# Tax Groups

## Corporate Tax Guide | CTGTGR1

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# 1. Glossary

**Accounting Standards:** The accounting standards specified in Ministerial Decision No. 114 of 2023.

**Accrual Basis of Accounting:** An accounting method under which the Taxable Person recognises income when earned and expenditure when incurred.

**Administrative Penalties:** Amounts imposed and collected under the Corporate Tax Law or the Tax Procedures Law.

**Bank:** A Person licensed in the UAE as a bank or finance institution or an equivalent licensed activity that allows the taking of deposits and the granting of credits as defined in the applicable legislation of the UAE.

**Business:** Any activity conducted regularly, on an ongoing and independent basis by any Person and in any location, such as industrial, commercial, agricultural, professional, vocational, service or excavation activities or anything related to the use of tangible or intangible properties.

**Business Activity:** Any transaction or activity, or series of transactions or series of activities conducted by a Person in the course of its Business.

**Business Restructuring Relief:** A relief from Corporate Tax for business restructuring transactions, available under Article 27 of the Corporate Tax Law and as specified under Ministerial Decision No. 133 of 2023.

**Cash Basis of Accounting:** An accounting method under which the Taxable Person recognises income and expenditure when cash payments are received and paid.

**Corporate Tax:** The tax imposed by the Corporate Tax Law on juridical persons and Business income.

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

**Corporate Tax Payable:** Corporate Tax that has or will become due for payment to the FTA in respect of one or more Tax Periods.

**Dividend:** Any payments or distributions that are declared or paid on or in respect of shares or other rights participating in the profits of the issuer of such shares or rights which do not constitute a return on capital or a return on debt claims, whether such payments or distributions are in cash, securities, or other properties, and whether

payable out of profits or retained earnings or from any account or legal reserve or from capital reserve or revenue. This will include any payment or benefit which in substance or effect constitutes a distribution of profits made in connection with the acquisition or redemption or cancellation of shares or termination of other ownership interests or rights or any transaction or arrangement with a Related Party or Connected Person which does not comply with Article 34 of the Corporate Tax Law.

**Double Taxation Agreement:** An International Agreement signed by two or more countries for the avoidance of double taxation and the prevention of fiscal evasion on income and capital.

**Exempt Income:** Any income exempt from Corporate Tax under the Corporate Tax Law.

**Exempt Person:** A Person exempt from Corporate Tax under Article 4 of the Corporate Tax Law.

**Financial Asset:** Financial asset as defined in the Accounting Standards applied by the Taxable Person.

**Financial Liability:** Financial liability as defined in the Accounting Standards applied by the Taxable Person.

**Financial Statements:** A complete set of statements as specified under the Accounting Standards applied by the Taxable Person, which includes, but is not limited to, statement of income, statement of other comprehensive income, balance sheet, statement of changes in equity and cash flow statement.

**Financial Year:** The Gregorian calendar year, or the twelve-month period for which the Taxable Person prepares Financial Statements.

**Foreign Permanent Establishment:** A place of Business or other form of presence outside the UAE of a Resident Person that is determined in accordance with the criteria prescribed in Article 14 of the Corporate Tax Law.

**Foreign Tax Credit:** Tax paid under the laws of a foreign jurisdiction on income or profits that may be deducted from the Corporate Tax due, in accordance with the conditions of Article 47(2) of the Corporate Tax Law.

**Free Zone:** A designated and defined geographic area within the UAE that is specified in a decision issued by the Cabinet at the suggestion of the Minister.

**Free Zone Person:** A juridical person incorporated, established or otherwise registered in a Free Zone, including a branch of a Non-Resident Person registered in a Free Zone.

**FTA:** Federal Tax Authority, being the Authority in charge of administration, collection and enforcement of federal taxes in the UAE.

**General Interest Deduction Limitation Rule:** The limitation provided under Article 30 of the Corporate Tax Law.

**IFRS:** International Financial Reporting Standards.

**IFRS for SMEs:** International Financial Reporting Standard for small and medium-sized entities.

**Immovable Property:** Means any of the following:

a. Any area of land over which rights or interests or services can be created.
b. Any building, structure or engineering work attached to the land permanently or attached to the seabed.
**c.** Any fixture or equipment which makes up a permanent part of the land or is permanently attached to the building, structure or engineering work or attached to the seabed.

**Insurance Provider:** A Person licensed in the UAE as an insurance provider that accepts risks by entering into or carrying out contracts of insurance, in both the life and non-life sectors, including contracts of reinsurance and captive insurance, as defined in the applicable legislation of the UAE.

**Intangible Asset:** An intangible asset as defined in the Accounting Standards applied by the Taxable Person.

**International Agreement:** Any bilateral or multilateral agreement, or any other agreement to which the UAE is a party, that has been ratified by the parties.

**Interest:** Any amount accrued or paid for the use of money or credit, including discounts, premiums and profit paid in respect of an Islamic financial instrument and other payments economically equivalent to interest, and any other amounts incurred in connection with the raising of finance, excluding payments of the principal amount.

**Market Value:** The price which could be agreed in an arm's-length free market transaction between Persons who are not Related Parties or Connected Persons in similar circumstances.

**Membership or Partnership Capital:** The capital paid to a juridical person where the paid capital is divided into membership or partnership interests by a Person in order to be a member or partner and have the rights of membership or partnership in that juridical person.

**Net Interest Expenditure:** The Interest expenditure amount that is in excess of the Interest income amount as determined in accordance with the provisions of the Corporate Tax Law.

**Non-Resident Person:** The Taxable Person specified in Article 11(4) of the Corporate Tax Law.

**Ordinary Shares:** The category of capital stock or equivalent ownership interest, which gives its owner, on a share-by-share basis, equal entitlement to voting rights, profits, and liquidation proceeds.

**Parent Company:** A Resident Person that can make an application to the FTA to form a Tax Group with one or more Subsidiaries in accordance with Article 40(1) of the Corporate Tax Law.

**Participating Interest:** An ownership interest in the shares or capital of a juridical person that meets the conditions referred to in Article 23 of the Corporate Tax Law.

**Participation:** The juridical person in which the Participating Interest is held.

**Participation Exemption:** An exemption from Corporate Tax for income from a Participating Interest, available under Article 23 of the Corporate Tax Law and as specified under Ministerial Decision No. 116 of 2023.

**Person:** Any natural person or juridical person.

**Preferred Shares:** The category of capital stock or equity interest which gives its owner priority entitlement to profits and liquidation proceeds ahead of owners of Ordinary Shares.

**Qualifying Free Zone Person:** A Free Zone Person that meets the conditions of Article 18 of the Corporate Tax Law and is subject to Corporate Tax under Article 3(2) of the Corporate Tax Law.

**Qualifying Group:** Two or more Taxable Persons that meet the conditions of Article 26(2) of the Corporate Tax Law.

**Qualifying Group Relief:** A relief from Corporate Tax for transfers within a Qualifying Group, available under Article 26 of the Corporate Tax Law and as specified under Ministerial Decision No. 132 of 2023.

**Redeemable Shares:** The category of capital stock or equity interest which the juridical person issuing this instrument has agreed to redeem or buy back from the owner of this instrument at a future date or after a specific event, for a predetermined amount or with reference to a predetermined amount.

**Related Party:** Any Person associated with a Taxable Person as determined in Article 35(1) of the Corporate Tax Law.

**Resident Person:** The Taxable Person specified in Article 11(3) of the Corporate Tax Law.

**Revenue:** The gross amount of income derived during a Tax Period.

**Small Business Relief:** A Corporate Tax relief that allows eligible Taxable Persons to be treated as having no Taxable Income for the relevant Tax Period in accordance with Article 21 of the Corporate Tax Law and Ministerial Decision No. 73 of 2023.

**Specific Interest Deduction Limitation Rule:** The limitation provided under Article 31 of the Corporate Tax Law.

**State:** United Arab Emirates.

**Subsidiary:** A Resident Person that can make an application to the FTA to form a Tax Group with a Parent Company in accordance with Article 40(1) of the Corporate Tax Law.

**Tax Deregistration:** A procedure under which a Person is deregistered for Corporate Tax purposes with the FTA.

**Tax Group:** Two or more Taxable Persons treated as a single Taxable Person according to the conditions of Article 40 of the Corporate Tax Law.

**Tax Loss:** Any negative Taxable Income as calculated under the Corporate Tax Law for a given Tax Period.

**Tax Period:** The period for which a Tax Return is required to be filed.

**Tax Registration:** A procedure under which a Person registers for Corporate Tax purposes with the FTA.

**Tax Registration Number:** A unique number issued by the FTA to each Person who is registered for Corporate Tax purposes in the UAE.

**Tax Return:** Information filed with the FTA for Corporate Tax purposes in the form and manner as prescribed by the FTA, including any schedule or attachment thereto, and any amendment thereof.

**Taxable Income:** The income that is subject to Corporate Tax under the Corporate Tax Law.

**Taxable Person:** A Person subject to Corporate Tax in the State under the Corporate Tax Law.

**UAE:** United Arab Emirates.

**Unincorporated Partnership:** A relationship established by contract between two Persons or more, such as a partnership or trust or any other similar association of Persons, in accordance with the applicable legislation of the UAE.

# 2. Introduction

## 2.1. Overview

Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses ("Corporate Tax Law") was issued on 3 October 2022 and was published in Issue #737 of the Official Gazette of the United Arab Emirates ("UAE") on 10 October 2022.

The Corporate Tax Law provides the legislative basis for imposing a federal tax on corporations and Business profits ("Corporate Tax") in the UAE.

The provisions of the Corporate Tax Law shall apply to Tax Periods commencing on or after 1 June 2023.

## 2.2. Purpose of this guide

This guide is designed to provide general guidance to Taxable Persons, helping them to understand the taxation of two or more juridical Resident Persons that form a Tax Group.

Once a Tax Group is formed, the juridical Resident Persons that are part of the Tax Group are treated as a single Taxable Person and, therefore, Taxable Income needs to be calculated on a consolidated basis for the entire Tax Group. As a result, only one Tax Return for the Tax Group needs to be submitted to the FTA.

This guide provides readers with an overview of:

- what is a Tax Group;
- who is eligible to form or be a member of a Tax Group;
- when a Tax Group can be formed and when it ceases to exist;
- how the Taxable Income of a Tax Group is determined; and
- related compliance requirements.

Tax Groups are an optional regime, and a Tax Group is only formed if juridical Resident Persons, who meet the relevant conditions, apply to form one and it is approved by the FTA. Therefore, the concept of a Tax Group will not apply to every Taxable Person.

This guide does not cover the concept of a Qualifying Group for the purposes of Article 26 of the Corporate Tax Law (under which assets and liabilities may be transferred between members of a Qualifying Group on a no gain or loss basis for Corporate Tax purposes), except insofar as this provision interacts with the rules related to Tax Groups.

## 2.3. Who should read this guide?

This guide should be read by any juridical Resident Person that thinks it may qualify to form a Tax Group (with a Parent Company and at least one Subsidiary) or join an existing Tax Group as per the Corporate Tax Law, and that wants to enjoy the benefits of the Tax Group regime (for example consolidated Taxable Income, reduced compliance burden, etc.).

It is intended to be read in conjunction with the Corporate Tax Law, the implementing decisions and other relevant guidance published by the FTA.

## 2.4. How to use this guide

The relevant Articles of the Corporate Tax Law and the implementing decisions are indicated in each Section of the guide.

It is recommended that the guide is read in its entirety to provide a complete understanding of the definitions and interactions of the different rules. Further guidance on some of the areas covered in this guide can be found in other topic-specific guides (such as Participation Exemption, foreign tax credit).

In some instances, simple examples are used to illustrate how the key Corporate Tax rules for Tax Groups apply. The examples in this guide:

- show how these elements operate in isolation and do not show the interactions with other provisions of the Corporate Tax Law that may occur. They do not, and are not intended to, cover the full facts of the hypothetical scenarios used nor all aspects of the Corporate Tax regime, and should not be relied upon for legal or tax advice purposes; and
- are only meant for providing the readers with general information on the subject matter of this guide. They are exclusively intended to explain the rules related to the subject matter of this guide and do not relate at all to the tax or legal position of any specific juridical or natural persons.

## 2.5. Legislative references

In this guide, the following legislation will be referred to as follows:

- Federal Decree-Law No. 28 of 2022 on Tax Procedures is referred to as “Tax Procedures Law”;
- Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses, and its amendments, is referred to as the “Corporate Tax Law”;
- Cabinet Resolution No. 44 of 2020 on Organising Reports Submitted by Multinational Companies is referred to as “Cabinet Resolution No. 44 of 2020”;

- Ministerial Decision No. 73 of 2023 on Small Business Relief for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses is referred to as the "Ministerial Decision No. 73 of 2023";
- Ministerial Decision No. 114 of 2023 on the Accounting Standards and Methods for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses is referred to as "Ministerial Decision No. 114 of 2023";
- Ministerial Decision No. 116 of 2023 on the Participation Exemption for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses is referred to as "Ministerial Decision No. 116 of 2023";
- Ministerial Decision No. 120 of 2023 on the Adjustments Under the Transitional Rules for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses is referred to as "Ministerial Decision No. 120 of 2023";
- Ministerial Decision No. 125 of 2023 on Tax Group for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses is referred to as "Ministerial Decision No. 125 of 2023";
- Ministerial Decision No. 126 of 2023 on the General Interest Deduction Limitation Rule for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses is referred to as "Ministerial Decision No. 126 of 2023";
- Ministerial Decision No. 134 of 2023 on the General Rules for Determining Taxable Income for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses is referred to as "Ministerial Decision No. 134 of 2023";
- Federal Tax Authority Decision No. 5 of 2023 on the Conditions for Change in Tax Period for the Purposes of the Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses is referred to as "FTA Decision No. 5 of 2023";
- Federal Tax Authority Decision No. 6 of 2023 on Tax Deregistration Timeline for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses is referred to as "FTA Decision No. 6 of 2023"; and
- Federal Tax Authority Decision No. 12 of 2023 on Conditions for Forming the Tax Group by Subsidiaries of a Government Entity for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses is referred to as "FTA Decision No. 12 of 2023".

### 2.6. Status of this guide

This guidance is not a legally binding document but is intended to provide assistance in understanding the tax implications for Tax Groups relating to the Corporate Tax regime in the UAE. The information provided in this guide should not be interpreted as legal or tax advice. It is not meant to be comprehensive and does not provide a

definitive answer in every case. It is based on the legislation as it stood when the guide was published. Each Person's own specific circumstances should be considered.

The Corporate Tax Law, the implementing decisions and the guidance materials referred to in this document will set out the principles and rules that govern the application of Corporate Tax. Nothing in this publication modifies or is intended to modify the requirements of any legislation.

This document is subject to change without notice.

## 3. What is a Tax Group?

The Corporate Tax Law defines a Tax Group as two or more Taxable Persons treated as a single Taxable Person according to the conditions of Article 40 of the Corporate Tax Law.[1] Only Resident Persons can be part of a Tax Group.[2] A Tax Group for Corporate Tax purposes is distinct from a tax group for value added tax purposes.

If the relevant conditions are met,[3] a joint application can be made to the FTA by the Parent Company and each Subsidiary seeking to form or become a member of a Tax Group.[4] A member of a Tax Group may refer to either a Parent Company or a Subsidiary included in the relevant Tax Group.

A Subsidiary can only be a member of a Tax Group if all conditions outlined in Article 40(1) of the Corporate Tax Law are met.

There are several benefits of forming a Tax Group, which include the ability for the Parent Company to file a single Tax Return on behalf of all members of the Tax Group.[5] Forming a Tax Group also allows for the income and losses of the members of the Tax Group to be offset against each other. Also, generally the transfer of assets and liabilities and other transactions and arrangements between members of the Tax Group are to be disregarded when determining the Taxable Income of the Tax Group.

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[1] Article 1 of the Corporate Tax Law.
[2] Article 40(1) of the Corporate Tax Law.
[3] Article 40(1) of the Corporate Tax Law.
[4] Article 40(3) of the Corporate Tax Law.
[5] Article 53(7) of the Corporate Tax Law.

# 4. Conditions to form a Tax Group

A Parent Company and one or more Subsidiaries can make an application to the FTA to form a Tax Group where all of the following conditions are satisfied:

- The Parent Company and each Subsidiary are juridical persons (the "juridical persons condition");[6]
- The Parent Company and each Subsidiary are Resident Persons (the "Resident Persons condition");[7]
- The Parent Company owns at least 95% of the share capital of each Subsidiary, either directly or indirectly through one or more Subsidiaries (the "share capital ownership condition");[8]
- The Parent Company owns at least 95% of the voting rights of each Subsidiary, either directly or indirectly through one or more Subsidiaries (the "voting rights condition");[9]
- The Parent Company is entitled to at least 95% of each Subsidiary's profits and net assets, either directly or indirectly through one or more Subsidiaries (the "profits and net assets condition");[10]
- Neither the Parent Company nor the Subsidiaries are an Exempt Person (the "Exempt Person condition");[11]
- Neither the Parent Company nor the Subsidiaries are a Qualifying Free Zone Person (the "Qualifying Free Zone Person condition");[12]
- The Parent Company and each Subsidiary must have the same Financial Year (the "Financial Year condition");[13] and
- The Parent Company and each Subsidiary must prepare their Financial Statements using the same Accounting Standards (the "Accounting Standards condition").[14]

The share capital ownership condition, the voting rights condition and the profits and net assets condition can be met if the Parent Company holds such rights directly and/or through one or more Subsidiaries. This means indirect ownership is only considered if it is through one or more intermediate Subsidiaries of the Parent Company.

[6] Article 40(1)(a) of the Corporate Tax Law.
[7] Article 40(1)(a) of the Corporate Tax Law.
[8] Article 40(1)(b) of the Corporate Tax Law.
[9] Article 40(1)(c) of the Corporate Tax Law.
[10] Article 40(1)(d) of the Corporate Tax Law.
[11] Article 40(1)(e) of the Corporate Tax Law.
[12] Article 40(1)(f) of the Corporate Tax Law.
[13] Article 40(1)(g) of the Corporate Tax Law.
[14] Article 40(1)(h) of the Corporate Tax Law.

For a Tax Group to be formed, the Parent Company and the Subsidiary must continuously meet all of the above-mentioned conditions throughout the relevant Tax Period during which the Tax Group rules are applied.[15] This means that if both or either of the Parent Company and the Subsidiaries meet the conditions only for part of a Tax Period, it is not possible to form a Tax Group in that Tax Period.

For the Tax Group to continue to exist, the Parent Company and all Subsidiaries must meet all the above-mentioned conditions continuously throughout the relevant Tax Period.[16] If the Parent Company and all Subsidiaries meet the conditions only for part of a Tax Period, it is not possible for the Tax Group to continue to exist in that Tax Period, except in cases where a Parent Company is replaced by another Parent Company without discontinuation of the Tax Group (see Section 6.4).[17] Similarly, if any Subsidiary does not meet the conditions continuously throughout the relevant Tax Period, the subsidiary will no longer be a member of the Tax Group.[18]

A Tax Group that existed in a Tax Period will continue to exist in the following Tax Period, provided the Parent Company and all the Subsidiaries continue to meet all the conditions throughout that next Tax Period. Where the Parent Company and all the Subsidiaries do not continuously meet all the conditions during a subsequent Tax Period, the Tax Group will cease to exist from the beginning of that subsequent Tax Period,[19] except in cases where a Parent Company is replaced by another Parent Company without discontinuation of the Tax Group,[20] or where a member of the Tax Group ceases to exist as a result of transfer of a Business within the same Tax Group.[21]

It may be possible to form a Tax Group again after it ceases to exist or to readmit a Subsidiary that left the Tax Group if the relevant conditions are met in a later Tax Period by submitting an application to the FTA.

There is no limit to the number of members of a Tax Group. However, a juridical person can only be a member of one Tax Group at any given time. Further, if a Parent Company forms a Tax Group with one or more Subsidiaries, these are regarded as a single Tax Group. Thus, it is not possible for a Parent Company to form multiple Tax Groups with different Subsidiaries.

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[15] Article 2(1) of Ministerial Decision No. 125 of 2023.
[16] Article 2(1) of Ministerial Decision No. 125 of 2023.
[17] Article 40(12) of the Corporate Tax Law.
[18] Article 40(10)(b) of the Corporate Tax Law.
[19] Article 41(3) of the Corporate Tax Law.
[20] Article 40(12) of the Corporate Tax Law.
[21] Article 10 of Ministerial Decision No. 125 of 2023.

There is no requirement for any connection or relation between the Business or Business Activities of the members of the Tax Group.

Each of the conditions listed in Article 40(1) of the Corporate Tax Law are considered below.

### 4.1. Juridical persons condition

The Parent Company and each Subsidiary of a Tax Group must be a juridical person, i.e. have a separate legal personality from its founders, owners and directors. Examples of juridical persons include companies (such as private or public joint stock companies or limited liability companies) and certain incorporated partnerships which have separate legal personality.[22]

Natural persons, carrying on Business as a sole establishment, are not juridical persons and, therefore, cannot qualify to be a member of a Tax Group.

Unincorporated Partnerships are a contractual relationship between two or more persons that generally do not have distinct legal personality separate from their partners / members. Given that Unincorporated Partnerships are not juridical persons in their own right, they cannot be part of a Tax Group (either as a Parent Company or as a Subsidiary). This applies even if an Unincorporated Partnership is treated as a Taxable Person on the basis of an approved application by its partners under Article 16(8) of the Corporate Tax Law, as this does not change the legal form of an Unincorporated Partnership. A juridical person which is a partner in a fiscally transparent Unincorporated Partnership, can be a member of a Tax Group as said partner is a juridical person.

