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United Arab Emirates: Corporate Tax Relief on International Investment

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The UAE's new Corporate Tax Law introduces a competitive tax regime, granting tax relief to a number of business activities. The UAE also has an extensive treaty network, providing relief on international transactions. This article focuses on corporate tax and treaty relief on inbound, throughbound and outbound investment.

1. Introduction[1]

1.1. The background

The United Arab Emirates (UAE) has undergone a fundamental tax transformation in recent years. While the UAE has successfully maintained its position as a tax-competitive jurisdiction, the country has recently introduced a number of new taxes. It has also significantly enhanced its treaty network, while respecting its international commitments with new base erosion and profit shifting measures, as well as its efforts to strengthen transparency and exchange of information.

The new UAE Federal Decree-Law 47 of 2022 on the Taxation of Corporations and Businesses (hereinafter the "UAE CTL" or "Corporate Tax Law")[2]is the latest addition to this landscape. It addresses income tax and withholding tax applicable to UAE resident and non-resident businesses for tax periods commencing on or after 1 June 2023. Although the new UAE CTL is aligned with international best practices, it has been designed to secure and accelerate the UAE's position as a global hub for business and investment. As such, it is a competitive tax regime that grants favourable tax relief to a wide variety of business activities. It is strengthened by an extensive treaty network that provides additional relief for cross-border investments.

1.2. Competitive tax regime

The new UAE CTL is one of the most competitive corporate tax regimes globally. This is evidenced by a 9% nominal income tax rate, a 0% rate for taxable income below AED 375,000, a pragmatic approach to the calculation of the tax basis, generous payment terms and a 0% withholding tax.

There is still no personal income tax in the UAE. As such, there is no tax on income from employment, as well as from privately held savings, investments, real estate, pensions or any other income from non-business activities.

1.3. Favourable tax relief

The new UAE CTL offers a host of exclusions, exemptions, deductions, safe harbours and credits to encourage domestic and international investment. These affect the holding, financing, operating and tax accounting of all businesses with investments in the UAE and its free zones. Relief is available to a wide variety of businesses and business functions, including startups, headquarters companies, holding companies, finance entities, research and development (R&D), intellectual property (IP), manufacturing, trading, distribution and transportation.

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1. While every effort has been made to accurately reflect the principles of UAE corporate tax, for the official position on all matters of UAE taxation, reliance can only be made on UAE laws, regulations and administrative practice as governed by UAE competent authorities. All references to domestic or international publications and opinions herein are for illustrative purposes only. They are not binding in any way on the UAE, the UAE Ministry of Finance (MoF), the UAE Federal Tax Authority (FTA) or any other legislative, executive or judicial body within the UAE.
2. Any references to the UAE CTL are based on the unofficial English translation of the law released by the UAE MoF and the FTA on 9 December 2022.

1.4. Extensive treaty network

The UAE has tax treaties with over 130 countries. These are primarily based on the OECD Model,[3] and often provide additional protection for cross-border income and capital. Tax treaties limit the application of domestic law. As UAE corporate tax is significantly aligned with international treaty law, there are few instances where tax treaties limit the application of UAE domestic law. However, any foreign tax usually levied on nationals or residents under foreign domestic law may often be reduced in whole, or in part, through the application of treaty dispositions.

This article examines the combined effect of corporate tax relief and treaty relief on inbound, throughbound and outbound investment.

2. Legal Framework

2.1. Introductory remarks

The legal framework for corporate tax relief on international investment is based on a combination of the new UAE CTL and the UAE's extensive treaty network.[4] In the absence of a tax treaty, businesses rely exclusively on the relief available under the UAE CTL, which includes double taxation relief.[5]

2.2. Corporate tax law

The new UAE CTL was released on 9 December 2022. This follows an initial announcement on 31 January 2022 by the UAE Ministry of Finance (MoF) and a public consultation process, which began on 28 April 2022.

The release of the law was also accompanied by the publication of 158 frequently asked questions (FAQs) by the MoF, which is expected to be complemented by numerous decisions given by the UAE's Cabinet, the Minister of Finance and the Federal Tax Authority (FTA).[6] As a result:

(1) The UAE Cabinet is expected to issue several implementing decisions, and has the legal authority to make amendments to the UAE CTL where circumstances require.[7] This possibility is embedded explicitly in the law for a range of different topics, including scope, the basis of taxation and tax rates.

(2) The Minister of Finance will suggest many of the Cabinet decisions referred to in (1). However, under the UAE CTL, the Minister also has autonomous authority to render decisions to facilitate the application of the law.

(3) The FTA[8] is expected to release a significant amount of supporting documentation and information in the form of user guides, public clarifications, business bulletins and templates, as well as regular presentations and communications to the business community across the UAE.[9] In addition, the FTA will permit taxpayers to submit requests for clarifications and advance pricing agreements (APAs), where appropriate.[10]

The UAE MoF reserves the right to introduce a higher effective tax rate on large multinationals to accommodate the possible introduction of "Pillar Two" of the G20/OECD Base Erosion and Profit Shifting (BEPS) Project,[11] which seeks to respond to concerns regarding profit shifting, harmful tax competition and a "race-to-the-bottom" regarding corporate tax rates.

As it currently stands, the Pillar Two project would introduce a global minimum effective corporate tax rate of 15% on a jurisdictional basis for large multinational corporations (MNCs)[12] and a subject-to-tax rule, which is a treaty-based rule that applies to royalties, interest and other categories of related party payments that are taxed below a nominal rate of 9%.[13] However, assuming that Pillar Two is implemented, it would not be unreasonable to expect the UAE to introduce, inter alia,

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3. Most recently, *OECD Model Tax Convention on Income and on Capital* (21 Nov. 2017), Treaties & Models IBFD.
4. H.R. Hull & R. Scalia, *UAE International Tax* (IBFD 2021), Books IBFD provides an in-depth analysis of UAE domestic and international tax law.
5. *See* section 3.9. of this article for double taxation relief within the UAE CTL.
6. Art. 67 UAE CTL.
7. *See*, for example, AE: Cabinet Decision No. 116 of 2022 confirming tax relief on the first AED 375,000 of taxable income for all taxpayers (for as long as there is no artificial separation of businesses).
8. The FTA is regulated, inter alia, by AE: Federal Decree-Law 28 of 2022 on Tax Procedures repealing AE: Federal Decree-Law 7 of 2017 on Tax Procedures. Article 62 of the UAE CTL addresses the "delegation of power".
9. For instance, AE: Corporate Tax Registration User Manual was released in January 2023, available at www.tax.gov.ae (accessed 10 Mar. 2023).
10. Art. 59 UAE CTL. *See also* FTA, Private Clarifications User Guide – USEG001 (Dec. 2022).
11. The UAE has been a member of the G20/OECD's Inclusive Framework on BEPS (IF) since May 2018. On 26 July 2021, the MoF issued its first official statement confirming the UAE's support of the global minimum effective tax rate as proposed under Pillar Two of the OECD BEPS Project.
12. MNCs are corporations that operate in their home country and other countries through foreign subsidiaries, permanent establishments (PEs) or other entity forms of presence or registration. "Large" refers to MNCs that have consolidated global revenues exceeding the UAE dirham equivalent of EUR 750 million (as confirmed in Q. 158 UAE MoF FAQs).
13. Which happens to be the same rate as the 9% nominal corporate tax rate in the UAE.

a qualified domestic minimum top-up tax (QDMTT) to ensure that income generated by UAE businesses is taxed in the UAE instead of being subject to a top-up tax imposed by other jurisdictions.[14] In this regard, the UAE MoF has confirmed that "until the UAE adopts the Pillar Two rules, multinationals will be subject to corporate tax under the regular UAE corporate tax regime", adding that "further information will be released in due course on the implementation of the Pillar Two rules in the UAE".[15]

2.3. International treaty law

The UAE has an extensive network of comprehensive tax treaties, with over 100 tax treaties in force and over 130 signed.[16] This network has been developed over a little more than 30 years.[17] As a rule, the UAE uses the standard model tax conventions on income and capital developed by the OECD and the United Nations (the UN Model)[18] as the basis for negotiating tax treaties. Any reference to "international treaty law" here refers to the OECD Model, which has significant repercussions on the negotiation, application and interpretation of tax treaties. However, it cannot be assumed that all of the UAE's tax treaties follow the OECD Model to the letter. Every tax treaty must be analysed on its own merits.[19]

As the UAE CTL provides for many different forms of tax relief, double taxation may not lead to the actual tax payment in two contracting states. Nevertheless, tax treaties also protect so-called virtual double taxation, whereby, if taxing rights under a tax treaty are granted to the UAE, the other contracting state may not subject such income or capital to tax even if the UAE does not levy any income tax on such income.

As a member of the G20/OECD's Inclusive Framework on BEPS (IF), the UAE adopted the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (the Multilateral Instrument, or MLI)[20] in 2019. As such, the UAE has been undertaking significant measures in recent years, mainly to implement the minimum standards that address harmful tax practices (BEPS Action 5), the prevention of treaty abuse (BEPS Action 6, *see* section 5.), country-by-country (CbC) reporting (BEPS Action 13) and treaty dispute resolution (BEPS Action 14).

2.4. Interaction between domestic law and treaty law

Once ratified by the UAE, international treaties immediately become part of UAE federal law (monistic system). In order to apply directly to taxpayers, i.e. self-executing, treaties must contain sufficiently clear rules. In principle, the UAE's tax treaties are sufficiently clear to be legally binding in specific situations of international taxation.

However, a tax treaty can only limit the application of domestic law (the so-called negative effect of tax treaties). A tax treaty is not usually a sufficient legal basis for levying a tax in the absence of domestic legislation.

In the case of a conflict between a rule of domestic tax law and a rule of treaty law that cannot be resolved through interpretation, the latter should prevail. Indeed, as tax treaties form part of international public law, they should usually have priority over domestic law. This rule limits the possibility for contracting states to introduce domestic laws that are intended "to have effects in clear contradiction to international treaty legislation"[21] or "override" treaty rules.[22]

The principle of the superiority of international law over internal law is also embodied in the UAE's constitution.[23] The UAE MoF recognizes that, once tax treaties are in force, they "override all other domestic laws (other than the Constitution)".[24] The new UAE CTL also clearly states that to

14. Qatar is the first Gulf Cooperation Council (GCC) Member State to introduce a QDMTT (AE: Law 24 of 2018, art. 34, as amended by Law 11 of 2 February 2023).
15. Qs. 118 and 157 UAE MoF FAQs.
16. According to AE: UAE MoF, the UAE has concluded 139 double tax agreements of which 109 are in force. *See* https://mof.gov.ae/double-taxation-agreements (accessed 10 Mar. 2023).
17. The first UAE tax treaty was *Convention between the Government of the French Republic and the Government of the United Arab Emirates for the Avoidance of Double Taxation* (19 July 1989) (as amended through 1993), Treaties & Models IBFD.
18. Most recently, *UN Model Double Taxation Convention between Developed and Developing Countries* (1 Jan. 2021), Treaties & Models IBFD.
19. Reference is made to Hull & Scalia, *supra* n. 4, at chs. 4 to 20 [pp. 61-230] for specifics regarding the UAE's treaty network.
20. *Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting* (7 June 2017), Treaties & Models IBFD [hereinafter the *Multilateral Instrument*, or MLI].
21. *See* OECD, *Tax Treaty Override* (OECD 1989), Primary Sources IBFD.
22. *See*, among others, P. Ribeiro de Sousa, *Tax Treaty Override*, in *Fundamental Issues and Practical Problems in Tax Treaty Interpretation* pp. 250-251 (M. Schilcher & P. Weniger eds., Linde Verlag 2008).
23. It has also been recognized in the case law of the UAE's treaty partners. *See* the decisions of the Indian Income Tax Appellate Tribunal (ITAT) in IN: ITAT Mumbai, 8 May 2015, *Mashreq Bank PSC v. JDIT*, ITA No. 4093/Mum/2005, Case ITA No. 4093/Mum/2005, Case Law IBFD and IN: ITAT Mumbai, 15 Jan. 2016, *Mashreq Bank PSC v. DDIT*, ITA No. 1342/Mum/2006, Case ITA No. 1342/Mum/2006, Case Law IBFD. For the UAE constitutional rules governing implementation of international treaties, *see* R. Scalia, *The UAE Fiscal Federalism*, 47 Intertax 11, pp. 971-972 (2019).
24. AE: MoF, Department of International and Financial Relations, Government of United Arab Emirates – Mutual Agreement Procedure (MAP) Guidance, version 1.0 (7 Jan. 2021).

