



# UAE Corporate Tax ICAI Dubai Chapter

Nilesh Ashar  
Partner, International Tax  
KPMG Lower Gulf

Contact: [nashar1@KPMG.com](mailto:nashar1@KPMG.com) /+971 50 182 7701




# Corporate Tax in the UAE – current status

On 31 January 2022 UAE made an announcement to introduce Corporate Tax ('CT') - effective for the financial years commencing on or after 1 June 2023.



Details on the proposed CT regime - set out through press release and Frequently Asked Questions (FAQs) issued by Ministry of Finance ('MOF').



Public Consultation Document released on 28 April 2022. Comments due on 20 May 2022.

CT Law is expected to be released mid-2022

# Key features of the UAE CT



## Effective Date

- Effective for financial years starting on or after 1 June 2023
- **December year end – first CT year is 1 January 2024 to 31 December 2024, CT return and CT payment by 30 September 2025**
- **March year end – first CT year is 1 April 2024 to 31 March 2025, CT return and CT payment by 31 December 2025**



## Rates

### Progressive tax rates

- 0% for taxable income below AED 375,000
- 9% for taxable income above AED 375,000; e.g. – if taxable income is AED 500,000, 9% applies on AED 125,000
- Possible 15% (*though not stated in consultation*) for large multinationals where Pillar 2 provisions apply (consolidated group turnover more than EUR 750 mn)



## In-scope taxable persons

- Any person conducting commercial activities (Commercial License being the main criteria to determine applicability of CT)
- All UAE businesses including banks (branches, FTZ /mainland entities, foreign PEs) operating in UAE under a commercial license
- Legal person incorporated in foreign jurisdiction that is effectively managed and controlled in the UAE
- Limited and general partnership and other unincorporated joint ventures and association of person will be treated as ‘transparent’ for CT purpose – partners taxed with on income
- UAE resident person (*i.e., in-scope taxable legal entity, natural person and foreign entity owned and managed in the UAE*) will be taxable on worldwide income; Natural person to be taxable only on income earned from business activity carried out in the UAE
- Non-resident person subject to UAE CT on taxable income from their permanent establishment in the UAE and UAE sourced income
- LLPs taxed in a similar manner as a UAE resident company – not considered to be transparent

[Click for examples](#)

# Key features of the UAE CT



## Exempt Person

- The **federal and emirate governments** and their departments, authorities and other public institutions
- **Wholly government-owned UAE companies** that carry out a sovereign or mandated activity, and that are **listed in a cabinet decision**
- **Businesses engaged in the extraction and exploitation of UAE natural resources** that are subject to Emirate-level taxation
- **Charities and other public benefit organizations** that are listed in a cabinet decision
- Public and regulated private social security and retirement pension funds
- Investment funds, subject to meeting the relevant condition



## Free Zone

- Free Zone Persons (companies and branches) subject to 0% rate provided they **maintain adequate substance, comply with regulatory requirements** and no **other mainland sourced income** (*except for passive income*)
- Key relevant exceptions:
  - Entities having a branch on the mainland UAE will be taxed at the regular CT rate on its mainland sourced income, whilst non-mainland income subject to 0% rate; Considerations of mainland entity with FZ branch not explicitly stated
  - For entities without a mainland branch, 0% rate benefit to continue if the mainland income is limited to ‘passive income’ (interest, royalties, dividends and capital gains)
  - Transactions with mainland related party group companies subject to a 0% CT rate, no deduction for mainland group companies
- Outside the exceptions above, any FZ entity earning mainland income may taint the 0% rate – all income taxable
- Entities need to register and file annual CT returns (*audited financial statements*)
- Entities can opt in to CT regime (irrevocable)

[Click for examples](#)

# Key features of the UAE CT



## Exemptions

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- Dividend received from domestic UAE companies (including free zone entities)
- Dividends from foreign companies and capital gains from sale of shares will be exempted, subject to the following conditions:
  - **Owns at least 5% of the shares of the company; and**
  - **Investee company is subject to CT (or an equivalent) at a rate of at least 9%**
- Capital gains on disposal of Free Zone entity shares exempt despite 0% rate (for FZ) as long as Free Zone entity substantially earns all its income from shareholding in subsidiaries
- **Foreign Branch profits** - UAE companies can either i) elect to claim an exemption for their foreign branch profit (*provided branch is subject to sufficient level of tax in foreign jurisdiction*) or ii) claim a foreign tax credit for taxes paid in the foreign branch country



## Tax Grouping

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- UAE resident companies - tax group if the parent company holds at least 95% **share capital** and **voting rights and have same FY**
- **Free Zone person that benefits from the 0% CT rate cannot be a part of tax group – unclear whether branch can separately be part**
- To form a tax group a notice signed by the parent and subsidiaries to be submitted to the FTA
- One tax return, consolidated financial accounts for entities in the ground, elimination of transactions between group entities
- **Intra group transfer asset/liability relief** will be available between UAE group entities that are at least 75% commonly owned and assets/liability remain in the group for a minimum of three years

# Key features of the UAE CT



## Losses

- Tax losses can be carried forward indefinitely
- A business can offset a loss in future periods **up to a maximum of 75% of the taxable income in each of those future periods**
- For change in ownership exceeding 50%, tax losses may be carried forward if same or similar business is carried on by the new owners
- Transfer of losses between companies allowed provided the group companies are 75% commonly owned and not benefitting from 0% CT rate
- Total tax loss offset cannot exceed 75% of the taxable income of the company receiving the transferred losses
- No tax loss relief for losses before effective date of UAE CT or from activities otherwise exempt from UAE CT