### 4.2. Resident Persons condition

#### 4.2.1. Resident Person under the Corporate Tax Law and under Double Taxation Agreements

The Parent Company and each Subsidiary of a Tax Group must be a Resident Person.[23] Under the Corporate Tax Law, a juridical person is a Resident Person where:

[22] Article 40(1)(a) of the Corporate Tax Law.

[23] Article 40(1) of the Corporate Tax Law.

- It is incorporated or otherwise established or recognised under the applicable legislation of the UAE;[24] or
- It is incorporated or otherwise established or recognised under the applicable legislation of a foreign jurisdiction but is effectively managed and controlled in the UAE.[25]

In addition, juridical persons can be members of a Tax Group only if they are regarded both as a Resident Person under the Corporate Tax Law as well as a tax resident of the UAE for the purposes of an applicable Double Taxation Agreement.[26] In other words, a juridical person cannot be a member of a Tax Group if they are considered tax resident in a foreign jurisdiction under a Double Taxation Agreement in force in the UAE.

Double Taxation Agreements are bilateral agreements between the UAE and another jurisdiction for the elimination of double taxation with respect to taxes on income and capital and the prevention of tax evasion and avoidance. Such agreements aim, inter alia, at resolving double taxation in instances where a person is a dual resident in the UAE and in another jurisdiction. For this purpose, Double Taxation Agreements generally provide rules for determining in which jurisdiction a Person is regarded as tax resident for the purposes of the agreement (see Section 4.2.2.1 in relation to the "tie-breaker rule").

### 4.2.2. Dual resident persons

If a Resident Person is also liable to an income tax or any other tax that is similar to Corporate Tax in a foreign jurisdiction by virtue of residence, place of management or any other criterion of a similar nature, the Resident Person is considered a dual resident person. Whether a dual resident person can be a member of a Tax Group will depend on the relevant facts and circumstances, as explained below.

#### 4.2.2.1. The Double Taxation Agreement includes a tie-breaker rule

In general, Double Taxation Agreements will outline a clear procedure to determine the sole jurisdiction in which a dual resident person is considered tax resident for the purposes of that agreement (a "tie-breaker rule").

- If the dual resident person is regarded as a tax resident of only the UAE under the tie-breaker rule of an applicable Double Taxation Agreement with another jurisdiction, then that Resident Person is not considered a tax resident of that

[24] Article 11(3)(a) of the Corporate Tax Law.
[25] Article 11(3)(b) of the Corporate Tax Law.
[26] Article 3(1) of Ministerial Decision No. 125 of 2023.

foreign jurisdiction. As a result, the dual resident person can be a member of a Tax Group.

- However, if a dual resident person is regarded as a tax resident of a foreign jurisdiction under the tie-breaker rule of an applicable Double Taxation Agreement, then that Resident Person cannot form or be a member of a Tax Group.[27]
- If a dual resident person qualified as a member of a Tax Group in earlier Tax Periods, but subsequently is treated as a tax resident of a foreign jurisdiction under the tie-breaker rule of an applicable Double Taxation Agreement, then that member ceases to be a member of the Tax Group from the beginning of the Tax Period in which the member became a tax resident of the foreign jurisdiction.[28]

The reason for this condition is that where a dual resident person is regarded as a tax resident of a foreign jurisdiction under an applicable Double Taxation Agreement, the restrictions under the Double Taxation Agreement would usually mean it is not effectively taxed in a manner similar to other Resident Persons for UAE Corporate Tax purposes as the UAE's taxing rights on that person will generally be limited to specific instances.

#### 4.2.2.2. The Double Taxation Agreement has the mutual agreement procedure as a tie breaker rule

Certain Double Taxation Agreements do not provide a conclusive tie-breaker rule for dual resident persons. Instead, tax residence is determined through mutual agreement of the competent authorities of both countries. In this case, until the competent authorities come to a conclusion, the person is treated as a tax resident of both countries.[29]

For Tax Group purposes, a Resident Person should not be resident for tax purposes in another jurisdiction under a Double Taxation Agreement.[30] This requirement is not met until the mutual agreement procedure is complete. As a result, the Resident Person is not eligible to join or form a Tax Group in such cases, even though the UAE is not restricted from exercising a taxing right on the income of the dual resident person.

After the mutual agreement procedure is concluded and the tax residence is allocated to one specific jurisdiction, a dual resident person can join a Tax Group only if the

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[27] Article 3(1) of Ministerial Decision No. 125 of 2023.
[28] Article 3(2) of Ministerial Decision No. 125 of 2023.
[29] Article 4(3) of OECD Model Tax Convention on Income and on Capital (2017 version) and the UN Model Double Taxation Convention between Developed and Developing Countries (2021 version).
[30] Article 3(1) of Ministerial Decision No. 125 of 2023.

Resident Person is regarded as being tax resident only in the UAE by the competent authorities under the relevant Double Taxation Agreement.

#### 4.2.2.3. No Double Taxation Agreement between UAE and another foreign jurisdiction

It is possible that a Resident Person is also a tax resident under the domestic tax law of a foreign jurisdiction with which the UAE does not have an in force Double Taxation Agreement. In such cases, the requirement under Article 3(1) of Ministerial Decision No. 125 of 2023 does not apply, as this provision only applies if there is an applicable Double Taxation Agreement. Thus, the Resident Person would still be eligible to join a Tax Group.

### 4.2.3. Documentation to prove tax residence

For Tax Group purposes, the following Resident Persons are required to maintain the requisite documentation to support that they are not tax resident in a foreign jurisdiction in which they are incorporated or effectively managed and controlled:[31]

- Juridical persons incorporated or otherwise established or recognised under the applicable legislation of a foreign jurisdiction but that are effectively managed and controlled in the UAE; and
- Juridical persons incorporated or otherwise established or recognised under applicable legislation of UAE but that are effectively managed and controlled in a foreign jurisdiction.

The documentation to be maintained includes either of the following:

- A confirmation issued by the relevant tax authority of that foreign jurisdiction to support that they are not tax resident under domestic law of that foreign jurisdiction.[32]
- A confirmation issued by the relevant competent authorities for the purposes of the application of the relevant Double Taxation Agreement.[33]

Failure of a dual resident person to maintain documentation can mean that the Resident Person is unable to prove it is not tax resident in a foreign jurisdiction. In those circumstances, the FTA may treat the dual resident as if the conditions for being part of a Tax Group were not met for Tax Periods for which insufficient documentation is available.

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[31] Article 3(3) of Ministerial Decision No. 125 of 2023.

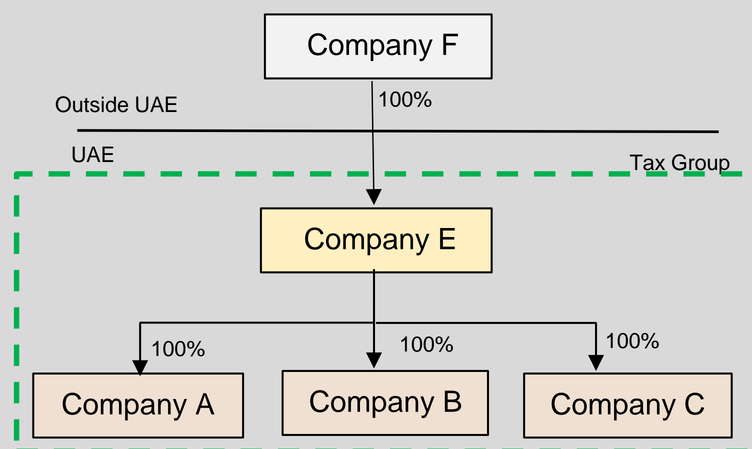
[32] Article 3(4)(a) of Ministerial Decision No. 125 of 2023.

[33] Article 3(4)(b) of Ministerial Decision No. 125 of 2023.

#### 4.2.4. Parent Company held by a non-resident person

A foreign company, that is not a Resident Person, cannot qualify to be a member of a Tax Group. However, it is possible that a foreign company directly or indirectly holds shares or interests of several juridical Resident Persons including a Parent Company. In such a case, the juridical Resident Persons (Subsidiaries of the foreign company) can form a Tax Group provided that such companies are held by a Parent Company which is a juridical Resident Person and meets all of the conditions under Article 40(1) of the Corporate Tax Law such that it qualifies as the Parent Company of the Tax Group.

**Example 1: Resident Subsidiaries of a foreign parent forming a Tax Group**




Company F (incorporated in and tax resident of a foreign country) holds 100% of the share capital of Company E, which in turn holds 100% of the share capital of Company A, Company B and Company C. Company A, Company B, Company C and Company E are all incorporated and resident in the UAE for Corporate Tax purposes.

Assuming all other conditions to form a Tax Group are met, Company E, as a Parent Company, can make an application together with Company A, Company B and Company C to the FTA to form a Tax Group.

### 4.3. Share capital ownership condition

To form a Tax Group, the Parent Company must own at least 95% of the share capital in each of the Subsidiaries, either directly or indirectly through one or more Subsidiaries.[34] The 95% threshold allows companies to form or join a Tax Group when

[34] Article 40(1)(b) of the Corporate Tax Law.

there is a minority interest holder. This can be the case, for example, if an applicable law requires at least two shareholders for the incorporation of a juridical person.

#### 4.3.1. What is share capital?

Share capital is defined as the nominal issued and paid-up share capital, or Membership or Partnership Capital, as applicable.[35]

The term "share" refers to a unit of ownership in a company which entitles the holder to a number of rights. These may include the right to vote, the right to participate in distributions of company profits, and the right to a return on the company's capital. The particular rights attached to a share will depend on the constitutional documents of the company. The term includes all types of shares issued by a company which carry a right to participate in the company's profits and liquidation proceeds, such as Ordinary Shares, Preferred Shares, Redeemable Shares etc. The term should be interpreted consistently with the term "shares or capital" and other usage of the term "share capital" in the Corporate Tax Law[36] and implementing decisions.[37] Any related guidance on those terms can also be applied. For instance, an ownership interest shall qualify as "share or capital" if it is classified as an equity interest under the Accounting Standards as applied by the Person holding the ownership interest.[38]

Share capital consists of share capital that has been issued and paid-up and does not include share capital that has been authorised but not yet issued and/or paid up. Rights of shareholders (such as voting rights and rights to receive profit distributions) are usually determined by reference to the nominal or par value (for example the "unit value") of the shares, in which case the share capital condition requires the Parent Company to own at least 95% of the nominal value of the share capital. Usually, the nominal value is determined separately from any share premium (i.e. amounts contributed on shares in excess of their nominal value).

If the share capital of a company does not have nominal value, the rights of shareholders would usually be determined by reference to a different metric, such as a capital account allocated to a shareholder. In such a case, the share capital condition requires the Parent Company to own at least 95% of such a metric.

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[35] Article 2(2) of Ministerial Decision No. 125 of 2023.

[36] For example, the term "shares or capital" is used in Articles 13(2)(e), 23(2), 23(11) of the Corporate Tax Law and the term "share capital" used in Article 31(1)(b) of the Corporate Tax Law.

[37] Scope of ownership interests is described in Article 2 of Ministerial Decision No. 116 of 2023, Article 2 of Ministerial Decision No. 132 of 2023 and Article 3 of Ministerial Decision No. 133 of 2023.

[38] Article 2 of Ministerial Decision No. 116 of 2023, Article 2 of Ministerial Decision No. 132 of 2023 and Article 3 of Ministerial Decision No. 133 of 2023.

Share capital also includes capital invested in other forms of juridical persons (other than companies) such as Membership or Partnership Capital (which is the total amount of capital held by such juridical person that can be allocated to specific owners). Capital in an incorporated partnership or units of a trust also qualify as share capital where such entities are treated as juridical persons according to the law under which they are incorporated.

A Parent Company must hold at least 95% of voting rights and entitlement to profits and net assets in the capital of the Subsidiaries i.e. the "voting rights condition" and the "profits and net assets condition" (see Sections 4.4 and 4.5).[39]

#### 4.3.2. Ownership of share capital

The share capital ownership condition under Article 40(1)(b) of the Corporate Tax Law refers to the legal owner of the shares, that is the Person who holds the legal title to the shares or interest. Where the shares do not have a legal title, this will be the Person who is otherwise recognised as the owner of the share capital from a legal perspective.

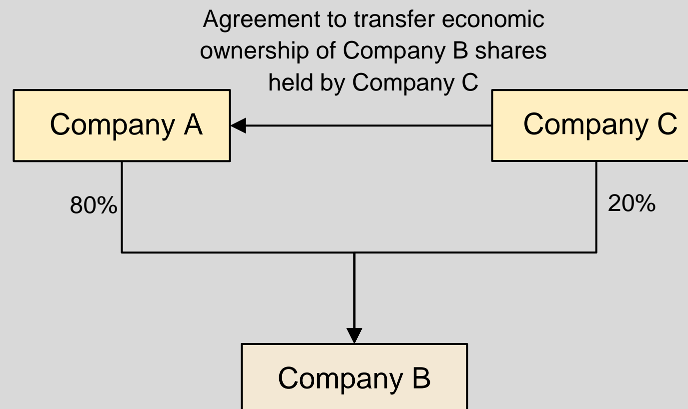
Where the Parent Company legally owns directly or indirectly at least 95% of the share capital of the Subsidiary, the share capital ownership condition should be met. However, whether this is the case should be determined based on the particular facts and circumstances on a case-by-case basis and after considering the specific legal arrangements that are in place.

The share capital ownership is not met if a Person transfers the legal title in shares or ownership interest to another Person while retaining the voting rights and entitlement to other benefits from such shares or interest.

Further, even if the share capital ownership condition is met, it should be assessed separately whether the voting rights condition and the profits and asset condition are also met (see Sections 4.4 and 4.5).

[39] Article 40(1)(c) and 40(1)(d) of the Corporate Tax Law.

**Example 2: Legal ownership of shares**




Company A owns 80% of the shares in Company B. Company C holds the remaining 20% of the shares in Company B. Company A, Company B and Company C are incorporated and tax resident in the UAE.

Company C and Company A enter into an agreement for the transfer of economic ownership under which Company C will continue to legally own 20% of the shares in Company B but will do so on behalf of Company A.

Company C will transfer all rights relating to the 20% to Company A and grant Company A the right to request the transfer of legal title to the 20% at any time. In return for the transfer of economic ownership, Company A pays a consideration equal to the Market Value of the 20% of shares held in Company B to Company C.

After the transfer, Company A owns 80% of the shares in Company B outright and 20% as an economic owner. However, the share capital ownership condition is determined based on legal ownership of the shares and not based on effective ownership. As Company A legally only owns 80% of the shares in Company B, the share capital ownership condition is not met. Therefore, Company A and Company B cannot form a Tax Group.

### 4.3.3. Determining the 95% share capital ownership threshold

Whether the condition to hold at least 95% of share capital is met should be assessed by reference to the nominal issued or paid-up share capital.[40] As explained in Section 4.3.1, the nominal issued or paid-up share capital represents the metric used by the juridical person to determine the proportionate rights of shareholders.

[40] Article 2(2) of Ministerial Decision No. 125 of 2023.

This is computed as: $\frac{X}{Y} \times 100\%$ where,

- X is the portion of nominal issued and paid-up share capital of the Subsidiary that is owned by the Parent Company directly or indirectly through one or more Subsidiaries.
- Y is the total nominal issued and paid-up share capital of the Subsidiary.

It is possible that the Subsidiary issues shares with different nominal values through the use of different share classes. In such a case, testing the 95% ownership condition only on the basis of the number of shares held can lead to an inaccurate representation. Instead, the number of shares should be weighted by the nominal value of each share when computing X and Y to provide an accurate representation of the shareholding.

**Example 3: Shares with different nominal values**

Company A (incorporated in and tax resident of the UAE) has issued 2 classes of shares to its shareholders:

| Class of share | Number of shares issued | Nominal value per share (AED) | Total capital (AED) |
|---|---|---|---|
| Class 1 | 100 | 10 | 1,000 |
| Class 2 | 1 | 1,000 | 1,000 |
| **Total** | **101** | **-** | **2,000** |

Company B holds 100% of Class 1 shares of Company A.

Applying the formula above to Class 1 shares leads to the following result: 1,000 ÷ 2,000 × 100% = 50%.

As the number of shares held in Company A is weighted by reference to their nominal value, the share capital ownership condition is not met by Company B even though Company B holds 100% of the Class 1 shares and 99% of the total number of shares.

As rights relating to the shares (such as voting rights and profit rights) are usually determined by reference to the nominal value, this provides a more realistic picture of the ownership stake in Company A.

It is also possible that the share capital of a Subsidiary consists of different types of shares, for example Ordinary Shares, Preferred Shares, etc. All types of shares held

by the Parent Company in the Subsidiary directly or indirectly should be considered when computing X and Y.

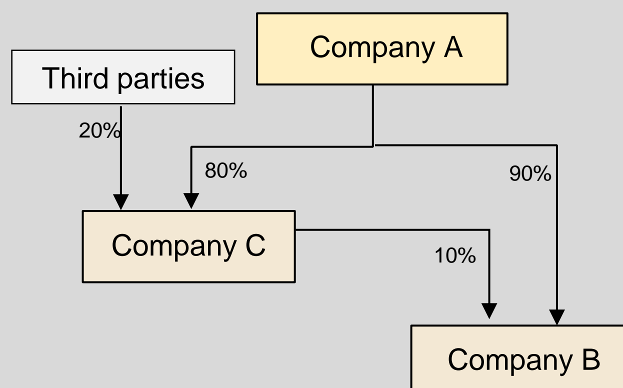
Any instruments issued that are not share capital (such as convertible loans, warrants, options over shares that have not been issued) should not be considered in determining whether the share capital ownership condition has been met.

Certain juridical persons do not have capital divided into shares with a nominal value, but instead determine the entitlement of their owners by reference to Membership or Partnership Capital. In such cases, the share capital condition should be tested by reference to such Membership or Partnership Capital. This means capital paid to a partnership or trust (that is a juridical person) by a Parent Company (directly or indirectly) or capital held in a capital account for the benefit of the Parent Company should be considered as X and the total capital account of the partnership or trust should be considered as Y.

### 4.3.4. Indirect ownership

The Parent Company must own at least 95% of the share capital in the Subsidiaries, either directly or indirectly through one or more intermediate Subsidiaries of the Parent Company. The condition is also met if the combination of direct and indirect ownership adds up to at least 95%.[41]

**Example 4: Indirect ownership**




Company A, Company B and Company C are all juridical Resident Persons. Company A owns 90% of the share capital of Company B and 80% of the share capital of Company C. The remaining 10% of the share capital of Company B is owned by Company C. The remaining 20% of the share capital of Company C is owned by third parties.

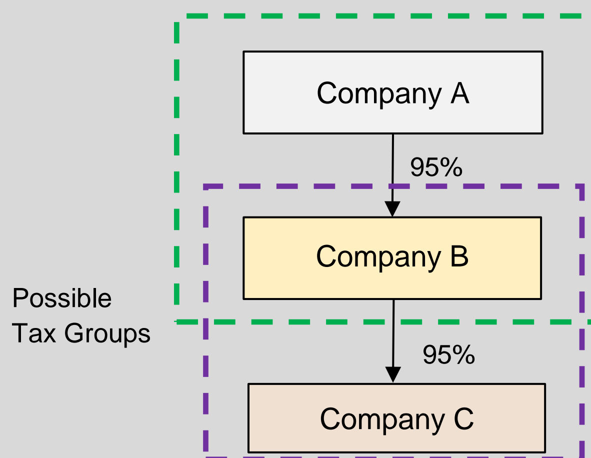
[41] Article 40(1)(b) of the Corporate Tax Law.

As Company A owns less than 95% of the share capital in Company C, Company A does not meet the share capital condition in respect of Company C. Therefore, Company C is not a Subsidiary of Company A, and the two cannot form a Tax Group.

Company A directly owns 90% of the share capital in Company B. The indirect ownership of share capital in Company B can only be considered if held through one or more Subsidiaries. As Company C is not a Subsidiary of Company A, the shares owned by Company C cannot be considered in determining whether the share capital condition is met by Company A in relation to Company B. Therefore, the condition is not met in case of Company B as well. Company A cannot form a Tax Group with either Company C or Company B.

If a Parent Company indirectly owns the share capital of a juridical Resident Person through non-wholly owned Subsidiaries, the holding of the Parent Company in that juridical Resident Person should be counted proportionately i.e. in proportion to the Parent Company's holding in the intermediate non-wholly owned Subsidiary.

**Example 5: Entities held through non-wholly owned Subsidiaries**




Company A, Company B and Company C are all juridical Resident Persons. Company A holds 95% of the shares in Company B and Company B holds 95% of the shares in Company C.

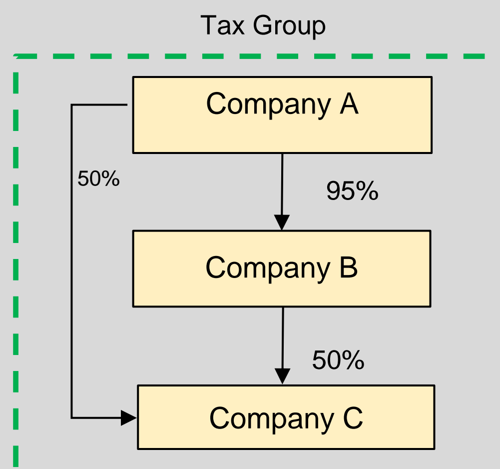
Assuming all other conditions of Article 40(1) of the Corporate Tax Law are met, Company A can form a Tax Group with Company B. However, Company C cannot be a member of this Tax Group since Company A's indirect shareholding in Company C is less than 95% (i.e. 95% * 95% = 90.25%).

