TRIBONIAN LAW ADVISORS
IN ASSOCIATION WITH
RINDALA BEYDOUN LEGAL CONSULTANCY

Summary

The UAE corporate income tax regime includes provisions that represent best international taxation practices. It is essential for businesses to plan ahead, assess the implications of the new rules and get ready for the upcoming regime, considering its far-reaching impact.

As initial steps, all businesses in the UAE are recommended to review their corporate structure, assess the CIT impact on their business, P&L and cash flows, and develop procedures to manage compliance.

It is to be noted that sufficient time should be allocated by entities to effect the required changes to ready their businesses for the CT Law on a timely basis. Such exercise must be completed during year 2023, as CIT will become applicable to the majority of businesses from 1 January 2024.

It needs to be kept in mind that, as per the CT Law, opening balance sheet (i.e. year 2023 balance sheet for companies with financial year starting on 1 January 2023 and becoming subject to CIT from 1 January 2024) must be prepared taking into consideration the arm's length principle prescribed in the CT Law.

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On 9 December 2022, the United Arab Emirates (**UAE**) published Federal Decree-Law No. 47 of 2022 relating to Taxation of Corporations and Businesses (the **CT Law**). The CT Law is applicable from the beginning of the first financial year that starts on or after 1 June 2023.

Most pertinent aspects of the CT Law are summarized below:

1. **CIT Rates:** Generally, UAE businesses will be subject to a 9% corporate income tax (**CIT**) rate. Recent Cabinet decision has confirmed that the first AED 375,000 of taxable income will be subject to 0% CIT rate irrespective of whether the taxable person conducts multiple businesses or business activities within that tax period. Any taxable income exceeding AED 375,000 will be subject to a 9% CIT rate.

2. **Registration:** Pre-registration for CIT for certain categories of companies operating in the UAE has commenced through the EmaraTax platform https://eservices.tax.gov.ae/. These selected companies will be receiving invitations from the FTA by email and SMS, allowing them to register via the EmaraTax platform. Such early registration is available until May 2023. Following such date, the UAE's Federal Tax Authority (**FTA**) will announce the date when registration will open for other categories of businesses. Priority will be given to businesses that have a financial year starting on 1 June 2023.

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The FTA released the "Corporate Tax Registration User Manual" (Version 1.0.0.0) https://www.saifaudit.com/PDF/UAE-Corporate-Tax-Registration-User-Manual-English.pdf explaining the CIT registration procedure.

Taxpayers will be required to register for CIT even if the taxable income is below the threshold of AED 375,000, and obtain a CIT registration number. Taxpayers have to register for CIT separately, irrespective of VAT registration. Taxpayers are required to register before they file their first CIT return. The CIT return will generally be due within 9 months following the end of the tax period.

3. **Exemptions:** The CT Law provides an exemption from CIT to a list of persons, such as government entities; government controlled entities; persons engaged in an extractive business; public/private pensions; social security funds, *etc*.

   Being an exempted person does not preclude the authorities from requiring the registration for CIT and obtaining a tax registration number.

4. **Deductions:** CIT deduction is allowed for expenses incurred, wholly and exclusively, to generate taxable income. Further, the CT Law provides for certain restrictions on the deductibility of interest expenditure to discourage excessive debt financing, and to ensure that debt financing used or arising as a result of certain specific intra-group transactions will only be deductible if there is a valid commercial reason for obtaining the loan.

5. **Free Zone Businesses:** Qualifying free zone businesses may benefit from a 0% CIT rate on their qualifying income. The scope of "qualifying income" is yet to be specified by the authorities. Once made public by the relevant authorities, such scope will explain the extent of benefits available to qualifying free zone businesses. A key question to answer will be whether a free zone company may conduct business with, and earn active income from, a mainland person in the UAE and still maintain the 0% CIT benefit. The treatment of transactions between free zone entities and group entities located in mainland UAE also needs clarity from authorities.

6. **Tax Group:** A resident parent company can make an application to the FTA to form a tax group with one or more other resident companies (subsidiaries), subject to meeting specified conditions. Such application shall be made to the FTA by the parent company and each subsidiary seeking to become members of the tax group. Once formed, the tax group is treated as a single taxable entity, with the parent company responsible for the administration and payment of CIT on behalf of the group. To determine the taxable income of the tax group, the parent company will have to consolidate the financial accounts of each subsidiary for the relevant tax period, and eliminate intra-group transactions. To form a tax group, neither the parent company nor any of the subsidiaries can be an exempt entity

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or a free zone entity benefitting from 0% CIT rate, and all companies must use the same financial year and prepare their financial statements using the same accounting standards.

7. **Transfer Pricing Rules:** The CT Law introduces a comprehensive transfer pricing (**TP**) regime applying to both domestic and cross border transactions and arrangements. In determining taxable income, transactions and arrangements between related parties must meet the arm's length standard. To prevent the manipulation of taxable income, various articles in the CIT Law require that the consideration of transactions with related parties and connected persons needs to be determined by reference to their "market value".

   The FTA will adjust the taxable income where the result of the transaction or arrangement between related parties does not fall within the arm's length range. Businesses will be required to maintain information regarding their transactions with related parties and connected persons, and certain businesses will be required to submit such information along with their tax return.

   With limited time left to implement TP rules, businesses must now start assessing the impact and determine what they need to do to be prepared in light of the complexity of these rules.

8. **General Anti-Abuse Rule (GAAR):** The CT Law introduces a general anti-abuse rule (**GAAR**) whereby the FTA may counteract or adjust the taxable basis where the tax benefit is obtained as a result of a transaction or arrangement where the main purpose, or one of its main purposes, is to obtain a tax advantage that is not consistent with the intention or purpose of the CT Law.

   During the CIT Public Awareness Sessions conducted by UAE's Ministry of Finance, it has been clarified that businesses may be reorganized before the CT Law comes into effect, provided there is commercial reason for such reorganization. A mere tax benefit is not sufficient for the reorganization to be approved by the FTA due to the presence of GAAR in the CT Law.

   Clarity on the GAAR scope from the authorities will be critical for businesses, especially those seeking restructuring before the CT Law becomes applicable to them.

TLA – Tax Advisory Practice

TLA has launched a tax advisory practice to support clients in managing CIT and VAT law requirements. From the CT Law perspective, the practice will facilitate clients in the readiness phase for CIT implementation (detailed assessment, design and planning), implementation support (potential corporate restructuring, changes to operating model, compliance with transfer pricing rules, *etc*.) and then post-implementation support including tax filing and ongoing compliance with the CT Law. TLA will also be able to assist clients in tax planning, developing CIT risk management framework and

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strategy, as well as providing tax advisory on specific transactions (*e.g.* mergers and acquisitions, transfer pricing, *etc.*).

The tax practice is being headed by Irfan Munawar who has recently joined the TLA team as a tax partner. Irfan is a seasoned Chartered Accountant with more than 25 years of professional experience, having worked and developed deep knowledge of direct and indirect taxation, as well as transfer pricing in multiple jurisdictions. For assistance with direct and indirect taxation and transfer pricing matters, including UAE CIT implementation, Irfan can be reached at imunawar@t-lawadvisors.com.