## Calculating taxable income

- Accounting net profit (or loss) as stated in the Financial Statements to be adjusted to arrive at taxable income
- Unrealized gains or losses on **capital items** are not taken into account when calculating taxable income
- Interest deduction is capped at 30% of EBITDA or an amount which ever is higher. Related party borrowings with specified end uses to be at arm's length and deductible only if there is a commercial reason.
- Related party payment to Free Zone person taxed at 0% will not be deductible
- 50% of entertainment expense to be disallowed
- Transitional rules – opening balance sheet for CT purposes, considered as closing balance sheet of previous year

# Key features of the UAE CT



## Tax Payments

- No deduction for penalties, recoverable VAT, donations to non-approved organizations
- CT return and Tax payments are to be made within 9 months from the end of the Fiscal year
- No provisional or advance tax payments is needed
- Foreign tax credits on UAE taxable income to be allowed as tax credits to offset tax liability



## Transfer Pricing

- UAE businesses will be required to comply with TP rules and documentation requirements set with reference to the OECD Transfer Pricing Guidelines
- Transfer pricing documentation that will be required to be submitted, includes a Master and Local file (threshold to be provided)
- Whether transfer pricing is applicable to domestic related party transactions? – still unclear

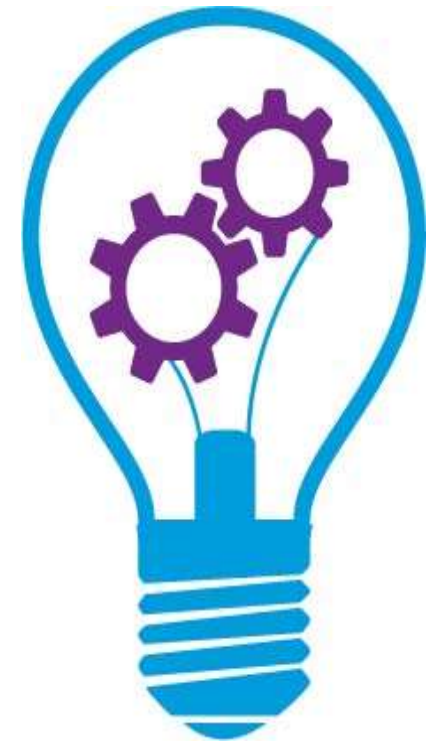


## Administration

- Business subject to CT to register with FTA and obtain tax registration number
- Federal Tax Authority would be responsible for the administration, collection, and enforcement of UAE CT
- Additional guidance required on how Tax Residency Certificates will be issued to FTZ entities claiming exemption from CT

# Key issues for considerations

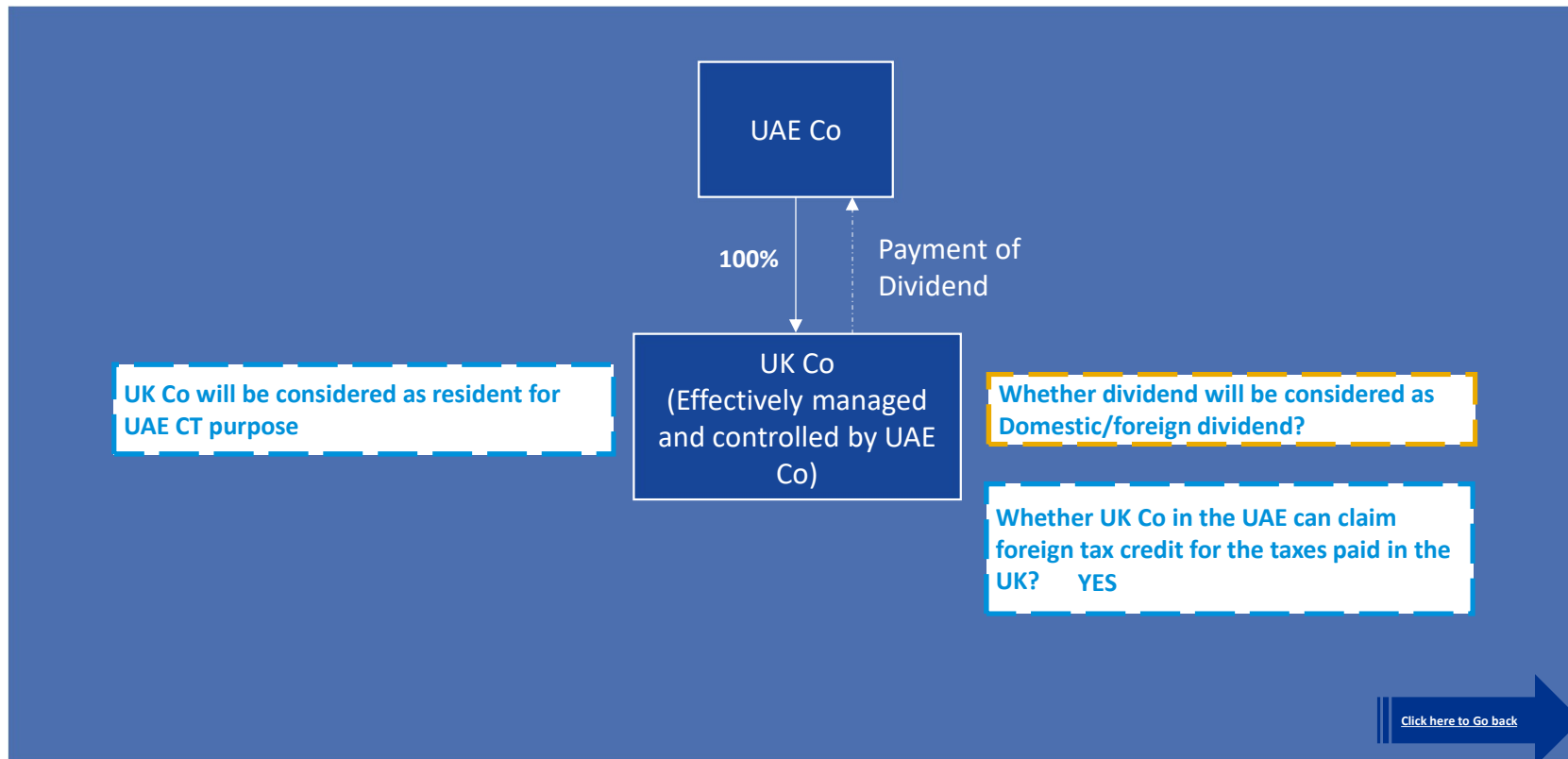
- Principle of effective management and control
- Inter-play of Free Zone vs Mainland
- Participation exemption considerations
- Investment fund exemption
- Need for separate audited financial statements for free zone entity
- Separate return for CT and BEPS 2.0 GloBE rules
- Tax grouping – separate CT return for each free zone entity claiming 0% CT benefit
- Carry forward option of the net interest expense that will not be deductible
- Additional guidance required on how Tax Residency Certificates will be issued to FTZ entities claiming exemption from CT – FTZ entities subject to tax at 0%
- Free zone exemption – location of underlying assets relevant? Substance over form approach ?