Alternatively, Company B holds 95% of shares in Company C. Assuming the other conditions of Article 40(1) are met, Company B can form a Tax Group with Company C.

However, a juridical Resident Person can only be part of one Tax Group at any given time. Hence, during any Tax Period, Company B can only be part of one Tax Group and not both the Tax Groups, i.e. Tax Group with Company A or Tax Group with Company C.

To determine the share capital ownership threshold, a direct ownership held by the Parent Company can be combined with any indirect shareholding or equivalent ownership interest held by a Subsidiary. The share capital ownership condition is met if total ownership (i.e. direct and indirect ownership) is 95% or more.

**Example 6: Direct and indirect shareholding in a Subsidiary**




Company A, Company B and Company C are all juridical Resident Persons. Company A wishes to form a Tax Group with Company B and Company C.

Company A holds 95% shares in Company B. Assuming all other conditions of Article 40(1) of the Corporate Tax Law are met, Company B qualifies as a Subsidiary. Company A can form a Tax Group with Company B.

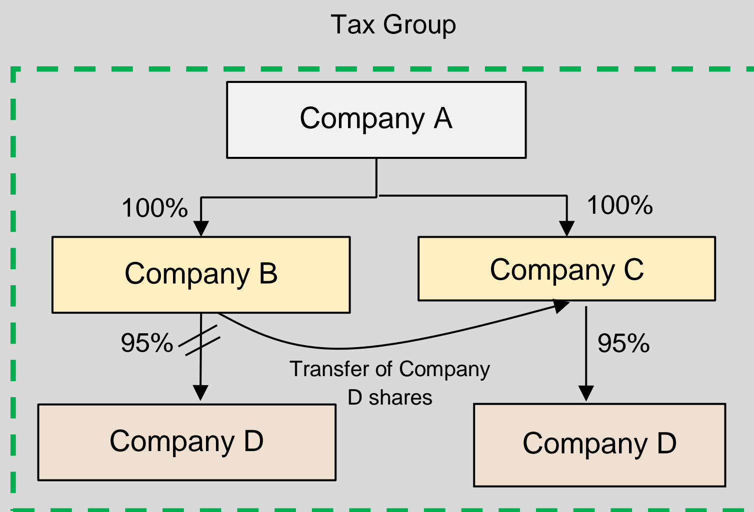
Company A holds a 50% direct stake in Company C. The remaining 50% is held by Company B. Accordingly, Company A holds 47.5% (i.e. 95% of 50%) of the share capital of Company C indirectly through Company B (which is considered a Subsidiary of Company A). As a result, the total of Company A's direct (50%) and indirect (47.5%) ownership of the share capital of Company C is 97.5%. This means Company A meets the share capital ownership condition in respect of Company C. Assuming all other conditions of Article 40(1) of the Corporate Tax Law are met,

Company C can also be a member of the Tax Group with Company A and Company B.

#### 4.3.5. Transfer of shares between members of a Tax Group

The transfer of shares of a Subsidiary held by one member of a Tax Group to another member of the same Tax Group will not impact the share capital ownership condition provided the Parent Company continues to hold at least 95% share capital of that Subsidiary directly or indirectly through one or more Subsidiaries.

**Example 7: Transfer of shares between members of a Tax Group**




Company A, Company B, Company C and Company D are all juridical Resident Persons. Company A holds 100% of the shares in Company B and 100% of the shares in Company C. Company B holds 95% of the shares in Company D. All four companies have formed a Tax Group for the Tax Period beginning 1 January 2024.

On 1 December 2024, Company B transfers its 95% shares in Company D to Company C.

The share capital ownership condition requires that Company A continuously holds at least 95% of the share capital of Company D, either directly or indirectly. Company A's direct or indirect shareholding of Company D during the Tax Period beginning 1 January 2024 is as follows:

- Before the transfer, Company A's indirect ownership of Company D was 95% (i.e. 100% of 95%).
- After the transfer on 1 December 2024, Company A's indirect ownership remains at 95% (i.e. 100% of 95%).

As Company A has held an indirect ownership of at least 95% in Company D at all times throughout 2024, the share capital ownership condition has been met continuously for 2024. This means it is possible for Company D to remain a member of the Tax Group, provided all the other conditions continue to be met as well.

#### 4.3.6. Transfer of shares outside the Tax Group

Transactions for the sale of shares between independent parties can be subject to a long negotiation process, usually resulting in the parties entering into a share purchase agreement ("signing") and a transfer of the shares ("closing"). Signing and closing can occur on the same date or there can be a time gap between signing and closing.

In the case of a time gap, questions can arise on whether the buyer or seller of the shares can continuously meet the share capital ownership condition between signing and closing of a share purchase agreement. As discussed in Section 4.3.2, the owner for the purposes of the share capital ownership condition is the legal owner of the share capital. Whether the legal ownership is transferred from buyer to seller depends on the specifics of the share purchase agreement. As a principle, until such time as the legal title in the shares is transferred to the buyer, the seller should be considered as the legal owner of the shares. As a result, it is possible for the seller to meet the share capital ownership condition after signing. Once the legal title of shares is transferred to the buyer, the buyer will be the legal owner of the shares. After that date, it is possible for the buyer to meet the share capital ownership condition.

If a sale of all the shares in a Subsidiary happens within a Tax Period, neither the seller nor the purchaser of the shares can meet the share capital ownership condition for the entire Tax Period, except in a scenario where a new Parent Company can make an application to replace the existing Parent Company without a discontinuation of the Tax Group.[42]

Therefore, the Subsidiary is considered to leave the Tax Group as of the start of the Tax Period in which the share capital ownership condition was no longer met.[43] In addition, the purchaser would not be able to form a Tax Group for that Tax Period, as it has not met the share capital ownership condition continuously for the entire Tax Period.

If the other conditions are met, the purchaser may form a Tax Group with the Subsidiary from the next Tax Period.

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[42] Article 40(12) of the Corporate Tax Law.

[43] Article 41(3) of the Corporate Tax Law.

## 4.4. Voting rights condition

### 4.4.1. General

The voting rights condition requires the Parent Company to hold at least 95% of the voting rights in the Subsidiary, either directly or indirectly through one or more Subsidiaries.[44] The condition is also met if the combination of direct and indirect entitlement to voting rights adds up to at least 95%. An indirect entitlement to voting rights is only considered if held through one or more intermediate Subsidiaries of the Parent Company.

Although the voting rights condition will often be met if the share capital ownership condition is met, voting rights need to be assessed independently and can produce different results if there are restrictions on voting rights or if voting rights do not fully align with nominal share capital ownership.

To determine this, voting rights on matters that require shareholder approval are relevant. Voting rights on matters that only require board approval are not relevant. What qualifies as a matter requiring shareholder approval would usually depend on the constitutive documents of the entity and any shareholders' agreement that sets out the rights, responsibilities, and obligations of the shareholders of the entity. Usually, matters such as appointment of directors, Dividends and the decision to wind up a juridical person require shareholder approval.

The voting rights condition is determined by whether the Parent Company and/or a relevant intermediary Subsidiary legally holds voting rights on shareholder matters.

A contractual agreement to vote in a certain way would not generally limit the legal right of a shareholder to vote. Similarly, appointing another person to vote on behalf of the shareholder through a proxy arrangement does not generally result in the shareholder losing its right to vote, as the proxyholder exercises the voting right on behalf of the shareholder. It is irrelevant for the voting rights condition whether the Parent Company and/or a relevant intermediary Subsidiary has exercised or regularly exercises its voting rights attached to the shares of the Subsidiary it owns.

Generally, voting rights are tied to the nominal value of share capital. Therefore, the voting rights condition will usually be met if the share capital ownership condition is met. However, some shares may not carry voting rights (non-voting shares) or carry extraordinary voting rights (see Section 4.4.2).

[44] Article 40(1)(c) of the Corporate Tax Law.

Where a Subsidiary has issued shares with voting rights as well as shares without voting rights, the latter should be excluded when determining whether the voting right condition has been met. This means that it is possible that the share capital ownership condition is met but the voting rights condition is not met.

Alternatively, where the Parent Company or a relevant intermediary Subsidiary transfers legal title to the shares in or interest to another Person while retaining the voting rights and entitlement to other benefits from such shares or interest, those voting rights would still count for the purposes of the voting right condition (even though the shares would not be counted for the share capital ownership condition (see Section 4.3.2).

#### 4.4.2. Extraordinary voting rights

Sometimes a juridical person issues shares which carry extraordinary voting rights to significant shareholders such as founders as compared to other shareholders. For instance, holders of these shares can have the right to appoint one board member or the right to veto certain important business decisions such as mergers, significant acquisitions and disposals or liquidation of the company.

If such shares are held by a minority shareholder holding a small stake of 5% or less, such shares do not automatically prevent the formation of a Tax Group. For instance, the right of a minority shareholder to appoint a board member does not jeopardise the voting rights condition, provided that the Parent Company and/or a relevant intermediary Subsidiary still has the ability to appoint a majority of the board members.

In addition, veto rights attached to certain shares do not prevent meeting the voting rights condition, provided that the Parent Company and/or a relevant intermediary Subsidiary continues to hold 95% of the voting rights on shareholder decisions. In other words, different classes of shares with different voting rights should generally not affect the voting right condition if the Parent Company can demonstrate that it directly or indirectly holds 95% or more of the total/overall statutory voting rights of the Subsidiary.

However, the above would need to be considered on a case-by-case basis depending on all the facts and circumstances.

#### 4.4.3. Indirect holding of voting rights

The same principle as discussed above in relation to share capital ownership applies to determine the percentage of voting rights held directly or indirectly. In this regard, see Section 4.3.3 for situations where the Parent Company holds voting rights

indirectly through Subsidiaries and how to determine the percentage of voting rights held by the Parent Company.

## 4.5. Profits and net assets condition

A Tax Group requires the Parent Company to have, either directly or indirectly, an entitlement to at least:[45]

- 95% of the Subsidiary's profits (herein referred to as the "profits condition"); and
- 95% of the Subsidiary's net assets (herein referred to as the "net assets condition").

This means the condition is only met if both conditions are satisfied. Both conditions need to be assessed on the basis of the effective entitlement. Although the profits and net assets condition will often be met if the share capital ownership condition is met, the profits and net assets rights need to be assessed independently and can produce different results if contractual arrangements limit the rights to profits and net assets, or if the rights to profits and net assets do not fully align with nominal share capital ownership.

### 4.5.1. Profits condition

The profits condition requires that the Parent Company is, directly or indirectly, entitled to receive at least 95% of profits from the Subsidiary. This consists of distributable profits and profits that are not distributable. Distributable profits of a juridical person are determined by the corporate law and applicable legislation of the UAE or a foreign jurisdiction which governs the formation or existence of the Subsidiary.

Often distributable profits will be the accumulated realised net profits based on the applicable Accounting Standards. If certain profits are not available for distribution, such as those allocated to a (non-distributable) legal reserve, the shareholders can generally be considered to hold a right to such profits and the profits condition can be met if the Parent Company (whether directly, or indirectly through one or more Subsidiaries) holds at least 95% of the rights to such profits if they were to be distributed.

Any portion of share capital that is not held by the Parent Company or a relevant intermediary Subsidiary should be taken into account when assessing who would have the right to receive profit distributions.

Profit allocation can be determined by various factors, such as shareholder agreements, company bylaws, or specific arrangements made among the

[45] Article 40(1)(d) of the Corporate Tax Law.

shareholders. Moreover, different classes of shares with different economic entitlement (e.g. Preferred Shares) may impact the actual entitlement of the Parent Company and/or a relevant intermediary Subsidiary. These factors can allow for different profit-sharing ratios from the shareholding/ownership percentages. Irrespective of the percentage of the legal ownership interest held by the Parent Company (whether directly, or indirectly through one or more Subsidiaries), the profits condition requires that the Parent Company is directly or indirectly entitled to at least 95% of the profits of the Subsidiary.

If a juridical person contractually agrees to share a portion of operational results with a third party, this would not necessarily reduce a shareholder's right to the profits, provided that the contractual entitlement is not an equity relationship. However, this would need to be determined based on the facts and circumstances in each case.

### 4.5.2. Entitlement to at least 95% of the Subsidiary's net assets

The net assets condition is tested as the direct or indirect entitlement to at least 95% of the net assets of the Subsidiary upon winding-up of the Subsidiary.[46] The net assets are defined by the value of the Subsidiary's total assets minus its total liabilities. In other words, the net assets of the Subsidiary upon liquidation after all creditors have been settled. The total amount of net assets equals the equity of the shareholders in the Subsidiary.

### 4.5.3. Impact of different share classes

If a company has several share classes with different economic entitlements, situations can occur where meeting the profits and net assets condition is not immediately obvious. This is illustrated in the example below.

**Example 8: Profit distribution only to holders of Preferred Shares**

Company C is incorporated in and tax resident of the UAE. The share capital of Company C is as follows:

| Class of share | Number of shares issued | Nominal value per share (AED) | Total capital (AED) |
|---|---|---|---|
| Ordinary Shares | 100 | 10 | 1,000 |
| Preferred Shares | 1 | 50 | 50 |
| **Total** | **101** | | **1,050** |

[46] Article 40(1)(d) of the Corporate Tax Law.

All the Ordinary Shares are held by Company A and all Preferred Shares are held by Company B. Since Company B holds Preferred Shares, it enjoys priority in terms of entitlement to profits and liquidation proceeds ahead of owners of Ordinary Shares. Company C uses the Gregorian calendar year as its Financial Year.

In 2024, Company C reports profits of AED 3 million, which – if distributed – would be distributed AED 2.86 million (3 million*1000/1050) to Company A and AED 0.14 million (3 million*50/1050) to Company B. Company C distributes the full profits for 2024 on 1 March 2025.

In 2025, Company C makes AED 0.1 million profits which – if distributed – would be distributed fully to Company B since it holds Preferred Shares and hence enjoy priority over Company A during distribution of profit. No distribution is made during 2025.

In 2024, Company A meets the share capital ownership condition and profits condition. Company A would also meet the net assets condition, provided it would be entitled to at least 95% of the proceeds if Company C were to be liquidated.

Assuming all of the other conditions are also met, Company A can form a Tax Group with Company C as of 1 January 2024. The theoretical possibility that the 95% profits condition may not be met at a future point in time does not prevent the formation of a Tax Group for 2024.

However, in 2025, the profits condition is not met. Therefore, if a Tax Group was formed in 2024, it would cease to exist in 2025, effective from the beginning of the Tax Period in which the profits condition was not met,[47] i.e. from 1 January 2025.

The Tax Group shall notify the FTA within 20 business days of the date from which the conditions are no longer met.[48] As the entitlement of shareholders to profits can only be assessed at the end of the Financial Year, the Tax Group is required to notify the FTA within 20 business days of the end of the 2025 Financial Year.

#### 4.5.4. Transfer of shares outside the Tax Group

In circumstances where a shareholder has entered into an agreement to sell its shares, it depends on the specifics of the share purchase agreement whether the economic entitlement is transferred from seller to buyer and from which date such a transfer is effective. As a general principle, the buyer will be considered entitled to the profits and net assets relating to the shares once the share purchase agreement has

[47] Article 41(3) of the Corporate Tax Law.

[48] Article 12 of Ministerial Decision No. 125 of 2023.

become unconditional. As of that moment, the buyer can meet the profits and net assets condition (assuming the shares transferred represent at least 95% entitlement to profits and net assets). That also means the seller no longer meets the profits and net assets condition as of that moment.

However, depending on the relevant facts and circumstances, if there are material conditions to be met that are not within the control of the buyer (for example, a regulatory approval or other approval by third parties), the buyer may not be effectively entitled to the profits and net assets relating to the shares transferred until such time that the material conditions are met. In each case, this will depend on the particular facts and circumstances.

#### 4.5.5. Indirect holding of rights to profits or net assets

The same principles as discussed above in relation to share capital ownership and voting rights apply to determine the percentage of rights to profits and net assets held directly or indirectly. In this regard, see Section **Error! Reference source not found.** for situations where the Parent Company holds rights to profits or net assets indirectly through Subsidiaries and how to determine the percentage of rights to profits or net assets held directly or indirectly by the Parent Company.

### 4.6. Exempt Person condition and Qualifying Free Zone Person condition

#### 4.6.1. General

A Tax Group is intended to allow for the grouping of entities which are subject to Corporate Tax in the same manner. In line with this principle, an Exempt Person or a Qualifying Free Zone Person cannot form or join a Tax Group.[49]

By contrast, a juridical Resident Person that is a Free Zone Person but not a Qualifying Free Zone Person can be a member of a Tax Group, whether as a Parent Company or as a Subsidiary, if the other conditions for forming or joining a Tax Group are met. The mere fact that a juridical person is incorporated or established in a Free Zone is not, in itself, a barrier to being a member of a Tax Group.

A branch of a Non-Resident Person could also fall within the definition of a Free Zone Person, if it is registered in a Free Zone.[50] However, a branch of a Non-Resident Person registered in a Free Zone cannot be a member of a Tax Group since it would not meet the juridical person condition, as the branch does not have a separate legal

[49] Article 40(1)(e) and 40(1)(f) of the Corporate Tax Law.

[50] Article 1 of the Corporate Tax Law.

personality from its head office. The Non-Resident Person of which the branch is a part would also not meet the Resident Person condition.[51]

Where a member of a Tax Group becomes an Exempt Person during the relevant Tax Period, or is a Qualifying Free Zone Person for a Tax Period and does not elect to be subject to tax under Article 19 of the Corporate Tax Law, the Exempt Person condition or Qualifying Free Zone Person condition will no longer be met. As a result, the relevant member of the Tax Group shall be treated as leaving the Tax Group from the beginning of the Tax Period in which the event took place.[52]

In case the Parent Company becomes an Exempt Person, the Tax Group ceases to exist from the beginning of the Tax Period in which it becomes an Exempt Person,[53] and all members of the Tax Group will be subject to Corporate Tax on a standalone basis (also see Section 7), unless the Parent Company is replaced by another Parent Company that meets the conditions to form a Tax Group (see Section 6.4).[54]

#### 4.6.2. Exception for Government Entities

There are scenarios where a Government Entity, is the shareholder of juridical Resident Persons. Because Government Entities are Exempt Persons, they cannot form or join a Tax Group as per the Exempt Person condition under the Tax Group regime.

However, taxable Subsidiaries of a Government Entity can form or join a Tax Group without the Government Entity, subject to meeting certain conditions.[55]

#### 4.6.3. Small Business Relief

A Resident Person with Revenue below or equal to AED 3 million in a relevant Tax Period and all previous Tax Periods can elect for Small Business Relief.[56] As a Tax Group will be treated as a single Taxable Person, Small Business Relief applies to the Tax Group rather than to the individual members of the Tax Group. This means the Revenue threshold for Small Business Relief applies to the consolidated Revenue of the Tax Group, and not to each member individually.

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[51] Article 11(3)(a) of the Corporate Tax Law.
[52] Article 41(3) of the Corporate Tax Law.
[53] Article 41(3) of the Corporate Tax Law.
[54] Article 40(12) of the Corporate Tax Law.
[55] Article 40(2) of the Corporate Tax Law read with FTA Decision No. 12 of 2023.
[56] Article 21(1) of the Corporate Tax Law and Ministerial Decision No. 73 of 2023.

If a juridical Resident Person that is eligible for Small Business Relief during the relevant Tax Period joins a Tax Group, it will no longer be eligible for Small Business Relief on a standalone basis as the Tax Group is treated as a single Taxable Person. The Small Business Relief would be applicable at the level of that single Taxable Person (i.e. the Tax Group) if the relevant conditions are met. Therefore, the Tax Group can only benefit from the Small Business Relief if on a consolidated basis:

- the Tax Group has a Revenue below or equal to AED 3 million in a relevant Tax Period and all previous Tax Periods;[57] and
- none of the members of the Tax Group is a Constituent Company of a Multinational Enterprises Group that is required to prepare a Country-by-Country Report under the UAE's Country-by-Country Reporting legislation.[58]

**Example 9: Tax Group applies Small Business Relief**

In the current Tax Period, Company A, Company B and Company C form a Tax Group with Company A as the Parent Company, assuming that all other conditions are met. All three entities were formed in the current Tax Period.

The Revenue of the members of the Tax Group in the current Tax Period, after eliminating Revenues earned from member of Tax Group, is as follows:

- Company A: AED 1 million
- Company B: AED 2 million
- Company C: AED 0.5 million

The Revenue of each member of the Tax Group on a standalone basis does not exceed AED 3 million in the relevant Tax Period or previous Tax Periods. However, the Small Business Relief is not available to the Tax Group since the total Revenue of the Tax Group (AED 1 million + AED 2 million + AED 0.5 million = AED 3.5 million) exceeds the AED 3 million threshold.

## 4.7. Financial Year condition

### 4.7.1. General

A key aim of the Tax Groups regime is to reduce the number and overall burden of tax filings. For example, Taxable Persons might have different Financial Years which would require the apportionment of results and thus add a layer of complexity.

[57] Article 2 of Ministerial Decision No. 73 of 2023.

[58] Article 3(1) of Ministerial Decision No. 73 of 2023 and Cabinet Resolution No. 44 of 2020.

Therefore, a Tax Group requires all members to have the same Financial Year[59] and have the same Tax Period.[60]

In the UAE Corporate Tax Law, the Financial Year is defined as either the Gregorian calendar year (beginning on 1 January and ending on 31 December) or a 12-month period for which Financial Statements according to the applicable Accounting Standards are prepared.[61]

If the Parent Company of a Tax Group wants to change its Financial Year, all members of the Tax Group would need to change their Financial Year simultaneously as well for the Tax Group to continue existing. If some but not all of the Tax Group members change their Financial Year, the Financial Year condition will no longer be met in relation to those members that have a different Financial Year from the Parent Company. Accordingly, the members will leave the Tax Group.

