



Newsflash:
**UAE releases Federal Decree on the Taxation of
Corporations and Businesses (Law No. 47 of
2022)**

Newsflash

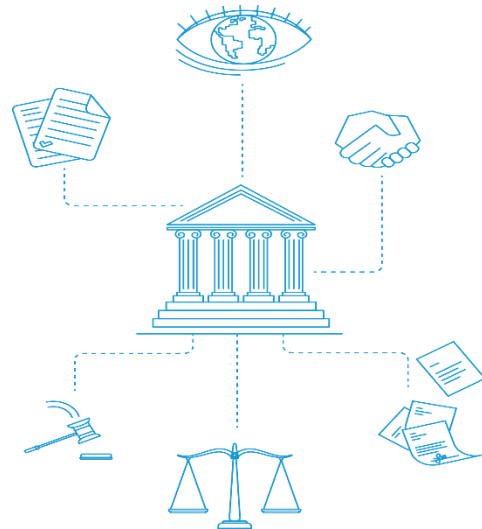
UAE releases Federal Decree on the Taxation of Corporations and Businesses (Law No. 47 of 2022)

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1.0 Background

1.1 United Arab Emirates ('UAE') has issued the **Federal Decree-Law No. 47 of 2022** on the taxation of Corporations and Businesses in December 2022 and which would be effective from period commencing on or after 1 June 2023. This has come following the roll out of initial guidance for Implementation of Corporate Taxation ('CT') on 31 January 2022 by the Ministry of Finance ('MoF') of UAE.

1.2 After announcement of CT, there have been regular developments by government of UAE in this context, which are summarized in the below table:

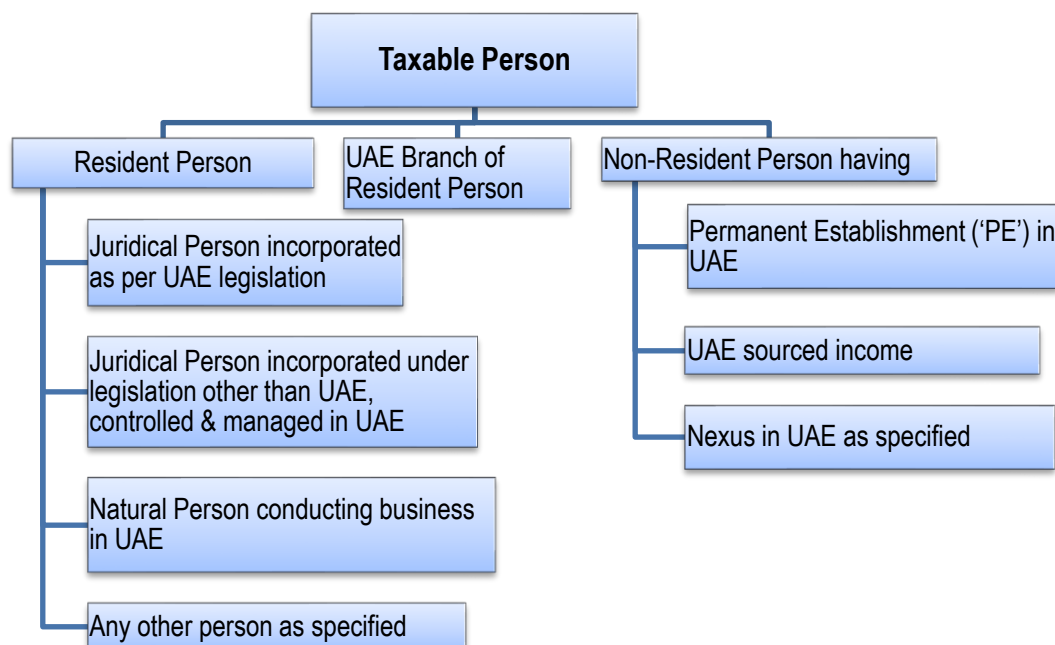


Date	Event	Document
31-Jan-22	Announcement to Introduce Corporate Tax in UAE	News Announcement, Initial guidance followed by FAQs
28-Apr-22	Public Consultation Document released	Public Consultation Document (this was later removed from public domain)
02-Sep-22	Issuance of resolution for Determination of Tax Residency	Cabinet Resolution No. (85) of 2022
04-Nov-22	Issuance of New Tax Procedures Law	Federal Decree Law No. 28 of 2022 on Tax Procedures
09-Dec-22	Issuance of Corporate Tax Law	Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses

2.0 Provisions of the Corporate Tax Law

In this newsflash, some of the relevant and important provisions/ Articles of Decree Law (DL) published in December 2022 have been discussed hereinbelow.