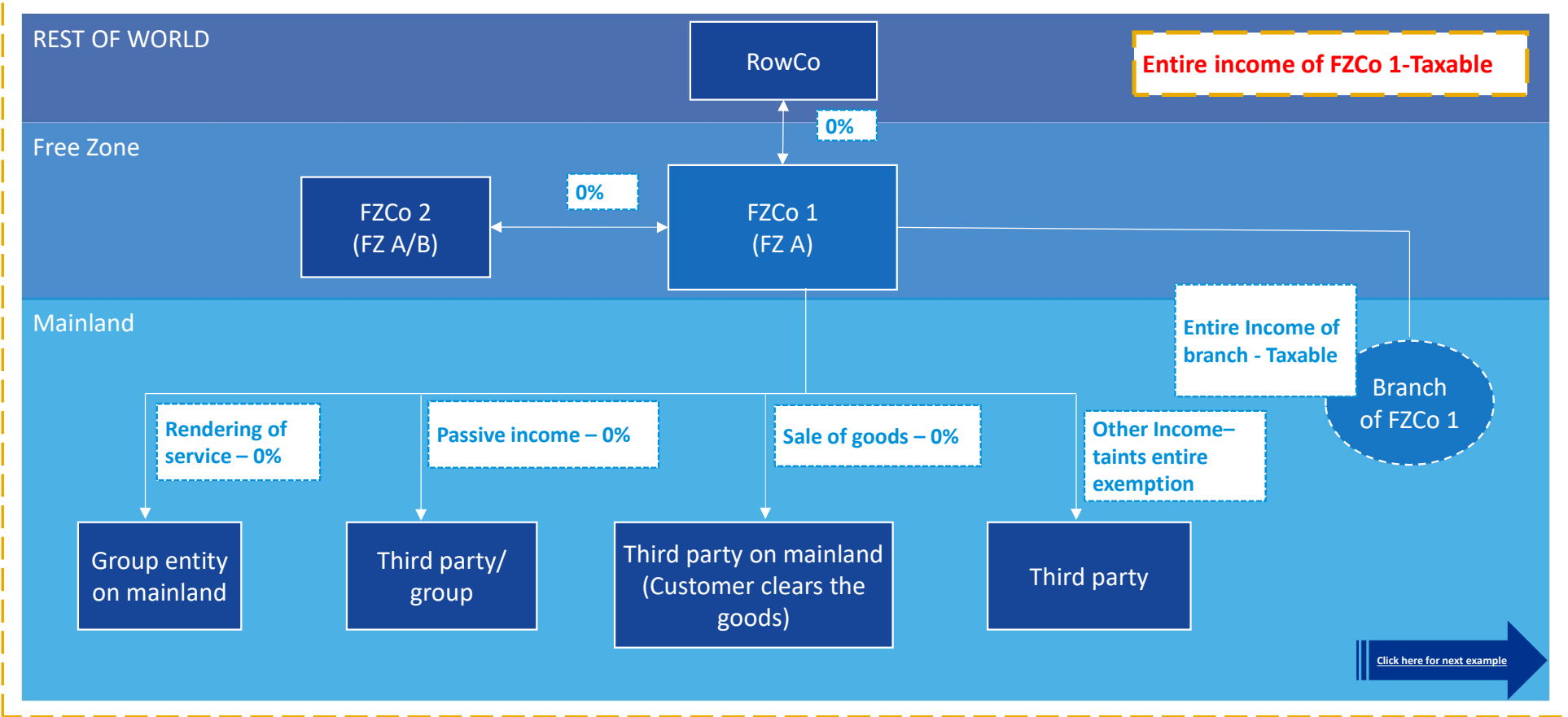
# Resident Person

Legal person incorporated in foreign jurisdiction that is effectively managed and controlled in the UAE will be considered as resident for UAE CT purpose.