#### 4.7.2. Newly established juridical person joining a Tax Group

A newly established juridical person can join an existing Tax Group from the date of incorporation if the conditions of Article 40(1) of the Corporate Tax Law are met from the date of incorporation onwards.[62] The Financial Year condition can be met provided the end date of the Financial Year of the newly established juridical person joining the Tax Group is aligned with that of the existing members of the Tax Group. This means that if the other conditions are met, a newly established juridical person can join a Tax Group from the date of its incorporation, and it does not have to wait until the start of the Tax Group's next Tax Period. However, if the Financial Year of the newly incorporated juridical person differs from the Financial Year of the Tax Group upon incorporation, it cannot join the Tax Group as of the date of incorporation. It will need to first change its Financial Year to align with the existing Tax Group members.

#### 4.7.3. Change of Tax Period in order to form or join a Tax Group

If a juridical Resident Person meets all the conditions for forming or joining a Tax Group except for the Financial Year condition, that person can make an application to the FTA to change the start and end date of its Tax Period, or use a different Tax Period[63] and align their Financial Year (i.e. the start and end date of a financial reporting period) so that a Tax Group can then be formed or that person can join an existing Tax Group.

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[59] Article 40(1)(g) of the Corporate Tax Law.
[60] Article 57(1) of the Corporate Tax Law.
[61] Article 57(2) of the Corporate Tax Law.
[62] Article 5(5) of Ministerial Decision No. 125 of 2023.
[63] Article 58 of the Corporate Tax Law.

The FTA shall allow that Person to change its Tax Period to align Financial Years for the purpose of forming a Tax Group or joining an existing Tax Group[64] provided the Tax Period is not extended to more than 18 months or reduced to less than 6 months.[65] However, Taxable Persons cannot change their Tax Period end date to a date that none of the intended Tax Group members apply, if forming a Tax Group is the sole purpose for the change in Tax Period. For instance, if the conditions for forming a Tax Group are first met on 1 March of a given year, and the entities have a Financial Year ending on 31 December each year, it will ordinarily not be possible to form a Tax Group until 1 January of the following year as the conditions were not met continuously throughout the relevant Tax Period. Unless there are valid commercial, economic or legal reasons to change the Tax Period, the companies involved cannot change their Financial Year to start a new Tax Period as per an earlier date.

**Example 10: Change of Tax Period to form a Tax Group**

Company A has a Gregorian calendar year end (31 December). Company B has a Financial Year that ends on 31 August. On 3 May 2024, Company A buys all the shares in Company B.

Company A could change its Financial Year end to 31 August and consequently change its Tax Period with the approval of the FTA to allow formation of a Tax Group with Company B effective from 1 September 2025.

Alternatively, after 3 May 2024, Company B could change its Financial Year to Gregorian calendar year with the approval of the FTA to allow Company B to form a Tax Group with Company A effective from 1 January 2025.

Company A and Company B can form a Tax Group, with approval from the FTA, when both companies have the same Financial Year.

### 4.8. Accounting Standards condition

Under this condition, all members of the Tax Group must prepare their Financial Statements using the same Accounting Standards.[66] For the purposes of the UAE Corporate Tax Law, a Taxable Person is required to prepare Financial Statements

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[64] Article 2(1)(b) of FTA Decision No. 5 of 2023.
[65] Article 2(3) of FTA Decision No. 5 of 2023.
[66] Article 40(1)(h) of the Corporate Tax Law.

based on IFRS. Where the Revenue of the Taxable Person does not exceed AED 50 million, they may choose to apply IFRS for SMEs instead.[67]

Tax Groups are required to prepare consolidated Financial Statements using the above Accounting Standards for the purpose of determining the Taxable Income of a Tax Group.[68] For this purpose, the standalone Financial Statements of the Parent Company and each Subsidiary that is a member of the Tax Group must be consolidated by way of aggregation, generally eliminating any transactions between the members of the Tax Group.[69] If the consolidated Revenue of the Tax Group exceeds AED 50 million during the relevant Tax Period, such Financial Statements of the Tax Group are required to be audited.[70] However, the Corporate Tax Law does not require the separate Financial Statements of the Parent Company and Subsidiary members to be audited, even when a member's Revenue exceeds AED 50 million.

All members of the Tax Group must use the same Accounting Standards for the relevant Tax Period in which the Tax Group is formed. This condition would not be met if one juridical Resident Person uses IFRS and another juridical Resident Person uses IFRS for SMEs. If one juridical Resident Person preparing its Financial Statements based on IFRS for SMEs wants to join a Tax Group whose members are preparing Financial Statement based on IFRS, that juridical person would need to prepare its Financial Statement based on IFRS in order to be able to join the Tax Group.

The Accounting Standards condition does not explicitly require all the members to follow the same accounting policy in the standalone Financial Statements. However, for the purposes of preparing the Financial Statements of the Tax Group, a single accounting policy consistent with the applicable Accounting Standard will need to be applied by all members of the Tax Group.

Although a Tax Group may have consolidated Financial Statements that are already available for financial reporting purposes, the consolidated Financial Statements used for the purposes of determining the Taxable Income of the Tax Group for Corporate Tax purposes should cover, and be accompanied by, a statement that aggregates the standalone Financial Statements of all entities included in the Tax Group and no other entities.

[67] Article 4(1) and 4(2) of Ministerial Decision No. 114 of 2023.
[68] Article 42(1) and 42(11) of the Corporate Tax Law.
[69] Article 42(1) of the Corporate Tax Law and Article 3 of Ministerial Decision No. 114 of 2023.
[70] Article 54(2) of the Corporate Tax Law read with Article 2(1) of Ministerial Decision No. 82 of 2023.

# 5. Forming a Tax Group and tax compliance obligations

## 5.1. Application to FTA to form a Tax Group

Once the relevant conditions are met, the Parent Company can form a Tax Group with its Subsidiaries. In such a case, the Parent Company and each Subsidiary seeking to become members of the Tax Group shall jointly make an application to the FTA.[71] This application should also specify the first intended Tax Period of the Tax Group. A request should be filed before the end of the Tax Period for which the formation of the Tax Group is requested.[72] In principle, the Tax Group will be formed from the beginning of the Tax Period specified in the application, but the FTA has the right to determine the Tax Period from which a Tax Group may be formed, even if this differs from the date requested in the application.[73]

The FTA may review the application to determine whether the conditions for forming a Tax Group are met. However, an approval by the FTA does not confirm that the conditions are or will continue to be met. In other words, if the Parent Company or all Subsidiaries fail to continuously meet the conditions in the first Tax Period for which they are part of the newly formed Tax Group, then it will be treated as if no Tax Group had been formed from the beginning of that Tax Period, even if the FTA has approved the application. In addition, the FTA can reassess compliance with the conditions at any time.

Each member of a Tax Group must be a Resident Person under the Corporate Tax Law as well as a tax resident of the UAE for the purposes of an applicable Double Taxation Agreement (see Section 4.2.1).[74] In line with this, members of a Tax Group would be eligible individually to apply for a UAE tax residency certificate for the purposes of such Double Taxation Agreements.

## 5.2. Responsibilities of the Parent Company of a Tax Group

Once a Tax Group is formed, the Parent Company will be required to meet the ongoing Corporate Tax compliance obligations on behalf of the Tax Group and represent the Tax Group. This includes:

[71] Article 40(3) of the Corporate Tax Law.

[72] Article 5(1) of Ministerial Decision No. 125 of 2023.

[73] Article 41(1) of the Corporate Tax Law.

[74] Article 3(1) of Ministerial Decision No. 125 of 2023.

- In case a new Subsidiary wishes to join an existing Tax Group, the Parent Company and the respective Subsidiary should jointly apply to the FTA.[75]
- The Parent Company shall prepare consolidated Financial Statements for the Tax Group in accordance with the applicable Accounting Standards (i.e. IFRS or IFRS for SMEs).[76]
- The Parent Company files a Tax Return on behalf of the Tax Group no later than 9 months from the end of the relevant Tax Period, or by such other date as directed by the FTA.[77]
- The Parent Company will settle the Corporate Tax Payable on behalf of the Tax Group within 9 months from the end of the relevant Tax Period, or by such other date as determined by the FTA.[78]
- The Parent Company may apply for a Corporate Tax refund on behalf of the Tax Group, if the relevant conditions are met.[79]
- The Parent Company will register and deregister the Tax Group.[80]
- The Parent Company is responsible for maintaining sufficient and adequate supporting documents related to the financial records, transfer pricing documentation, and submitting any clarification request to the FTA.[81]

## 5.3. Liability for Corporate Tax Payable

A Tax Group is treated as a single Taxable Person for the purposes of the Corporate Tax Law.[82] As indicated above, the Tax Group, represented by the Parent Company, is liable to settle the Corporate Tax due within 9 months from the end of the relevant Tax Period, or by such other date as directed by the FTA.[83]

In a case where the Parent Company fails to settle the Corporate Tax Payable by the due date, Administrative Penalties can apply to the Tax Group. All members of the Tax Group shall be jointly and severally liable for any Corporate Tax and Administrative Penalties due for the Tax Group for the Tax Periods when they are members of the Tax Group,[84] although a Tax Group can submit a request to the FTA to limit the joint and several liability to one or more members of the Tax Group.[85]

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[75] Article 40(9) of the Corporate Tax Law.
[76] Article 42(11) of the Corporate Tax Law.
[77] Article 53(1) and 53(7) of the Corporate Tax Law.
[78] Article 48 of the Corporate Tax Law.
[79] Article 49 of the Corporate Tax Law.
[80] Articles 51 and 52 of the Corporate Tax Law.
[81] Article 40(5) of the Corporate Tax Law read with Articles 54, 55, 56 of the Corporate Tax Law.
[82] Article 40(4) of the Corporate Tax Law.
[83] Article 48 of the Corporate Tax Law.
[84] Article 40(6) of the Corporate Tax Law.
[85] Article 40(7) of the Corporate Tax Law.

### 5.4. Tax Registration of the Tax Group and members of the Tax Group

The Parent Company and each Subsidiary that wants to apply to form a Tax Group should have a Tax Registration Number for Corporate Tax purposes. Once the application for forming a Tax Group is approved by the FTA, that Tax Group will be issued a separate Tax Registration Number and this Tax Registration Number will be used for the Tax Group for Corporate Tax purposes.

### 5.5. Tax Deregistration of the Tax Group and members of the Tax Group

Forming or joining a Tax Group will not cause or require the members of the Tax Group to be deregistered, even though the members of the Tax Group will no longer be required to file a Tax Return as a standalone Taxable Person.

A Taxable Person is required to file a Tax Deregistration application in case of a cessation of its Business or Business Activity.[86] In the case of a Tax Group, the question of whether the Business or Business Activity has ceased should be assessed at the level of the Tax Group as a whole. In other words, where the Business or Business Activity of a member of a Tax Group has ceased, there is no requirement to deregister the whole Tax Group, unless the Business or Business Activity of the Tax Group as a whole ceases to exist.

If the Business or Business Activities of all members of the Tax Group have ceased, the Parent Company should first make an application to the FTA under Article 40(11)(a) of the Corporate Tax Law requesting the cessation of the Tax Group. In the application for the cessation of the Tax Group, it should be declared whether the Parent Company has paid all the Corporate Tax and Administrative Penalties due and filed all Tax Returns due of the Tax Group.

If the application is approved, the Tax Group shall cease and the FTA shall deregister the Tax Group for Corporate Tax purposes with effect from the date of cessation or from such other date as may be determined by the FTA.

Thereafter, each member of the Tax Group will need to apply for Tax Deregistration.

Additionally, the requirement for Tax Deregistration in the following cases is discussed as indicated:

- Tax Group ceases to exist (see Section 7.2);
- Replacement of Parent Company of the Tax Group (see Section 6.4); and
- Subsidiary of a Tax Group ceases to exist (see Section 6.3.2).

[86] Article 52(1) of the Corporate Tax Law.

# 6. Change in members of a Tax Group

## 6.1. General

In broad terms, the following changes can take place in relation to a Tax Group:

- forming a Tax Group;
- joining a Tax Group;
- leaving a Tax Group;
- replacing a Parent Company; and
- ceasing to be a Tax Group.

Each of these events is discussed in this guide. However, for ease of reference, the timing of each of these events as provided for in the Corporate Tax Law, is summarised in the table below.

| Description | Timelines |
|---|---|
| When must an application be made:<br>• to form a Tax Group (see Section 5.1);<br>• to join an existing Tax Group (see Section 6.2.1); or<br>• to replace the Parent Company of an existing Tax Group (see Section 6.4)? | The application must be submitted to the FTA before the end of the Tax Period within which the formation or joining of a Tax Group is requested.[87] |
| From which date is a Tax Group formed? (see Section 5.1) | From the beginning of the Tax Period specified in the application submitted to the FTA, or from the beginning of any other Tax Period determined by the FTA.[88] |
| From which date does a Subsidiary join a Tax Group? (see Section 6.2.1) | From the beginning of the Tax Period specified in the application submitted to the FTA, or from the beginning of any other Tax Period determined by the FTA.[89] |
| From which date does a newly established entity join a Tax Group? This may be:<br>• a Subsidiary; or | From the date of its incorporation.[90] |

[87] Article 5(1) of Ministerial Decision No. 125 of 2023.
[88] Article 41(1) of the Corporate Tax Law.
[89] Article 41(1) of the Corporate Tax Law.
[90] Article 5(5) of Ministerial Decision No. 125 of 2023.

| Description | Timelines |
|---|---|
| • a Parent Company replacing the existing Parent Company<br>(see Section 6.2.2) | |
| From which date does a Subsidiary leave a Tax Group in circumstances where an application was made to the FTA for the Subsidiary to leave the Tax Group? (see Section 6.3.1) | From the beginning of the Tax Period specified in the application submitted to the FTA, or from the beginning of any other Tax Period determined by the FTA.[91] |
| From which date does a Subsidiary leave a Tax Group in circumstances where it ceased to comply with the conditions for forming part of a Tax Group? (see Section 6.3.1) | From the beginning of the Tax Period in which the conditions under Article 40(1) of the Corporate Tax Law are no longer met.[92] |
| From which date do the relevant members leave a Tax Group where the Tax Group ceases to exist in circumstances where an application has been made to the FTA to cease the Tax Group? (see Section 7.1) | From the beginning of the Tax Period specified in the application submitted to the FTA, or from the beginning of any other Tax Period determined by the FTA.[93] |
| From which date do the members of a Tax Group leave the Tax Group in circumstances where the Parent Company ceases to comply with the requirements to form part of a Tax Group? (see Section 7.1) | From the beginning of the Tax Period in which the conditions under Article 40(1) of the Corporate Tax Law are no longer met.[94] |
| From which date does a member of a Tax Group leave a Tax Group where such member becomes a resident for tax purposes in another country or foreign territory in accordance with a Double Tax Agreement? (see Section 4.2.2.1) | The relevant member must be treated as leaving the Tax Group from the beginning of the Tax Period in which it became a resident for tax purposes in the other country or foreign territory.[95] |
| From which date does a Subsidiary leave a Tax Group if the Subsidiary transfers its entire business to another member of the Tax Group and ceases to exist as a | From the date it ceases to exist, on the basis that such Subsidiary must be deemed to remain a member of the Tax Group until the date it ceases to exist.[96] |

[91] Article 41(2) of the Corporate Tax Law.
[92] Article 41(3) of the Corporate Tax Law.
[93] Article 41(2) of the Corporate Tax Law.
[94] Article 41(3) of the Corporate Tax Law.
[95] Article 3(2) of Ministerial Decision No. 125 of 2023.
[96] Article 10(1)(a) of Ministerial Decision No. 125 of 2023.

| Description | Timelines |
| --- | --- |
| result of such transfer? (see Section 6.3.2) | |
| From which date does a Tax Group comprising two members cease to exist in circumstances where one member transfers the entire business to another member and then ceases to exist? (see Section 7.1). | The Tax Group ceases to exist from the date that the transfer becomes effective.[97] |
| Where a new Parent Company replaces an existing Parent Company without the discontinuation of the Tax Group. (see Section 6.4) | The new Parent Company should meet the conditions specified in Article 40(1) of the Corporate Tax Law from the beginning of the relevant Tax Period.[98] |
| Where a member of the Tax Group replaces an existing Parent Company without a discontinuation of the Tax Group, by way of the old Parent Company transferring its entire business to a member of the old Tax Group and ceasing to exist as a result of this transfer (see Section 6.4). | The old Parent Company shall be replaced by that other member as of the date the transfer is effective.[99] |

## 6.2. Joining a Tax Group

### 6.2.1. Subsidiary joins a Tax Group

A Subsidiary can join an existing Tax Group following submission of an application to the FTA by the Parent Company and the relevant Subsidiary if the conditions of Article 40(1) of the Corporate Tax Law are met.[100] The application should specify the Tax Period for which the Subsidiary is intended to join the Tax Group. The application must be submitted to the FTA before the end of the Tax Period within which the joining of a Tax Group is requested.[101] Upon approval by the FTA, the relevant Subsidiary shall join the Tax Group from the beginning of the Tax Period specified in the application or such other Tax Period determined by the FTA.[102]

[97] Article 10(1)(b) of Ministerial Decision No. 125 of 2023.
[98] Article 5(3) of Ministerial Decision No. 125 of 2023.
[99] Article 5(4) of Ministerial Decision No. 125 of 2023.
[100] Article 40(1) and 40(9) of the Corporate Tax Law.
[101] Article 5(4) of Ministerial Decision No. 125 of 2023.
[102] Article 41(1) of the Corporate Tax Law.

#### 6.2.2. Newly incorporated entity joins a Tax Group

A newly established juridical person may join an existing Tax Group from the date of incorporation only where it is:

- a newly established Subsidiary;[103] or
- a newly established Parent Company replacing the existing Parent Company of the Tax Group.[104]

| **Example 11: A newly established juridical person joining an existing Tax Group** |
| --- |
| Company A is a Parent Company of an existing Tax Group which has the Gregorian calendar year as its Tax Period. On 15 September 2024, Company B is formed as a newly incorporated entity. Company A owns 100% of the shares in Company B as of the date of its incorporation. All other conditions for becoming members of the same Tax Group are met between Company A and Company B.<br><br>Company A and Company B can jointly file an application to the FTA for Company B to join the existing Tax Group. This request can specify that Company B would join the Tax Group as from Company B's incorporation date. Upon approval by the FTA, Company B will be part of the Tax Group from its date of incorporation (i.e. 15 September 2024). |

### 6.3. Leaving a Tax Group

#### 6.3.1. General

A Subsidiary shall leave the Tax Group in the following circumstances:

- Following approval by the FTA of an application made by the Parent Company and the relevant Subsidiary.[105] In such a case, the Subsidiary leaves the Tax Group from the beginning of the Tax Period specified in the application or such other Tax Period determined by the FTA.[106]
- Where the relevant Subsidiary no longer meets the conditions to be a member of the Tax Group, the Subsidiary leaves the Tax Group from the beginning of the Tax Period in which the conditions are no longer met.[107] Further, the Parent

[103] Article 5(5)(a) of Ministerial Decision No. 125 of 2023.
[104] Article 40(12)(a) of the Corporate Tax Law read with Article 5(5)(b) of Ministerial Decision No. 125 of 2023.
[105] Article 40(10)(a) of the Corporate Tax Law.
[106] Article 41(2) of the Corporate Tax Law.
[107] Article 40(10)(b) read with Article 41(3) of the Corporate Tax Law.

Company is required to notify the FTA within 20 business days from the date the conditions are no longer met.[108]

**Example 12: Subsidiary leaves a Tax Group after failing to meet conditions**

Company A (as the Parent Company), Company B and Company C formed a Tax Group during the Tax Period ending 31 December 2024. Company A owns 100% of the share capital of Company B. On 1 October 2025, Company A transfers 10% of the share capital in Company B to a third party. On 8 October 2025, the 10% share capital in Company B is transferred back to Company A.

As a result of the above, the conditions for Company B to be a member of the Tax Group were not continuously met throughout the Tax Period ending 31 December 2025. Therefore, Company B will leave the Tax Group as of the beginning of the 2025 Tax Period (i.e. from 1 January 2025). Company A is required to notify the FTA within 20 business days from 1 October 2025.

#### 6.3.2. Subsidiary ceases to exist upon transfer of Business

If a Subsidiary transfers all of its Business to another member of the Tax Group and ceases to exist as a result of this transfer (for example due to a legal merger), the Subsidiary shall remain a member of the Tax Group until the date it ceases to exist and the Tax Group shall continue to exist.[109] The Subsidiary shall be considered to leave the Tax Group on the date it ceases to exist.[110]

However, if the Tax Group only comprises two members and one member transfers its entire Business to the other member and the first mentioned member ceases to exist as a result of that transfer, the Tax Group shall be considered to cease to exist on the date that the transfer is effective.[111]

Since the Subsidiary (which ceases to exist) leaves the Tax Group on the transfer of its Business, a gain or loss on the assets and liabilities transferred as part of the transfer of the Business may be taken into account while determining the Taxable Income of the Tax Group, except if such a gain or loss would not have been taken into account had the Subsidiary elected for Business Restructuring Relief or Qualifying Group Relief.[112]

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[108] Article 12 of Ministerial Decision No. 125 of 2023.
[109] Article 10(1)(a) of Ministerial Decision No. 125 of 2023.
[110] Article 10(1)(a) of Ministerial Decision No. 125 of 2023.
[111] Article 10(1)(b) of Ministerial Decision No. 125 of 2023.
[112] Article 42(9) of the Corporate Tax Law read with Article 11(1) of Ministerial Decision No. 125 of 2023.

