
ICAI DUBAI CHAPTER NPIO

FOCUS

GROUP - TAX AND COMPLIANCE

# About **Horizon** Biz Consultancy

65
years

We are the **65-year-old Consulting** company providing
- Accounting
- Taxation
- Finance
- Consultancy and other allied services

Our Vision
- "Our Vision is to provide high quality services at a very efficient cost. We strive for continual growth based upon a reputation of excellence derived from proven results''


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# CORPORATE TAX

Corporate tax is a form of direct tax levied on the accounting net income or profit of corporations and other entities from their business.

JUNE
2023

# STRUCTURAL ANALYSIS

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# STRUCTURAL ANALYSIS

**Legal Status & Business activities:**

This includes the license types whether LLC, sole establishments etc., the business activity as per the license and its location. The transaction flow for goods whether free zone-mainland etc.

**Legal Structural Anlaysis:**

This includes the analysis as per the ownership or % of holding structure of all the entities of the group and their relationship reaching upto UBO.

**Existing VAT structure:**

Whether its group TRN or individual TRN and whether vat returns are up to date.

# TAX GROUP

A Tax Group is applicable if all of the following conditions are fulfilled

a. The Resident Persons are juridical persons.
b. The Parent Company owns at least 95% (ninety-five percent) of the share capital of the Subsidiary, either directly or indirectly through one or more Subsidiaries.
c. The Parent Company holds at least 95% (ninety-five percent) of the voting rights in the Subsidiary, either directly or indirectly through one or more Subsidiaries.
d. The Parent Company is entitled to at least 95% (ninety-five percent) of the Subsidiary's profits and net assets, either directly or indirectly through one or more Subsidiaries.
e. Neither the Parent Company nor the Subsidiary is an Exempt Person
f. Neither the Parent Company nor the Subsidiary is a Qualifying Free Zone Person.
g. The Parent Company and the Subsidiary have the same Financial Year.
h. Both the Parent Company and the Subsidiary prepare their financial statements using the same accounting standards.

# QUALIFYING GROUP

**Conditions for getting the benefit of a Qualifying Group**

a. The Taxable Persons are juridical persons that are Resident Persons, or Non-Resident Persons that have a Permanent Establishment in the State.
b. Either Taxable Person has a direct or indirect ownership interest of at least 75% (seventy-five percent) in the other Taxable Person, or a third Person has a direct or indirect ownership interest of at least 75% (seventy-five percent) in each of the Taxable Persons.
c. None of the Persons are an Exempt Person.
d. None of the Persons are a Qualifying Free Zone Person.
e. The Financial Year of each of the Taxable Persons ends on the same date.
f. Both Taxable Persons prepare their financial statements using the same accounting standard

# QUALIFYING GROUP

### TRANSFER OF ASSETS AND LIABILITIES

No gain or loss needs to be taken into account in determining the Taxable Income in relation to the transfer of one or more assets or liabilities between two Taxable Persons that are members of the same Qualifying Group.

### TRANSFER OF LOSS TO QUALIFYING GROUP

If all the above conditions are fullfilled & if the common ownership exist from the start of the Tax Period in which the Tax Loss is incurred to the end of the Tax Period in which the other Taxable Person offsets the Tax Loss transferred against its Taxable Income, then upto 75% of the Taxable Income,  Losses can be offset.

# FREEZONE REQUIREMENTS

**Assessing whether its a Qualified Free Zone Person (QFP):**

**This includes analysis whether all conditions as per Article 18 is complied or to will comply by the client:**

a. Maintains adequate substance in the State.
b. Derives Qualifying Income
c. not elected to be subject to Corporate Tax under Article 19
d. Complies with Arms Length & Transfer Pricing principles
e. Meets any other conditions as may be prescribed by the Minister - such as Audit

# FREEZONE REQUIREMENTS

**Qualified Income (19 of CT law & MD 100)**

**This includes identifying based on the business and business activities/transactions of the client whether it is deriving Qualifying income as any of the below:**

Transactions with:
a. another FZP but not excluded activities
b. Non FZP but only with regards to qualifying activity
c. Qualifying IP ownership & exploitation
d. Income that is not above but less than 5% of total income - De-minimis