2.1 Taxable Person – Following shall be considered as taxable persons in UAE:



2.2 Corporate Tax Rate and Tax Period

2.2.1 Corporate Tax Rate

Corporate Tax Rate shall be imposed on the Taxable Income at the following rates:

Rate	Particulars
0%	Upto Specified Amount ¹ of AED 3,75,000
9%	Exceeding Specified Amount of AED 3,75,000

However, the Corporate Tax Rate for Qualifying Free Zone Person ('QFZP') shall be imposed at the following rates:

Rate	Particulars
0%	Specified ² Qualifying Income
9%	Other than Qualifying Income

¹ Specified in a decision issued by the Cabinet at the suggestion of the Minister – AED 3,75,000

² As specified in a Cabinet Decision at the suggestion of the Minister - to be issued

2.2.2 Tax Period

A Taxable Person's Tax Period is the Financial Year (Calendar year i.e. 1 January – 31 December) or part thereof for which a Tax Return is required to be filed, or the 12 month period for which the Taxable Person prepares financial statements.

Change of tax period is available on application subject to conditions to be set by the Authority.

2.3 Exemptions from Corporate Tax

2.3.1 Exempt Taxpayers

Following shall be **exempt from Corporate Tax**, subject to fulfillment of certain specified conditions in DL:

- Government Entity³
- Government Controlled Entity ('GCE')⁴
- Persons engaged in Specified Extractive Business and Specified Non-extractive Natural Resource Business subject to fulfillment of specified conditions mentioned in DL
- Qualifying Public Benefit Entity ('QPBE')
- Qualifying Investment Fund
- A public pension/ social security fund or private pension/ social security fund
- A juridical person incorporated in UAE, wholly owned and controlled by specified exempt persons
- Any other Person as may be determined

Aforementioned exemption(s) are subjected to additional provisions specified in DL.

2.3.2 Exempt Income

Further, subject to fulfillment of certain conditions specified, following income shall be exempt from Corporate Tax:

- Dividends and other profit distributions received from a resident juridical person
- Dividends and other profit distributions received from a Participating Interest in a foreign juridical person as specified in Article 23⁵
- Any other income from a Participating Interest as specified in Article 23

³ & ⁴Government and GCE carrying on licensed business are not exempt.

⁵ Income from a 'Participating Interest' shall be exempt from Corporate Tax wherein participating interest means, a 5% or greater ownership interest in the shares or capital of a juridical person. Qualifying conditions for participating interest are provided in Article 23.

- Income of a Foreign PE as specified in Article 24⁶
- Income derived by a Non-Resident Person from operating aircraft or ships in international transportation

2.4 Corporate Tax Base (Scope of Taxation)

Following are the conditions to be subjected to Corporate Tax:

	Resident Person	Non- Resident Person ('NR')
Juridical Person	Taxable Income derived from the UAE or from outside UAE	<ul style="list-style-type: none"> ✓ Taxable Income that is attributable to the PE of NR ✓ UAE Sourced Income that is not attributable to the PE of NR
Natural Person	Income derived from the UAE or from outside the UAE insofar as it relates to the Business/ Business Activity conducted in UAE.	<ul style="list-style-type: none"> ✓ Taxable Income that is attributable to the nexus of the NR in the UAE as determined⁷

2.5 UAE Sourced Income

Income shall be considered UAE Sourced Income when:

- Derived from Resident Person
- Derived from NR and the income received has been paid or accrued in connection with, and attributable to a PE of that NR in UAE
- Accrued in or derived from activities performed, assets located, capital invested, rights used, or services performed/ benefitted in or from UAE

Further, the relevant provision also provides for an illustrative list of UAE sourced income to include Income from the sale of goods or provision of services in UAE, movable or immovable property in UAE, contracts performed or benefitted from or in UAE, etc.

2.6 Rules for Determining Taxable Income

The taxable income of each taxable person shall be determined separately on the basis of standalone financial statements prepared as per accounting standards in the state of UAE.

Such taxable income shall be determined on the basis of certain specified adjustments like unrealized gain or loss, exempt income, incentives, reliefs, deductions, tax loss, transaction with related / connected parties, special reliefs etc.