> the extent the terms of an international agreement that is in force in the State are inconsistent with the provisions of this Decree-Law, the terms of the international agreement shall prevail.[25]

As the UAE CTL is a competitive tax regime, and is otherwise significantly aligned with international best practices, there are relatively few situations where applying the new law is limited by treaty law. However, there are numerous circumstances in which UAE treaty dispositions limit foreign domestic law (*see* section 4.).

3. Corporate Tax Relief

3.1. Introductory remarks

Taxable income is determined by the accounting net profit of a business prepared in accordance with accounting standards accepted in the UAE,[26] after making adjustments for certain items specified within the UAE CTL. Tax relief is derived from scope exclusions, sector exemptions, non-taxable income, tax deductions, loss relief, group relief, restructuring relief and double taxation relief.

Sections 3.2. to 3.9. address the tax relief afforded to businesses under the UAE CTL. Any additional tax relief granted by treaty law is discussed in section 4.

3.2. Scope exclusions

3.2.1. Opening comments

The scope of the application of UAE corporate tax depends on the nature of the persons[27] undertaking those business activities and their place of residency.[28] Accordingly:

- UAE resident legal entities are taxed on worldwide income except for income attributable to foreign permanent establishments (PEs).[29]
- UAE resident individuals are taxed on income earned from their business activities carried out in the UAE, whether the income is sourced in the UAE or abroad.[30]
- Non-resident persons are taxed on income generated by PEs located in the UAE. Non-residents are also technically subject to withholding tax on UAE-source income and other forms of UAE nexus.[31]
- Transparent entities, such as certain partnerships, trusts, family foundations and investment funds, are out of scope.[32]

Any person not within the scope of UAE corporate tax is, by definition, out of scope. It follows that non-residents that are merely earning UAE-source income without creating a PE in the UAE would not give rise to any corporate tax payable[33] or be required to register and file for UAE corporate tax.[34]

The author now considers these different types of taxpayers and the implications from an international investment perspective. This is the subject matter of sections 3.2.2. to 3.2.5.

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25. Art. 66 UAE CTL. *See also* Q.13 and 67 UAE MoF FAQs. *See also* Art. 6 of AE: "Determination of Tax Residency": Cabinet Decision No. 85 of 2022 – Issued 2 September 2022 (effective 1 March 2023).
26. For UAE corporate tax purposes, the financial statements of UAE entities and other businesses should be based on International Financial Reporting Standards (IFRS), the most frequently used accounting standard in the UAE (Q. 78 UAE MoF FAQ). *See* article 20(1) of the UAE CTL.
27. A "person", as defined, is any natural person (individual) or juridical person (legal entity). *See* article 1 of the UAE CTL and Qs. 31 and 41 UAE MoF FAQs.
28. Arts. 11-17 UAE CTL. UAE residency is governed by AE: "Determination of Tax Residency": Cabinet Decision No. 85 of 2022 issued 2 September 2022 (effective 1 Mar. 2023) and Ministerial Decision No. 27 of 2023 on Implementation of Certain Provisions of Cabinet Decision No. 85 of 2022 on Determination of Tax Residency, published on 1 March 2023. The UAE Cabinet, on the suggestion of the Minister of Finance, has reserved the right to include other persons or other activities within or outside the scope of UAE corporate tax.
29. Id., at art. 12(1).
30. Id., at art. 12(2). Personal income tax is inexistent in the UAE. As such, there is no tax in the UAE on income earned by individuals in the form of salaries (Q. 36 UAE MoF FAQs), real estate income (Q. 40 UAE MoF FAQs), investment income (Q. 39 UAE MoF FAQs) and pension income or any income other than business income as defined. UAE real estate and other investments held through private or family trusts on behalf of individual beneficiaries are also out of the scope of UAE corporate tax.
31. Id., at art. 12(3). The withholding tax rate in the UAE is 0%.
32. Q. 48 UAE MoF FAQs clarifies that "The Corporate Tax Law makes a distinction between unincorporated and incorporated partnerships. 'Unincorporated Partnerships' (as defined in the Corporate Tax Law) are essentially a contractual relationship … [and] are treated as 'transparent' for UAE CT purposes … [conversely] Incorporated partnerships [such as limited liability companies (LLCs) and partnerships limited by shares (PLSs)] and other types of partnerships where none of the partners have unlimited liability for the partnership's obligations or other partners' actions … are subject to [corporate tax] CT in the same manner as a corporate entity." *See* articles 1 (for the definitions of "Unincorporated Partnerships" and "Family Foundations"), 16 and 17 of the UAE CTL.
33. Any UAE-source income (not connected to a PE) would be subject to a 0% withholding tax, and, therefore, remains untaxed.
34. Art. 11 UAE CTL *a contrario* and Q. 68 UAE MoF FAQ.

3.2.2. Resident legal entities

3.2.2.1. Opening comments

Legal entities[35] are considered to be UAE residents, and, therefore, subject to full taxation if: (i) they are incorporated or otherwise established or recognized in the UAE;[36] or (ii) their place of effective management (POEM) and control is in the UAE.[37] Where two states consider a legal entity to be resident in each state, there is a real possibility of international juridical double taxation.[38] This can only be avoided if a tax treaty between the two states exists.[39]

3.2.2.2. Place of incorporation

Under the so-called place-of-incorporation test, a company's residence is determined by its formal place of incorporation. Consequently, when a company is incorporated in the UAE, it will automatically be considered to be a "resident" person for UAE corporate tax purposes. Resident legal entities include limited liability companies (LLCs), private shareholding companies (PSCs), public joint-stock companies (PJSCs) and other entities established under the laws of the UAE that have separate legal personalities under UAE "mainland" legislation or free zone regulations.[40]

The place of incorporation is determined by the location at which a company's head office is registered. However, there may be situations where legal entities acquire UAE tax residence if they are otherwise "established or recognized" under UAE law. The PEs of legal entities registered outside the UAE do not fall under the definition of residents under the place-of-incorporation test.[41]

3.2.2.3. Effective management and control

Where a legal entity is incorporated outside the UAE, it may nevertheless be considered to be a UAE resident for tax purposes if it is effectively managed and controlled from within the UAE.[42] Determining whether an entity is effectively managed and controlled in the UAE is a question of fact. The determinant criteria are expected to be where the key decision makers, such as the directors, make the strategic decisions affecting the juridical person.[43]

Whether a company is effectively managed in the UAE leads to the problem of proof. Accordingly, any decision to subject a company to income taxes based on effective management and control in the UAE is made using circumstantial evidence.[44]

The competent authorities will undoubtedly take a substance-over-form approach when analysing the facts and circumstances of any given situation. As a result, to protect against so-called "rubber-stamping", if the director of a company resides in the state in which the company has its registered office but, in fact, merely follows all the instructions of a UAE stakeholder, the competent authorities may well consider the company to be a UAE resident.

3.2.3. Resident individuals

Any individual engaged in a business or business activity is considered to be a UAE resident individual for corporate tax purposes.[45] These include freelancers, sole establishments or proprietorships and partners in unincorporated partnerships.[46]

A business is accepted to be any:

> activity conducted regularly, on an ongoing and independent basis by any person and in any location, such as industrial, commercial, agricultural, vocational, professional, service or excavation activities or any other activity related to the use of tangible or intangible properties.[47]

While the definition of "business or business activity" has been formally defined, in practice, it may be closely linked to activities that require a commercial licence. In other words, whether an individual is engaged in a business that is subject to UAE corporate tax may depend on whether the activity requires the individual to obtain a commercial licence or equivalent permit

35. Referred to in the UAE CTL as "Juridical persons".
36. *See* article 11(3a) of the UAE CTL referring to the "applicable legislation of the State, including a Free Zone Person".
37. Art. 11(3b) UAE CTL.
38. This type of double taxation occurs when (i) the same person is (ii) taxed twice (iii) on the same item of income (iv) in two different states.
39. For treaty relief on concurrent full tax liability, *see* section 4.3.2.
40. *See* Q. 41, UAE MoF FAQs.
41. UAE branches of non-UAE entities may be subject to UAE corporate tax if they qualify as a UAE PE. *See* section 3.2.4.
42. Art. 11(3)(b) UAE CTL and Q. 44 UAE MoF FAQs.
43. Qs. 20 and 45 UAE MoF FAQs. However, the UAE MoF's consultation paper refers to "directors or other decision makers of the company *(who)* make the key management and commercial decisions" (emphasis added).
44. *See* Q. 45 UAE MoF FAQs.
45. Art. 11(3c) UAE CTL.
46. Q. 33 UAE MoF FAQs.
47. Art. 1 UAE CTL and AE: "Determination of Tax Residency": Cabinet Decision No. 85 of 2022, Issued 2 September 2022 (effective 1 Mar. 2023).

from the relevant competent authority (for example, the relevant Department of Economic Development or registration authority of a Free Zone) in the UAE.

There may be situations in which two states consider an individual to be resident in each state or where a non-resident individual is taxed as a resident individual, as they conduct a business or business activity in the UAE. Such situations can potentially result in international double taxation, which is avoided in most countries with which the UAE has a tax treaty.[48]

3.2.4. Non-resident persons

3.2.4.1. Initial remarks

Non-residents, whether individuals or legal entities, are subject to a limited tax liability on income attributable to PEs in the UAE.[49] The UAE tax law also has a placeholder for the possibility of subjecting non-residents to tax if, in the absence of a PE, they have UAE-source income or a UAE nexus.[50]

3.2.4.2. Permanent establishments

The UAE corporate tax regulates situations in which a non-resident has a PE in the UAE, and the reverse case where a resident person has a PE abroad (i.e. a Foreign PE). The definition of PE is the same in both situations.[51]

Generally, a non-resident enterprise is not taxable in the UAE until it is considered to have set up a PE in the UAE. Once it has been determined that a UAE PE exists, the UAE will only subject the non-resident enterprise to taxation on profits attributable to that PE. Accordingly, the right to tax does not extend to profits that a non-resident enterprise may derive from the UAE otherwise than through the PE.

Though simple in appearance, the general principle of taxation of international businesses raises two questions. First, it is necessary to define the term “Permanent Establishment”. Second, where there is a PE, the rules determining the allocation of profits to the PE must be clarified.

A non-resident is considered to have a PE in the UAE if: (i) it has a fixed place of business through which it operates in the UAE (fixed place of business test); (ii) a person is acting for it in the UAE (dependent agent test); or (iii) there is some other form of nexus with the UAE.[52] The rules on determining PEs in UAE domestic law align significantly with internationally recognized principles under article 5 of the OECD Model. As such, reference can be made to the extensive guidelines developed in the international tax context.[53]

A place of business may be a facility, such as premises or, in certain instances, machinery or equipment. It is immaterial whether the premises, facilities or installations are owned, rented by or otherwise at the disposal of the business. The place of business must be fixed, i.e. it must be established at a separate location with a certain degree of permanence. The UAE CTL includes “land, buildings and other real property” and installations or structures for “the exploration of renewable or non-renewable natural resources” in the list of fixed places of business constitutive of PEs.[54] However, it should be noted that investments in UAE real estate by foreign legal entities:

> may only give rise to a taxable PE where the real estate represents a fixed place of business in the UAE through which the foreign person’s business is wholly or partially carried out.[55]

As with the OECD Model, the UAE CTL lists several activities that are not considered to give rise to a PE, even where a fixed place of business exists. These include activities of a preparatory or auxiliary nature. As well as storing, displaying or delivering goods, stocking goods for the sole purpose of processing by another person, purchasing goods, and collecting information for the non-resident person.[56] However, special rules apply to limit the application of this relief where the activities of a non-resident person in the UAE are artificially fragmented to avoid constituting a taxable PE.[57]

Although an enterprise in one contracting state may not have a fixed place of business in the other contracting state through which the business of an enterprise is wholly or partly carried on, there may also be a PE in the UAE if a person acts on behalf of the enterprise. This is the so-called agency PE. Persons concerned by this provision are “dependent agents”, which may be