The exception does not require the former Subsidiary to elect for Business Restructuring Relief[113] or Qualifying Group Relief, but instead the exception applies if:[114]

- such an election would have been possible if the Tax Group had not existed; and
- no clawback would have applied under Article 26(4) or Article 27(6) of the Corporate Tax Law.

If the former Subsidiary was not eligible to claim the relief or a clawback would have applied under Article 26(4) or Article 27(6) of the Corporate Tax Law, the gain or loss which was not taken into account on the transfer shall be included as Taxable Income on the date when the former Subsidiary left the Tax Group.[115]

**Example 13: A Subsidiary is merged into the Parent Company**

Company A (as the Parent Company), Company B and Company C formed a Tax Group during the Tax Period ending 31 December 2024. Company A owns 100% of the share capital of Company B and Company C.

On 1 March 2024, Company B transfers an asset (asset 1) to Company C in exchange for cash.

On 1 March 2025, Company B merges into Company A and ceases to exist. In such a case, Company B will remain a member of the Tax Group until 1 March 2025 (i.e. till it ceases to exist) and will be considered to leave the Tax Group on 1 March 2025.[116]

- Transfer of assets and liabilities as part of legal merger

The assets or liabilities transferred as part of the legal merger are considered to have transferred within the Tax Group. However, immediately after the merger, Company B has ceased to exist and is considered to leave the Tax Group. In such case, any gain or loss on the transfer of the assets and liabilities is taken into account upon Company B leaving the Tax Group, unless the associated income would have been exempt from Corporate Tax or not taken into account under any other provision of the Corporate Tax Law.[117]

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[113] Article 10(3) of Ministerial Decision No. 125 of 2023.

[114] Article 11(1) and 11(2) of Ministerial Decision No. 125 of 2023.

[115] Article 42(10) of the Corporate Tax Law read with Article 11(2) of Ministerial Decision No. 125 of 2023.

[116] Article 10(1)(a) of the Ministerial Decision No. 125 of 2023.

[117] Article 42(9) and 42(10) of the Corporate Tax Law.

If the conditions of Business Restructuring Relief are met in relation to the legal merger of Company B with Company A, no gain or loss would need to be taken into account.[118] Since the gains or loss would not have been taken into account had Company B elected for Business Restructuring Relief, it would not be taken into account when Company B ceases to exist and leaves the Tax Group.

- Transfer of asset 1 by Company B to Company C

The asset transferred by Company B to Company C on 1 March 2024 (asset 1) was a transaction between two members of the Tax Group and therefore, eliminated for determining Taxable Income for the Tax Period ending 31 December 2024. However, Company B leaves the Tax Group within 2 years from the date of the asset transfer, as it ceased to exist on 1 March 2025 as a result of a transfer of Business under a legal merger.

As Company B ceases to be part of a Qualifying Group with Company C within two years of the transfer of asset 1, the clawback of Qualifying Group Relief is triggered.[119] Therefore, the transfer of asset 1 shall be treated as taking place at its Market Value determined at the time of the asset transfer.[120] The resulting gain or loss from the transfer of asset 1 by Company B to Company C should be taken into account in the hands of Company B (transferor) on the date the transferor (Company B) leaves the Tax Group.[121] However, as Company B ceases to exist, the relevant gain or loss must be taken into account in the hands of the Transferee, being the Tax Group[122].

## 6.4. Change of the Parent Company of a Tax Group

The Parent Company of a Tax Group may submit an application to the FTA to be replaced by another Parent Company without a discontinuation of the Tax Group in any of the following circumstances:

- The new Parent Company meets all the conditions[123] (see Section 4) in relation to the former Parent Company.[124] In this case, the request should be submitted after the new Parent Company meets the conditions for joining a Tax Group and

[118] Article 27(1)(a) of the Corporate Tax Law.
[119] Article 26(4) of the Corporate Tax Law.
[120] Article 26(5) of the Corporate Tax Law.
[121] Article 42(9) and 42(10) of the Corporate Tax Law.
[122] Article 5(2) of Ministerial Decision No 132 of 2023 read with Article 26(5) of the Corporate Tax Law
[123] Under Article 40(1) of the Corporate Tax Law.
[124] Article 40(12)(a) of the Corporate Tax Law.

the request should specify the Tax Period when the change is effective. The request should be filed before the end of the Tax Period for which the replacement of the Parent Company is requested;[125] or

- The former Parent Company ceases to exist and the new Parent Company or a Subsidiary is its universal legal successor, for instance as a result of a merger or other transfer under universal title.[126] Although an application to form a Tax Group can generally only be submitted once the relevant conditions are met, a request to replace a Parent Company in such circumstances can be made while a transfer under universal title Is being prepared. Once approved, the continuation of the Tax Group applies as of the date when the transfer to the universal legal successor occurs and is conditional on that transfer being completed.

## 6.5. Compliance impact of changes in a Tax Group

If the conditions for a Tax Group are not met continuously throughout a Tax Period in relation to a specific Subsidiary, that Subsidiary is considered to leave the Tax Group as of the start of that Tax Period.[127] As a result, it would need to file a Tax Return as a separate Taxable Person for that Tax Period and is liable for its own Corporate Tax Payable.

If a Tax Group did not realise the conditions for a Tax Group were not met in relation to a certain Subsidiary, it is possible that the Tax Group will have filed Tax Returns as if the Subsidiary was still part of the Tax Group. This implies that such Tax Returns were incorrect and would need to be corrected once the error has been identified. Any Administrative Penalties relating to filing an incorrect Tax Return of the Tax Group and, where applicable, underpayment of Corporate Tax shall be the liability of entities that remain part of the Tax Group. It is also possible that Taxable Persons did not file a Tax Return as they mistakenly thought that the conditions for the Tax Group were met for that Tax Period. In such case, these entities could also be subject to Administrative Penalties for failure to file a Tax Return.

### 6.5.1. Tax Deregistration

A Subsidiary leaving the Tax Group but which does not cease to exist is not required to deregister for Corporate Tax purposes. The Subsidiary's own Tax Registration Number shall be used for its standalone Tax Returns, paying Corporate Tax and any other compliance obligations.

[125] Article 5(1) and 5(2) of Ministerial Decision No. 125 of 2023.
[126] Article 40(12)(b) of the Corporate Tax Law.
[127] Article 41(3) of the Corporate Tax Law.

If a Subsidiary of a Tax Group ceases to exist in a Tax Period (for example, through dissolution or liquidation), the relevant Subsidiary is deemed to leave that Tax Group from the start of that Tax Period,[128] except if it ceases to exist as part of a Business restructuring taking place within the Tax Group.[129]

If the Subsidiary leaves the Tax Group from the start of the Tax Period, it would generally be required to settle its Corporate Tax and Administrative Penalties due and file any Tax Returns for the period between its date of leaving the Tax Group (i.e. the beginning of the relevant Tax Period) and its date of cessation. The former Subsidiary that ceases to exist is required to file an application with the FTA for Tax Deregistration within 3 months of the date when it ceases to exist.[130]

The Tax Group itself has a separate Tax Registration Number which is not affected if a Subsidiary leaves the Tax Group, unless the Tax Group itself ceases to exist due to the Subsidiary leaving the Tax Group (see Section 7).

#### 6.5.2. Financial Statements

If a member of a Tax Group leaves the Tax Group or the Tax Group ceases to exist, the Parent Company and each Subsidiary leaving the Tax Group shall prepare standalone Financial Statements using the same accounting basis applied by the Tax Group.

The opening values of the assets and liabilities in the standalone Financial Statements will be the value of those assets and liabilities recorded by the Tax Group at the moment that member left the Tax Group or the Tax Group ceased to exist.[131]

If any assets or liabilities are eliminated on consolidation as they are recognised in standalone Financial Statements only as a result of a transfer within the Tax Group, such assets or liabilities will not have a value recorded by the Tax Group. This can apply to internally created goodwill or customer lists that are recognised in the standalone Financial Statements after a transfer within the Tax Group. In such case, if within two years from the date of transfer, the transferee member of the Tax Group leaves the Tax Group or the Tax Group ceases to exist, the gain or loss on transfer of such an asset or liability may be recognised at Market Value, unless the associated income would have been exempt from Corporate Tax Law or not taken into account under any other provision of the Corporate Tax Law (see Section 8.2).[132]

[128] Article 41(3) of the Corporate Tax Law.
[129] Article 10 of Ministerial Decision No. 125 of 2023.
[130] Article 2(2) of FTA Decision No. 6 of 2023.
[131] Article 13 of Ministerial Decision No. 125 of 2023.
[132] Article 42(9) and 42(10) of the Corporate Tax Law read with Article 11 of Ministerial Decision No. 125 of 2023.

Within the Tax Group, any loans between members of the Tax Group will be eliminated on consolidation, meaning they will not have a value recorded by the Tax Group. In such case, such assets and liabilities will have an opening value consistent with the applicable Accounting Standards, determined as if these transactions had occurred without a Tax Group being in existence.

# 7. Cessation of a Tax Group

## 7.1. General

A Tax Group shall cease to exist in any of the following circumstances:

| Circumstance | Date from which Tax Group is dissolved |
|---|---|
| Following approval by the FTA of an application by the Parent Company[133] | The Tax Group is dissolved from the beginning of the Tax Period specified in the application submitted or any other Tax Period determined by the FTA.[134] |
| The Parent Company no longer meets the conditions to form a Tax Group[135] and is not replaced by another Parent Company without discontinuation of the Tax Group (see Section 6.4).<br><br>In such case, the Tax Group should notify the FTA within 20 business days from the date the conditions are no longer met.[136] | The Tax Group is dissolved from the beginning of the Tax Period in which the conditions were no longer met.[137] |
| If there are only two members of the Tax Group, and one of them transfers its entire Business to the other and ceases to exist as a result of the transfer.[138]<br><br>In such a case, the surviving entity should notify the FTA within 20 business days from the date the transfer of Business has occurred. | The Tax Group is dissolved as of the date that the transfer becomes effective.[139]<br><br>If this occurs in the course of a Tax Period, two separate Tax Returns would need to be filed for the Tax Period-<br>• Before the transfer under universal title, which will be filed by the Parent Company of the Tax Group under the Tax Group's Tax Registration Number; and |

133 Article 40(11)(a) of the Corporate Tax Law.
134 Article 41(2) of the Corporate Tax Law.
135 Article 40(11)(b) of the Corporate Tax Law.
136 Article 12 of Ministerial Decision No. 125 of 2023.
137 Article 41(3) of the Corporate Tax Law.
138 Article 10(1)(b) of the Ministerial Decision No. 125 of 2023.
139 Article 10(1)(b) of the Ministerial Decision No. 125 of 2023.

| | |
|---|---|
| | • After the transfer which will be filed by the surviving entity under that entity's Tax Registration Number. |

In addition, the FTA may at its discretion, dissolve a Tax Group or change the Parent Company of a Tax Group based on information available to the FTA and notify the Parent Company of such action taken.[140]

**Example 14: Parent Company merges into a Subsidiary**

Company A directly holds 100% of the shares of Company B and Company C. Assuming all conditions of Article 40(1) of the Corporate Tax Law are met, Company A (as the Parent Company), Company B and Company C formed a Tax Group during the Tax Period ending 31 December 2024.

On 1 May 2025, Company A sells all of the shares in Company C to a third party. On 1 March 2026, Company A merges into Company B, with Company B being Company A's universal legal successor and Company A ceases to exist.

In 2025, the conditions for forming a Tax Group between Company A and Company C are not met continuously. As a result, Company C is considered to leave the Tax Group from the start of the 2025 Tax Period (i.e. on 1 January 2025).[141] However, as the conditions for Company A forming a Tax Group with Company B are still met, the Tax Group continues to exist.

On 1 March 2026, Company A enters into a legal merger with Company B, under which it transfers all its assets and liabilities (other than the shares in Company B, which are transferred to Company A's shareholders) to Company B and ceases to exist with Company B being the legal universal successor. The Tax Group shall be considered to cease to exist as of 1 March 2026.[142]

The obligation to file the Tax Return of the Tax Group is on the Parent Company (i.e. Company A). However, since Company A ceases to exist upon the merger, Company B (in its capacity as legal successor of Company A) will file a Tax Return on behalf of the Tax Group for its last Tax Period from 1 January 2026 to 28 February 2026, and Company B will file a Tax Return as a standalone Taxable Person for the Tax Period from 1 March 2026 to 31 December 2026.

[140] Article 40(13) of the Corporate Tax Law.
[141] Article 41(3) of the Corporate Tax Law.
[142] Article 10(1)(b) of Ministerial Decision No. 125 of 2023.

## 7.2. Tax Deregistration of a Tax Group

If a Tax Group ceases to exist as a result of an application by the Parent Company,[143] the application shall also be treated as an application for Tax Deregistration of the Tax Group. The Tax Group shall indicate in its application if all Corporate Tax and Administrative Penalties have been paid and all Tax Returns have been filed. If so, the FTA shall also process the Tax Deregistration.[144]

If a Tax Group ceases as a result of the conditions no longer being met,[145] the Tax Group shall notify the FTA within 20 business days.[146] This notification shall also be treated as a request to deregister the Tax Group. The Tax Group shall specify in its notification if all Corporate Tax and Administrative Penalties have been paid and all Tax Returns have been filed. If so, the FTA shall also process the Tax Deregistration.[147]

If there are only two members of the Tax Group, and one of them transfers its entire Business to the other and ceases to exist as a result of the transfer, the Tax Group ceases to exist as of the date that the transfer becomes effective.[148] No election to apply Business Restructuring Relief under Article 27 of the Corporate Tax Law is required for this treatment.[149] However, the surviving entity shall notify the FTA within 20 business days.[150] This notification shall also be treated as an application to deregister the Tax Group. The Tax Group shall specify in its notification if all Corporate Tax and Administrative Penalties have been paid and all Tax Returns have been filed, in order for the FTA to also process the Tax Deregistration.[151]

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[143] Article 40(11)(a) of the Corporate Tax Law.
[144] Article 52(2) of the Corporate Tax Law.
[145] Article 40(11)(b) of the Corporate Tax Law.
[146] Article 12 of Ministerial Decision No. 125 of 2023.
[147] Article 52(2) of the Corporate Tax Law.
[148] Article 10(1)(b) of Ministerial Decision No. 125 of 2023.
[149] Article 10(3) of Ministerial Decision No. 125 of 2023.
[150] Article 12 of Ministerial Decision No. 125 of 2023.
[151] Article 52(2) of the Corporate Tax Law.

# 8. Taxable Income of a Tax Group

## 8.1. Determining the Taxable Income of a Tax Group

A Tax Group is treated as a single Taxable Person for the purposes of the Corporate Tax Law.[152] As a result, the Tax Group has a combined Taxable Income, which is reported by the Parent Company. The Parent Company shall calculate the Taxable Income after consolidating the financial results, assets and liabilities with all Subsidiaries and eliminating transactions between the Parent Company and any Subsidiary or between the Subsidiaries that are a member of the Tax Group.[153]

### 8.1.1. Elimination of intra-group transactions

The requirement to eliminate intra-group transactions within the Tax Group applies to transactions between the Subsidiaries in the same way as it applies to transactions between the Parent Company and any Subsidiary.[154] This is consistent with the principle that Taxable Income is determined as if the Tax Group is a single Taxable Person. One exception to this is where a member has recognised a deductible loss in a Tax Period in respect of those transactions prior to joining or forming the Tax Group (as described in Section 8.1.2 below).[155]

The requirement to eliminate intra-group transactions within the Tax Group also applies to valuation adjustments and provisions in relation to transactions within the Tax Group[156] and changes in the accounting value of assets and liabilities, where they arise as a result of a gain or loss from a transaction within a Tax Group.[157]

The above principle similarly applies to income and expenditure. For instance, if one member of a Tax Group (Company A) provides a service to another member of the Tax Group (Company B), this results in an expense and corresponding income that is eliminated on consolidation of the Financial Statements of the Tax Group.

The requirement to eliminate transactions within the Tax Group only applies to periods where the transacting parties are members of the same Tax Group. For instance, if Company A paid AED 100,000 of Interest to Company B in a Tax Period, and Company A and Company B form a Tax Group effective from the beginning of that

[152] Article 40(4) of the Corporate Tax Law.
[153] Article 42(1) of the Corporate Tax Law.
[154] Article 6(1)(a) of Ministerial Decision No. 125 of 2023.
[155] Article 4 of Ministerial Decision No. 125 of 2023.
[156] Article 6(1)(b) of Ministerial Decision No. 125 of 2023.
[157] Article 6(2) of Ministerial Decision No. 125 of 2023.

Tax Period, all of the Interest paid in that Tax Period in which the Tax Group is formed is eliminated.[158]

### 8.1.2. Exception to elimination of intra-group transactions

As an exception to Section 8.1.1, the requirement to eliminate intra-group transactions does not apply to transactions where a member has recognised a deductible loss in a Tax Period in respect of those transactions prior to joining or forming the Tax Group, until the deductible loss is reversed in full.[159] In such cases, the transaction is not eliminated and income is included in the Taxable Income of the Tax Group up to the amount that was previously deducted prior to joining or forming the Tax Group.[160]

This can occur if, for instance, one member of the Tax Group has recognised a deductible loss by impairing a loan receivable due from another member of the Tax Group prior to the joining or the formation of the Tax Group. In that case, the relevant transaction shall not be eliminated. Any income in relation to the transaction, for example reversal of the impairment, shall be included in the Taxable income of the Tax Group up to the same amount as the deductible loss previously deducted. After the reversal of the impairment has been taken into account up to the same amount as the deductible loss, the exception will no longer apply, i.e. the loan will be eliminated as an intra-group transaction. This prevents the non-taxation of income on an intra-group transaction where that income reverses a loss that had already been deducted prior to forming or joining a Tax Group.

This exception to elimination only applies on transactions that resulted in both a "deductible loss" before the joining or formation of the Tax Group and a reversal of such loss after the joining or formation of the Tax Group. The exception requires the inclusion of income in relation to such a transaction, but would not allow a Tax Group to claim an additional deductible loss on such a transaction.[161] For example, if one member of the Tax Group has recognised a deductible loss by partially impairing a loan due from another member of the Tax Group prior to the joining or the formation of the Tax Group, the exception does not apply to any further impairments of such a loan. As a result, any further impairment (after the lender and borrower form part of a Tax Group) will be eliminated and, therefore, not be deductible. However, the exception to elimination would apply to a reversal of the impairment, as this would generate income that could wholly or partially reverse the deductible loss.[162]

[158] Article 41(1) of the Corporate Tax Law.

[159] Article 4(1) of Ministerial Decision No. 125 of 2023.

[160] Article 4(2) of Ministerial Decision No. 125 of 2023.

[161] Article 4(2) of Ministerial Decision No. 125 of 2023.

[162] Article 4(2) of Ministerial Decision No. 125 of 2023.

In addition, the exception only applies on income that represents a reversal of the deductible loss on the same transaction.[163] For instance, if a company (Company A) has provided an Interest-bearing loan to another company (Company B), the Interest would generally result in a deductible loss for the borrower (Company B). If Company A and Company B are included in a Tax Group in a later Tax Period, a reversal of the Interest payable that was previously deducted (such as in the form of release or waiver) is not eliminated on consolidation. However, if the Interest was paid (whether in cash or in kind) and Company A or Company B realises income in relation to that loan on another basis (such as the receipt of interest for Company A or the release of principal amount for Company B), this is not a reversal of the deductible loss.

Similarly, if a company (Company C) incurs a foreign exchange loss on a loan provided to or from another company (Company D), that foreign exchange loss would generally be a deductible loss. If Company C and Company D are included in a Tax Group in a later Tax Period, a reversal of the foreign exchange loss within the Tax Group is not eliminated on consolidation.

## 8.2. Consequence of leaving a Tax Group or cessation of Tax Group on transfers within the Tax Group

The requirement to eliminate transactions within the Tax Group generally also applies to transfers of assets and liabilities between members of the Tax Group. However, the gain or loss on such a transfer may need to be taken into account at the level of the transferor or the transferee, if either party leaves the Tax Group within 2 years from the date of the transfer. One exception to this is those cases where the associated income would have been exempt or not taken into account for Corporate Tax purposes (for instance, under the Participation Exemption, Business Restructuring Relief or Qualifying Group Relief) and the relevant conditions for such reliefs were and continue to be met (as applicable).[164]

Unless the exception applies, any corresponding gain or loss on transfer of assets and/or liabilities which was not taken into account previously, will be taken into account when the transferor or transferee leaves the Tax Group within 2 years from the date of the transfer.[165] The gain or loss in question will be calculated consistently with the other provisions of the Corporate Tax Law.

If there is no other provision of the Corporate Tax Law that either exempts the transfer or requires the income to not be taken into account, the corresponding income shall be taken into account by the transferor or the Tax Group (as the case may be), on the

[163] Article 4(1) of Ministerial Decision No. 125 of 2023.
[164] Article 42(9) of the Corporate Tax Law.
[165] Article 42(9) of the Corporate Tax Law.

date the transferor or transferee leaves the Tax Group and the transferee or the Tax Group (as the case may be), shall make a corresponding adjustment to the cost base of the asset or liability for Corporate Tax purposes.[166]

If the Tax Group ceases to exist on the same date that the transferor or the transferee leaves the Tax Group, the income shall be taken into account by the Tax Group in its last Tax Return (if the Transferee leaves the Tax Group, or by the Transferor if the Transferor leaves the Tax Group).