⁶ Article 24 provides for exemption/ exclusion of income on election basis of Foreign PEs in cases wherein relevant foreign jurisdiction have a corporate tax rate of atleast 9%.

⁷ determined in a decision issued by the Cabinet pursuant to paragraph (c) of Clause 4 of Article 11 of this DL (as discussed in Para 2.4 above)

A taxable person that prepares the financial statements on accrual basis may elect to take into account gain and losses on realization basis in relation to specified assets and liabilities.

2.7 Establishment of Permanent Establishment ('PE') in UAE

Following instances are provided to constitute PE of NR in UAE:

Fixed Place PE	<ul style="list-style-type: none"> ✓ Fixed or permanent business place in UAE through which the Non-resident conducts any part of their business × Fixed or permanent place used solely as under not to constitute PE: <ul style="list-style-type: none"> - Storing, displaying, or delivering of goods - Keeping a stock of goods for processing by NR; - Purchasing goods or collecting information - Activity of a preparatory or auxiliary × Mere presence of natural person do not constitute PE if such presence is due to temporary and exceptional situation; × Employee of NR person would not constitute PE if such natural person is not engaged in core income generating activity and NR does not derive income from UAE
Agency PE	<ul style="list-style-type: none"> ✓ A person has & habitually exercises an authority to conduct Business/ Business Activity in UAE on behalf of the NR
Other	Any other form of nexus in UAE as specified by cabinet

It is pertinent to note that Investment Managers (engaged in brokerage and investment management) acting in independent capacity on behalf of a NR, would not constitute agency PE.

2.8 Taxability of Partners in an Unincorporated Partnership and Family Foundation

An Unincorporated Partnership shall not be considered as a Taxable Person in its own right, and persons conducting a Business as an Unincorporated Partnership shall be treated as Individual Taxable Persons. Alternatively, partners shall be taxable in Individual capacity.

A Family Foundation can make an application to the Authority to be treated as an Unincorporated Partnership, subject to fulfillment of conditions specified therein.



2.9 Qualifying Free Zone Person ('QFZP')

A QFZP is a person is a free zone person that meets all of the following conditions:

- Maintains adequate substance in the state of UAE
- Derives Qualifying Income as specified
- Has not elected to be subject to Corporate Tax under this DL
- Complies with Arm's Length Principle and Transfer Pricing Documentation as per DL
- Meets any other conditions as may be prescribed by the Minister.

Additional provisions have been provided for clarification on tax period relevant on QFZP. QFZP can elect to pay Corporate Tax at the rates other than applicable on QFZ effective from start of Tax Period of election or its successive Tax period

2.10 Small Business Relief

A Taxable Person may elect for not deriving any Taxable Income for a Tax Period where revenue of such relevant tax period and previous tax periods doesn't exceed the threshold to be set by Minister and subjected to fulfillment of conditions specified thereof. Such an election is also subject to forgoing of certain provisions w.r.t. certain exempt incomes, reliefs deductions, tax loss relief and Transfer Pricing documentation as specified in DL.

2.11 Tax Reliefs

Gain/ loss in relation to the transfer of one or more assets or liabilities between two Taxable Persons that are members of the same Qualifying Group not to be considered for the purpose of calculation of Taxable Income. Certain conditions have also been specified for being treated as members of such a group.

Gain/ loss in relation to certain specified Business Restructuring circumstances has also been exempted from consideration in calculation of Taxable Income.

2.12 Deductible and Non-Deductible Expenditure

Deductible in the Tax Period in which it is incurred	Not Deductible
Expenditure wholly incurred for purpose of Taxable Person's Business: ✓ Not capital in nature If Expenditure incurred for more than 1 purpose, deduction would be allowed for: ✓ Any identifiable part or proportion of the expenditure incurred wholly and exclusively for the purposes of deriving Taxable Income	× Expenditure not incurred for the purposes of the Taxable Person's Business × Expenditure incurred in deriving Exempt Income × Losses unrelated to the Taxable Person's Business × Donations, grants or gifts made to a Non-Qualifying Public Benefit Entity (QPBE) × Fines and penalties, other than amounts awarded as compensation for damages or breach of contract × Bribes or other illicit payments

Deductible in the Tax Period in which it is incurred	Not Deductible
✓ An appropriate proportion of any unidentifiable part or proportion of the expenditure incurred for the purposes of deriving Taxable Income that has been determined on a fair and reasonable basis	× Dividends, profit distributions or benefits of a similar nature × Amounts withdrawn from the Business by a natural taxable person × Corporate Tax × Input Value Added Tax incurred by a Taxable Person × Tax on income imposed on the Taxable Person outside the UAE × Such other expenditure as specified

Interest expenditure is deductible in the Tax Period in which it is incurred, subject to certain conditions.