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48. For treaty relief, *see* section 4.4.2..
49. *See* article 11(4a) of the UAE CTL, *in juncto* with art. 14(1a-c) of the UAE CTL.
50. Arts. 11(4b-c) and 12(3b-c) UAE CTL.
51. *See* article 1 of the UAE CTL concerning the definition of a “Foreign Permanent Establishment”.
52. Art. 14(1) UAE CTL. Other forms of nexus are to be specified in a decision issued by the Cabinet at the suggestion of the Minister of Finance.
53. Q. 67 and 73 UAE MoF FAQs. *See* Hull & Scalia, *supra* n. 4, at sec. 7.2 [pp. 118-131] for more details on what does and what does not constitute a PE.
54. Art. 14(2)(f) and (g) UAE CTL.
55. Q. 74 UAE MoF FAQs.
56. Art. 14(3) UAE CTL.
57. Id., at art. 14(4).

individuals or companies. As an exception, the UAE CTL allows regulated UAE investment managers to provide discretionary investment management services to foreign customers without triggering a UAE PE for the foreign investor or the foreign investment fund.[58] However, this exemption is conditional on the investment manager being subject to regulatory oversight.[59]

Once it has been ascertained that a business has a PE in the UAE, it is necessary to determine the amount of taxable income allocated to that PE. The UAE CTL favours the direct method allocation of profits whereby the "profits attributable" to each PE are those that it would have made if the PE had been a separate, unrelated and distinct enterprise engaged in the same or similar activities under the same or similar circumstances.[60] The reference to "profits attributable" to PEs *prima facie* excludes any "force of attraction", whereby the PE would attract all income sourced in the UAE. In this regard, the UAE CTL is aligned with the OECD Model.[61]

3.2.4.3. UAE-source income

UAE-source income earned by a foreign person that does not have a PE in the UAE is subject to withholding tax at a rate of 0%.[62] The law includes a non-exhaustive list of the types of income that are considered to have its source in the UAE.[63] However, income will generally be considered to be UAE source if the income is earned from a UAE resident, if the payment is attributed to a PE in the UAE of a non-UAE resident, or if the income is derived from activities performed, assets located, capital invested, rights used or services performed or benefited from in the UAE.[64]

3.2.4.4. UAE nexus

The UAE CTL reserves the right to tax non-residents with a so-called nexus in the UAE.[65] However, if this were to be implemented, it would require a Cabinet Decision based on a recommendation from the Minister of Finance.[66]

3.2.5. Transparent entities

Where an entity is considered to be transparent for tax purposes, it is out of the scope of corporate tax. This means it will not be a taxpayer in their own right, but, instead, its income will "flow through" and be taxed (or exempt) in the hands of the partners or members.

Partnerships and certain trusts or similar associations of persons have no legal personality and, by default, are treated as "transparent" for UAE corporate tax purposes.[67] Indeed, the partnership's taxable income is determined as a whole, and only the net income is allocated between the partners.[68] All partnership profits are considered to be profits of the partners, whether distributed or not. The partners may apply to be treated as separate and standalone taxable persons for UAE corporate tax.[69] Non-resident unincorporated partnerships are treated in the same way.[70]

On the other hand, foundations, certain trusts and similar entities are independent juridical persons with separate legal personalities. Accordingly, they are subject to corporate tax in their own right.[71] However, such entities may elect to be transparent and treated as "transparent" for corporate tax purposes if, inter alia, their principal activity is to receive, hold, invest, disburse or otherwise manage assets or funds associated with savings or investment.[72]

3.3. Sector exemptions

3.3.1. Opening comments

The UAE CTL exempts businesses operating in certain specific sectors.[73] While government entities are automatically exempt (*see* section 3.3.2.), natural resource businesses require MoF approval (*see* section 3.3.3.), public benefit entities require a

58. Id., at art. 15.
59. Id., at art. 15(1)(b).
60. Id., at art. 24(4). Consequently, where a PE is in a loss situation, it does not participate in the allocation of the total net income.
61. *See OECD Model Tax Convention on Income and on Capital: Commentary on Article 7* para. 12 (21 Nov. 2017), Treaties & Models IBFD.
62. Art. 45 UAE CTL and Q. 75 UAE MoF FAQs.
63. Art. 13 UAE CTL.
64. Art. 13(1) UAE CTL and Q. 69 UAE MoF FAQs.
65. Pillar One of the OECD/G20 BEPS Project also refers to a nexus test and source rules for Amount A determination. However, these rules have been designed as a stand-alone provision to limit any unintended spill-over effects on other existing tax or non-tax rules.
66. Art. 11(4c) UAE CTL.
67. Id., at art. 16. *A contrario* limited liability partnerships (LLPs), partnerships limited by shares (PLSs), and other types of partnerships where none of the partners have unlimited liability are, by default, subject to UAE corporate tax in the same way as a UAE legal entity.
68. The partners are required to: (i) register; and (ii) file the tax return. *See* Q. 49 UAE MoF FAQs.
69. Art. 16(8) UAE CTL.
70. Q. 50 UAE MoF FAQs.
71. *See* section 3.3.6. for investment fund exemptions.
72. Art. 17 UAE CTL and Q. 52 UAE MoF FAQs.
73. Arts. 4-10 UAE CTL.

Cabinet decision (*see* section 3.3.4.) and social security and pension and investment funds require FTA approval (*see* sections 3.3.5. and 3.3.6., respectively). The Minister of Finance may also recommend other sector exemptions requiring Cabinet approval.[74]

3.3.2. Government entities

Government entities are exempt from UAE corporate tax,[75] as their activities are typically non-commercial. The same is true for government-controlled entities[76] that carry out a sovereign or mandated activity, as they are essentially an extension of the government.[77]

However, where government entities conduct a business or business activity, either by themselves or in association with third parties, they would be subject to UAE corporate tax in the same way as any other resident legal entity. This is also true for government-controlled entities that conduct business or business activities, which are not government-mandated. Special rules ensure that any business activities undertaken by government or government-controlled entities are taxed as independent businesses subject to arm's length principles (ALP).[78]

3.3.3. Natural resource businesses

Natural resources in the UAE primarily include oil, natural gas, water and deposits of sand and rocks. The extraction and exploitation of natural resources[79] are usually subject to tax at the level of local Emirate governments,[80] based on long-term concession agreements or licences.

As such, extractive natural resource businesses[81] and certain non-extractive natural resource businesses[82] are exempt from UAE corporate tax if, inter alia, they are "effectively subject to tax" in a local Emirate.[83] A person is considered "effectively subject to tax" if a local government "imposes a tax on income or profits, a royalty or revenue tax, or any other form of tax, charge or levy" in respect of such a person's extractive business or non-extractive business.[84]

Although this exemption extends to activities deemed to be ancillary or incidental to the exempt natural resource business, it does not extend to any suppliers, contractors or subcontractors used by concession holders.[85] Special rules apply where an exempt extractive business derives income from other taxable businesses.[86]

3.3.4. Public benefit entities

Philanthropy plays a vital role in most countries by supporting a wide range of private activities and initiatives for the public good. It represents a crucial addition to government initiatives (i.e. public action for the public interest) and profit-based initiatives (i.e. private action for the private good).[87]

The UAE CTL supports philanthropy by exempting "qualifying public benefit entities" that are exclusively established and operated for religious, charitable, scientific, artistic, cultural, athletic, educational, healthcare, environmental, humanitarian, animal protection or other similar purposes. Professional entities, chambers of commerce or similar entities operated exclusively for the promotion of social welfare or public benefit may also be exempt from corporate tax.[88] Additionally, donations, grants or gifts made to qualifying public benefit entities are tax deductible.[89]

74. Id., at art. 4(1i).
75. Id., at art. 4(1a and b) and 5(1).
76. Id., at arts. 4(1h) and 6(1).
77. Qualifying government entities for UAE CT purposes may or may not be aligned with UAE VAT definitions under article 10(2) of the UAE and article 57 of the AE: Federal Decree No. 8 of 2017 on Value Added Tax (UAE VAT Law).
78. Arts. 5(2-6) and 6(2-5) UAE CTL.
79. Natural resources are defined as "Water, oil, gas, coal, naturally formed minerals, and other non-renewable, non-living natural resources that may be extracted from the State's Territory" (*see* article 1 of the UAE CTL).
80. The Emirates that constitute the UAE are Abu Dhabi, Ajman, Dubai, Fujeirah, Ras Al Khaimah, Sharjah and Umm Al Quwain.
81. "The Business or Business Activity of exploring, extracting, removing, or otherwise producing and exploiting the Natural Resources of the State or any interest therein as determined by the Minister of Finance" (*see* article 1 of the UAE CTL).
82. "The Business or Business Activity of separating, treating, refining, processing, storing, transporting, marketing or distributing the Natural Resources of the State" (*see* article 1 of the UAE CTL).
83. Arts. 4(1c and d), 7(1) and 8(1) UAE CTL.
84. Id., at arts. 7(6) and 8(6).
85. Id., at arts. 7(7) and 8(7).
86. Id., at arts. 7(2-5) and 8(2-5).
87. OECD, *Taxation and Philanthropy*, OECD Tax Policy Studies No. 27 (OECD 2020).
88. Arts. 4(1e) and 9(1a) UAE CTL. The scope of this relief is broader under UAE VAT law which is applicable to "charities" (*see* article 57 of the UAE VAT Law).
89. Art. 33(1) UAE CTL *a contrario*.

While exempt entities are subject to Cabinet decisions based on recommendations from the Minister of Finance,[90] no exemption will be available to organizations that undertake commercial activities that are not directly related to their stated purpose, or whose income and donations may be used for the personal gain of persons associated with the organization.

3.3.5. Social security and pension funds

Social security and pension funds regulated in the UAE may be exempt from corporate tax, whether public or private.[91] The same is true for UAE-incorporated entities wholly owned and controlled by exempt social security or pension funds.[92] It is expected that the Minister of Finance will issue other conditions for such entities to qualify for corporate tax exemption.

3.3.6. Investment funds

Qualifying investment funds can apply to be exempt from UAE corporate tax.[93] UAE-incorporated entities wholly owned and controlled by exempt investment funds also qualify.

In order to qualify for tax exemption, the investments fund, or the investment fund's manager,[94] must be regulated by a UAE or international regulatory authority that the UAE MoF recognizes (for example, the Securities and Commodities Authority, the Financial Services Regulatory Authority and the Dubai Financial Services Authority), or the interests in the investment fund must be freely traded on a stock exchange in the UAE (or a recognized foreign stock exchange),[95] or widely marketed and made available to investors.[96]

3.4. Non-taxable income

3.4.1. Opening comments

In principle, all income and capital gains are taxable under the UAE CTL, unless the law states otherwise. This section addresses the relief granted to small businesses, free zone companies, dividends and capital gains, and international transport businesses. Other situations in which income or capital gains are non-taxable include certain unrealized capital gains[97] and group relief, and restructuring relief (*see* sections 3.7. and 3.8., respectively). The UAE CTL permits the competent authorities to introduce other forms of non-taxable income in due course.

3.4.2. Small business relief

UAE resident taxpayers with revenue[98] below a certain threshold are treated as having no taxable income for corporate tax purposes.[99] Such businesses may also benefit from simplified financial and tax reporting obligations.[100] Other small businesses may take advantage of the 0% corporate tax rate on the first AED 375,000 of taxable income,[101] the deduction of start-up expenses and the other relief addressed in sections 3.4.3., 3.4.4. and 3.4.5.

3.4.3. Free zone qualifying income

Within the UAE, all Emirates have established one or more free zones to stimulate the economy and attract foreign investment. Most free zones are focused on commercial activities. Four of the larger free zones are the Dubai Multi Commodities Centre (DMCC), the Jebel Ali Free Zone (JAFZ), the Ras Al Khaimah Economic Zone (RAK EZ) and the Ras Al Khaimah International

90. Q. 123 UAE MoF FAQs.
91. Art. 4(1g) UAE CTL.
92. Id., at art. 4(1h).
93. Id., at art. 10. A qualifying investment fund is defined as: "Any entity whose principal activity is the issuing of investment interests to raise funds or pool investor funds or establish a joint investment fund to enable the holder of such an investment interest to benefit from the profits or gains from the entity's acquisition, holding, management or disposal of investments, in accordance with the applicable legislation and when it meets the conditions set out in Article 10 of this Decree-Law." (*See* article 1 of the UAE CTL.). *See also* Q. 54, UAE MoF FAQs.
94. Q. 57 UAE MoF FAQs.
95. As defined in article 1 of the UAE CTL.
96. The main purpose of the investment fund must not be the avoidance of corporate tax (*see* article 10(1)(c) of the UAE CTL) and other conditions may be prescribed by the Cabinet on Ministerial recommendation.
97. Unrealized gains or losses on capital items are not considered when calculating taxable income (*see* article 20 of the UAE CTL). Capital items are items that have a long-term effect on a business. They include assets, such as machinery, and long-term liabilities, such as loans to buy property.
98. According to the Q. 30 UAE MoF FAQ's: "Revenue is the gross amount of income derived in a tax period from sales of inventory and properties, services, royalties, interest, premiums, dividends and any other amounts, before deducting any type of costs or expenditure. In the context of income from sales or services, gross income means gross revenues from sales or services without deducting the cost of goods sold or the cost of services."
99. Article 21 of the UAE CTL addresses the principles of "small business relief". The revenue threshold and other qualifying conditions are still to be determined.
100. Simplified compliance obligations are expected to be released in due course in addition to the exemption from filing transfer pricing documentation according to article 21(2e) of the UAE CTL.
101. Which applies to most taxpayers (*see* article 3(1a) of the UAE CTL and UAE Corporate Tax – Cabinet Resolution No. (116) of 2022 on determining the annual income subject to the 0% corporate tax).