The situation where a Subsidiary transfers its entire Business to another member of the same Tax Group and then ceases to exist as a result of this transfer is discussed in Section 6.3.2.

**Example 15: Transfer within the Tax Group**

Company A, Company B and Company C are members of a Tax Group for the Tax Period 2024. Company A is the Parent Company and Company B and Company C are the Subsidiaries. All Tax Group members use the Gregorian calendar year as their Financial Year. The following transactions take place between the members of the Tax Group.

| Date of the transaction | Description of the transaction | Net book value of asset 1 | Market value of asset 1 |
|---|---|---|---|
| 31 March 2024 | Company A transfers an asset ('asset 1') to Company B | AED 1 million | AED 1.2 million |
| 31 March 2025 | Company B transfers 'asset 1' to Company C | AED 1 million | AED 1.4 million |
| 1 February 2027 | Company A transfers the shares in Company B to a third party | AED 1 million | AED 1.5 million |

Tax Period ending 31 December 2024: Since the transfer of the asset from Company A to Company B is a transaction between two members of a Tax Group, this transaction will be eliminated while calculating Taxable Income of the Tax Group for this Tax Period.

Tax Period ending 31 December 2025: Since the transfer of the asset from Company B to Company C is a transaction between two members of a Tax Group, this transaction will be eliminated while calculating Taxable Income of the Tax Group for this Tax Period.

166 Article 42(10) of the Corporate Tax Law.

Tax Period ending 31 December 2027:

- As a result of the transfer of the shares of Company B to a third party, Company B is considered to leave the Tax Group from the beginning of Tax Period 2027 (i.e. 1 January 2027).[167] This will be the case even if the sale had occurred later in 2027 (e.g. after 31 March 2027). The Tax Group with Parent Company (Company A) continues with its other Subsidiary.
- Transfers of assets and liabilities between members of the Tax Group should not be eliminated, where the transferor or the transferee leaves the Tax Group within 2 years from the date of the transfer.[168]
- This rule does not impact the transfer of the asset from Company A to Company B on 31 March 2024 since Company B does not leave the Tax Group within 2 years from the date of the transfer.
- However, Company B leaves the Tax Group within 2 years from the transfer of the asset from Company B to Company C on 31 March 2025. Hence, the gain or loss on such transfer shall need to be taken into account, unless the associated gain or loss on the transfer of the asset would have been exempt or not taken into account under another provision of the Corporate Tax Law.[169]
- This means it should be assessed if the transfer of asset from Company B to Company C could have qualified for Qualifying Group Relief, if Company B and Company C had not been members of a Tax Group, and that the clawback of Qualifying Group Relief is not triggered.
- As shares of Company B are sold to a third party, Company B ceases to be part of the same Qualifying Group as Company C within two years of the transfer, hence, Qualifying Group Relief would have been clawed back.[170]
- Thus, the gain on the transfer of the asset must be determined in the hands of the transferor with reference to Market Value at the time of transfer.[171] In this case, at the time of the transfer of the asset to Company C, the net book value of the asset was AED 1 million and Market Value was AED 1.4 million. Thus, the gain at time of transfer would be AED 0.4 million.
- Thus, a gain of AED 0.4 million is taken into account on the date the transferee leaves the Tax Group (i.e. on 1 January 2027) and so is included in the Taxable Income of the Transferor for the Tax Period ending 31 December 2027.[172]

[167] Article 41(3) of the Corporate Tax Law.
[168] Article 42(9) of the Corporate Tax Law.
[169] Article 42(9) of the Corporate Tax Law.
[170] Article 26(4) of the Corporate Tax Law.
[171] Article 26(5) of the Corporate Tax Law.
[172] Article 42(10) of the Corporate Tax Law read with Article 11(2) of Ministerial Decision No. 125 of 2023.

- Going forward, the cost base of asset 1 for the Tax Group is increased to AED 1.4 million.[173]

## 8.3. Application of the provisions of the Corporate Tax Law to Tax Groups

A Tax Group is treated as a single Taxable Person for the purposes of the Corporate Tax Law.[174] As a result, the provisions of the Corporate Tax Law have to be applied to the Tax Group as a whole, unless specifically provided otherwise in the Corporate Tax Law.[175]

### 8.3.1. Application of reduced Corporate Tax rate and Small Business Relief

The portion of the Taxable Income that is subject to the 0% Corporate Tax rate will be limited to AED 375,000,[176] regardless of the number of entities that are included in the Tax Group.

Similarly, as discussed in Section 4.6.3, whether Small Business Relief is available shall be determined by reference to the consolidated Revenue of the entire Tax Group.[177]

### 8.3.2. Application of ownership conditions at the level of Tax Group

For the purposes of the Participation Exemption[178], whether the Tax Group holds a 5% or greater ownership interest in the shares or capital is determined by combining ownership interests held by all members of the Tax Group as well as ownership interests held by other entities that are not part of the Tax Group but that belong to the same Qualifying Group with any of the members of that Tax Group.[179]

Also, for the purposes of the Participation Exemption, the acquisition cost of ownership interests held by all members of the Tax Group as well as entities who are not part of the Tax Group but are a member of a Qualifying Group with any of the members of the Tax Group, should be combined to determine whether the aggregated acquisition cost is equal to or exceeds AED 4 million.[180]

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[173] Article 42(10) of the Corporate Tax Law.
[174] Article 40(4) of the Corporate Tax Law.
[175] Article 42(2) of the Corporate Tax Law.
[176] Article 3(1) of the Corporate Tax Law read with Article 2(1) of Cabinet Decision No. 116 of 2022.
[177] Article 2(1) of Ministerial Decision No. 73 of 2023.
[178] Article 23 of the Corporate Tax Law.
[179] Article 3(1)(b) of Ministerial Decision No. 116 of 2023.
[180] Article 8(1) read with Article 3(2) of Ministerial Decision No. 116 of 2023.

For the purposes of the ownership requirements for Qualifying Group Relief[181] and the transfer of Tax Losses,[182] the direct and indirect ownership interest held by members of the same Tax Group shall be determined on the basis of the aggregation of the ownership interests of the Parent Company and each Subsidiary that is a member of the Tax Group.[183]

### 8.3.3. Application of Qualifying Group Relief

A Taxable Person can elect to not take into account gains or losses in relation to transfers within a Qualifying Group.[184] The election should be made when filing the Tax Return for the Tax Period in which the transfer within a Qualifying Group takes place.[185] Such an election is irrevocable.[186] If a Tax Group makes such an election for Qualifying Group Relief, it shall apply to all members of the Tax Group and the election would continue to apply to the members even after such members leave the Tax Group or after the Tax Group ceases to exist.

A Taxable Person that has not made an election for Qualifying Group Relief is treated as making such an election if it forms a Tax Group or joins a Tax Group that includes one or more members that have made such an election. Similarly, a Tax Group that has not made such an election, is treated as making the election if a new Subsidiary joins the Tax Group and such Subsidiary has made such an election.

If a member of a Tax Group transfers an asset or liability to or from a member of its Qualifying Group (not being part of the Tax Group), no gain or loss needs to be taken into account in relation to this transfer.[187] However, a gain or loss may need to be taken into account if, within 2 years from the date of the transfer, the transferor and the transferee cease to be members of the same Qualifying Group or there is a subsequent transfer of the asset or liability outside the Qualifying Group.[188]

Two Taxable Persons can be members of a Qualifying Group when certain conditions are satisfied.[189] One of the conditions is that a Taxable Person has a direct or indirect ownership interest of at least 75% in another Taxable Person or a common owner that

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[181] Article 26(2)(b) of the Corporate Tax Law.
[182] Article 38(1)(c) of the Corporate Tax Law.
[183] Article 9 of Ministerial Decision No. 125 of 2023.
[184] Article 26(1) of the Corporate Tax Law.
[185] Article 3(2) of Ministerial Decision No. 132 of 2023.
[186] Article 3(3) of Ministerial Decision No. 132 of 2023.
[187] Article 26(1) of the Corporate Tax Law.
[188] Article 26(4) of the Corporate Tax Law.
[189] Article 26(2) of the Corporate Tax Law.

holds at least 75% in both Taxable Persons.[190] As the ownership interests held by members of the Tax Group are aggregated (see Section 8.3.2),[191] it is possible that two Taxable Persons are in a Qualifying Group while one of them is in a Tax Group, but would no longer be in a Qualifying Group once such Tax Group ceases to exist. Therefore, it is possible that the Qualifying Group Relief may need to be clawed back if a Subsidiary leaves a Tax Group or if a Tax Group ceases to exist within two years of the transfer in respect of which Qualifying Group Relief was applied.[192]

#### 8.3.4. Application of limitation of Tax Losses carried forward

A Tax Loss can be carried forward by a Taxable Person provided any of the following applies:

- the owners of the Taxable Person continuously hold at least 50% ownership from the start of the period in which the Tax Loss is incurred to the end of the Tax Period in which the Tax Loss is used to offset against Taxable Income (the "ownership condition"),[193] or
- there is a change in ownership of more than 50%, Tax Losses can still be carried forward provided the same or similar Business is carried on following the change in ownership (the "Business continuity condition").[194]

For the limitation of Tax Losses carried forward rule (under Article 39(1)(a) of the Corporate Tax Law, i.e. the requirement to have continuous 50% ownership); when applying the ownership condition, only the ownership interest in the Parent Company of the Tax Group is relevant.

The conditions in Articles 39(1)(b) and 39(2) of the Corporate Tax Law (i.e. the requirement to conduct the same or similar business if there is a greater than 50% change in ownership), are to be determined by reference to Business Activities of the Tax Group as a whole. In other words, if a substantial part of the Business of the Tax Group is operated by a particular Subsidiary, it is possible that the Business continuity condition in Article 39(1)(b) is not met in respect of a Tax Loss of the Tax Group after that Subsidiary leaves the Tax Group, which would prevent the carry forward and use of the loss, if there had been a change of ownership of more than 50% in the Parent Company.

This means that if a substantial part of the Business of the Tax Group was carried out by one or more Subsidiaries, it is possible that the Business continuity condition is not

[190] Article 26(2)(b) of the Corporate Tax Law.
[191] Article 9 of Ministerial Decision No. 125 of 2023.
[192] Article 26(4) of the Corporate Tax Law.
[193] Article 39(1)(a) of the Corporate Tax Law.
[194] Article 39(1)(b) and 39(2) of the Corporate Tax Law.

met for the Parent Company after the Tax Group has ceased to exist if there is a change of ownership of more than 50% in the Parent Company.

When applying the ownership condition to pre-Grouping Tax Losses (see Section 10), only the ownership interest in the relevant Subsidiary is relevant. The Business continuity condition is determined by reference to Business Activities of that Subsidiary. In other words, if the Subsidiary transfers a substantial part of its Business within the Tax Group, it is possible that its remaining Business is no longer the same or similar to the Business it was when its pre-Grouping Tax Losses were incurred. That means that the Business continuity condition may not be met in respect of the pre-Grouping Tax Losses of that Subsidiary.

#### 8.3.5. Application of election for realisation basis

##### 8.3.5.1. General

As the Tax Group determines its Taxable Income on a consolidated basis,[195] all members of the Tax Group would need to follow the same accounting basis in calculating the Taxable Income. The Tax Group will need to determine whether to prepare its consolidated Financial Statements on a Cash Basis (if permitted) or an Accrual Basis of Accounting in a manner consistent with the relevant Accounting Standards and the Corporate Tax Law.

If a Tax Group prepares its Financial Statements on an Accrual Basis of Accounting, the Tax Group can make an election during its first Tax Period to take into account gains and losses on a realisation basis (in respect of either all accounting gains or losses or only gains and losses on assets and liabilities held on capital account), provided the relevant conditions are met.[196] If the Tax Group makes the election for realisation basis, it would make the specified adjustments to its Taxable Income in respect of assets and liabilities held by each member of the Tax Group.[197]

If a member of the Tax Group leaves the Tax Group or the Tax Group ceases to exist, the relevant former members of the Tax Group are required to prepare their standalone Financial Statements on the same accounting basis as applied by the Tax Group and to adopt the values of the relevant assets and liabilities as recorded by the Tax Group as the opening value of those assets and liabilities in the standalone Financial Statements.[198] Therefore, if the Tax Group has applied an Accrual Basis of Accounting and has elected to take into account gains and losses on a realisation

[195] Article 42(1) of the Corporate Tax Law.
[196] Article 20(3) of the Corporate Tax law.
[197] Article 2(3) and 2(4) of Ministerial Decision No. 134 of 2023.
[198] Article 13 of Ministerial Decision No. 125 of 2023.

basis,[199] any former member of the Tax Group is required to follow the same accounting basis and the same election. Similarly, if the Tax Group has not made an election, any former member of the Tax Group is required to follow the same basis.

If the Tax Group includes members that had a first Tax Period before joining the Tax Group, these members would have determined their standalone basis of accounting and would have made a decision to elect or not elect for the realisation basis in their first Tax Period. It is possible that the Tax Group made a different decision than a member that joined the Tax Group after its first Tax Period. In such case, the joining member will need to follow the decision of the Tax Group. For example, if a Taxable Person (i.e. Subsidiary) that did not elect for the realisation basis joins a Tax Group that has elected for the realisation basis, any unrealised gains or losses of the joining Subsidiary will be included in the Taxable Income of the Tax Group only upon realisation.

A decision to make an election or not make an election is irrevocable, except under exceptional circumstances and pursuant to approval by the FTA.[200] An exceptional circumstance where an entity is allowed to change its election is where a Subsidiary joins a Tax Group which has not elected for the realisation basis but the Subsidiary has previously made the election. In such case, the Subsidiary cannot continue to apply the realisation basis. Hence, approval does not need to be sought from the FTA as the approval of a request to form a Tax Group can be considered approval to revoke the Subsidiary's previous election for realisation basis.

A Taxable Person (Parent Company or Subsidiary) should specify a change in such election in its application to form or join a Tax Group, which will be considered by the FTA before the application is approved. If the application to form or join the Tax Group is approved in these circumstances, the relevant member would be required to follow the same accounting basis and election made (or not made) by the Tax Group, even in Tax Periods after it has left the Tax Group or the Tax Group ceases to exist.[201]

#### 8.3.5.2. Banks and Insurance Providers

Banks and Insurance Providers can elect for realisation basis only in relation to assets and liabilities held on capital account and not on all assets and liabilities that are subject to fair value or impairment accounting.[202]

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[199] Article 20(3) of the Corporate Tax Law.
[200] Article 8(3) of Ministerial Decision No. 134 of 2023.
[201] Article 13 of Ministerial Decision No. 125 of 2023.
[202] Article 8(2) of Ministerial Decision No. 134 of 2023.

If a Tax Group includes any such Taxable Persons, the Tax Group would not be allowed to make such an election for realisation basis in respect of all assets and liabilities that are subject to fair value or impairment accounting, as the Tax Group consolidates financial results, assets and liabilities applying a single accounting basis for the purposes of determining Taxable Income.[203] Similarly, if Banks or Insurance Providers apply to join an existing Tax Group, the Tax Group would not be allowed to apply realisation basis on all assets and liabilities that are subject to fair value or impairment accounting. In such situations, the Tax Group may be required to change its election or to revoke an existing election.

As indicated above, a decision to make an election or not to make an election is irrevocable, except under exceptional circumstances and pursuant to approval by the FTA.[204] If a Bank or Insurance Provider applies to join a Tax Group which has elected to apply realisation basis on all assets and liabilities that are subject to fair value or impairment accounting, this may be an exceptional circumstance under which a previous election can be amended or revoked.

### 8.3.6. Deduction of expenditure

Expenditure incurred wholly and exclusively for the purposes of the Taxable Person's Business that is not capital in nature shall be deductible.[205] In the case of a Tax Group, whether expenditure is incurred wholly and exclusively for the purposes of a Taxable Person's Business should be assessed on the basis of the whole Tax Group. Therefore, expenditure may be deductible if it is incurred wholly and exclusively for the Business of another member of the Tax Group (or the Business of several members of the Tax Group). Expenditure incurred for the purposes of a non-Tax Group member's business, (for instance a foreign parent that is not a Resident Person) is not deductible.

### 8.3.7. Application of transitional rules

A Taxable Person's opening balance sheet for Corporate Tax purposes is the closing balance sheet prepared for financial reporting purposes under applicable Accounting Standards on the last day of the Financial Year that ends immediately before their first Tax Period commences.[206] The transitional rules in the Corporate Tax Law aim to limit the taxable gain to the gain which arises after the start of the first Tax Period, in relation to certain categories of assets that are owned by the Taxable Person prior to the first Tax Period.[207]

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[203] Article 42(1) of the Corporate Tax Law.
[204] Article 8(3) of Ministerial Decision No. 134 of 2023.
[205] Article 28(1) of the Corporate Tax Law.
[206] Article 61(1) of the Corporate Tax Law.
[207] Assets as specified in Ministerial Decision No. 120 of 2023.

In the case of Tax Groups formed in the first Tax Period following the introduction of Corporate Tax, the opening balance sheet of a Tax Group is the consolidated (aggregated) balance sheet of each member of the Tax Group on the last day of the Financial Year that ends immediately before the beginning of the Tax Group's first Tax Period. Any election in respect of transitional rules needs to be made by the Tax Group and will continue to apply to any members of the Tax Group after they leave the Tax Group or the Tax Group ceases to exist.

Further, adjustments can be made to the Taxable Income of a Taxable Person in respect of gains recognised on Immovable Property, Intangible Assets and Financial Assets and Financial Liabilities owned prior to the Taxable Person's first Tax Period.[208]

In the case of Tax Groups, when determining whether these assets were owned prior to the first Tax Period,[209] ownership of the asset by all members of the Tax Group should be considered.[210]

When calculating the apportionment of gains under the transitional rules,[211] any period in which a member of the Tax Group held the relevant asset should be considered.[212] This means that if an asset, within the scope of the transitional rules has been transferred between members of a Tax Group, the ownership period is determined by combining all ownership periods, provided that the Tax Group was formed as of the start of the first Tax Period.

**Example 16: Transitional rules on Immovable Property held within a Tax Group**

| Date | Event |
|---|---|
| 27 January 2019 | Company A acquired an Immovable Property in the UAE from a third party for AED 10 million |
| 1 December 2021 | Company B was incorporated with Company A as its 100% shareholder. |
| 1 January 2022 | Company A transferred the Immovable Property to Company B for AED 12 million. Company B measures its Immovable Property on a historical cost basis. |

208 Articles 2, 3 and 4 of Ministerial Decision No. 120 of 2023.
209 As required for Articles 2(1)(a) and 3(1)(a) of Ministerial Decision No. 120 of 2023.
210 Article 5(3) of Ministerial Decision No. 120 of 2023.
211 As required for Articles 2(2) and 3(3) of Ministerial Decision No. 120 of 2023.
212 Article 5(4) of Ministerial Decision No. 120 of 2023.

| | |
|---|---|
| 1 January 2024 | Company A and Company B form a Tax Group and follow the Gregorian calendar year as its Tax Period<br><br>The net book value of the Immovable Property as of 1 January 2024 is AED 12 million. The Market Value of the Immovable Property as of 1 January 2024 is AED 19 million. |
| 19 July 2025 | Company B sells the Immovable Property for AED 20 million. As a result, Company B includes a gain of AED 8 million in its financial statements. |

In its first Tax Return, the Tax Group elects to apply the transitional rules in relation to the Immovable Property. In this regard, it elects to apply the Market Value to determine any gain or loss on disposal in the future.[213]

Based on the election made by the Tax Group, the following amount is excluded in the determination of the gain or loss on disposal:
The amount of gain that would have arisen if Company B had disposed of the Immovable Property at Market Value at the start of the first Tax Period and the cost of the Immovable Property was the higher of the original cost and the net book value.[214] Therefore, the following points are considered.

- The start of the first Tax Period is 1 January 2024.
- The Market Value of the Immovable Property as of 1 January 2024 is AED 19 million.
- The original cost for the Tax Group was AED 10 million.
- The net book value at the start of the first Tax Period is AED 12 million, which is higher.

As a result, this would exclude a gain of AED 7 million (AED 19 million minus AED 12 million) from the Taxable Income of the Tax Group.

The transitional rules apply to certain assets and liabilities owned prior to a Taxable Person's first Tax Period.[215] If a new Tax Group is formed in subsequent Tax Periods, it is not possible for the Tax Group to elect for the transitional rules if the members of the Tax Group had one or more Tax Periods before forming the Tax Group.

It is possible that a Taxable Person has elected to apply the transitional rules on such assets or liabilities and enters into a Tax Group in a later Tax Period. If so, the transitional relief will continue to apply in relation to such assets and liabilities that

[213] Article 2(2)(a) of Ministerial Decision No. 120 of 2023.
[214] Article 2(2)(a) of Ministerial Decision No. 120 of 2023.
[215] Articles 2(5), 3(5) and 4(3) of Ministerial Decision No. 120 of 2023.

were held at the start of the first Tax Period by any Taxable Person that has made the election.

### 8.4. Treatment of Subsidiaries which have shareholders outside the Tax Group

All the income of the members of the Tax Group is included in the Taxable Income of the Tax Group, unless specified otherwise.[216] This means that any income realised by a Subsidiary should be included in full in the Taxable Income of the Tax Group (unless eliminated through consolidation), even if the Parent Company does not wholly own the Subsidiary.