Taxable Person's Net Interest Expenditure shall be deductible up to 30% of the Taxable Person's accounting earnings before the deduction of interest, tax, depreciation and amortization (EBITDA) for the relevant Tax Period, excluding any Exempt Income and any disallowed amount may be carried forward and deducted in the subsequent 10 Tax Periods in the order in which the amount was incurred.

No deduction would be allowed for Interest incurred on a loan obtained in respect of certain specified transactions directly or indirectly undertaken with Related Party in respect of certain specified transactions.

Allowed deduction of 50% of any entertainment, amusement, or recreation expenditure incurred during a Tax Period incurred for the purposes of receiving and entertaining the Taxable Person's customers, shareholders, suppliers or other business partners.

2.13 Transfer Pricing Provisions

In determining Taxable Income, transactions and arrangements between Related Parties must meet the arm's length standard by determining arm's length result by below Transfer Pricing (TP) methods:

- The comparable uncontrolled price method;
- The resale price method;
- The cost-plus method;
- The transactional net margin method;
- The transactional profit split method; and

It is also provided to opt for any other method as well wherein none of the above methods can be reasonably applied.

DL provides for adjustment in cases wherein result of Related Party Transaction does not fall within the arm's length range. The concept of corresponding adjustment on account of any adjustment in or outside UAE is also provided.

➤ **Meaning of Related Parties**

Related party defined as under:

Natural persons: Related within the fourth degree of kinship or affiliation

A natural person and a juridical person:

- the natural person or one or more Related Parties of the natural person are having atleast 50% direct or indirect shareholders/ ownership;
- the natural person, alone or together with its Related Parties, directly or indirectly Controls the juridical person.

Two or more juridical persons

- Owning atleast 50% ownership interest directly or indirectly in each other;
- One juridical person directly or indirectly controls other;
- any Person directly or indirectly owning atleast 50% ownership interest in or Controls such two or more juridical persons

A Person and its PE; Partners of unincorporated Partnership; a trustee, founder, settlor or beneficiary of a trust or foundation and its related parties; are also considered as related party.

Further, "Control" means the ability of a Person, whether in their own right or by agreement or otherwise to influence another Person, including:

- the ability to exercise 50% (fifty percent) or more of the voting rights of another Person.
- the ability to determine the composition of 50% (fifty percent) or more of the Board of directors of another Person.
- the ability to receive 50% (fifty percent) or more of the profits of another Person.
- the ability to determine, or exercise significant influence over, the conduct of the Business and affairs of another Person.

➤ **Payments to Connected Persons**

A payment/ benefit provided by a Taxable Person to its Connected Person is deductible to the extent the payment/ benefit corresponds with the Market Value of the service, benefit or otherwise provided by the Connected Person and is incurred wholly and exclusively for the purposes of the Taxable Person's Business. Conditions to be considered as a Connected Person have also been provided as under:

- An owner of the Taxable Person;
- A director or officer of the Taxable Person;
- A Related Party of any of the Persons referred above.

➤ **Transfer Pricing Documentation**

Taxpayers falling within the scope of Transfer Pricing applicability would be required to file together with their tax return a disclosure containing information regarding the Taxable Person's transactions and arrangements with its Related Parties and Connected Persons. Further, such a person, on fulfillment of conditions specified, may also be required to maintain and submit a master file and a local file.

Authority may ask for submission of master file, local file and any other information to support the arm's length nature of transactions within a period of 30 days or any such later date.

2.14 Treatment of Tax Loss

Tax Loss can be offset against the Taxable Income of subsequent Tax Periods to the extent¹⁰ of 75% of total taxable income of such period. However, no such offset would be allowed for losses incurred;

- prior to 01 June 2023;
- before a person become taxable person;
- from an asset or activity, the income of which is exempt

➤ **Transfer of Tax Loss**

Tax Loss or a portion thereof may be offset against the Taxable Income of another Taxable Person where specified conditions as under are met:

- Both Taxable Persons are juridical persons;
- Both Taxable Persons are Resident Persons;
- Either Taxable Person or any third party has a direct or indirect ownership interest of at least 75% in the other or each of the Taxable Persons (Common Ownership)
- Common ownership must exist from start to end of the Tax Period
- None of the Persons are an Exempt Person or QFZP;
- Both taxable persons follows same financial year and accounting standards.