# QUALIFYING ACTIVITIES

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**This includes brief analysis of Qualifying Activities & Excluded Activities as per Ministrial Decisions 265:**

a. Manufacturing of goods or materials.
b. Processing of goods or materials.
c. Trading of Qualifying Commodities.
d. Holding of shares and other securities for investment purposes.
e. Ownership, management and operation of Ships.
f. Reinsurance services.
g. Fund management services.
h. Wealth and investment management services.
i. Headquarter services to Related Parties.
j. Treasury and financing services to Related Parties.
k. Financing and leasing of Aircrafts.
l. Distribution of goods or materials in or from a Designated Zone.
m. Logistics services.
n. Any activities that are ancillary to the Qualifying Activities specified in paragraphs (a) to (m) of this Clause.

# EXCLUDED ACTIVITY

- Any transactions with natural persons, other than few Qualifying Activities
- Banking activities
- Insurance activities
- Finance & leasing activities
- Ownership/exploitation of immovable property other than commercial property
- Anciulliary to above activities

# RESIDENT PERSON

- A juridical person that is incorporated or otherwise established or recognised under the applicable legislation of the State, including a Free Zone Person.

- A juridical person that is incorporated or otherwise established or recognised under the applicable legislation of a foreign jurisdiction that is effectively managed and controlled in the State.

- A natural person who conducts a Business or Business Activity in the State.

- Any other Person as may be determined in a decision issued by the Cabinet at the suggestion of the Minister.

# NON RESIDENT PERSON

a. Has a Permanent Establishment in the State as under Article 14 of this Decree-Law.

b. Derives State Sourced Income as under Article 13 of this Decree-Law.

c. Has a nexus in the State as specified in a decision issued by the Cabinet at the suggestion of the Minister.

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# TAXABILITY OF INCOME

| Taxability | State Sourced Income | Global Income |
|---|---|---|
| Resident Judicial Person | Yes | Yes |
| Foreign Juridical person - effectively managed & controlled in UAE is considered as Resident person<br>Non Resident Person | Yes | Yes |
| Has Permanent Establishment (PE) | Yes | No |
| Has State Sourced income without PE | Yes | No |
| Has Nexus in State | Yes | No |

# FINANCIAL ANALYSIS

# FINANCIAL ANALYSIS

**Article 20 – General Rules for Determining Taxable Income**

The Taxable Income of each individual or entity subject to taxation shall be determined separately. This determination should be based on adequate, standalone financial statements that are prepared for the purpose of financial reporting. These financial statements should comply with accounting standards accepted in the relevant jurisdiction.

# FINANCIAL ANALYSIS

**Article 28 – Deductible Expenditure**

Expenditure incurred wholly and exclusively for the purposes of the Taxable Person's Business that is not capital in nature shall be deductible in the Tax Period in which it is incurred, subject to the provisions of this Decree-Law

2. For the purposes of calculating the Taxable Income for a Tax Period, no deduction Federal Decree-Law No. 47 of 2022 – Unofficial translation 36 is allowed for the following:

Expenditure not incurred for the purposes of the Taxable Person's Business.

Expenditure incurred in deriving Exempt Income.

Losses not connected with or arising out of the Taxable Person's Business.

Such other expenditure as may be specified in a decision issued by the Cabinet at the suggestion of the Minister.

# FINANCIAL ANALYSIS

**3. If expenditure is incurred for more than one purpose, a deduction shall be allowed for:**

Any identifiable part or proportion of the expenditure incurred wholly and exclusively for the purposes of deriving Taxable Income.

An appropriate proportion of any unidentifiable part or proportion of the expenditure incurred for the purposes of deriving Taxable Income that has been determined on a fair and reasonable basis, having regard to the relevant facts and circumstances of the Taxable Person's Business.

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# FINANCIAL ANALYSIS

**Article 29 – Interest Expenditure** Except for a specific part mentioned in Clause 2 of Article 28 of this law, the money you spend on interest can be deducted from your taxes in the same year you paid it. However, there are other rules and conditions mentioned in Article 28, as well as Articles 30 and 31 of this law that you need to follow in order to claim this deduction.

**Article 30 – General Interest Deduction Limitation Rule**
Business can deduct up to 30% of its earnings before accounting for interest, taxes, depreciation, and amortization (EBITDA) as net interest expenditure. This deduction applies to the relevant tax period and does not include any income that is exempt from taxation.