At the level of the Tax Group, the ownership in Subsidiaries that is held by Persons who are not members of the Tax Group is recorded as part of the Tax Group's capital. Similarly, if a Parent Company sells shares in a Subsidiary to a third party while continuing to meet the conditions of the Tax Group, any capital gain or loss arising on such a transaction under the applicable Accounting Standards may benefit from the Participation Exemption.[217]

Profit distributions from Subsidiaries to other members of the Tax Group (the Parent Company or other Subsidiaries) should be eliminated in the computation of the Taxable Income of the Tax Group.[218]

[216] Article 42 of the Corporate Tax Law.
[217] Article 23(5)(b) of the Corporate Tax Law.
[218] Article 42(1) of the Corporate Tax Law.

# 9. Attribution of Taxable Income between members of a Tax Group

## 9.1. Situations in which attribution is required

A Tax Group is required to calculate the Taxable Income attributable to one or more of its members in the following situations:[219]

- A member of the Tax Group has unutilised pre-Grouping Tax Losses (see Section 10).
- A member of the Tax Group has earned income for which the Tax Group can claim a Foreign Tax Credit.
- A member of the Tax Group benefits from any Corporate Tax incentives as specified under Article 20(2)(g) of the Corporate Tax Law.
- A member of the Tax Group has unutilised carried forward pre-Grouping Net Interest Expenditure.

If a Tax Group has not attributed its Taxable Income, it would not be possible to claim relief for the situations mentioned above.

## 9.2. Principles of attribution of Taxable Income

For the purposes of attribution of Taxable Income to members of a Tax Group, the Taxable Income is calculated as if each member were a separate Taxable Person using the accounting basis of the Tax Group.

Transactions between members of a Tax Group should be determined consistently with the arm's length principle where these transactions have been eliminated under consolidation.[220] If such transactions between members of a Tax Group are not eliminated in consolidation,[221] the transaction shall have the same value as reflected in the consolidated Financial Statements of the Tax Group (see Section 8.1.2).

The attribution should be done based on the guiding principles elaborated on below. However, if these guiding principles do not result in a reasonable result, the FTA may require different attribution principles to be used.

[219] Article 8(1) of Ministerial Decision No. 125 of 2023
[220] Article 8(2)(a) of Ministerial Decision No. 125 of 2023.
[221] Article 4 of Ministerial Decision No. 125 of 2023.

## 9.3. Application of arm's length standard

In each case, the attribution of Taxable Income to individual members of the Tax Group should be calculated in accordance with all provisions of the Corporate Tax Law, including the arm's length standard in Article 34 of the Corporate Tax Law.[222] This means that transactions between members of the Tax Group should be determined consistently with the arm's length standard. For instance, if a sale between entities of the same Tax Group occurs at a value that is above or below the arm's length standard (determined in line with Article 34), the price should be corrected for the purposes of the attribution to the arm's length standard. Similarly, if a member of the Tax Group has supplied a service to another member of the Tax Group, but no price was charged, the attribution of Taxable Income should ordinarily create a deduction (if allowed under the provisions of the Corporate Tax Law) and corresponding Taxable Income for the service for an amount consistent with Article 34.

If a member of a Tax Group has incurred an external cost for the benefit of the Business Activities of another member of the Tax Group, the attribution of Taxable Income should be determined as if the cost had been passed on, if it would be consistent with the arm's length standard to pass on such cost.

However, the above general principle should be balanced by the further general principle that in the determination of the Taxable Income attributable to a particular Subsidiary, the combined Taxable Income of the individual members of the Tax Group should not (and cannot) exceed the Taxable Income of the Tax Group.

If a member of the Tax Group has an item of income (or expenditure) on a standalone basis that is eliminated on consolidation, but for which no other member of the Tax Group has corresponding expenditure (or income), the relevant income or expenditure will not be recognised for the purposes of the attribution of Taxable Income.

This can occur if one member recognises income on a transaction, but the other member would add the cost to the cost base of an asset. It can also occur if one member recognises an impairment loss on a loan receivable or an account receivable, but the other member would not recognise a corresponding release of the liability.

Having regard to the above, for the purposes of attribution of Taxable Income, transfers of assets and liabilities between Tax Group members can be treated as occurring on a no gain or loss basis, which is consistent with the treatment for Qualifying Group Relief under Article 26 of the Corporate Tax Law.

[222] Article 8(2)(a) of Ministerial Decision No. 125 of 2023.

## 9.4. Lending transactions between Tax Group members

As outlined in Section 9.2, transactions between members of the Tax Group are taken into account for the attribution of Taxable Income to individual members of the Tax Group. In line with this, if a member of a Tax Group has provided an Interest-bearing loan, the amount of Interest due will generally increase the Taxable Income attributable to the lender. It would also reduce Taxable Income attributable to the borrower.[223]

While determining the Taxable Income attributable to the member of the Tax Group that is the borrower, restrictions on Interest deduction under the General Interest Deduction Limitation Rule[224] and the Specific Interest Deduction Limitation Rule[225] have to be considered. If the Interest relates to a loan from a member of a Tax Group and the General Interest Deduction Limitation Rule or the Specific Interest Deduction Limitation Rule limits the Interest deduction for the borrower member, the corresponding Interest income of the lender member of the Tax Group will also be reduced when attributing Taxable Income to such lender member. This is based on the general principle that Taxable Income attributed to members cannot exceed the total Taxable Income of the Tax Group, meaning that a restriction of deduction leads to non-inclusion of Taxable Income.

Interest deduction on loans provided by third parties would only be restricted for the purposes of the attribution if, and only if, the Interest deduction is also restricted for the Tax Group. Again, this is based on the general principle that Taxable Income attributed to members cannot exceed the total Taxable Income of the Tax Group.

If the lender of a loan wholly or partially impairs its receivable, such impairment would not generally result in corresponding income for the borrower. Therefore, within a Tax Group this is a deduction on a transaction without creating corresponding income in another member of the Tax Group. In such a situation the deduction should not be taken into account for the purposes of the attribution of Taxable Income.

If the lender impairs Interest payable or accrued in the current period on a loan between members of the same Tax Group, this impairment is considered to take place after the initial recognition of Interest income. This means the lender recognises both Interest income and impairment of the Interest receivable even if only the netted amount is shown in the Financial Statements. As a result, if Interest expenditure is recognised by the borrower on a standalone basis, this expenditure would reduce the attribution of Taxable Income to the borrower and the corresponding income would increase the attribution of Taxable Income to the lender.

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[223] Article 29 of the Corporate Tax Law.
[224] Article 30 of the Corporate Tax Law.
[225] Article 31 of the Corporate Tax Law.

If a lender recognises income on a reversal of a previous impairment on a loan between members of the same Tax Group, this would not generally result in a corresponding deduction for the borrower, except where a deductible loss was recognised by a member of the Tax Group in relation to that loan prior to forming or joining the Tax Group.[226] Unless this exception applies, the reversal of such impairment is not taken into account for the purposes of the attribution of Taxable Income.

If a lender releases or waives a loan between members of the same Tax Group, this release or waiver would generally result in income for the borrower due to cancellation of its liability. This income would be taken into account for the attribution of Taxable Income up to an arm's length standard and up to the loss that the lender reports in the same Tax Period in relation to the loan.

**Example 17: Attribution of income between members of a Tax Group**

Company A and Company B are in a Tax Group as of 1 January 2025. Company A and Company B both use the Gregorian calendar year as their Tax Period.

Company A and Company B have unutilised pre-Grouping Tax Losses and hence, the Tax Group is required to determine Taxable Income attributable to Company A and Company B on a standalone basis.[227]

Company A holds a loan receivable of AED 1 million with Company B as the borrower with an Interest rate of 5%. Interest is payable annually.

- In 2026, Company A impairs the loan receivable from Company B to zero. In 2026, Company B continues to recognise the liability for the full nominal amount of AED 1 million.
- In 2027, Company A releases the loan, creating AED 1 million of income for Company B, which is assumed to be consistent with the arm's length principle.

If Company A were a separate Taxable Person, it would recognise a deduction against Taxable Income of AED 1 million in 2026 as a result of the impairment. If Company B were a separate Taxable Person, it would not recognise Taxable Income in 2026 as a result of the impairment. Thus, on a standalone basis, there is no income in Company B corresponding to the deduction in Company A. However, for the purposes of calculating the Taxable Income of the Tax Group for the 2026 Tax Period, the transaction is eliminated on consolidation. Therefore, in the Tax Period 2026, the impairment loss is not taken into account for the attribution of Taxable Income attributable to Company A and Company B.

[226] Article 4 of Ministerial Decision No. 125 of 2023.

[227] Article 8(1)(a) of Ministerial Decision No. 125 of 2023.

The release in 2027 does not trigger any deduction from the Taxable Income for Company A as the cost base of the loan receivable was already reduced to zero. In 2027, Company B would recognise Taxable Income of AED 1 million as a result of the release, if it were a standalone Taxable Person. Thus, on a standalone basis there is no deduction corresponding to the income claimed by Company B. However, for the purpose of calculating the Taxable Income of the Tax Group the transaction is eliminated on consolidation. Therefore, in the Tax Period 2027, the release is not taken into account for the attribution of Taxable Income attributable to Company A and Company B.

# 10. Tax Losses

## 10.1. Tax Losses applicable to Tax Groups

Tax Losses of a Tax Period can be carried forward to subsequent Tax Periods upon satisfaction of certain conditions (see Section 8.3.4).[228] Tax Losses carried forward can be offset against the Taxable Income of subsequent Tax Periods, when the conditions of utilisation are met.[229] A Tax Loss carried forward to a subsequent Tax Period must be set off against Taxable Income of that period first, up to the 75% Taxable Income limit,[230] with any remaining loss available for carry forward to further subsequent Tax Periods.[231]

Where a Tax Loss as been transferred to a Taxable Person (including a Tax Group),[232] that Tax Loss can only be utilised by such Tax Group after utilising its own Tax Losses and any pre-Grouping Tax Losses, to the extent the conditions of utilisation of Tax Loss are met.[233]

Pre-Grouping Tax Losses are the unutilised Tax Losses of a Subsidiary that joins a Tax Group.[234] Further, if a Tax Group utilises Tax Losses, pre-Grouping Tax Losses have to be utilised before Tax Losses of the Tax Group can be utilised.[235] A Taxable Person cannot claim Tax Loss relief for Tax Losses incurred before the commencement of Corporate Tax.[236] Hence, if a Tax Group is formed from 1 January 2024, pre-Grouping Tax Losses of its members cannot be claimed.

If a Subsidiary joins a Tax Group, its existing unutilised Tax Losses become pre-Grouping Tax Losses that can only be offset against the Taxable Income of the Tax Group insofar as this income is attributable to the relevant Subsidiary.[237]

Existing unutilised Tax Losses of an existing Tax Group cannot be used against the Taxable Income of a Subsidiary that has joined the existing Tax Group after the Tax Losses were incurred ("restricted Tax Group Tax Losses").[238] The utilisation of

[228] Article 39 of the Corporate Tax Law.
[229] Article 37(1) of the Corporate Tax Law.
[230] Article 37(2) of the Corporate Tax Law.
[231] Article 37(4) of the Corporate Tax Law.
[232] Article 38 of the Corporate Tax Law.
[233] Article 37(4) of the Corporate Tax Law.
[234] Article 42(3) of the Corporate Tax Law.
[235] Article 7(2) of Ministerial Decision No. 125 of 2023.
[236] Article 37(3)(a) of the Corporate Tax Law.
[237] Article 42(3) of the Corporate Tax Law.
[238] Article 42(4) of the Corporate Tax Law.

restricted Tax Group Tax Losses follows the same utilisation and attribution principles as are applicable to pre-Grouping Tax Losses. This restriction does not apply if a Tax Group is formed for the first time. In such case, existing Tax Losses of the Parent Company will be regarded as Tax Losses of the Tax Group.

## 10.2. Order of utilisation of Tax Losses

### 10.2.1. Limits on utilisation

A Tax Group is treated as a single Taxable Person.[239] This means that the Tax Group has a single, combined Taxable Income. In case one member of the Tax Group would have incurred a Tax Loss on a standalone basis and another member of the Tax Group realises positive Taxable Income, these results are offset automatically within the Tax Group through the process of consolidation. If the calculation of the Taxable Income of the Tax Group results in a Tax Loss, this is a Tax Loss of the Tax Group and not a Tax Loss of any member of the Tax Group.

If a Subsidiary subsequently leaves the Tax Group, such a Tax Loss will remain with the Tax Group.[240] If a Tax Group ceases to exist, such Tax Loss shall remain with the Parent Company.[241]

Where the calculation of the Taxable Income of a Tax Group results in a Tax Loss in a Tax Period and becomes a carried forward Tax Loss for a subsequent Tax Period, any pre-Grouping Tax Losses available to be utilised in a subsequent Tax Period must be offset against the Taxable Income of the Tax Group in that subsequent Tax Period, before the other carried forward Tax Losses of the Tax Group can be utilised in that same Tax Period.[242]

Thus, pre-Grouping Tax Losses can only be offset where the Tax Group has Taxable Income and only insofar as Taxable Income is attributable to the relevant member of the Tax Group.[243] Therefore, utilisation of pre-Grouping Tax Losses requires both:[244]

- the Tax Group to have Taxable Income (before taking into account a Tax Loss brought forward from a prior year); and
- Taxable Income that can be attributed to the relevant member of the Tax Group.

[239] Article 40(4) of the Corporate Tax Law.
[240] Article 42(6) of the Corporate Tax Law.
[241] Article 42(7)(a) of the Corporate Tax Law.
[242] Article 7(2) of Ministerial Decision No. 125 of 2023.
[243] Article 42(3) of the Corporate Tax Law.
[244] Article 7(1) of Ministerial Decision No. 125 of 2023.

Utilisation of carried forward Tax Losses is limited up to 75% of the Taxable Income.[245] That restriction only applies at Tax Group level.[246] In other words, the utilisation of pre-Grouping Tax Losses is not limited to 75% of the Taxable Income attributable to the relevant member of the Tax Group.

**Example 18**: **Limits on utilisation of pre-Grouping Tax Losses**

Company A and Company B are in a Tax Group as of 1 January 2025. Company A and Company B both use the Gregorian calendar year as their Tax Period. Company B has a pre-Grouping Tax Loss of AED 1 million.

In 2025, the Tax Group realised Taxable Income of AED 0.8 million. The Taxable Income that can be attributed to Company A is a loss of AED 0.4 million and the Taxable Income that can be attributed to Company B is AED 1.2 million.

The pre-Grouping Tax Loss which can be set off against Taxable Income is the lesser of (a) the Taxable Income attributable to Company B and (b) 75% of AED 0.8 million Taxable Income of the Tax Group.[247]

As the Taxable Income of the Tax Group is AED 0.8 million, the ability of the Tax Group to utilise the pre-Grouping Tax Loss is limited to AED 0.6 million (after application of the 75% restriction). As this is lower than the Taxable Income that can be attributed to Company B (which is AED 1.2 million), AED 0.6 million of the pre-Grouping Tax Loss can be utilised.

### 10.2.2. Order of utilisation where there are several Tax Losses

Several clauses in the Corporate Tax Law and its implementing decisions place restrictions on the order in which different types of Tax Losses can be utilised. As a result of these restrictions, the utilisation of Tax Losses by Tax Groups is in the following order:

- Pre-Grouping Tax Losses have to be utilised before Tax Losses of the Tax Group can be utilised.[248]
- Where there are several pre-Grouping Tax Losses that could be utilised, the Parent Company shall determine the order in which they are utilised.[249]

[245] Article 37(2) of the Corporate Tax Law.
[246] Article 42(5) of the Corporate Tax Law.
[247] Article 7(1) of Ministerial Decision No. 125 of 2023.
[248] Article 7(2) of Ministerial Decision No. 125 of 2023.
[249] Article 7(3) of Ministerial Decision No. 125 of 2023.

- After utilisation of pre-Grouping Tax Losses, Tax Groups can utilise Tax Losses of the Tax Group.
- The Tax Losses of the Tax Group should be utilised in the order they were incurred.
- As restricted Tax Group Tax Losses are Tax Losses which predate certain Subsidiaries joining the Tax Group,[250] restricted Tax Group Tax Losses necessarily relate to earlier Tax Periods and are required to be utilised (if the conditions for utilisation are met) before utilisation of later Tax Losses of the Tax Group.
- After utilisation of pre-Grouping Tax Losses and Tax Losses of the Tax Group, the Tax Group can utilise any Tax Losses that were transferred to it under Article 38 of the Corporate Tax Law.[251]

**Example 19**: **Transfer of Tax Losses and multiple pre-Grouping Tax Losses**

Company A, Company B and Company C, are in a Tax Group as of 1 January 2025. All three companies use the Gregorian calendar year as their accounting period. Company B has a pre-Grouping Tax Loss of AED 1 million (incurred in 2024). Company C has a pre-Grouping Tax Loss of AED 0.8 million (incurred in 2024).

In 2025, the Tax Group incurred a Tax Loss of AED 0.3 million.

In 2026, the Tax Group realised Taxable Income of AED 2 million.

The Taxable Income in 2026 is attributed as follows:

- Company A: Tax Loss of AED 0.2 million
- Company B: Taxable Income of AED 1.2 million
- Company C: Taxable Income of AED 1 million

The Tax Losses of the Tax Group can only be utilised after utilisation of the pre-Grouping Tax Losses (to the extent possible).

Under Article 37(2) of the Corporate Tax Law, at most AED 1.5 million (i.e. 75% of 2 million) of the Tax Group's Taxable Income can be offset with Tax Losses.[252]

The utilisation of pre-Grouping Tax Losses is limited to this amount. Therefore, the Tax Group has sufficient Taxable Income to utilise the pre-Grouping Tax Loss of

[250] Article 42(4) of the Corporate Tax Law.
[251] Article 37(4) of the Corporate Tax Law.
[252] Article 7(1) of Ministerial Decision No. 125 of 2023.

Company B or Company C. The income attributed to Company B and Company C is also sufficient to utilise the pre-Grouping Tax Losses of such entities.

However, after the utilisation of the pre-Grouping Tax Loss of either Company B or Company C, there will not be sufficient Taxable Income in the Tax Group to utilise all of the pre-Grouping Tax Loss of the other company.

For instance, if the Tax Group chooses to utilise all the pre-Grouping Tax Losses of Company B (i.e. AED 1 million), only AED 0.5 million of the pre-Grouping Tax Losses of Company C can be utilised. Alternatively, the Tax Group could utilise all the pre-Grouping Tax Losses of Company C (AED 0.8 million). After that, only AED 0.7 million of the pre-Grouping Tax Losses of Company B can be utilised against the Taxable Income of the Tax Group.

The Parent Company of the Tax Group would decide which pre-Grouping Tax Losses to utilise.

After utilisation of the pre-Grouping Tax Losses, the Tax Group has exhausted its capacity to utilise other Tax Losses. Therefore, the Tax Group is not able to utilise its 2025 Tax Loss of AED 0.3 million. Similarly, the Tax Group is not able to utilise any Tax Losses transferred to it under Article 38 of the Corporate Tax Law.

#### 10.2.3. Utilisation of restricted Tax Group Tax Losses

Restricted Tax Group Tax Losses cannot be utilised against Taxable Income attributable to Subsidiaries which joined the Tax Group after the Tax Losses arose.[253] If there are several Subsidiaries to which this applies, it is possible to limit this restriction to the net amount of Taxable Income attributable to such Subsidiaries.

**Example 20**: **Restricted Tax Group Tax Losses**

Company A (as Parent Company) and Company B (as Subsidiary) are in a Tax Group as of 1 January 2024. Company A holds all the shares in Company C and Company D. All four companies use the Gregorian calendar year as their Tax Period. In 2024, the Tax Group incurred Tax Losses of AED 1 million.

In 2024, Company C incurred Tax Losses of AED 0.6 million.

As of 1 January 2025, Company C and Company D join the Tax Group. As a result, the existing 2024 Tax Losses of the Tax Group (AED 1 million) become restricted

[253] Article 42(4) of the Corporate Tax Law.

Tax Group Tax Losses. The Tax Losses of Company C become pre-Grouping Tax Losses.

In 2025, the Taxable Income of the Tax Group is AED 1.6 million. This Taxable Income was attributed as follows:

- Company A: Taxable Income of AED 1.1 million
- Company B: Taxable Income is nil
- Company C: Taxable Income of AED 1 million
- Company D: a loss of AED 0.5 million

As pre-Grouping Tax Losses would need to be utilised before restricted Tax Group Tax Losses could be utilised, it should first be assessed to what extent the pre-Grouping Tax Losses of Company C can be utilised. As the Taxable Income of the new Tax Group is AED 1.6 million, the Tax Group has a capacity to utilise Tax Losses of AED 1.2 million (i.e. 75% of the Taxable Income of the Group), which is sufficient capacity to utilise the pre-Grouping Tax Losses. The Taxable Income attributable to Company C (i.e. AED 1 million) is also sufficient to utilise the pre-Grouping Tax Losses. Therefore, the Tax Group would utilise the AED 0.6 million of pre-Grouping Tax Losses of Company C before utilising any restricted Tax Group Tax Losses resulting in Taxable Income of Company C of AED 0.5 million.

Utilisation of the restricted Tax Group Tax Loss of AED 1 million is limited to the lower of:

- 75% of the Taxable Income attributable to Company A and Company B (i.e. 75% of AED 1.1 million) and
- the remaining portion of the 75% of the Taxable Income of the Tax Group (i.e. AED 0.6 million)

Thus, AED 0.6 million of the restricted Tax Group Tax Loss can be utilised, leaving an amount of AED 0.4 million to be carried forward to the subsequent Tax Period.