Corporate Centre (RAK ICC). Financial services offered by free zone companies are primarily undertaken within the two financial free zones,[102] the Dubai International Financial Centre (DIFC) and the Abu Dhabi Global Market (ADGM).

Free zones generally issue their own legislation governing the entities established within their jurisdiction.[103] They typically subject businesses to tax at 0% or grant them a tax exemption (whether limited or unlimited in time). For instance, businesses regulated by the Jebel Ali Free Zone Authority (JAFZA) are subject to a 0% tax rate for 50 years.[104] DIFC businesses, on the other hand, are "subject to a zero rate of tax for 50 (fifty) years from the date of enactment of this law, including the income tax", with the possibility "to renew this period for a similar period upon issuance of a resolution by the Ruler".[105] The terminology and extent of tax relief for free zone businesses differ depending on the free zone.

Free zone authorities are responsible for supervising the entities operating within their jurisdiction. They are also responsible for ensuring such entities comply with specific federal laws, including those related to the availability of information relevant to international standards of transparency and the exchange of information for tax purposes.

Under the UAE CTL, "free zone persons" (as defined under article 1) are subject to tax.[106] However, "qualifying free zone persons" are taxed at 0% on their "qualifying income"[107] unless they may make an irrevocable election to be subject to the standard 9% corporate tax rate.[108]

A "qualifying free zone person" is a business registered in a free zone with "adequate substance" in the UAE[109] and generates "qualifying income". While the Minister of Finance may prescribe other conditions, the UAE CTL explicitly states that related party transactions must reflect ALP and maintain appropriate transfer pricing documentation.[110] It should also be noted that free zone entities do not qualify for any "group relief" in the form of loss transfers,[111] business transfers[112] or fiscal consolidation[113] (*see* section 3.7.).

"Qualifying income" is to be defined by the UAE Cabinet at the suggestion of the Minister of Finance.[114] However, qualifying income may include income from transactions with businesses located outside the UAE (international income), income from trading with businesses located in the same or other free zones (free zone income) and perhaps certain limited types of domestic income (UAE mainland income). There are also expected to be special rules covering free zone persons with branches in mainland UAE and vice versa, as well as the tax deductibility and withholding tax applicable to certain payments from mainland UAE to free zone persons.

If free zone persons have different sources of income, which are taxed at different rates, it can also be expected that special rules on the allocation of income and expenses between each income category will be seen. For instance, separate accounts may be required for each category of income from which costs directly attributable to each type must be deducted. Other indirect expenses may have to be allocated proportionally between qualifying and non-qualifying income.[115]

3.4.4. Participation exemption

Dividends and other profit distributions earned by UAE businesses from UAE resident entities are exempt from corporate tax.[116] There is also a full exemption for UAE businesses with international participations on dividends and other profit distributions, capital gains, foreign exchange gains and impairment gains on domestic and international participations.[117] This is the so-called participation exemption.

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102. Regulated under AE: Federal Law 8 of 2004.
103. However, federal law, such as AE: Federal Law 2 of 2015 on Commercial Companies as amended, may apply to UAE free zone and mainland entities depending on circumstances.
104. AE: Law (19) of 2021, amending AE: Law (2) of 1986 Concerning Business Activities in the JAFZ, available at dubai.gov.ae (accessed 10 Mar. 2022).
105. AE: DIFC Law 9 of 2004, art. 14.
106. Art. 11(3a) UAE CTL.
107. Id., at art. 3(2a). Non-qualifying income is subject to the standard 9% corporate tax rate (*see* article 3(2b) of the UAE CTL).
108. Id., at art. 19(1).
109. "Substance" may or may not be based on the Economic Substance Regulations (ESR) according to the UAE's Cabinet of Ministers Resolution No. 57 of 2020 but will certainly need to meet the requirements of the OECD/G20 BEPS Action 5 (Harmful Tax Practices). However, substance may also be relevant to qualify for tax treaty relief or to increase the substance-based income exclusion under Pillar Two of the OECD/G20 BEPS initiative (calculated on a jurisdictional basis).
110. Arts. 18 and 19 UAE CTL.
111. Id., at art. 26(2d and f).
112. Id., at art. 27(2d).
113. Id., at art. 40(1f).
114. Id., at art. 18(1)(b).
115. *See* article 28(3) of the UAE CTL for the allocation of expenditure incurred for more than one purpose. *See also* articles 7(4) and 8(4) of the UAE CTL (applicable to natural resource businesses).
116. Art. 22(1) UAE CTL. This relief is granted irrespective of the level of ownership, and includes dividends and other profit distributions received from qualifying free zone persons that are taxed at 0% on their qualifying free zone income.
117. Capital losses, foreign exchange losses and impairment losses are also not considered in determining taxable income, unless there are losses upon liquidation of the participation.

However, in order to qualify for this participation relief, there is, inter alia, a participation threshold, a minimum holding period, a subject-to-tax rule and a look-through clause.[118] Indeed, the UAE shareholder must have (or have the intention to hold) an ownership interest in at least 5% of the shares or capital of the participation[119] for at least 12 months or a participation, the value of which exceeds a minimum acquisition cost to be specified by the Minister of Finance.[120] And, amongst other conditions, it is also necessary that the participation be subject to foreign corporate tax (or an equivalent tax) at a rate of at least 9% (except for participations in holding, free zone or exempt companies[121]), and that not more than 50% of the assets held directly or indirectly by the participation consists of ownership interests or entitlements that would not have qualified for an exemption if held directly.[122]

Participations usually include shares or any other interests that grant the right to a dividend or similar income (for example, participation certificates). Participations do not typically include bonds and other loan certificates held by shareholders. Participations must be held directly by the UAE beneficiary when the dividends are due. Participations may not be held on a fiduciary basis nor be subject to usufruct.

Earnings generated from participations include ordinary dividend distributions and any other income attribution to shareholders, such as hidden dividend distributions and liquidation proceeds. The term does not include the income for which a deduction is granted to the distributing entity. There are also special rules to limit the application of the participation exemption where there has been tax-deductible impairment of the shares in the distributing company.

"Capital gains" include the income generated from the sale, exchange, partial alienation or revaluation of assets, and the expropriation, the transfer to a company in exchange for stock or the sale of a right (even the gifting and the passing of property on death),[123] which corresponds to the differential between the price of acquisition of the assets and the selling price.[124] The UAE CTL explicitly exempts such capital gains from the "transfer, sale or other disposition of a Participating Interest".[125]

3.4.5. International transport relief

Non-resident businesses with income derived from operating or leasing aircraft or ships (and associated equipment) used in international transportation are exempt from tax, provided that the same tax treatment is granted to UAE businesses in the relevant foreign jurisdiction (principle of reciprocity).[126] Businesses not exclusively engaged in this activity may take advantage of this relief for profits from operating or leasing aircraft or ships (and associated equipment) used in international transportation.

3.5. Tax deductions

3.5.1. Opening comments

Economically justifiable expenditure[127] that reflects arm's length pricing[128] is fully deductible unless stated otherwise, irrespective of the location or tax profile of the beneficiary of such expenditure. Similarly, other deductibles, such as depreciation, amortization or provisions, that are acceptable by recognized accounting standards are fully deductible, unless stated otherwise.[129] Section 3.5.2. addresses the limitations on the deductibility of interest expenditure before listing other deductibles mentioned explicitly in the UAE CTL in section 3.5.3.[130]

3.5.2. Interest expenditure

3.5.2.1. Definition

Interest is defined as:

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118. Often referred to as a shareholder test, holding period test, subject-to-tax test and a qualifying asset test.
119. Entitling the shareholder to not less than 5% of the profits available for distribution by the participation and not less than 5% of the liquidation proceeds.
120. Arts. 22(2 and 3) and 23 UAE CTL.
121. Free zone and exempt persons may be subject to other conditions in due course.
122. Other conditions may be prescribed by the Minister of Finance in due course.
123. Para. 5 *OECD Model: Commentary on Article 13* (2017).
124. Id., at para. 12.
125. Art. 23(5)(b) UAE CTL. However, "[f]or the purposes of calculating the Taxable Income for the relevant Tax Period … a Taxable Person that prepares financial statements on an accrual basis may elect to take into account gains and losses on a realisation basis". *See* article 23 of the UAE CTL.
126. Id., at arts. 22(5) and 25. This is significantly aligned with article 8 of the *OECD Model* (2017), which states that income generated from "international traffic" should be taxable only in the state of residence of the business undertaking such activity.
127. That is not capital in nature (*see* article 28(1) of the UAE CTL).
128. Transfer pricing is outside the scope of this article. However, suffice to mention here that UAE transfer pricing rules are significantly aligned with international best practices (*see* articles 34 to 36 and 55 of the UAE CTL). Reference can therefore be made to Hull & Scalia, *supra* n. 4, at ch. 8 for an in-depth analysis of transfer pricing as well as documentation and compliance (Master files, local files and CbC reporting).
129. *See*, inter alia, article 20(7) of the UAE CTL.
130. Additional guidance from the Cabinet, Minister of Finance, or FTA is expected over the coming months.

> 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.[131]

However, in order to avoid inappropriate base erosion, UAE businesses with interest payments in excess of a given threshold[132] must comply with interest capping rules and related party financial assistance limitations.[133]

3.5.2.2. Interest capping

A so-called interest capping rule applies, whereby deductible interest expense is limited to 30% of earnings before interest, tax, depreciation and amortization (EBITDA), adjusted for corporate tax purposes.[134] Any interest paid in excess of this amount is non-deductible. However, the amount of net interest expenditure disallowed may be carried forward and deducted in the subsequent ten tax periods in the order in which the amount was incurred.

This being established, interest capping rules do not apply to small amounts of interest within the limits of a safe harbour (or de minimis amount).[135] They also do not apply to banks, insurance companies and businesses undertaken by individuals.[136]

3.5.2.3. Related party financial assistance limitations

Where loans are used for certain specific related party transactions (for example, to pay a dividend or capitalize a group company), related party interest will only be deductible if the primary purpose of obtaining the loan and carrying out the transaction is not to gain a corporate tax advantage (business purpose test, or BPT).[137] No corporate tax advantage should be deemed to arise if the related party lender is subject to corporate tax (or an equivalent tax) of at least 9% on the interest income earned (subject-to-tax test).

3.5.3. Other deductions

The following are amongst the expenditure mentioned explicitly in the law as being deductible:[138]

- fifty per cent of entertainment, amusement or recreation expenditure;[139]
- donations, grants or gifts made to qualifying public benefit entities;[140] and
- amounts awarded as compensation for damages or breach of contract.