If the taxpayer's interest expenses do not surpass AED 12,000,000 as determined by the Ministerial decision, they won't be subject to the mentioned restriction.

If the taxpayer has interest expenses that are not allowed in one period, they can carry forward those expenses and deduct them in the following ten periods, as long as they meet the requirements outlined in the mentioned clauses

# FINANCIAL ANALYSIS

**Article 32 – Entertainment Expenditure**

A Taxable Person shall be allowed to deduct 50% (fifty percent) of any entertainment, amusement, or recreation expenditure incurred during a Tax Period on its customers, shareholders, suppliers or other business partners, including but not limited to the nature of the following:

a. Meals.
b. Accommodation.
c. Transportation.
d. Admission fees.
e. Facilities and equipment used in connection with such entertainment, amusement or recreation.
f. Such other expenditure as specified by the Minister.

# FINANCIAL ANALYSIS

**Article 33 – Non-Deductible Expenditure**

The following expenses are not allowed: -

1) Donations, grants or gifts made to an entity that is not a qualifying public benefit entity.
2) Fines and penalties, other than amounts awarded as compensation for damages or breach of contract
3) Bribes or other illicit payments
4) Dividend, profit distributions or benefits of a similar nature paid to an owner of the taxable person.
5) Amounts withdrawn from the business by a natural person who is a taxable person.
6) Corporate tax imposed on a taxable person
7) Input VAT which is recoverable under VAT Law
8) Tax on income imposed on the taxable person outside the state.

# FINANCIAL ANALYSIS

**Article 22 – Exempt Income**

• The following incomes are not considered of calculating taxable income:

a. Dividends & Profits distribution from a resident juridical person/Co.

b. Dividends & Profits distribution from a participating interest in a foreign juridical person

c. Other income from participation interest (such as gain loss or sale of interest, forex gain & loss of the same, imparirment gains or loss)

d. Income from Foreign PE

e. Income by NR from operating aircraft or ships in international transportation

Participating Interest/Exemption: 5% or more ownership in share capital of a juridical person

* intention to hold the inetrest for at least 12 months

*The participating company is subject to foreign CT

*Atleast 5% of profit available for distribution/liquidation proceeds is received/entitled to receive

*Not more than 50% of direct & indirect assest of partipating Company is of ownership interest.

# TRANSFER PRICING COMPLIANCE

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**Related Party Article 35:**
**Natural Person:** Two or more natural persons upto 4th degree of kinship
Natural person alone & with one or more related parties are shareholders in a Company holding 50% or more ownership or they alone or together controls the Company.

**Juridical person:** one Company alone or with RP owning another company by 50% or greater or they controls another Company a third person alone or through RP owns 50% or more in ownership or has controls in another Company.
A person & its PE or Foerign PE Partners of same Unincorporated Partnership
Trustee, Founder, Beneficiary of a trust & its RPs

**Connected Persons – Article 36**
Owners
Director or Officer
A Related party of any of the persons referred above

# TRANSFER PRICING COMPLIANCE

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Transfer pricing refers to the rules and methods for pricing transactions within and between enterprises under common ownership or control.
As per UAE CT Law and Ministerial Decisions, the following things are required :

1. A disclosure containing information regarding the Taxable Person's transactions and arrangements with its Related Parties and Connected Persons as prescribed along with the tax return

2. The Taxable Person must maintain both a master file and a local file in the form prescribed by the Authority and to be submitted to Authority within 30 days of request, if one of the following conditions fulfilled.

The entity is part of a Multinational Enterprises Group that has consolidated group revenue of AED 3.150 Billion
OR
The entity's revenue in the Tax period is AED 200 million or more.

3. The taxable person has to also submit supporting documents to support Arms length nature of transactions with related parties & connected persons.

# ARTICLE 61 – TRANSITIONAL RULES

A Taxable Person's opening balance sheet for Corporate Tax purposes shall be the closing balance sheet prepared for financial reporting purposes under applicable accounting standards (In UAE as per IFRS) on the last day of the Financial Year that ends immediately before their first Tax Period commences, subject to any conditions or adjustments that may be prescribed by the Minister, which Ministerial Decision No. 120/2023. The opening balance sheet shall be prepared taking into consideration the arm's length principle in accordance with Article 34.

