

Cabinet Decision No. 100 of 2023 on Determining Qualifying Income for the Qualifying Free Zone Person for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses

The Cabinet:

- Having reviewed the Constitution,
- Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses,
- Cabinet Decision No. 55 of 2023 on Determining Qualifying Income for the Qualifying Free Zone Person for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses,
- Pursuant to what was presented by the Minister of Finance and upon the approval of the Cabinet,

Decided:

Article (1)

Definitions

Definitions in Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses shall apply to this Decision, otherwise the following words and expressions shall have the meaning assigned against each, unless the context requires otherwise:

Domestic Permanent Establishment: A place of Business or other form of presence of a Qualifying Free Zone Person outside the Free Zone in the State.

Qualifying Activities: Any activities determined by a decision issued by the Minister and conducted by a Qualifying Free Zone Person from which Qualifying Income is derived.

Excluded Activities: Any activities determined by a decision issued by the Minister and conducted by a Qualifying Free Zone Person from which non-Qualifying Income is derived.

Non-Free Zone Person: Any Person who is not a Free Zone Person.

Qualifying Intellectual Property: Patents, Copyrighted Software and any right functionally equivalent to a Patent that is both legally protected and subject to a similar approval and registration process to a Patent, such as utility models, intellectual property assets that grant protection to plants and genetic material, orphan drug designations, and extensions of Patent protection, but not including any marketing related intellectual property assets, such as trademarks.

Patents: Any patent granted under the law regulating patents in the State or granted under the relevant law of a foreign jurisdiction.

Copyrighted Software: Any copyright subsisting in software granted under the law regulating copyrights in the State or granted under the relevant law of a foreign jurisdiction.

Commercial Property: Immovable property or part thereof used exclusively for a Business or Business Activity and not used as a place of residence or accommodation including hotels, motels, bed and breakfast establishments, serviced apartments and the like.

Designated Zone: A designated zone according to what is stated in Federal Decree-Law No. (8) of 2017 on Value Added Tax, and which has been included as a Free Zone in accordance with the Corporate Tax Law.

Corporate Tax Law: Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses.

Article (2)

Scope of Application

The provisions of this Decision shall apply to Qualifying Free Zone Persons.

Article (3)

Qualifying Income

1. For the purposes of application of Article (18) of the Corporate Tax Law, Qualifying Income of the Qualifying Free Zone Person shall include the below categories of income, provided that such income is not attributable to a Domestic Permanent Establishment or a Foreign Permanent Establishment in accordance with Article (5) of this Decision, or derived from the ownership or exploitation of immovable property in accordance with Article (6) of this Decision, or considered Taxable Income under Clause (2) of Article (7) of this Decision:
 - a. Income derived from transactions with a Free Zone Person, except for income derived from Excluded Activities.
 - b. Income derived from transactions with a Non-Free Zone Person, but only in respect of Qualifying Activities that are not Excluded Activities.
 - c. Income derived from the ownership or exploitation of Qualifying Intellectual Property under Clause (1) of Article (7) of this Decision.
 - d. Any other income provided that the Qualifying Free Zone Person satisfies the de minimis requirements under Article (4) of this Decision.
2. For the purposes of paragraph (a) of Clause (1) of this Article, income will be considered as derived from transactions with a Free Zone Person where that Free Zone Person is the Beneficial Recipient of the relevant services or Goods.
3. For the purposes of this Article, the term “Beneficial Recipient” shall mean a Person who has the right to use and enjoy the service or the Good and does not have a contractual or legal obligation to supply such service or Good to another person and the term “Good” shall mean tangible or intangible property that has economic value in dealing including movable and immovable property.
4. For the purposes of determining whether a Qualifying Free Zone Person has a Domestic Permanent Establishment, the provisions of Article (14) of the Corporate Tax Law shall apply and the expression “Qualifying Free Zone Person” shall be used instead of the expression “Non-Resident Person”, and the expression “geographical areas outside the Free Zones in the State” shall be used instead of the word “State”, wherever used in that Article.