On the other hand, the following are noted explicitly as being non-deductible:[141]

- expenditure not incurred for business purposes;
- expenditure incurred in deriving exempt income;
- losses not connected with or arising out of the taxable person’s business;
- fines and penalties;
- bribes or other illicit payments;
- dividends, profit distributions or benefits of a similar nature;
- amounts are withdrawn from businesses held by individuals or unincorporated partnerships; and
- corporate tax,[142] recoverable input VAT[143] and foreign income tax.[144]

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131. Art. 1 UAE CTL.
132. Id., at art. 30(3). The threshold is to be determined and communicated by the UAE Minister of Finance.
133. These are in addition to the transfer pricing requirement for interest payments to respect ALP (*see* articles 34 to 36 of the UAE CTL).
134. *See* article 30 of the UAE CTL in alignment with Action 4 of the OECD/G20 BEPS Project.
135. Amounts to be determined according to article 30(3) of the UAE CTL.
136. It remains to be seen what other businesses may also be exempt from interest capping rules in due course, or whether different rules will apply to businesses that are a part of a consolidated group (for example, by reference to the group’s overall position).
137. Art. 31 UAE CTL.
138. Id., at arts. 32 and 33.
139. Incurred for the purposes of receiving and entertaining customers, shareholders, suppliers or other business partners (*see* article 32(2) of the UAE CTL). There is no specific reference to similar expenditure for employees.
140. *See* section 3.3.4. for exemptions available to “public benefit entities”.
141. Art. 28 UAE CTL.
142. Emirate-level taxes paid will not be able to be credited against or otherwise reduce the amount of corporate tax payable. Business set-up, licence renewal and other governmental fees and charges incurred wholly and exclusively in the ordinary course of business are deductible expenses for UAE CT purposes.
143. *A contrario*, irrecoverable input VAT Tax may be tax deductible.

Expenditure incurred for more than one purpose must be allocated between taxable and non-taxable income on a fair and reasonable basis whenever it is not incurred wholly and exclusively to derive taxable income.[145]

3.6. Loss relief

3.6.1. Current-year losses

A loss for corporate tax purposes ("tax loss") arises when the total deductions a business can claim are greater than the total income subject to tax for the relevant tax period, resulting in negative taxable income.[146] Where a UAE business records an economically justifiable loss in any given fiscal year, that business will not pay corporate tax for that particular year. Such losses may be transferred to a qualifying related party business (*see* section 3.7.2.), or offset against losses where that business forms part of the fiscal consolidation of a wider group of companies (*see* section 3.7.4.).

Where a loss transfer or offset is not possible in the current year, the loss may be considered to be a tax asset under the loss carry-forward rules. There is no loss carry-back in the UAE CTL.

3.6.2. Loss carry-forwards

Tax losses may be carried forward indefinitely, provided that the losses are not incurred from non-taxable income.[147] However, only a maximum of 75% of the taxable income in those future periods may be offset against past losses.[148]

Tax losses may also be carried forward in case of share transfers, provided that the same shareholder(s) hold(s) at least 50% of the share capital from the start of the period a loss is incurred to the end of the period in which a loss is offset against taxable income (continuity of shareholding test).[149] If there is a change in ownership of more than 50%, tax losses may still be carried forward, provided that the same or similar business is carried on by the new owners (continuity of business test). The continuity of shareholder or business test requirements do not apply to businesses listed on a recognized stock exchange.[150]

3.7. Group relief

3.7.1. Opening comments

In addition to fiscal consolidation, UAE CTL permits the transfer of losses between related party businesses and tax-neutral business transfers.

3.7.2. Loss transfers

UAE resident entities may transfer their current-year losses between companies that are at least 75% commonly owned.[151] Although the full amount of current-year losses may be transferred to a qualifying group company, the amount of losses transferred may not exceed 75% of the company's taxable income receiving the transferred losses. Inter alia, this relief is subject to the condition that none of the entities is tax-exempt or a qualifying free zone person.[152]

3.7.3. Business transfers

UAE resident entities or PEs of non-resident entities may transfer one or more assets and liabilities between companies that are members of the same "qualifying group" without triggering any taxable gain or losses.[153] A "qualifying group" exists where either a taxable person has a direct or indirect ownership interest of at least 75% in the other taxable person or where a third person has a direct or indirect ownership interest of at least 75% in each taxable person.

This relief is subject, inter alia, to the conditions that the assets or liabilities transferred (at net book value) are not subsequently transferred outside the "qualifying group", and that the taxable persons do not cease to be members of the "qualifying group", within two years following the tax neutral business transfer. Amongst other requirements, none of the entities may be tax-exempt or a qualifying free zone person.

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144. Nevertheless, a tax credit may be possible under domestic or treaty law (reference here is made to sections 3.9.3. and 4.4.3., respectively).
145. Art. 28(3) UAE CTL.
146. Q. 104 UAE MoF FAQs.
147. Art. 37 UAE CTL.
148. *See* Q. 105 UAE MoF FAQs.
149. *See* Q. 106 UAE MoF FAQs.
150. Art. 39 UAE CTL. Recognized stock exchanges are defined in article 1 of the UAE CTL.
151. Id., at art. 38.
152. Other conditions require common ownership from the start of the fiscal year, similar accounting standards and the same fiscal year-end dates.
153. Art. 26 UAE CTL.

3.7.4. Fiscal consolidation

UAE resident groups of companies may elect to form a tax group,[154] and be treated as a single taxable person ("fiscal unity") if the "parent company" holds, directly or indirectly, at least 95% of the share capital, 95% of the voting rights and 95% of the profits and net assets in a "subsidiary". There is also a requirement that none of the entities within the tax group may be tax-exempt or a qualifying free zone person,[155] All group members must also have the same financial year-end and use the same accounting standards.

Once formed, tax groups are treated as a single taxable person, with the "parent company" being responsible for tax filing and payment on behalf of the tax group.[156] In order to determine the taxable income of the tax group, consolidated financial statements must be prepared whereby the "parent company" consolidates the financial results, assets and liabilities of each "subsidiary" eliminating transactions between the "parent company" and each "subsidiary" that is a member of the tax group. The 0% tax rate for taxable income below AED 375,000 applies to the tax group as a single taxpayer, irrespective of the number of entities that form part of the tax group.[157]

3.8. Restructuring relief

A UAE resident entity or PE of a non-resident entity may transfer its entire business or an independent part of its business to another taxable person without giving rise to any taxable gain or losses. Any unutilized tax losses may also be carried forward in full for as long as they can be reasonably attributed to the independent part of the business being transferred.[158]

In order to qualify for this relief, the shares or other ownership interests received in compensation for the business transfer are not subsequently sold, transferred or otherwise disposed of (or that there is no subsequent transfer or disposal of the independent business) within two years following the tax-neutral business transfer. There is also a requirement that commercial or non-tax reasons must justify the transaction and that none of the entities may be tax exempt or a qualifying free zone person.

3.9. Double taxation relief

3.9.1. Opening remarks

Income received by a resident of one state from another state may often be subject to international juridical double taxation. First, it is subject to tax in the state of the source. Second, it is subject to income tax in the state in which the beneficiary is a resident.

Sections3.9.2. and 3.9.3. summarize the provisions of double taxation relief embedded in the UAE CTL, which apply to all UAE taxable persons whether or not an international tax treaty exists.[159] Additional double taxation relief provided by tax treaties is addressed in section 4.4.

3.9.2. Foreign PE exemption

UAE residents with PEs abroad can either: (i) claim a foreign tax credit for taxes paid in the foreign country of location of the PE: or (ii) elect to claim an exemption in respect of their foreign branch profits.[160] The foreign PE exemption is irrevocable, and is conditional on the foreign PE being subject to corporate tax or a similar tax at a rate of 9% or more. While such an election implies that the income and associated expenditure attributable to the PE is not considered in determining the taxable income in the UAE, it also means that any losses attributable to the foreign PE are not deductible in the UAE.

3.9.3. Foreign tax credit

Where income earned from abroad is not exempt, any income taxes paid in the foreign jurisdiction can be taken as a credit against UAE corporate tax payable.[161] The maximum foreign tax credit available is the lower amount paid in the foreign jurisdiction or the amount of UAE corporate tax payable on the foreign-source income.[162] Unutilized foreign tax credits may not be carried forward, nor will any unutilized foreign tax credits be refunded.

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154. *See* articles 40-42 of the UAE CTL, as defined in article 1 of the UAE CTL.
155. Free zone persons may elect to be subject to corporate tax to avoid being "qualifying free zone persons" (*see* articles 18(1c) and 19 of the UAE CTL).
156. Art. 53(7) and 40(4-5) UAE CTL.
157. Q. 128 UAE MoF FAQs.
158. Article 27 of the UAE CTL facilitates legal mergers, business mergers, spin-offs and other transfers and restructuring transactions.
159. It remains to be seen how domestic double taxation between Federal corporate tax and local Emirates tax on foreign banks will be addressed.
160. Arts. 22(4) and 24 UAE CTL. *See also* Q. 64 UAE MoF FAQs.
161. Id., at art. 47.
162. Id., at art. 47(2).

4. Treaty Relief

4.1. Introductory remarks

Tax treaties have the effect of significantly reducing the burden of international taxation on income and capital.[163] This is accomplished by limiting the application of domestic tax law (the so-called negative effect of tax treaties), primarily in the following situations:

- a person is a tax resident in two contracting states (where there is a residence-residence conflict and the UAE is one of the two residence states);
- a UAE resident has income sourced in another contracting state (where there is a residence-source conflict and the UAE is the residence state); and
- a non-UAE resident has UAE-source income (where there is a residence-source conflict and the UAE is the source state).

In a residence-residence conflict, tax treaties ensure that individuals or entities are only residents in one of the contracting states.[164] Where, for example, an individual or entity is considered to be resident for tax purposes under the domestic laws of the UAE as well as a contracting state, tax treaties help to determine which of the two contracting states is limited in its application of domestic law. If the tax treaty determines that the person involved is a resident of the UAE, the other contracting state may not tax that person as if they were a resident of that country.

Tax treaties also allocate taxing rights between the contracting states to ensure that individuals or entities who are resident in the UAE are not taxed or excessively taxed on certain income and capital sourced in the other contracting state.[165] Where, for example, a UAE resident invests in the equity of a business located in the other contracting state, the relevant tax treaty limits the application of domestic law in the other contracting state by reducing or eliminating any tax at source on dividend income that would otherwise have been levied in that state.[166] The fact that certain income and capital sourced in other contracting states is favourably taxed significantly affects the overall tax profile of UAE outbound investors.

Tax treaties have the additional benefit of ensuring that individuals or entities resident in other contracting states are not taxed on certain income and capital sourced in the UAE. Where, for example, non-UAE residents earn income from UAE real estate or business investments, the application of tax treaties can limit the application of foreign tax law, which, in light of the UAE's favourable tax regime, may have a significant effect on the overall tax profile of non-UAE inbound investors.

There are many other cases in which tax treaties allocate taxing rights to one or the other of the contracting states. The rules differ depending on the type of income or the nature of the capital involved. In the absence of a tax treaty, UAE and non-UAE residents would be subject to taxation on their cross-border income and capital as per the domestic laws of each contracting state. Accordingly, the importance of tax treaties lies in limiting the application of domestic tax laws. This has the effect of reducing the overall tax burden of UAE residents on their international investments and the overall tax burden of non-UAE residents on their UAE-based investments.

This section introduces the scope of tax treaties (*see* section 4.2.) before highlighting the rules of allocation of taxable income (*see* section 4.3.) and the methods by which double taxation is relieved under treaty law (*see* section 4.4.).[167]

4.2. Tax residence

Most UAE tax treaties apply to persons who are "residents" of one or both contracting states. Consequently, the definitions of "resident" and "non-resident" are fundamental to determining who does and does not qualify for treaty relief.

Under the OECD Model, which serves as a basis for treaty negotiations, a resident of a contracting state is any person who, under the laws of that state, is "liable to tax" therein by reason of his domicile, residence, place of management or any other criterion of a similar nature. As most UAE persons have not historically paid any income tax, there has been much technical debate as to which UAE persons can qualify for the benefits of OECD Model-based tax treaties. In particular, interpretative questions have arisen as to whether the requirement of being liable to tax requires the existence of an "actual" tax payment, whether it is necessary to have an enforced tax law, or whether the phrase is simply a proxy for the concept of a country's right to tax a person on his worldwide income because of the person's connections with the UAE.

163. In the absence of a tax treaty, businesses rely exclusively on the tax relief offered by domestic law (*see* section 3.8.).
164. Relief from concurrent full tax liability (*see* section 4.2.).
165. Relief from concurrent full and limited tax liability (*see* section 4.2.).
166. Treaty relief on tax at source in foreign jurisdictions is in addition to the participation exemption on dividends received under UAE domestic law (*see* section 3.4.4.).
167. For a much more extensive analysis of the UAE's tax treaties, reference is made to Hull & Scalia, *supra* n. 4.

