORPORATE TAX SHIFT

WITH HOURANI & PARTNERS' TRADE AND TAX LEADER

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SUMMARY

The United Arab Emirates (UAE) has long been a preferred destination for businesses and investors from around the world. Its strategic location and investor-friendly policies have made it a global hub for commerce, finance, and innovation. However, in a significant move that marked a departure from the country's long-standing tax-free stance, the UAE Ministry of Finance announced the Corporate Income Tax Regime (CIT) in January 2022. As businesses and investors grapple with what this may mean for them, Zain Satardien, Trade and Tax Leader at Hourani & Partners, recently shared his insights with Hubbis, offering clarity on the various facets of the new tax system.

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MORE ABOUT ZAIN SATARDIEN

Zain Satardien is a qualified attorney who currently leads the International Trade and Tax Law service line at Hourani & Partners Law Firm in Dubai, UAE. His core areas of expertise lie in WTO and international trade law, GCC tax law, corporate regulatory and related litigation. Drawing on 15 years' experience, and with a precise approach to the practice of international trade and tax law, Zain works with multi-nationals and government authorities to provide them with legal and strategic trade and tax advice. As Hourani & Partners' International Trade and Tax Law leader, Zain advises various major clients on international trade law, customs law, tax law (such as income tax, excise tax, transfer pricing rules, zakat, withholding tax, economic substance) and related litigation. Zain's practice extends across the GCC in these areas, and just recently, the practice received the "Tax Law Firm of the Year" Award at the ALB Middle East Law Awards 2023, presented by Thomson Reuters.

Zain has authored numerous articles on a variety of areas of Tax Law in the GCC region, and is also a Lexis Nexis Middle East Award Winning Author for his contributions. He recently published a book with Lexis Nexis Middle East, titled "Global Trade Law in the Middle East: Essential Principles for the Gulf States", which is the first and only of its kind for the GCC. He is currently completing his Doctor of Laws in Customs Valuation and Transfer Pricing law.

Could you briefly set the scene as to why the new corporate tax was activated, when it became effective, what it is precisely, and what entities are now within this net?

On 31 Jan 2022, the UAE Ministry of Finance announced the launch of the Corporate Income Tax Regime (CIT). CIT is applicable to taxpayers either 1 June 2023 or 1 Jan 2024, contingent upon the fiscal year of the business. "CIT will be levied on the net profits/income of the business. For businesses earning a taxable income less than AED 375,000, the rate of CIT would be 0%," explains Zain. "For businesses earning a taxable income of more than AED 375,000, the rate of CIT is set at 9%. For multinational entities having a group of companies meeting the Pillar 2 of the OECD (Organization for Economic Cooperation and Development) BEPS (Base Erosion and Profit Shifting) criteria, the rate of CIT would be relatively higher, which is currently envisaged to be a minimum of 15%." The UAE's Corporate tax law is designed to establish a tax system that encourages foreign investment and offers clear exemptions. This structure seeks to promote transparency, and maintain a neutral corporate tax environment. "The framework also aims to positively impact the flow of investments into the UAE by making it more appealing to international investors, as well as strengthening the country's position as a preferred global investment destination," Zain reports.

Are capital gains and dividends received also included in the CT, or only 'ordinary' business profits?

"There are no specific capital gains provisions under the UAE Corporate Tax Law," says Zain, "and therefore, as a general rule, any gain or loss (as the case may be) on disposal of capital assets would form part of the taxable income, which would be subject to 0% or 9% tax rate as the case may be."

"However," Zain clarifies, "gains earned from participating interests that meet the requirements under the law will not be subject to corporate tax."

Is every company included, from the smallest to the largest, or are there specific thresholds applicable?

"As mentioned earlier, CIT will be levied on the net profits/income of the business, and for businesses earning a taxable income less than AED 375,000, the rate of CIT would be 0%. For businesses earning a taxable income of more than AED 375,000, the rate of CIT is set at 9%," reported Zain. However, under the Corporate Tax Law, the UAE offers 'Small Business Relief' for companies that qualify as small businesses and are tax residents in the country. This relief aims to lessen the administrative requirements for these businesses, especially during the initial phases of the Corporate Tax system. "According to the Federal Tax Authority's Small Business Relief Guide, any eligible Taxable Person (being a Resident Taxable Person with revenue below or equal to AED 3,000,000 in a relevant Tax Period and all previous Tax Periods ending on or before 31 December 2026) can elect to be treated as having no taxable income in that period," Zain explains, "and will not be obliged to calculate its taxable income or complete a full tax return."

Will losses be allowable to offset profits, and will any losses be allowed to be carried forward?

"Taxable persons can offset tax losses incurred against the taxable income of subsequent tax periods, which cannot exceed 75% of the taxable income for that tax period," says Zain. "Any remaining tax loss amount can be carried forward to a further subsequent tax period indefinitely." The legislation also permits group companies to transfer tax losses between group entities, provided they meet specific criteria outlined in the law, explained Zain.

How does this relate to controlling interests any UAE companies might have in overseas companies or other entities and to transfer pricing or inter-group transactions?

Zain expanded on his earlier comments, noting that UAE companies with stakes in overseas entities might be taxed on the income and profits they receive from these entities. However, he says, "unless the UAE entity meets the requirements for the foreign participation exemption, under the UAE Corporate Tax Law, the income will not be exempted." Moreover, he reports, transactions between associated entities must be carried out without undue influence, or at market rates, also known as 'at arm's-length.'

What are the implications for family offices registered in the UAE (including those within the 'free' zones)?

"As a general rule, all juristic persons would be subject to corporate tax, and this would include family offices," reports Zain. "However, the corporate tax law avails options to help family offices restructure their businesses and protect family wealth in a tax-efficient manner, and allows family offices to potentially benefit from the qualified free zone persons tax rate of zero percent where certain requirements are met."

What are the implications for foundations registered in the UAE (including those within the 'free' zones)?

"The UAE Corporate Tax Law does provide certain tax incentives for Foundations as well", says Zain. "While the law regards foundations and similar wealth

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consolidation structures as taxable entities by default, it does allow a foundation to make an application to the Federal Tax Authority for it to be treated as a transparent legal entity, meaning that the individuals connected to the Foundation, namely the founder(s) and qualified recipients (beneficiaries), rather than the Foundation itself, will be treated as taxable persons under the Corporate Tax Law, which may lead to taxation benefits for these persons."

What do the companies, or the shareholders of any entity required to pay this corporate tax, need to do next?

"Companies need to explore whether their current structures are tax efficient and tax compliant," says Zain. Furthermore, companies should consider taking the following into account in adopting a proactive and informed approach in discharging new corporate tax obligations:

- Compliance in a fast-changing environment
- Requirements for regulatory oversight
- Restructuring to obtain tax efficiency and potential zero rating or exemptions
- Ensuring that any approvals required under the law for tax benefits are duly obtained
- Consider cross border transactions for tax efficiency or savings (including double taxation agreements)

What is the long-term view of this new scheme coming into place? What are the implications (if any) for personal taxes (income, dividends, capital gains, inheritance tax, etc)?

"The UAE currently does not impose income tax on individuals' salaries, personal income, passive income, or investment income," reports Zain. "Please note however that the law does impose corporate tax on natural persons considered to be conducting 'a business or business activity' in the UAE, and such income earned will be subject to tax at the rate of 9%," Zain clarifies. "Natural persons therefore need to confirm whether income from their earning activities would be susceptible to Corporate Income Tax," notes Zain.

Furthermore, Zain also noted that there is no indication from official sources that these changes are a precursor to much higher corporate taxes in the UAE in the foreseeable future. ■