➤ **Limitation on Tax Losses Carried Forward**

Tax Losses can only be carried forward and utilized in subsequent year subject to conditions as specified under:

- the same person or Persons continuously owned at least a 50% ownership interest in the Taxable Person;
- The Taxable Person continued to conduct the same or a similar business following any change in ownership of more than 50%

¹⁰ Or any other percentage as shall be prescribed

2.15 Certain Tax Aspects for a Tax Group ('TG')

Subject to certain conditions specified in DL, following are some key aspects of a TG -

TG's Key Aspects	Related Provisions
Formation and cessation¹¹	<p>A Resident Person, shall be referred to as a "Parent Company", can make an application to the Authority to form a Tax Group with one or more other Resident Persons, each referred to as a "Subsidiary" subject to fulfilment of the following:</p> <ul style="list-style-type: none"> ✓ Any Resident Juridical Parent with one or more Resident Juridical Subsidiaries ✓ One or more subsidiaries of a Government Entity ✓ The parent company owns atleast 95% directly or indirectly; ✓ Neither the parent nor subsidiary is exempt/ QFZP ✓ The parent and subsidiary have same financial year and follows same accounting standards
Treatment	Single Taxable Person – represented by the Parent
CT Liability	All members are Jointly and Severally liable for relevant tax periods
Date of Formation	Beginning of tax period specified in application or determined by the Authority
Date of Cessation	Beginning of tax period specified in application or determined by the Authority or in which specified formation conditions are no longer met
Determination of Taxable Income	Parent is liable to consolidate financial results of TG members to determine Taxable Income of such TG
Unutilized Tax Losses	<ul style="list-style-type: none"> • Pre-Grouping Tax Losses of Subsidiary – Carried forward as TG's tax losses and allowed to set off to the extent of Subsidiary's Taxable Income • Pre-Grouping Tax Losses of TG – New Subsidiary member not allowed to set off against such member's taxable income • Tax Losses after Subsidiary departure from TG – Remain with TG except pre-grouping tax losses of such departing subsidiary • Tax Losses after cessation of TG – Remain with Parent if such Parent continues to be a Taxable Person, otherwise not allowable with an exception to pre-grouping tax losses of subsidiaries

2.16 General Anti-abuse Rules

This applies to a transaction/ arrangement if it can be reasonably concluded that such transaction/ arrangement is not for a valid commercial or other non-fiscal reason which reflects economic reality and main purpose or one of purpose of the transaction is to obtain a Corporate Tax advantage. In case the Authority determines any transaction as subject

¹¹ By an application to the authority

to the general anti-abuse rules, it can make compensating adjustment to the corporate tax liability.

2.17 Withholding Tax, Withholding Tax Credit ('WTC') and Foreign Tax Credit ('FTC')

Withholding of tax at 0% on UAE sourced income of a Non-Resident unless specified or attributable to PE or any other income as specified.

Corporate Tax can be reduced by the amount of WTC for that Tax Period and any excess to corporate tax payable is allowed as refund.



Corporate Tax can be reduced by the amount of FTC for the relevant Tax Period to the extent of the amount of Corporate Tax due on the relevant income, subject to maintenance of all necessary records for the purposes of claiming FTC. Any unutilized FTC cannot be carried forward or carried back.

Order of settlement of Corporate Tax:

Withholding Tax Credit ('WTC') → Foreign Tax Credit ('FTC') → Any other relief specified¹² → Tax Payable

Further, it is pertinent to note that all amounts to be quantified in UAE dirham and any other currency amounts to be converted at applicable exchange rate set by Central Bank of UAE.

2.18 Tax Registration & Deregistration

Particulars	Tax Registration	Tax Deregistration
Applicability	Any Taxable Person	<ul style="list-style-type: none"> ✓ Cessation of Business/ Business Activity ✓ Paid all Corporate Tax and Administrative Penalties due ✓ Filed all Tax Returns due
Effective Date	Date the person became Taxable	Date of cessation or from such other date determined

¹² As per the decision issued by the Cabinet at the suggestion of the Minister

2.19 Other Procedural Aspects

➤ Tax Returns and Clarifications

A taxable person must file a Tax Return, **within 9 months from the end of the relevant Tax Period**, or by such other date as directed. An inclusive list has been provided for information to be mandatorily filed in such a return.