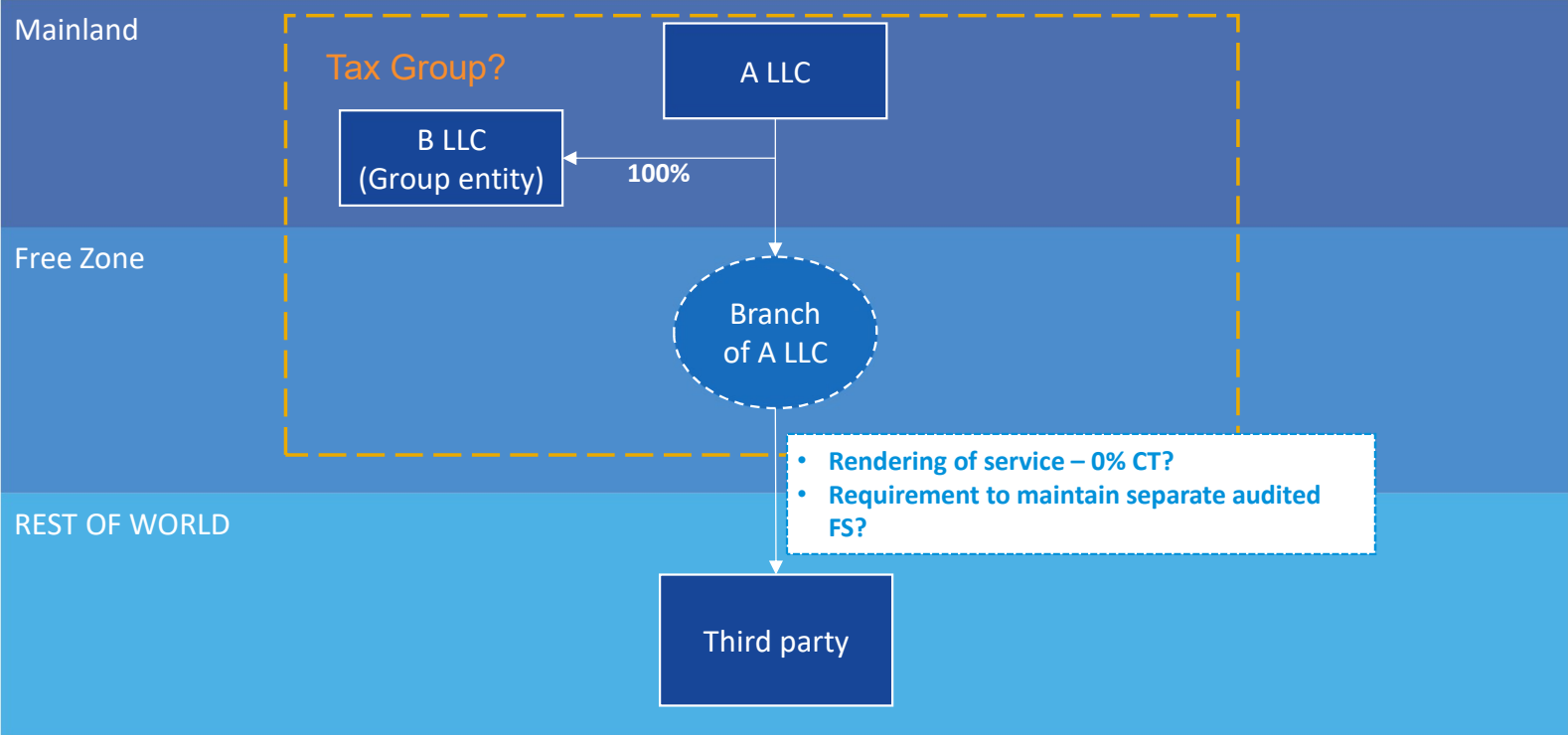
# Free Zones

The UAE has decided to honor its commitments to businesses registered in free zones – but there are a several aspects to consider:



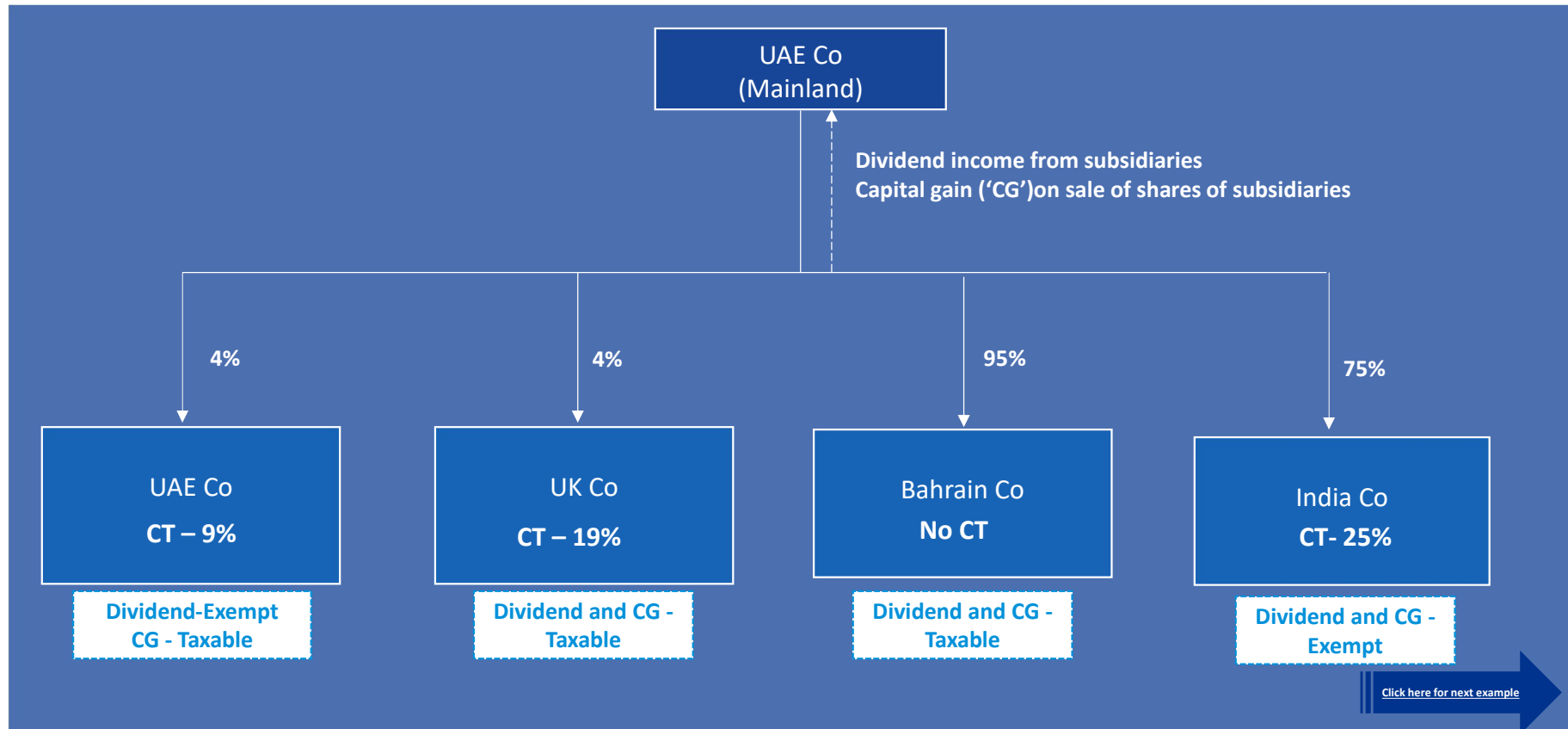
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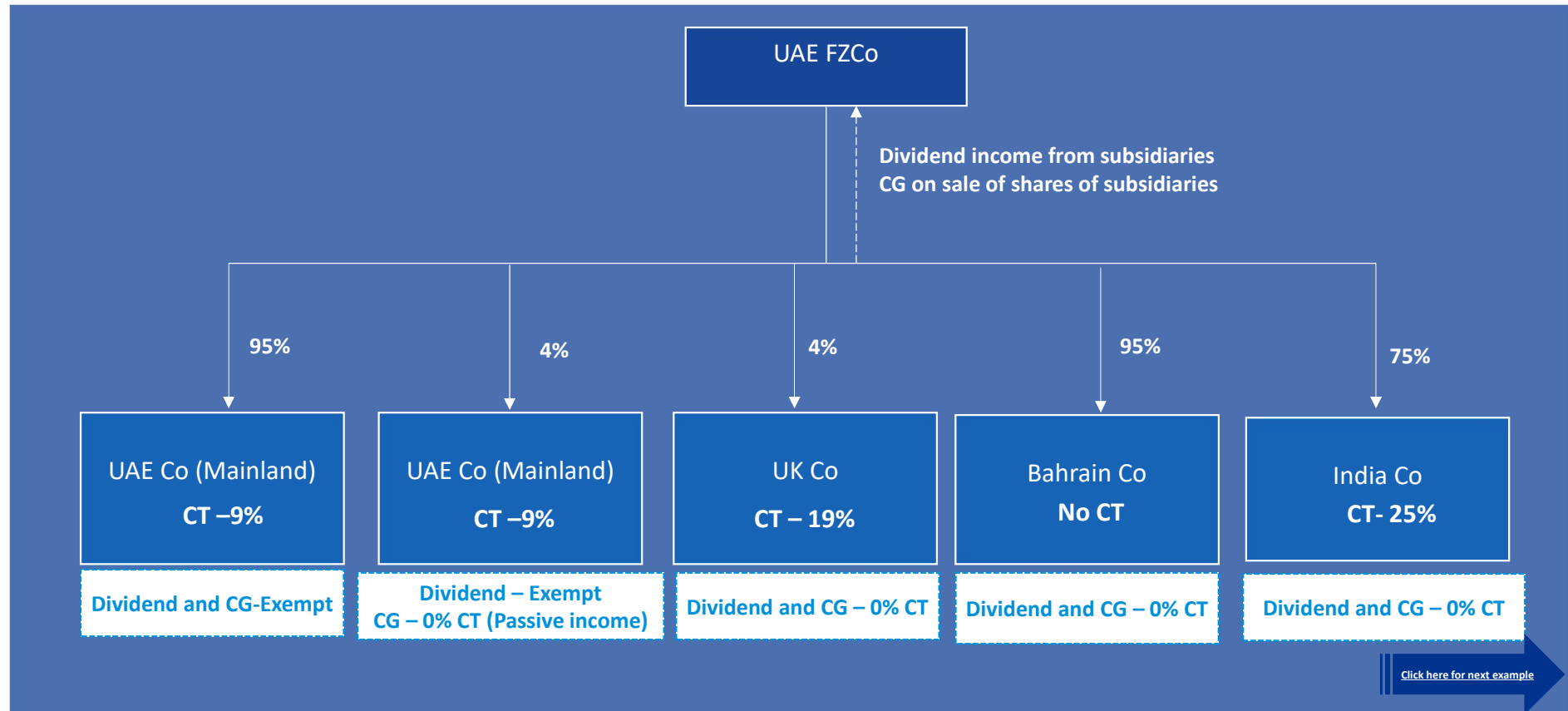
# Exemption for dividends and Capital Gains