Going forward, this debate may continue for businesses that take advantage of domestic tax relief through exclusions, exemptions, deductions, credits or otherwise. However, the author maintains that the residence criterion should be satisfied by UAE persons, regardless of any domestic tax relief for as long as they are within the territorial jurisdiction of the UAE.[168] In this connection, the terms used in the OECD Model may be interpreted to grant UAE persons treaty protection. In addition, even if there is a technical discussion regarding the terms used in a tax treaty, the context, object and purpose of the tax treaty, as well as the reference to domestic law, should be sufficient to apply the tax treaty to UAE persons. Otherwise, bilateral tax treaties themselves would be meaningless.[169] Indeed, in the author's opinion, the critical consideration in determining whether a person is a resident in the UAE should be whether the UAE has jurisdiction to subject that person to unlimited taxation by reason of his domicile, residence, place of management or any other criterion of a similar nature, irrespective of whether the government exercises its right to tax (unless a resident is expressly excluded in a tax treaty or protocol to a tax treaty).[170]

That being said, UAE treaty negotiators have recognized that the definition of "resident" has given rise to much technical debate. As a result, in alignment with the UAE's position put forward in respect of the OECD Model, they have sought to clarify the situation by introducing other criteria to establish who is (and who is not) a resident by reference to legal connections (for example, incorporation or nationality) or economic relations (for example, effective management or substantial presence). UAE treaty negotiators have also sought to ensure that certain persons, such as UAE nationals, individual residents and government bodies, are expressly listed as examples of persons benefiting from treaty relief. It follows that if a UAE person qualifies for a certificate of residence from the FTA, there should be no reason for a contracting state to contest that the person is prima facie qualified for treaty relief.[171]

4.3. Allocation of taxable income

4.3.1. Opening comments

Sections 4.3.2. to 4.3.5. summarize the international allocation of taxable income under the OECD Model.[172] This determines which state is granted the right to tax income under treaty law and to what extent. The power to tax income is generally granted to one or other of the contracting states. However, taxation in both contracting states is possible on dividends, interest and sometimes on royalties and pensions. Although the author has refrained from defining the different types of taxable income,[173] it is expected that international double taxation as a result of differences in the definition of types of income will be few and far between.

4.3.2. Personal services

4.3.2.1. In general

Personal services income includes all income earned by individuals in their private activity.[174] It includes income from dependent personal services (salaries, wages and other similar employment income), directors' fees and pensions.[175] There is no personal income tax in the UAE. As such, income earned by individuals in their personal capacity is not taxable.

Personal services income is also outside the scope of UAE corporate tax, as personal services do not constitute an independent business or business activity (*see* section 3.2.3.). Nonetheless, payments businesses make for the personal services of their employees or directors are fully deductible for corporate tax purposes.[176]

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168. *See* H.R. Hull, *United Arab Emirates: Tax Treaty Relief on International Investment*, 63 Bull. Intl. Taxn. 2 (2009), Journal Articles & Opinion Pieces IBFD.
169. It would be meaningless for one state (the UAE) to enter into a bilateral tax treaty to protect its residents in a situation in which both contracting states acknowledge that the UAE has no residents.
170. Along the same line of reasoning, although UAE individuals are not taxed on their overall income, the prevailing view has been that such a taxpayer would be treated as "liable to tax" (this is the stance adopted in B.R. Obuoforibo, *Residence*, in *Roy Rohatgi on International Taxation*: Volume 1 Principles sec. 10.1. (O. Ostaszewska & B.R. Obuoforibo eds., IBFD 2018), Books IBFD. Tax treaties frequently take into account such situations. *See* J. Bürgisser, *Switzerland*, in *The Notion of Tax and the Elimination of International Double Taxation and Non-Taxation*, International Fiscal Association (IFA), *Cahiers de droit fiscal international* vol. 101B, sec. 2.1. (IBFD 2016), and K. Brooks, *Canada*, in *Residence of Individuals under Tax Treaties and EC Law* sec. 13.3.1.1. (G. Maisto ed., IBFD 2010), Books IBFD.
171. Nevertheless, the tax administration of the contracting state may not grant treaty relief if there is a specific exclusion in the tax treaty or the protocol to a tax treaty, or if it can be based on anti-abuse provisions.
172. It cannot be assumed that all UAE's tax treaties follow the *OECD Model* to the letter. Accordingly, every tax treaty must be analysed on its own merits.
173. The UAE's tax regime is significantly aligned with international standards in this regard.
174. The taxation of personal services is included in this article primarily due to its significantly favourable effect on the cost structure of businesses operating in the UAE.
175. Tax treaties also explicitly address the allocation of taxing rights for artists and sportsmen, government services, members of diplomatic missions and consular posts, students and other income. These are out of the scope of this article.
176. This includes payments to business owners and shareholders within the limits of ALP and general anti-avoidance rules (GAARs).

4.3.2.2. Dependent personal services

Under treaty law, dependent personal services are taxed in the place of activity unless exceptions apply. Two exceptions relate to: (i) short-term employment;[177] and (ii) employment in international transport.[178]

The short-term employment exception permits residents of one contracting state who work in another contracting state to be exempt from tax in that other contracting state if they are present in that other state for a period or periods not exceeding in the aggregate 183 days in any 12 months commencing or ending in the fiscal year concerned.[179] As such, UAE residents who work in international markets for short-term periods may continue to benefit from the absence of personal income tax in UAE domestic law without being taxed in the other country of assignment.

The international transport exception permits the remuneration derived in respect of employment exercised aboard a ship or aircraft operated in international traffic or aboard a boat engaged in inland waterways transport to be taxed in the state in which the residence of the enterprise concerned is situated. As such, employees who work in international transportation for UAE resident businesses are tax-exempt on their employment income without being taxed in other contracting states.

4.3.2.3. Directors' fees

Under treaty law, directors' fees are taxed in the state where the paying entity is resident.[180] As such, directors working for UAE resident businesses are not taxed on their employment income in the UAE or in other contracting states.

4.3.2.4. Private pensions

Under treaty law, private pensions are exclusively taxed in the state of the beneficiary's state of residence.[181] As such, when individuals retire in the UAE after having worked in the private sector in the UAE or abroad, their pensions are exempt from taxation in the UAE as well as in the country of the source of their pension income. This is usually also true for individuals who release the capital from their pension accounts while residing in the UAE.

4.3.3. Investment income

4.3.3.1. In general

For the purposes of this article, "investment income" includes dividends, interest, royalties and capital gains. Investment income earned by UAE resident individuals in their personal capacity is not taxable in the UAE, as there is no personal income tax. In addition, private investment activity usually does not constitute an independent business or business activity subject to corporate tax (*see* section 3.2.3.).

In principle, investment income generated by UAE businesses is subject to corporate tax. However, many taxpayers qualify for the tax relief described previously in this section. This includes participation exemption relief and free zone relief (*see* sections 3.4.3. and 3.4.4.).

While dividends are not deductible,[182] interest and royalties paid by UAE persons are fully deductible for corporate tax purposes.[183] Dividends, interest, royalties and capital gains are also free of any withholding tax obligations.

4.3.3.2. Dividends

Under treaty law, dividends are taxed in the beneficiary's state of residence.[184] However, a limited right to tax is also granted to the source state.[185] According to the OECD Model, the tax rate in the source state is limited to 15% of the gross amount of the dividends. However, where the recipient shareholder is a company that holds directly at least 25% of the gross amount of the company's capital paying the dividends, the tax rate in the source state is limited to 5%.[186] As such, UAE residents who receive dividend income from a treaty country may be exempt from UAE taxation based on domestic law relief,[187] and qualify

177. Art. 15(2) *OECD Model* (2017).
178. Id., at art. 15(3).
179. In order to qualify for this relief, the employee must not be remunerated by an employer or a PE in that other state.
180. Art. 16 *OECD Model* (2017).
181. Id. Exceptions apply, for example, in the *Convention between the Swiss Confederation and the United Arab Emirates for the Avoidance of Double Taxation with Respect to Taxes on Income* (6 Oct. 2011), Treaties & Models IBFD.
182. Art. 33(4) UAE CTL.
183. This includes payments to business owners and shareholders within the limits of ALP and GAARs.
184. Art. 10(1) *OECD Model* (2017).
185. Id., at art. 10(2).
186. Other conditions to qualify for treaty relief on dividends include beneficial ownership and the absence of treaty abuse. Procedural considerations should also be addressed to determine the effect on cash flow, particularly in jurisdictions that do not prospectively apply treaty withholding tax rates.
187. Under the participation exemption, qualifying free zone relief, or by means of a tax credit.

for a reduction in foreign tax at source based on international treaty law. Non-residents are not taxed on UAE-source dividends, as there is a 0% withholding tax rate in the UAE.

UAE tax treaties generally follow the OECD Model to reduce the tax at source on dividend distributions. Nevertheless, there may be various: (i) tax rates (for example, 5%,[188] 7%[189] and 10%);[190] (ii) exemptions;[191] (iii) percentages of holding thresholds;[192] (iv) voting powers;[193] (v) entity qualifications;[194] or (vi) other preconditions.[195] The Saudi Arabia-United Arab Emirates Income and Capital Tax Treaty (2018),[196] for example, allows for a flat 5% residual withholding tax on dividends, regardless of the participation threshold.

4.3.3.3. Interest

Under treaty law, interest is taxed in the beneficiary's state of residence.[197] However, this state only sometimes has an exclusive right to subject interest to taxation, as a limited right to tax is also granted to the source state.[198] Under the OECD Model, the tax rate in the source state is limited to 10% of the gross amount of the interest.[199] As such, UAE residents who receive interest income from a treaty country may qualify for relief from UAE taxation based on the above-mentioned domestic law,[200] a reduction in foreign tax at source based on international treaty law and/or a tax credit in the UAE for any unrecoverable foreign tax at source. Non-residents are not taxed on UAE-source interest, as there is a 0% withholding tax rate in the UAE. UAE businesses take advantage of a full deduction of interest paid within the limits of the interest limitation rules (*see* section 3.5.2.).

Tax treaties ratified by the UAE generally follow these principles.[201] However, certain tax treaties, such as the Luxembourg-United Arab Emirates Income and Capital Tax Treaty (2005),[202] the Netherlands-United Arab Emirates Income Tax Treaty