**1. Immovable Property:**

Taxable Person may elect to adjust its Taxable Income for calculating the gains on any Immovable Property that meets all of the following conditions:

a. The Immovable Property is owned prior to the first Tax Period.

b. The Immovable Property is measured in the Financial Statements on a historical cost basis.

c. The Immovable Property is disposed of or deemed to be disposed of during or after the first Tax Period for the purposes of determining the Taxable Income for a value exceeding the net book value.

# TRANSITIONAL RULES

**Accordingly, upon disposal of a Qualifying Immovable Property, the Taxable Person shall make one of the following adjustments:**

| OPTION-1 | OPTION-2 |
| --- | --- |
| Market Value as on 1st January 2024 | Actual Disposal Value |
| Less: Higher of Original cost or Book value | Less: Higher of Original cost or Book value |
| Gains to be excluded (in year of disposal) | Difference (A) |
| If benefit of this to be taken then the market value needs to be done per RERA or Qualified Valuation experts at the start of the first tax period. | No. of days the asset is owned before 1st April 2024 (B) |
| | Total no. of days the asset is owned (C) |
| | Ratio (D = B/C) |
| | Gains to be excluded A*D (in year of disposal) |

# TRANSITIONAL RULES

**Intangible Asset**

A. Taxable Person may elect to adjust its Taxable Income for calculating the gains on any Intangible asset that meets all of the following conditions:

a. The Intangible asset is owned prior to the first Tax Period.

b. The Intangible asset is measured in the Financial Statements on a historical cost basis.

c. The Intangible asset is disposed of or deemed to be disposed of during or after the first Tax Period for the purposes of determining the Taxable Income for a value exceeding the net book value

Accordingly, if there is a intangible asset meeting above conditions, we recommend proper valuation for determining the transitional value as of 1 Jan 2024 and accordingly determine the gains/loss to be excluded.

# TRANSITIONAL PROVISIONS

**Financial Asset & Liability**

A Taxable Person may adjust its Taxable Income for the purposes of calculating the gains and losses on all the Financial Assets and Financial Liabilities that meet all of the following conditions:

a. The Financial Assets or Financial Liabilities are owned prior to the first Tax Period.

b. The Financial Assets or Financial Liabilities are measured in the Financial Statements on a historical cost basis.

The Taxable Person shall exclude the amount of the gain or loss that would have arisen, at the start of the first Tax Period, had the Qualifying Financial Assets or Qualifying Financial Liabilities been disposed of at Market Value and the cost of these Assets or Liabilities had been equal to the net book value.

# REGISTRATION REQUIREMENTS & RETURN FILING (ARTICLE 51 & 53 OF CT LAW)

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- Any Taxable Person shall register for Corporate Tax with the Authority in the form and manner and within the timeline prescribed by the Authority and obtain a Tax Registration Number. Currently there is no deadline.

- All Taxable Persons will be required to register for UAE Corporate Tax and obtain a Corporate Tax Registration Number. There is no registration threshold for UAE Corporate Tax. The main company and its branches are treated as one single entity and hence has to do only one registration.

- Non-Resident Persons earning State Sourced Income that do not have a Permanent Establishment or nexus in the UAE do not need to register. This is because they will not have a Corporate Tax liability in the UAE and their home jurisdiction will have primary taxing rights.

- Election to Apply Transfers Within a Qualifying Group

- There is no Group registration required and both the companies have to do individual registration. However an election must be made by the Transferor to apply the provisions of Qualifying Group of the Corporate Tax Law. The election shall be made at the time of submission of the Tax Return for the Tax Period and shall be irrevocable.

# COMPLIANCE

A Taxable Person must file a Tax Return, as applicable, to the Authority in the form and manner prescribed by the Authority no later than (9) nine months from the end of the relevant Tax Period, or by such other date as directed by the Authority.

**Things to include in a Tax Return**

a. Tax Period
b. Name, address and Tax Registration Number
c. Date of submission of the Tax Return.
d. The Accounting basis used in the financial statements
 - Accrual or Cash
e. Taxable Income
f. Tax Loss relief claimed if any
g. Tax Loss transferred
h. Available tax credits claimed
i. Corporate Tax Payable

# QUESTIONS

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