➤ Financial Statements

Authority may request submission of Financial Statements and issue a decision requiring audit of financial statements of a certain category.

➤ Record Keeping and Tax Period

Maintenance mandated of all supporting records and documents of a Tax return and Exempt Person's status for a period of **7 years** by a Taxable Person and an Exempt person respectively.

➤ Payment and refund of Corporate Tax

Corporate Tax would be required to be settled within 9 months from the end of the relevant Tax Period.

Corporate Tax Refund is available on application in case of WTC or Corporate Tax paid exceeds Corporate Tax payable.

➤ Transitional Rules

A Taxable Person's opening balance sheet for Corporate Tax purposes shall be the closing balance sheet prepared for financial reporting purposes under accounting standards applied in the UAE and by taking into consideration the arm's length principle. Certain exceptions to these rules have been specified as well.

➤ Clarifications

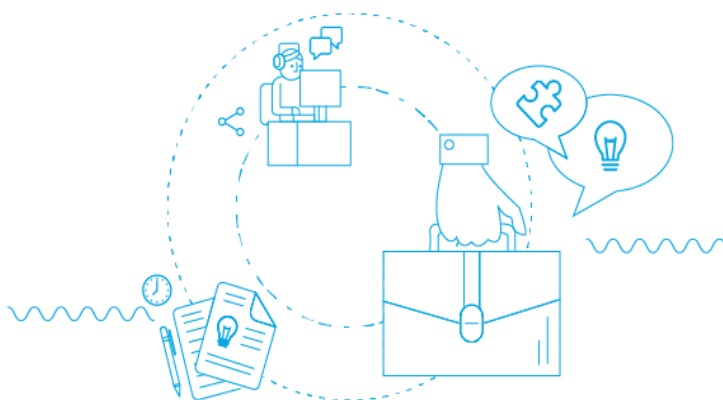
Clarification regarding the application of DL or the conclusion of an advance pricing agreement with respect to a transaction or an arrangement proposed or entered into by the Person is available on application.

➤ Violations and Penalties

A person may be subjected to Corporate Tax assessment and the relevant penalties and fines in accordance with the Tax Procedures Law and the decisions issued in the implementation of its provisions.

2.20 Administrative Policies and Procedures

- With regards to the requirements imposed on a Person under DL, the same shall be issued by the relevant authority in coordination with the Ministry
- All governmental authorities in the UAE shall fully cooperate with the Authority to carry out whatever is required to implement the provisions of DL and provide the Authority with any data, information and documentation in respect of a Taxable Person or an Exempt Person as may be requested by the Authority.
- Corporate Tax revenues and Administrative Penalties collected under DL shall be shared between the Federal Government and the Local Governments.
- International Agreements shall over-rule the provisions of this DL.
- The Minister and the Authority, within their respective powers and the Cabinet, at the suggestion of the Minister may implement decisions related to DL.
- Any text or provisions contrary to or inconsistent with the provisions of this DL shall be abrogated.



3.0 Our Comments

The DL provides guidance and certainty on substantive provisions and would be helpful in analyzing the impact on taxable persons subject to UAE CT regime. It is expected that more clarity would follow through enrollment of rules or circulars. Few areas which may be identified at this time for further clarity are transitional provisions, assessment and refund proceedings, transfer pricing computation and documentation mechanism, taxation in case of companies subject to Global Minimum Tax as envisaged under Pillar Two, provisions of GAAR, foreign tax credit computation mechanism etc.



DL specifically provides that it would not override international agreements and most of the provisions have been kept in alignment with international laws and this would help in interpreting the laws in the initial years wherein there are limited local judicial precedents. Given the limited time available for coming into effect, the taxpayers need to take necessary steps in analyzing the impact and proactive implementation of CT regime and relevant fiscal policies.

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This Newsflash summarizes on the Federal Decree on the Taxation of Corporations and Businesses (Law No. 47 of 2022) released by the UAE Government. It may be noted that nothing contained in this newsflash should be regarded as our opinion and facts of each case will need to be analyzed to ascertain applicability or otherwise of the said judgement and appropriate professional advice should be sought for applicability of legal provisions based on specific facts. We are not responsible for any liability arising from any statements or errors contained in this newsflash.

5 January 2023

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