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188. *Convention between the Government of the Republic of Azerbaijan and the Government of the United Arab Emirates for the Avoidance of Double Taxation with Respect to Taxes on Income and on Capital*, art. 11(2)(a) (20 Nov. 2006), Treaties & Models IBFD (which applies, subject to protocol III, which provides that "if the tax rate in one of the Contracting States is changed for lower than which accrued this Convention, such lower rate should apply automatically to a resident of the other Contracting State to the extent that it is more favourable").
189. *Agreement between the Government of the United Arab Emirates and the Government of the People's Republic of China for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income*, art. 10(2) (1 July 1993), Treaties & Models IBFD [hereinafter the *PRC-UAE Income Tax Treaty* (1993)].
190. *Agreement between the Government of the Republic of India and the Government of the United Arab Emirates for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital* art. 10(2) (29 Apr. 1992) (as amended through 2007), Treaties & Models IBFD [hereinafter the *India-UAE Income and Capital Tax Treaty* (1992)], as amended by *Protocol Amending the Agreement between the Government of the Republic of India and the Government of the United Arab Emirates for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income Signed in India on 29th April 1992*, art. 3 (26 Mar. 2007), Treaties & Models IBFD.
191. *Convention between the Government of the United Kingdom of Great Britain and Northern Ireland [and] the Government of the United Arab Emirates for the Avoidance of Double Taxation and the Prevention of Tax Evasion and Avoidance with Respect to Taxes on Income and on Capital Gains*, art. 10(2)(a) (12 Apr. 2016), Treaties & Models IBFD.
192. According to *Agreement between the Kingdom of Belgium and the United Arab Emirates for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital*, art. 10(2)(a) (30 Sept. 1996), Treaties & Models IBFD [hereinafter the *Belg.-UAE Income and Capital Tax Treaty* (1996)] and *Convention between the Government of the Republic of Italy and the Government of the United Arab Emirates for the Avoidance of Double Taxation with Respect to Taxes on Income and the Prevention of Fiscal Evasion*, art. 10(2)(a) (22 Jan. 1995), Treaties & Models IBFD, the 5% tax rate is granted to shareholders holding at least 25% of the company's capital paying the dividend. The holding threshold to be entitled to the "qualifying shareholder" tax rate is 10% in *Convention between the Government of Canada and the Government of the United Arab Emirates for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital*, art. 10(2)(a) (9 June 2002), Treaties & Models IBFD [hereinafter the *Can.-UAE Income and Capital Tax Treaty* (2002)]. *Agreement between the Government of the Republic of Belarus and the Government of the United Arab Emirates for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and Property*, art. 10(2)(b) (27 Mar. 2000.) (as amended through 2019), Treaties & Models IBFD provides for a 5% rate subject to the following condition: "[T]he beneficial owner is a company (other than a partnership) *which holds directly at least 100,000 USD* of the company paying the dividends" [emphasis added].
193. Art. 10(2)(b) *Can.-UAE Income and Capital Tax Treaty* (2002).
194. *Agreement between the Federal Republic of Germany and the United Arab Emirates for the Avoidance of Double Taxation and of Tax Evasion with Respect to Taxes on Income* art. 10(2)(c) (1 July 2010), Treaties & Models IBFD [hereinafter the *Ger.-UAE Income and Capital Tax Treaty* (2010)] applies when the recipient of the dividend is a "real estate investment company which is tax-exempt" and (as clarified in the Protocol With reference to article 10(b), sub-para. (c) of para. (2) to the *Ger.-UAE Income and Capital Tax Treaty* (2010)) "[i]n the case of Germany a real estate investment company is a company according to paragraph 1 of chapter 1 of the German Act on German Real Estate Stock Corporations with Listed Shares (REIT Act)".
195. This is the case of *Convention between Japan and the United Arab Emirates for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income*, art. 10(2)(a) (2 May 2013), Treaties & Models IBFD, which provides for a six-month holding period.
196. *Convention between Saudi Arabia and the United Arab Emirates for the Avoidance of Double Taxation with Respect to Taxes on Income and Capital* (Arabic text) (23 May 2018), Treaties & Models IBFD [hereinafter the *Saudi Arabia-UAE Income and Capital Tax Treaty* (2018)].
197. Art. 11(1) *OECD Model* (2017).
198. Id., at art. 11(2).
199. Other conditions to qualify for treaty relief on interest include beneficial ownership and the absence of treaty abuse. Some of the UAE's tax treaties provide for special anti-abuse provisions, limiting treaty benefits where the main purpose or one of the main purposes of the creation of an entity involved in a loan agreement is to obtain treaty benefits that would otherwise not be available.
200. Particularly, the qualifying free zone income relief.
201. However, different rates apply in different UAE tax treaties, for example, 2% (*Convention between the Government of the Republic of Bulgaria and the Government of the United Arab Emirates for the Avoidance of Double Taxation with Respect to Taxes on Income*, art. 11(2) (26 June 2007), Treaties & Models IBFD); 2.5% (*Convention between the Government of the Republic of Latvia and the Government of the United Arab Emirates for the Avoidance of Double*

(2007)[203] and Saudi Arabia-United Arab Emirates Income and Capital Tax Treaty (2018) grant the beneficiary's state of residence the exclusive right to tax such income. While the Canada-United Arab Emirates Income and Capital Tax Treaty (2002) follows the OECD Model, limiting the tax to be levied at the rate of 10%,[204] the limits provided for under the India-United Arab Emirates Income and Capital Tax Treaty (1992), the Argentina-United Arab Emirates Income and Capital Tax Treaty (2016)[205] and the Angola-United Arab Emirates Income Tax Treaty (2018)[206] are 5%, 12% and 8%, respectively.

4.3.3.4. Royalties

Under international treaty law, royalties are exclusively taxed in the beneficiary's state of residence.[207] According to these rules, the state in which the debtor of the royalty is resident[208] may not subject royalty payments to any form of taxation. As such, UAE residents who receive royalty income from a treaty country may enjoy corporate tax relief based on the abovementioned domestic law rules[209] and relief from tax in the state of source of the royalties.[210] Non-residents are not taxed on UAE-source royalties, as there is a 0% withholding tax rate in the UAE, and UAE businesses may take advantage of a full deduction of royalties paid.[211]

Many UAE tax treaties permit limited taxation at source on royalty payments like that of dividend and interest income. Under these tax treaties, the right to tax in the state of the beneficiary is not exclusive. Royalties "may be taxed" to a limited extent in the state of source.[212] This is the case, for example, with the Saudi Arabia-United Arab Emirates Income and Capital Tax Treaty (2018), which allows for a residual withholding tax at source of 10%, and the Canada-United Arab Emirates Income and Capital Tax Treaty (2002),[213] the India-United Arab Emirates Income and Capital Tax Treaty (1992),[214] and the Singapore-United Arab Emirates Income Tax Treaty (1995).[215]

4.3.3.5. Capital gains

Under international treaty law, capital gains from the alienation of any property are only taxable in the contracting state of which the alienator is a resident.[216] There are four exceptions. These are: (i) immovable property; (ii) movable property forming part of the business property of a PE; (iii) assets in international transportation; and (iv) shares that derive more than 50% of their value from immovable property. As such, UAE residents who receive capital gains from a treaty country may enjoy corporate tax relief based on the domestic law rules noted previously in section 3.[217] and a full exemption or reimbursement in the foreign jurisdiction.[218] Non-residents are not taxed on UAE-source capital gains, as there is a 0% withholding tax rate.

UAE tax treaties largely follow the OECD Model. However, the Singapore-United Arab Emirates Income Tax Treaty (1995) does not include an article relating to capital gains.[219] On the other hand, the Luxembourg-United Arab Emirates Income and Capital

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Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital, art. 11(2) (11 Mar. 2012), Treaties & Models IBFD); and 7% (article 11(2) of the *PRC-UAE Income Tax Treaty* (1993)) of the gross amount of the interest.

202. *Convention between the Grand Duchy of Luxembourg and the United Arab Emirates for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital* (20 Nov. 2005) (as amended through 2014), Treaties & Models IBFD [hereinafter the *Lux.-UAE Income and Capital Tax Treaty* (2005)].
203. *Convention between the Kingdom of the Netherlands and the United Arab Emirates for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income* (8 May 2007), Treaties & Models IBFD [hereinafter the *Neth.-UAE Income Tax Treaty* (2007)].
204. Art. 11(2) *Can.-UAE Income and Capital Tax Treaty* (2002).
205. *Convention between the Government of the Argentine Republic and the Government of the United Arab Emirates for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital* (3 Nov. 2016), Treaties & Models IBFD.
206. *Agreement between the Government of the United Arab Emirates and the Government of the Republic of Angola for the Elimination of Double Taxation with Respect to Taxes on Income and the Prevention of Fiscal Evasion* (8 Feb. 2018), Treaties & Models IBFD.
207. Art. 12(1) *OECD Model* (2017).
208. The *UN Model* (2021) provides for a deeming rule according to which royalties should be deemed to arise in a contracting state when the payer is a resident of that state.
209. Particularly, the qualifying free zone income relief.
210. However, similar to dividends and interest, this exemption from taxation in the state of source is only available if the recipient is the beneficial owner of the royalties.
211. Within the limits of economic justifiability, the ALP and GAARs.
212. For instance, 10% (*Convention between the People's Democratic Republic of Algeria and the United Arab Emirates for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and on Capital* (unofficial translation), art. 12(2) (24 Apr. 2001), Treaties & Models IBFD) or 5% (article 12(2) of the *Belg.-UAE Income and Capital Tax Treaty* (1996)).
213. *See* article 12(2) of the *Can.-UAE Income and Capital Tax Treaty* (2002), subject to the exceptions listed in article 12(3).
214. Art. 12(2) *India-UAE Income and Capital Tax Treaty* (1992).
215. *Agreement between the Government of the Republic of Singapore and the Government of the United Arab Emirates for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income*, art. 12(2), (1 Dec. 1995), Treaties & Models IBFD [hereinafter the *Sing.-UAE Income Tax Treaty* (1995)].
216. This is embodied in the catch-all clause under article 13(5) of the *OECD Model* (2017).
217. In particular, the participation exemption or qualifying free zone income relief.
218. Unless the capital gains are taxable in the country of source according to the four exceptions previously noted in this section.
219. *See Second Protocol Amending the Agreement between the Government of the Republic of Singapore and the Government of the United Arab Emirates for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income*, art. 1 (31 Oct. 2014), Treaties & Models IBFD with reference to the *Sing.-UAE Income Tax Treaty* (1995), which provides that, "[w]ith respect to gains from the alienation of movable and immovable properties, it

Tax Treaty (2005) and the Saudi Arabia-United Arab Emirates Income and Capital Tax Treaty (2018), specifically emphasize the fact that gains resulting from the alienation of shares representing a share in the capital of a company that is a resident of a contracting state, other than those listed on the domestic stock market, may be taxed in that state.[220] Under the Protocol to the Canada-United Arab Emirates Income and Capital Tax Treaty (2002), earnings that are taxed in a state, according to article 13 of the tax treaty, remain subject to branch tax at a rate not exceeding 5%.[221] The India-United Arab Emirates Income and Capital Tax Treaty (1992) does not include capital gains from the alienation of ships, boats or aircraft.

4.3.4. Immovable property

Income from immovable property includes income derived from the direct use, letting or use of any other form of immovable property. Income from immovable property earned by UAE resident individuals in their personal capacity is not taxable in the UAE, as personal income tax is not levied in the country.[222] In addition, where a real estate investment activity does not constitute an independent business or business activity, it will not be subject to corporate tax (*see* section 3.2.3.).

However, income generated by UAE businesses from immovable property is, in principle, subject to corporate tax. While many taxpayers may qualify for tax relief described in section 3, there is no domestic tax exemption on income generated from foreign real estate. This being established, rents paid are fully deductible for corporate tax purposes,[223] and are free of withholding tax obligations.

Under international treaty law, income derived from immovable property is exclusively taxable in the state in which the property is situated. The same is true of the taxation of gains arising from the sale of immovable property.[224] As such, where UAE residents generate income from real estate investments situated abroad, as the UAE CTL does not expressly exempt income earned by UAE residents on foreign immovable property, in the absence of a tax treaty, that income would potentially be subject to tax in the UAE.[225] Tax treaties limit the application of UAE domestic law and grant a tax exemption on foreign real estate income rather than a tax credit against foreign taxes paid.[226]

Non-residents who earn income from immovable property in the UAE will be exempt from foreign income and exclusively subject to taxation in the UAE. This is particularly favourable to non-UAE resident investors who will only be subject to tax on income attributable to UAE immovable property if such property forms part of a UAE PE. As such, it is only operational property directly used for a business's activity, which will be taxable in the UAE. In contrast, property owned by non-resident traders or investors who do not have a PE in the UAE will be exempt from tax on such income.[227]

4.3.5. Business profits

For the purposes of this article, the term "business profits" includes all income generated by companies, partnerships, entities or individuals operating in more than one state. Under international treaty law, an enterprise of one contracting state is only taxable in the other contracting state if it is considered to have set up a PE in that other state.[228] Once it has been determined that a PE exists in the other state, that state may only subject the international enterprise to taxation on profits attributable to the PE.

The UAE CTL is significantly aligned with international treaty law in this regard. As such, UAE residents who operate their international business through a PE in a treaty country will be exempt from taxation in the UAE on income attributable to the foreign PE based on the previously noted domestic law rules (*see* section 3.9.2.) and international treaty rules.

On the other hand, non-residents will only be subject to tax on business activities in the UAE if they are attributable to a PE in the UAE. This would continue to be the case, even if the UAE were to introduce a corporate tax or withholding tax on UAE-source income or some other form of UAE nexus.[229]

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is understood that under the current laws of both Contracting States, there does not exist any tax on capital gains. Therefore, no tax shall be levied on capital gains in either Contracting State so long as the current laws remain unchanged".

220. Article 13(4) of the *Lux.-UAE Income and Capital Tax Treaty* (2005) and article 13(4) of the *Saudi Arabia-UAE Income and Capital Tax Treaty* (2018), in line with the option provided for in paragraph 28.7 of the *OECD Model: Commentary on Article 13* (2017).
221. Art. 6 Protocol *Can.-UAE Income and Capital Tax Treaty* (2002).
222. Individual real estate income and capital gains are exempt, even when used as an investment property and earning rental income or held through a private or family trust.
223. This includes payments to business owners and shareholders within the limits of economic justifiability, ALP and GAARs.
224. Art. 6(1) *OECD Model* (2017). Special treaty dispositions may apply to income from so-called real estate companies and gains arising from the sale of share in real estate companies.
225. With a tax credit for foreign tax paid.
226. In practice, a tax exemption may often lead to the same result as a tax credit due to the relatively low corporate tax rate in the UAE.
227. Although, in practice, this only applies to non-resident individuals since ownership of UAE real estate by non-resident legal entities is restricted.
228. Arts. 5 and 7(1) *OECD Model* (2017); para. 1 *OECD Model: Commentary on Article 5* (2017); and para. 1 *OECD Model: Commentary on Article 7* (2017).
229. Arts. 11(4b-c), 12(3b-c), and 13 UAE CTL.