#### 10.2.4. Interaction with Business Restructuring Relief

If a Business has been transferred to a Taxable Person under Article 27 (Business Restructuring Relief) and the transferor had unutilised Tax Losses, such Tax Losses can become Tax Losses of the transferee if the conditions are met.[254] In such a case, the Tax Losses are treated the same as any other Tax Losses of the transferee and all the guidance and examples in this guide should be equally applicable to such a Tax Loss.

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[254] Article 27(3)(d) and 27(5) of the Corporate Tax Law and Article 5 of Ministerial Decision No. 133 of 2023.

If the transferee subsequently joins a Tax Group after receiving losses on a transfer to which Business Restructuring Relief applied, the Tax Loss (if unutilised) would become a pre-Grouping Tax Loss.

If the transferee is already in a Tax Group (whether as Parent Company or Subsidiary), the Tax Losses become Tax Losses of the Tax Group. If another Subsidiary subsequently joins the Tax Group, the Tax Losses could become restricted Tax Group Tax Losses.

If the Parent Company or a Subsidiary transfers its entire Business to another member of the Tax Group and the transferor ceases to exist as a result of that transfer, it would remain a member of the Tax Group until such date it ceases to exist.[255] In case a Subsidiary ceases to exist in this way, any pre-Grouping Tax Losses would be foregone.[256] In case a Parent Company ceases to exist in this way, the Tax Losses of the Tax Group would remain with the Tax Group, provided the Tax Group continues to exist.[257] If the Tax Group ceases to exist as a result of such transfer,[258] any Tax Losses of the Tax Group would be foregone.[259]

## 10.3. Impact of changes in the members of a Tax Group on Tax Losses

If a Subsidiary joins a Tax Group, its existing unutilised Tax Losses become pre-Grouping Tax Losses that can only be offset against the Taxable Income of the Tax Group insofar as this income is attributable to the relevant Subsidiary.[260] Existing unutilised Tax Losses of an existing Tax Group cannot be used against the Taxable Income of a Subsidiary that has joined the existing Tax Group after the Tax Losses were incurred ("restricted Tax Group Tax Losses").

If a Subsidiary leaves a Tax Group which continues to exist, any Tax Losses of the Tax Group continue to be Tax Losses of the Tax Group.[261] This is the case even if the Tax Losses could be attributed to the Subsidiary that has left the Tax Group. As an exception, any pre-Grouping Tax Losses will stay with the relevant Subsidiary and become Tax Losses of that company.[262]

[255] Article 10(1) of the Ministerial Decision No. 125 of 2023.
[256] Article 42(6) of the Corporate Tax Law.
[257] Article 42(8) of the Corporate Tax Law.
[258] Article 10(1)(b) of Ministerial Decision No. 125 of 2023.
[259] Article 42(7)(b) of the Corporate Tax Law.
[260] Article 42(3) of the Corporate Tax Law.
[261] Article 42(6) of the Corporate Tax Law.
[262] Article 42(6) of the Corporate Tax Law.

If a Tax Group ceases to exist and the Parent Company continues to be a Taxable Person, any Tax Losses of a Tax Group will become Tax Losses of the Parent Company.[263] If the Parent Company ceases to exist or it ceases to be a Taxable Person, the Tax Losses of the Tax Group will not be available for utilisation except if the Parent Company is replaced where Article 40(12) of the Corporate Tax Law applies.[264] Any pre-Grouping Tax Losses will become Tax Losses of the relevant Subsidiary and will be available for future utilisation, if the Subsidiary continues to exist.

Where Article 40(12) of the Corporate Tax Law applies, a Parent Company can be replaced by another Parent Company without discontinuing the Tax Group. In this case, any unutilised Tax Losses of the Tax Group continue to be available as Tax Losses of the Tax Group.[265]

### 10.4. Transfer of Tax Losses

The Tax Group is treated as a single Taxable Person.[266] If the conditions of Article 38 of the Corporate Tax Law are met, the Tax Group can transfer a Tax Loss to another Taxable Person or another Tax Group. Similarly, if another Taxable Person or another Tax Group meets the relevant conditions under Article 38 of the Corporate Tax Law, it can transfer a Tax Loss to the Tax Group.

A Tax Loss can be transferred from one Taxable Person to another Taxable Person only upon fulfilment of certain conditions.[267] One of the conditions is that either Taxable Person has a direct or indirect ownership interest of at least 75% in the other, or a third Person has a direct or indirect ownership interest of at least 75% in each of them.[268] As explained in Section 8.3.2, in case of Tax Groups, this condition is determined by aggregating all ownership interests held by members of the Tax Group.

If a Tax Loss is transferred to the Tax Group, this can only be utilised after utilisation of any pre-Grouping Tax Losses, restricted Tax Group Tax Losses and other Tax Losses of the Tax Group.[269]

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263 Article 42(7)(a) of the Corporate Tax Law.
264 Article 42(7)(b) and Article 42(8) of the Corporate Tax Law.
265 Article 42(8) of the Corporate Tax Law.
266 Article 40(4) of the Corporate Tax Law.
267 Article 38(1) of the Corporate Tax Law.
268 Article 38(1)(c) of the Corporate Tax Law.
269 Article 37(4) of the Corporate Tax Law.

# 11. Interest Deduction Limitation Rule

## 11.1. Application of General Interest Deduction Limitation Rule to Tax Groups

Net Interest Expenditure is the Interest expenditure amount in excess of the Interest income amount as determined in accordance with the provisions of the Corporate Tax Law.[270] Where a Taxable Person's Net Interest Expenditure exceeds AED 12 million for the relevant Tax Period, Net Interest Expenditure shall be deductible up to the greater of:

- 30% of EBITDA (earnings before the deduction of Interest, tax, depreciation and amortisation) for a Tax Period, calculated as the Taxable Income for the Tax Period with adjustments for:[271]
  - Net Interest Expenditure for the relevant Tax Period,
  - depreciation and amortisation expenditure taken into account in determining the Taxable Income for the relevant Tax Period, and
  - any Interest income or expenditure relating to historical financial assets or liabilities held prior to 9 December 2022.

and,

- the de minimis threshold of AED 12 million.[272]

The amount of Net Interest Expenditure disallowed may be carried forward and deducted in the subsequent 10 Tax Periods in the order in which the amount was incurred.[273]

The above restriction is called the General Interest Deduction Limitation Rule.[274] The restriction does not apply to Banks, Insurance Providers and in certain other cases.[275]

A Tax Group is treated as a single Taxable Person.[276] This means this restriction and the carry forward is calculated at the level of the Tax Group. Even if a member of the Tax Group has insufficient EBITDA to utilise its Net Interest Expenditure, the 30% restriction on Interest deduction under the General Interest Deduction Limitation Rule does not apply provided the Tax Group as a whole has sufficient EBITDA to utilise the Tax Group's Net Interest Expenditure. However, if the Tax Group has combined Net Interest Expenditure exceeding AED 12 million and the Tax Group has insufficient EBITDA to utilise its Net Interest Expenditure, the 30% restriction on Interest deduction

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[270] Article 1 of the Corporate Tax Law.
[271] Article 30(1) of the Corporate Tax Law and Article 9(1) of Ministerial Decision No. 126 of 2023.
[272] Article 8 of Ministerial Decision No. 126 of 2023.
[273] Article 30(4) of the Corporate Tax Law.
[274] Article 30 of the Corporate Tax Law.
[275] Article 30(6) of the Corporate Tax Law.
[276] Article 40(4) of the Corporate Tax Law.

will apply, even if there are members of the Tax Group that on a standalone basis would have had sufficient EBITDA to utilise their Net Interest Expenditure.

## 11.2. Impact of changes in the members of a Tax Group on unutilised Net Interest Expenditure

### 11.2.1. General

If the General Interest Deduction Limitation Rule applies to a Tax Group, the resulting disallowed Net Interest Expenditure carried forward may be utilised in the subsequent 10 Tax Periods of the Tax Group. This Net Interest Expenditure carried forward is an attribute of the Tax Group as represented by the Parent Company and not an attribute of any member of the Tax Group. If a Subsidiary subsequently leaves the Tax Group the unutilised Net Interest Expenditure shall remain with the Tax Group, with the exception of any pre-Grouping Net Interest Expenditure of that Subsidiary.[277] If a Tax Group ceases to exist and the Parent Company continues to be a Taxable Person, any unutilised Net Interest Expenditure of the Tax Group shall remain with the Parent Company as the representative of the Tax Group.[278] If the Parent Company ceases to exist without a universal successor or ceases to be a Taxable Person, any unutilised Net Interest Expenditure of the Tax Group will be foregone.[279]

However, if the Parent Company merges with another Taxable Person and ceases to exist as a result, any unutilised Net Interest Expenditure of the Tax Group would continue to be available where the legal successor is the new Parent Company of the Tax Group that continues to exist.[280]

Attribution of Taxable Income (see Section 9) is required where a member of the Tax Group has unutilised pre-Grouping Net Interest Expenditure carried forward.[281] Similar to the restriction of pre-Grouping Tax Losses[282] (see Section 10.2), pre-Grouping Net Interest Expenditure can only be utilised against the Taxable Income that is attributable to that Subsidiary.[283]

This means utilisation of pre-Grouping Net Interest Expenditure would be possible to the extent both:[284]

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[277] Article 12(2) of Ministerial Decision No. 126 of 2023.
[278] Article 12(3)(a) of Ministerial Decision No. 126 of 2023.
[279] Article 12(3)(b) of Ministerial Decision No. 126 of 2023.
[280] Article 12(4) of Ministerial Decision No. 126 of 2023.
[281] Article 8(1)(d) of Ministerial Decision No. 125 of 2023.
[282] Article 42(3) of the Corporate Tax Law.
[283] Article 12(1) of Ministerial Decision No. 126 of 2023.
[284] Article 12(1) of Ministerial Decision No. 126 of 2023.

- current Net Interest Expenditure of the Tax Group is less than 30% of the Tax Group's EBITDA (or AED 12 million, if higher); and
- based on attribution of the Taxable Income, the relevant Subsidiary has sufficient Taxable Income.

Where a new Subsidiary joins an existing Tax Group, the restrictions on utilisation of Tax Losses under Article 42(4) of the Corporate Tax Law do not apply to Net Interest Expenditure. Hence, carried forward Net Interest Expenditure of the existing Tax Group can be utilised against future Tax Group EBITDA after the utilisation of current year Net Interest Expense of that Tax Group. Similarly, carried forward Net Interest Expenditure of a Taxable Person that subsequently becomes a Parent Company of a Tax Group can be utilised against future Taxable Income of the Tax Group after the utilisation of current year Net Interest Expense of that Tax Group.[285]

### 11.2.2. Order of utilisation of unutilised Net Interest Expenditure

If a Tax Group has unutilised Net Interest Expenditure and it also has members with pre-Grouping unutilized Net Interest Expenditure, the Net Interest Expenditure should be utilised in the order in which the amount was incurred.[286] Where several unutilised Net Interest Expenditures qualify for utilisation and they arose from Tax Periods with the same end date, there is no requirement to follow when the underlying Interest was incurred and the Taxable Person can choose the order in which Net Interest Expenditure is utilised. This is because the Net Interest Expenditure is treated as being incurred at the end of the Tax Period for the purpose of Article 30(4) of the Corporate Tax Law.

**Example 21**: **Order of different Net Interest Expenditure**

On 1 January 2026, Company A holds all the shares in Company B, Company C and Company D. All four companies use the Gregorian calendar year as their Tax Period and meet all the requirements to form a Tax Group. As of 1 January 2026, Company A forms a Tax Group with Company B, Company C and Company D. In the Tax Period 2026:

- Tax Group's EBITDA is AED 200 million; and
- Tax Group Net Interest Expenditure for the Tax Period 2026 is AED 38 million.

Further, Company B, Company C and Company D have following pre-Grouping Net Interest Expenditure:

[285] Articles 30(1), 30(4) and 40(4) of the Corporate Tax Law.

[286] Article 30(4) of the Corporate Tax Law.

| Company | Tax Period 2024 | Tax Period 2025 | Total |
|---|---|---|---|
| Company B | 10 million | 5 million | 15 million |
| Company C | 5 million | 5 million | 10 million |
| Company D | 7 million | 5 million | 12 million |

The utilisation of any of the unutilised Net Interest Expenditure requires sufficient capacity at Tax Group level. In addition, utilisation of Company B's, Company C's and Company D's pre-Grouping Net Interest Expenditures, also require sufficient Taxable Income at the level of the relevant Subsidiary.

In 2026, the Tax Group's Taxable Income is AED 42 million which can be attributed as follows:

- Company A: AED 2 million.
- Company B: AED 30 million.
- Company C: AED 14 million.
- Company D: a loss of AED 4 million.

**Utilisation of Net Interest Expenditure of Tax Period 2026:**

| Description | Amount (in AED) |
|---|---|
| Tax Group's EBITDA for Tax Period 2026 | 200 million |
| Maximum Net Interest Expenditure deductible (30% of 200 million) | 60 million |
| Less: Net Interest Expenditure of the Group for the Tax Period 2026 | (38 million) |
| Balance capacity of the Tax Group to utilise pre-Grouping Net Interest Expenditure of the Subsidiaries | 22 million |

**Capacity to utilise pre-Grouping Net Interest Expenditure at the level of the respective Subsidiary:**

| Subsidiary | Attributable Taxable Income | Pre-Grouping Net Interest Expenditure | Capacity to utilised pre-Grouping Net Interest Expenditure |
|---|---|---|---|
| Company B | 30 million | 15 million | 15 million |
| Company C | 14 million | 10 million | 10 million |
| Company D | (4 million) | 12 million | 0 million (since Company D is in loss) |

**Utilisation of pre-Grouping Net Interest Expenditure:**
The Tax Group could utilise up to AED 15 million of Company B's pre-Grouping Net Interest Expenditure and AED 10 million of Company C's pre-Grouping Net Interest Expenditure. However, as the Tax Group can only utilise up to AED 22 million of

previously disallowed Net Interest Expenditure, it should be assessed which Net Interest Expenditure is utilised.

Article 30(4) of the Corporate Tax Law requires that the Net Interest Expenditure is utilised in the order the amount was incurred. This means the Net Interest Expenditure of 2024 should be utilised prior to utilising Net Interest Expenditure of 2025. As Company D has no capacity to utilise its 2024 pre-Grouping Net Interest Expenditure, only the Net Interest Expenditure relating to Company B (AED 10 million) and Company C (AED 5 million) can be utilised.

After utilising the 2024 Net Interest Expenditure, the Tax Group can only utilise an additional AED 7 million of Net Interest Expenditure (i.e. the original AED 22 million reduced by AED 15 million of the 2024 Net Interest Expenditure). As the remaining unutilised Net Interest Expenditure of Company B and Company C was all incurred in the same Tax Period (2025), the Net Interest Expenditure is treated as occurring at the same time. This means the Tax Group can decide which of the remaining Net Interest Expenditure of Company B and/or Company C is utilised.

### 11.2.3. Interaction with Business Restructuring Relief

If a Business has been transferred to a Taxable Person and the conditions of Article 27 of the Corporate Tax Law are met, the transferor can elect for Business Restructuring Relief to apply in respect of gains or losses that arise from the transfer of Business. The relief does not extend to unutilised Net Interest Expenditure. Therefore, the utilisation of Net Interest Expenditure is unaffected by the application of Business Restructuring Relief, meaning that unutilised Net Interest Expenditure will remain with the Taxable Person that incurred it, which may be able to utilise it if it continues to exist. As a result, the other comments in this Section would apply equally to Taxable Persons that were subject to Business Restructuring Relief.

If the Parent Company or a Subsidiary ceases to exist as a result of a Business restructuring under which it transfers all its assets and liabilities to another member of the Tax Group, it would remain a member of the Tax Group until such date as it ceases to exist.[287] In case a Subsidiary ceases to exist in this way, any unutilised pre-Grouping Net Interest Expenditure tied to the Subsidiary would be foregone. In case a Parent Company ceases to exist in this way, any unutilised Net Interest Expenditure of the Parent Company and the Tax Group would be foregone, unless the Tax Group continues to exist without discontinuation.[288]

[287] Article 10(1) of Ministerial Decision No.125 of 2023.
[288] Article 40(12) of the Corporate Tax Law.

## 11.3. Impact of a Tax Group that includes Banks and Insurance Providers

The General Interest Deduction Limitation Rule does not apply to Banks, Insurance Providers and certain other specified Taxable Persons.[289] Where a member of a Tax Group is a Bank or Insurance Provider, any income or expenditure of such member shall be disregarded for the calculation of total Net Interest Expenditure and EBITDA of the Tax Group.[290]

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[289] Article 30(6) of the Corporate Tax Law.

[290] Article 12(5) of Ministerial Decision No. 126 of 2023.

# 12. Foreign Tax Credits and Foreign Permanent Establishment

## 12.1. Foreign Tax Credit

### 12.1.1. Impact of Tax Group on Foreign Tax Credit

Where a Taxable Person's foreign source income is subject to UAE Corporate Tax, such Person can claim a Foreign Tax Credit by deducting taxes paid under the tax laws of a foreign jurisdiction from the Corporate Tax due in the UAE on the same income.[291]

The Foreign Tax Credit cannot exceed the amount of UAE Corporate Tax due on the relevant foreign income.[292] Hence, the amount of Foreign Tax Credit is the lower of:

- The actual amount of tax paid on foreign source income in the foreign jurisdiction and
- The amount of Corporate Tax due on the foreign source income as determined for the purposes of UAE Corporate Tax Law after deducting economically linked expenditure from the relevant income.

The unutilised foreign taxes (if any) cannot be carried forward or carried back and shall be forfeited.[293]

Where a member of a Tax Group has foreign source income for which a Foreign Tax Credit can be claimed, the Taxable Income attributable to that member of the Tax Group shall be calculated separately on a standalone basis.[294] Accordingly, the amount of Foreign Tax Credit should be calculated at the level of the member of the Tax Group that has received the relevant foreign source income. The amount of Foreign Tax Credit due to a member of a Tax Group reduces the Corporate Tax due for the Tax Group.

In the case of Tax Groups, Corporate Tax due on the relevant foreign income is calculated as $\frac{X}{Y}*Z$ where:

- X= The relevant foreign income that has been included in the Taxable Income of the Tax Group,
- Y= The total Taxable Income attributable to the relevant member of the Tax Group,

[291] Articles 1 and 47(1) of the Corporate Tax Law.
[292] Article 47(2) of the Corporate Tax Law.
[293] Article 47(3) of the Corporate Tax Law.
[294] Article 8(1)(b) of Ministerial Decision No. 125 of 2023.

- Z= The Corporate Tax attributable to the relevant member on its total Taxable Income determined as $\frac{A}{B}$*C where:

A= Corporate Tax due by the Tax Group,
B= Taxable Income of the Tax Group,
C= Taxable Income attributable to the relevant member of the Tax Group.

In determining the economically linked costs in respect of the foreign income earned by the member of the Tax Group, any economically linked costs resulting from transactions with other members of the Tax Group should generally also be taken into account.

## 12.2. Foreign Permanent Establishments

### 12.2.1. Application of Foreign Permanent Establishment exemption to Tax Groups

A Taxable Person may elect to exclude the net income of its Foreign Permanent Establishments from its Taxable Income.[295] In the case of a Tax Group, the Parent Company is responsible for making an election and if an election is made, it is applicable to all Foreign Permanent Establishments held by the Tax Group.[296] If a new Subsidiary joins the Tax Group after an election is made, the election also applies to any Foreign Permanent Establishments held by such Subsidiary (regardless of whether such Subsidiary had made an election). If no election is made by the Parent Company, the exemption does not apply to any of the Tax Group's Foreign Permanent Establishments. If a new Subsidiary joins a Tax Group which has not made an election, no election applies to the Foreign Permanent Establishments held by that Subsidiary (even if the new Subsidiary had made an election in previous years).

### 12.2.2. Calculation of Taxable Income of Foreign Permanent Establishment

The loss or income attributable to Foreign Permanent Establishments is calculated as if the Foreign Permanent Establishments were Resident Persons.[297] As the Foreign Permanent Establishment is legally the same person as its head office, all income and expenditure of the entity will need to be allocated between head office and Permanent Establishment. The attribution of income and expenditure to a Foreign Permanent Establishment must be performed in accordance with internationally accepted profit attribution methods such as the Authorised OECD Approach and the relevant provisions of the Corporate Tax Law for the determination of Taxable Income. This

[295] Article 24 of the Corporate Tax Law.
[296] Article 53(7) of the Corporate Tax Law.
[297] Article 24(2)(a) and 24(2)(b) of the Corporate Tax Law.

requires the application of the arm's length standard with regards to any transactions between the Taxable Person and its Foreign Permanent Establishment as if the Permanent Establishment was a separate and independent Person.[298]

If the head office is included in a Tax Group, transactions between the Foreign Permanent Establishment and other members of the Tax Group are not included in the overall result of the Tax Group.[299] However, the profits of Foreign Permanent Establishments should be determined as if the Tax Group did not exist, meaning that the transactions between a Foreign Permanent Establishment and other members of the Tax Group are taken into account to the extent consistent with the arm's length standard.

If several members of a Tax Group have a Foreign Permanent Establishment in the same country, the income or loss of these Foreign Permanent Establishments is calculated separately before being aggregated with all Foreign Permanent Establishments.[300] This approach avoids the need to eliminate and then reintroduce transactions between Foreign Permanent Establishments and head offices of other Foreign Permanent Establishments.

[298] Article 24(4) of the Corporate Tax Law.
[299] Article 40(4) of the Corporate Tax Law.
[300] Article 24(3) of the Corporate Tax Law.

# 13. Updates and Amendments

| Date of amendment | Amendments made |
| --- | --- |
| January 2024 | • First version |