Dividends and capital gain from sale of share of subsidiaries is exempt from CT, subject to participation exemption.



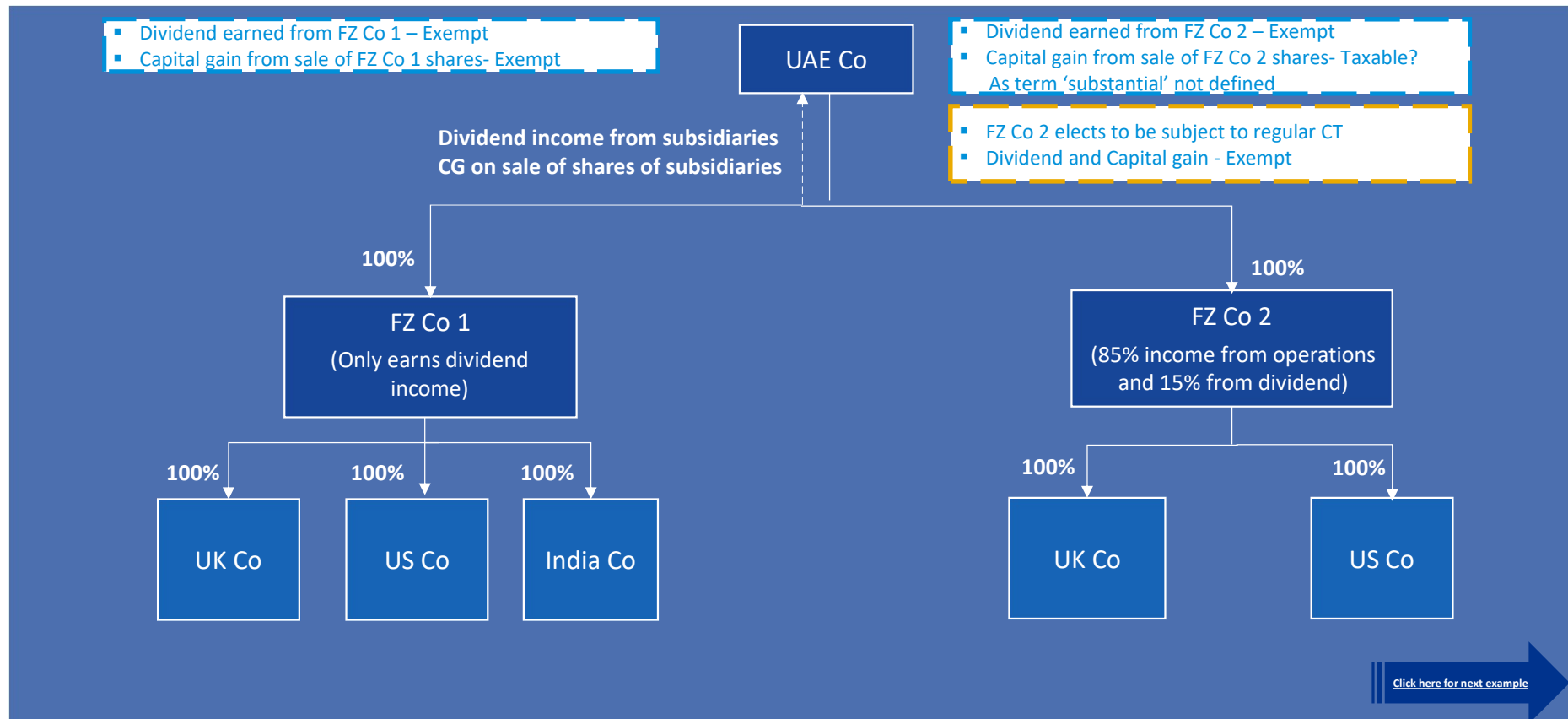
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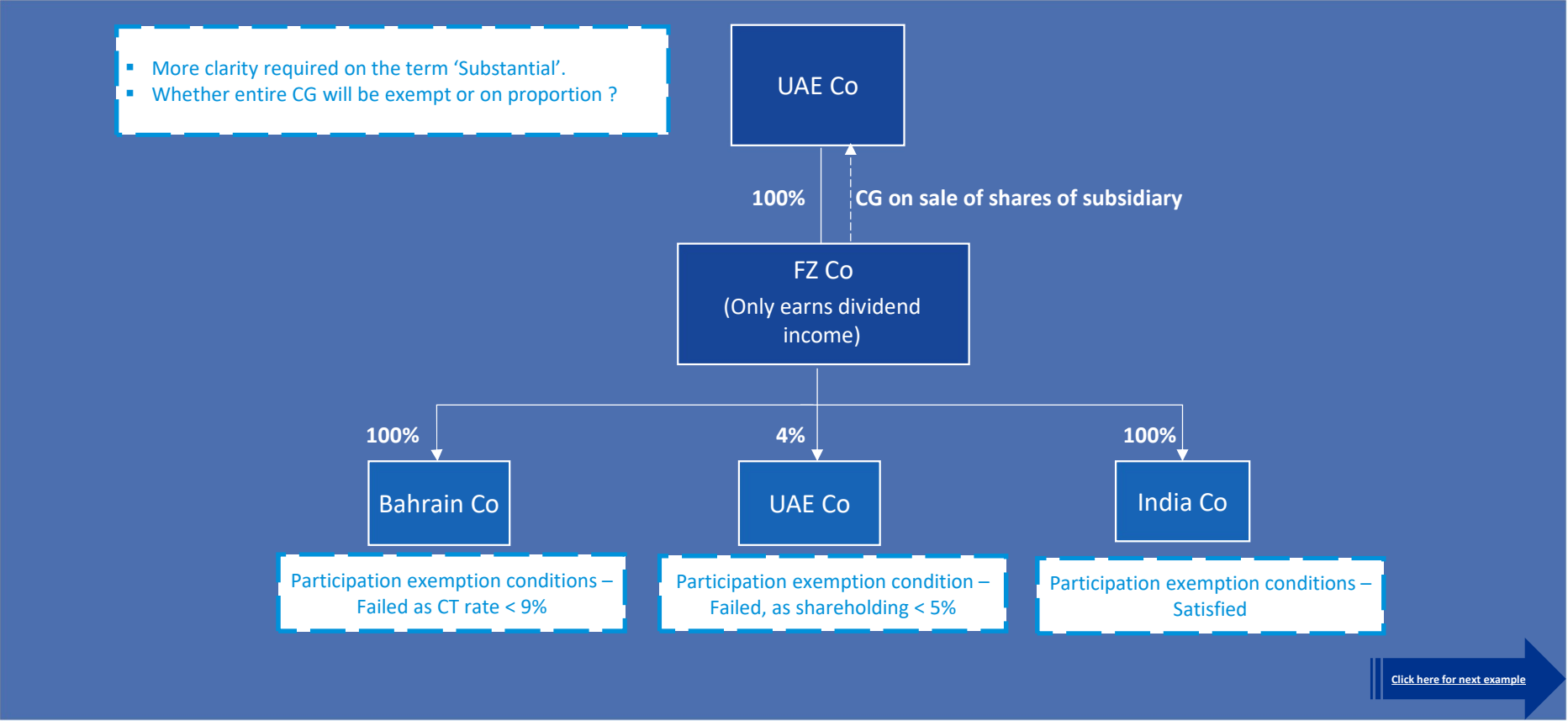
# Exemption for dividends and Capital Gains