Article (4)

De minimis Requirements

1. The de minimis requirements shall be considered satisfied where the non-qualifying Revenue derived by the Qualifying Free Zone Person in a Tax Period does not exceed a percentage of the total Revenue of the Qualifying Free Zone Person in that Tax Period as specified by the Minister, or an amount specified by the Minister, whichever is lower.
2. Subject to Clause (3) of this Article, the following provisions shall apply:

- a. Non-qualifying Revenue is Revenue derived in a Tax Period from any of the following:
 - (1) Excluded Activities.
 - (2) Activities that are not Qualifying Activities where the other party to the transaction is a Non-Free Zone Person.
 - (3) Transactions with a Free Zone Person where such Free Zone Person is not the Beneficial Recipient of the relevant services or Goods.
 - b. Total Revenue is all Revenue derived by a Qualifying Free Zone Person in a Tax Period.
3. The following Revenue shall not be included in the calculation of non-qualifying Revenue and total Revenue:
- a. Revenue derived from the following transactions in relation to immovable property located in a Free Zone:
 - (1) Transactions with a Non-Free Zone Person in respect of Commercial Property.
 - (2) Transactions with any Person in respect of immovable property that is not Commercial Property.
 - b. Revenue attributable to a Domestic Permanent Establishment or a Foreign Permanent Establishment of the Qualifying Free Zone Person.
 - c. Revenue derived from the ownership or exploitation of intellectual property, except for the Revenue related to the Qualifying Income referred to in Clause (1) of Article (7) of this Decision.
4. For the purposes of this Article, a Qualifying Free Zone Person and its Domestic Permanent Establishment or Foreign Permanent Establishment shall be treated as if the establishment was a separate and independent Person that is a Related Party of the Qualifying Free Zone Person.

Article (5)

Income Attributable to a Domestic Permanent Establishment or a Foreign Permanent Establishment

- 1. Income attributable to a Domestic Permanent Establishment or a Foreign Permanent Establishment of the Qualifying Free Zone Person shall be considered Taxable Income and taxed in accordance with paragraph (b) of Clause (2) of Article (3) of the Corporate Tax Law.
- 2. The income attributable to a Domestic Permanent Establishment or a Foreign Permanent Establishment of the Qualifying Free Zone Person for a Tax Period is the Taxable Income attributable to any such establishment for that period calculated as if the establishment was a separate and independent Person that is a Related Party of the Qualifying Free Zone Person.

Article (6)

Income Derived From Immovable Property Located in a Free Zone

- 1. Income derived from immovable property located in a Free Zone from the below transactions shall be considered Taxable Income and taxed in accordance with paragraph (b) of Clause (2) of Article (3) of the Corporate Tax Law:

- a. Transactions with a Non-Free Zone Person in respect of Commercial Property.
 - b. Transactions with any Person in respect of immovable property that is not Commercial Property.
2. For the purposes of Clause (1) of this Article, the Taxable Income for a Tax Period shall be the income that is derived from the immovable property referred to in paragraphs (a) and (b) of Clause (1) of this Article calculated in accordance with the relevant provisions of the Corporate Tax Law.

Article (7)

Income Derived from Qualifying Intellectual Property

1. Qualifying Income derived from the ownership or exploitation of Qualifying Intellectual Property shall be calculated in accordance with a decision issued by the Minister.
2. Income derived from the ownership or exploitation of intellectual property that is not Qualifying Intellectual Property and income in excess of Qualifying Income calculated in accordance with Clause (1) of this Article, shall be considered Taxable Income and taxed in accordance with paragraph (b) of Clause (2) of Article (3) of the Corporate Tax Law.

Article (8)

Maintaining Adequate Substance and Outsourcing in a Free Zone

1. A Qualifying Free Zone Person shall undertake its core income-generating activities in a Free Zone or a Designated Zone, depending on where such activities are required to be conducted, and having regard to the level of the activities carried out, have adequate assets, an adequate number of qualified full-time employees in a Free Zone or a Designated Zone depending on where such activities are required to be conducted, and incur an adequate amount of operating expenditures, in relation to each activity.
2. Core income-generating activities can be outsourced to another Person in a Free Zone or a Designated Zone depending on where such activities are required to be conducted, provided the Qualifying Free Zone Person has adequate supervision of the outsourced activity.
3. Notwithstanding Clause (2) of this Article, core income-generating activities in respect of Qualifying Intellectual Property can be outsourced to any other Person in the State and to any other Person who is not a Related Party outside the State, provided the Qualifying Free Zone Person has adequate supervision of the outsourced activity.
4. For the purposes of this Article, core income-generating activities may vary according to the specific activity but mainly consist of those significant functions that drive the business value for each activity carried out by a Qualifying Free Zone Person and are not exclusively or mostly support activities.

Article (9)

Implementing Decisions

The Minister shall issue the necessary decisions to implement the provisions of this Decision.

Article (10)

Repeals

Cabinet Decision No. 55 of 2023 on Determining Qualifying Income for the Qualifying Free Zone Person for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses shall be repealed.

Article (11)

Publication and Application of this Decision

This Decision shall be published in the Official Gazette and shall come into effect on 1 June 2023.

Mohammed bin Rashid Al Maktoum

Prime Minister

Issued by us,

On: 10/ Rabi' al-Akhir/ 1445 H

Corresponding to: 25 / October / 2023