Most UAE tax treaties have adopted a similar provision to the OECD Model definition. The Canada-United Arab Emirates Income and Capital Tax Treaty (2002) also allows the contracting state of a PE to levy a branch profits tax (not exceeding 5%) on the profits generated by the PE.[230] On the other hand, the Protocol to the Netherlands-United Arab Emirates Income Tax Treaty (2007) specifies that payments received for technical services, such as studies or surveys of a scientific, geological or technical nature, consultancy services or supervisory services, are covered by article 7 (Business profits).[231]

4.4. Double taxation relief

4.4.1. Opening comments

International tax law aims to limit the number of situations in which income is subject to international double taxation. International double taxation arises when comparable taxes are levied by two (or more) tax jurisdictions on the same taxpayer in respect of the same taxable income in the same period. In particular, international juridical double taxation is the consequence of the three following situations:[232]

(1) Two states subject the same person to tax on their worldwide income (concurrent full tax liability).

(2) Two states subject the same person, who is not a resident of either state, to tax on income derived from one of the two states. This may occur, for example, when a non-resident person has a PE in one state through which they derive income from another state of which they are not a resident (concurrent limited tax liability).[233]

(3) A person is a resident of one state and derives income from another state, and both states impose a tax on that income (concurrent full and limited tax liability).

Sections4.4.2. and 4.4.3. address concurrent full tax liability as well as concurrent full and limited tax liability.

4.4.2. Concurrent full tax liability

Situations can arise in which two states consider the same person to be resident in two different states. This can be avoided with most countries with which the UAE has a tax treaty by applying the so-called “tie-breaker rules”. Tie-breaker rules are a series of criteria determining of which of the two states the taxpayer is deemed a resident.

These rules are indicated in article 4 of the OECD Model, which distinguishes between individuals and other persons. Article 4(3) of the OECD Model covers the rules applicable to legal entities as follows:

> Where by reason of the provisions of paragraph 1, a person other than an individual is a resident of both Contracting States, the competent authorities of the Contracting States shall endeavour to determine by mutual agreement the Contracting State of which such person shall be deemed to be a resident for the purposes of the Convention, having regard to its place of effective management [POEM], the location where it is incorporated or otherwise constituted and any other relevant factors. In the absence of such agreement, such person shall not be entitled to any relief or exemption from tax provided by this Convention except to the extent and in such manner as may be agreed upon by the competent authorities of the Contracting States.

The POEM concerns companies and bodies of persons other than individuals. Reference is made to the domestic laws of each contracting state for the criteria used to determine the POEM.[234] There may still be a double taxation problem if each contracting state interprets this notion differently. If this is the case, the question should be resolved by a mutual agreement procedure (MAP) between the states concerned according to the procedure set out in article 25 of the OECD Model.

4.4.3. Concurrent full tax and limited tax liability

Income received by a resident of one state from another state may often be subject to juridical double taxation. First, it is subject to tax in the state of source, Second, it is subject to income tax in the state where the beneficiary is a resident.

The three most commonly used methods of avoiding – or at least alleviating – concurrent full and limited tax liability are the deduction method, the credit method and the exemption method.

(1) According to the deduction method, foreign-source income is subject to income tax in the state of residence. However, any taxation levied in the state of the source is deducted from the tax base in the state of residence.

230. Art. 6 Protocol *Can.-UAE Income and Capital Tax Treaty* (2002).
231. Art. VII Protocol to the *Neth.-UAE Income Tax Treaty* (2007).
232. Para. 2 *OECD Model: Commentary on Articles 23A and 23B* (2017).
233. Which is not addressed in international tax treaties.
234. *See* section 3.2.2. for UAE residence in the case of effective management and control.

(2) Under the credit method, any foreign-source taxes paid on foreign-source income reduce the income tax levied by the state of residence by the amount of the foreign tax. Typically, the deduction given by the state of residence for the tax paid in the other state is restricted to the part of its own tax that is appropriate for the income that may be taxed in the other state.

(3) Under the exemption method, the state in which a person is resident exempts the foreign-source income from income tax. Accordingly, such income should only be subject to taxation in one of the contracting states.

The exemption method (option (3)) usually provides the most relief to taxpayers, followed by the credit method (option (2)) and then the deduction method (option (1)). According to the UAE CTL, a credit is available to UAE businesses for all foreign income tax, except for income tax attributable to foreign PEs, for which the exemption method applies.

Under the OECD Model, an exclusive right is granted to a contracting state when a relevant article indicates that the income in question “shall be taxable only” in a contracting state. In that case, double taxation is avoided using the exemption method. However, when income taxed in the state of residence “may be taxed” in the state of the source, the attribution of the right to tax is not exclusive. In this situation, the following two different methods for eliminating double taxation are proposed by article 23 of the OECD Model: (i) the exemption method (article 23A); and (ii) the credit method (article 23B). Significantly, all UAE tax treaties apply the credit method in this situation. As such, when UAE residents earn foreign-source income where an exclusive right to tax a given income is granted to the other contracting state, the UAE is precluded from taxing such income. This includes business profits attributable to a foreign PE[235] and income from immovable property.[236]

Similarly, when non-UAE residents earn UAE-source income where an exclusive right to tax a given income is granted to the UAE, the foreign state is precluded from taxing such income. As such, income from a PE or business-related immovable property in the UAE will be exempt from foreign tax and subject to the more favourable UAE tax regime.

This rule applies whether or not the UAE exercises its right to tax (virtual double taxation). As such, for non-UAE resident individuals who own UAE real estate in a personal capacity, any related income will be exempt from foreign tax as per the tax treaty, even if there is no tax in the UAE. This also holds for non-UAE residents who earn UAE-source employment remuneration in the private sector (except for short-term employment), directors’ fees, artists and sportsmen, and pensions paid in respect of government services in the UAE.

Most UAE tax treaties follow the principles set out in the OECD Model. Nevertheless, certain tax treaties only permit the exemption method to apply if the income is effectively subject to income tax in the other state (the subject-to-tax rule). With regard to dividends, interest and, in some cases, royalties, the credit method is generally applied in UAE tax treaties. In some tax treaties, the credit method is extended to management fees.

5. Anti-Abuse Provisions

5.1. Introductory remarks

Many of the exclusions, exemptions, deductions, safe harbours and credits addressed in section 3. have specific qualifying conditions and requirements, which aim to limit the application of relief to a particular set of facts and circumstances. However, both the UAE CTL and international treaty law include anti-abuse rules which apply across the board.[237]

5.2. Corporate tax law

The UAE has introduced a general anti-avoidance rule (GAAR)[238] to, among other things, ensure that tax relief is not granted to persons who derive an unintended tax advantage from a transaction or an arrangement. According to the GAAR in the UAE CTL, the FTA will disallow tax benefits to businesses where it can be “reasonably concluded” that there are transactions or arrangements (or parts thereof) that fail to cumulatively meet a BPT and a principal purpose test (PPT).

Both of these tests are motive tests with the onus of proof technically with the FTA.[239] As such, it is necessary to ascertain the taxpayer’s purpose (or intentionality) for the FTA to disallow tax benefits under GAAR. Where a taxpayer is considered to be involved in abusive transactions or arrangements under the GAAR, the FTA may adjust the taxable income to disregard the effects of the abusive transactions or arrangements.[240]

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235. Similar to UAE domestic law under article 24 of the UAE CTL.
236. With regard to individuals, an exemption is also applied to foreign-source employment remuneration in the private sector (except for short-term employment), directors’ fees, artists and sportsmen, and pensions paid in respect of government services.
237. All of these are to be considered when businesses seek the protection of corporate tax relief on international investments.
238. Art. 50 UAE CTL. The GAAR applies to transactions and arrangements entered into on or after the date the UAE CTL was published in the Official Gazette, being 10 Oct. 2022 (*see* article 61(3) of the UAE CTL).
239. Id., at art. 50(6).
240. The FTA must demonstrate that any transactions or arrangements that are counteracted or adjusted are “just and reasonable” (*see* article 50(6) of the UAE CTL).

5.3. Treaty law

Action 6 of the OECD/G20 BEPS Project identifies treaty abuse – and treaty shopping in particular – as one of the most critical concerns that led to the BEPS initiative.[241] The OECD released the Final Report on BEPS Action 6, entitled “Preventing the Granting of Treaty Benefits in Inappropriate Circumstances”, on 5 October 2015.[242] Under this action, countries have agreed to include anti-abuse provisions in their tax treaties, including a minimum standard to counter treaty shopping.

The minimum standard requires adopting rules in bilateral tax treaties that effectively address treaty shopping. First, tax treaties should include, in their title and preamble, a clear statement confirming that the states that enter into a tax treaty intend to avoid creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance, including through treaty shopping. Second, countries should implement this common intention by including in their tax treaties: (i) a combination of a limitation-on-benefits (LOB) rule (specific anti-abuse rule) and a PPT rule (GAAR); (ii) the PPT rule; or (iii) the LOB rule supplemented by a mechanism that deals with conduit arrangements, such as a restricted PPT rule applying to conduit financing arrangements in which an entity otherwise entitled to treaty benefits act as a conduit for payments to third-country investors. Third, countries should identify tax policy considerations when determining whether to enter into a tax treaty with another country.

Anti-abuse measures can also be found in the “persons covered” by UAE tax treaties as well as beneficial ownership rules,[243] domestic anti-abuse rules,[244] Economic Substance Regulations (ESR), or numerous initiatives to enhance international tax transparency.[245]

6. Conclusions

This article has sought to explore the combined impact of a competitive tax regime, favourable tax relief and an extensive tax treaty network on UAE international investment.

Whilst the baseline corporate tax regime is competitive by international standards, there exists a host of favourable tax relief in the form of scope exclusions, sector exemptions, nontaxable income, tax deductions, loss relief, group relief, restructuring relief and double taxation relief.

This relief is generally available to all businesses established in the UAE. However, additional relief is available for UAE residents and non-residents on their international investments.

- UAE residents who qualify for treaty relief on their outbound investments may be protected against taxation abroad through foreign tax exemptions, credits or reductions. In the absence of treaty relief, UAE taxpayers can claim a tax credit for any unrecoverable foreign tax.
- Non-residents who qualify for treaty relief on their UAE inbound investments may be protected against taxation in their country of residence through tax exemptions. They also enjoy the UAE’s 0% withholding tax. As such, the repatriation of profits in the form of dividends or otherwise is not subject to any additional tax leakage in the UAE.

Much of this tax relief is subject to specific conditions, substance requirements, arm’s length principles or anti-abuse provisions. Relief should also be considered in light of Pillar Two of the G20/OECD’s BEPS initiative.

However, based on the UAE’s competitive tax regime, favourable tax relief and extensive tax treaty network, this author can already conclude that the UAE has fulfilled its ambitions of creating a corporate tax that maintains its attractiveness as a global hub for international investment.

241. OECD, *Executive Summaries: 2015 Final Reports*, OECD/G20 Base Erosion and Profit Shifting Project p. 21, available at www.oecd.org/ctp/beps-reports-2015-executive-summaries.pdf (accessed 10 Mar. 2023).
242. OECD, *Action 6 Final Report 2015 – Preventing the Granting of Treaty Benefits in Inappropriate Circumstances* (OECD 2015), Primary Sources IBFD.
243. As referenced in treaty dispositions on dividends, interest and royalties (*see* articles 10 to 12 of the *OECD Model* (2017).
244. Tax administrations often rely on the facts and circumstances of a given situation to determine whether treaty relief is considered to be abusive, irrespective of treaty dispositions. This can often translate into subjective analysis in source countries or restrictions on issuing “certificates of residence” in the country of the income beneficiary.
245. *See* Hull & Scalia, *supra* n. 4, at chs. 27 to 29 [pp. 351-388] for an in-depth analysis of anti-abuse rules in tax treaties, including the actions of the OECD’s Global Forum, financial accounting information (FATCA/CRS), and beneficial ownership information.