Capital gains on sale of shares in a Free Zone Company is exempt from CT provided FZ person is a holding company and substantially all of its income is derived from shareholdings in subsidiary companies that meet the participation exemption.



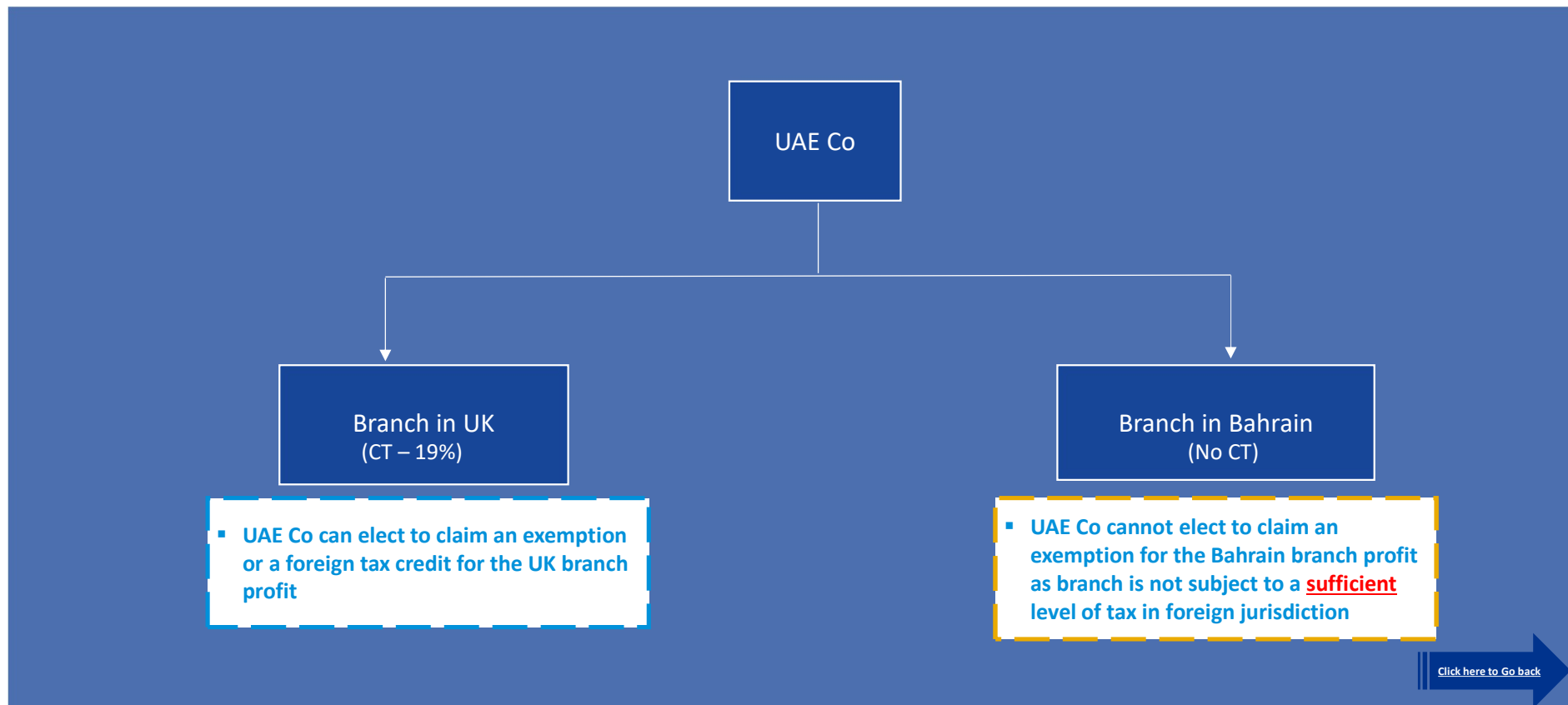
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# Foreign Branch Profit Exemptions

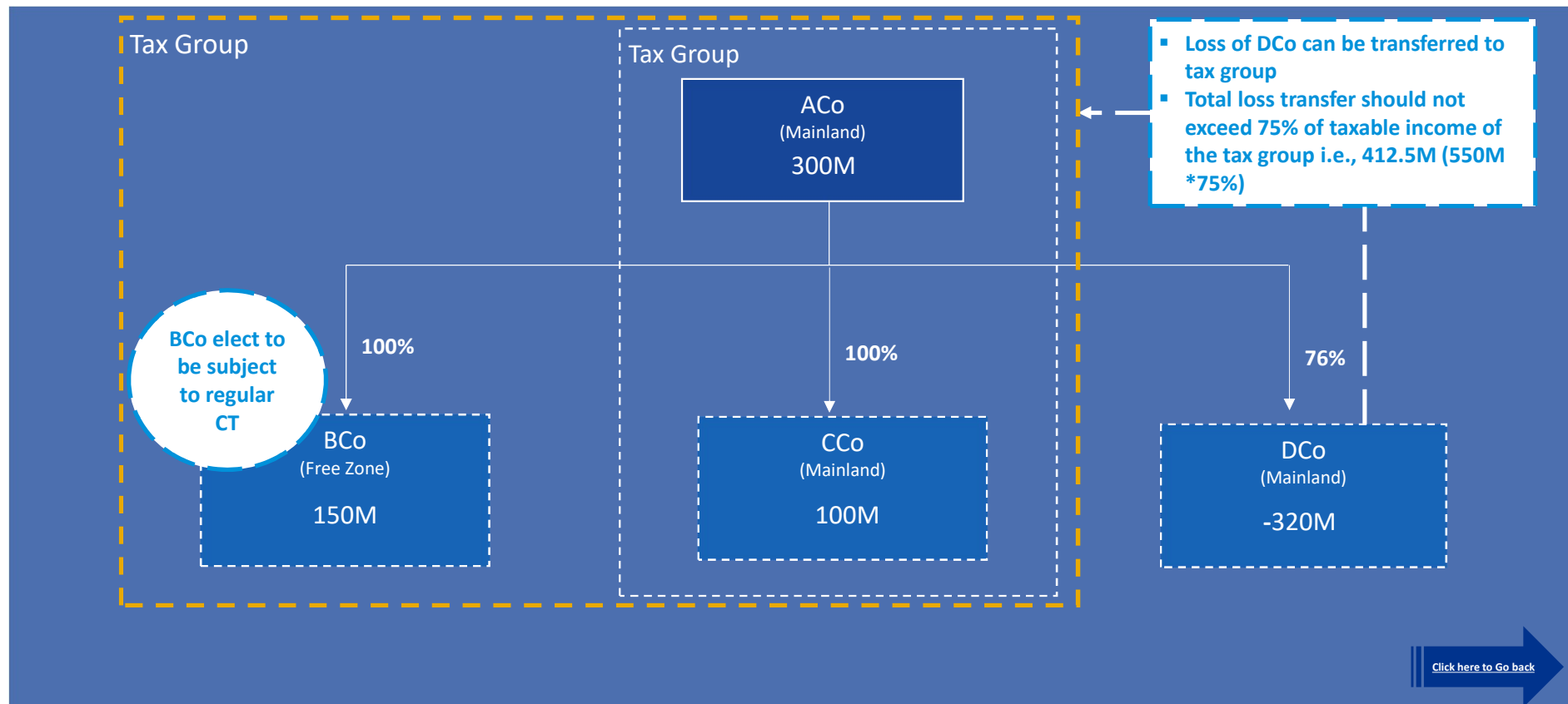
UAE Company can elect to claim an exemption for foreign branch profit, subject to certain conditions:





# Tax Grouping and Transfer of Losses

The proposed UAE CT treatment allows tax grouping and transfer of losses-





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Questions?





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