Impact of the new Tax Residency Rules on the Common Reporting Standard (“CRS”) Requirements in the UAE

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> *This welcome introduction of new UAE tax residency criteria brings additional clarity to both individuals and legal entities in relation to their tax position.*

In brief

On 9 September 2022, the UAE Cabinet of Ministers issued Decision No. 85 of for 2022 ("**Resolution**"), which provides a new domestic definition and criteria for when an individual or a legal entity shall be considered a '*tax resident'* of the UAE for the purposes of any domestic law or international regimes. The effective date of the new rules is 1 March 2023.

Prior to the release of the Resolution, while there were certain practical and documentary requirements established by the UAE Ministry of Finance and the Federal Tax Authority which applied to natural and legal persons seeking to obtain a UAE tax residency certificate, there was no statutory definition of UAE tax residency.

The new domestic tax resident definition is aligned to internationally recognised standards and gives additional clarity to individuals and legal entities in respect of their UAE tax residency position.

Many of the tax agreements and regimes that the UAE is party to, such as the Common Reporting Standard ("**CRS**"), make reference to the domestic laws of the UAE for determining whether a person is a resident of the UAE for tax purposes. This new domestic law gives additional clarity, which will facilitate the application of the tax residency definition.

The overall impact on CRS will, therefore, be on:

- UAE Reporting Financial Institutions ("**UAE RFIs**") that are required to determine the reportable status of financial accounts maintained (in large part by validating tax residency declared by account holders);
- Non-UAE RFIs who may onboard UAE tax residents as account holders; and
- Account holders of UAE and non-UAE RFIs who may now be required to declare a change in their tax residency status, where necessary.

In detail

Impact on CRS

In accordance with the Cabinet Decision Number 16/9W of the year 2016, the CRS Multilateral Competent Authority Agreement ("**MCAA**") was signed on 22 April 2017 in the UAE and the CRS went live in the UAE with an effective go-live date of 1 January 2017.

Under the CRS, UAE RFIs are required identify and report CRS reportable accounts. A Reportable Account is a financial account held by any reportable person, i.e. any person (individual, entity or controlling person(s)) identified as a resident for tax purposes in a reportable jurisdiction. UAE RFIs are, therefore, required to determine whether the jurisdiction of tax residence declared by a Reportable Person is reasonable, in light of the new rules.

With the introduction of the new UAE tax residency rules, UAE RFIs will be required to update their processes to include the new tax residency criteria when assessing jurisdiction of tax residency of account holders for the purposes of the CRS.

For example, there may be scenarios where a person qualifies as a tax resident under the tax residence rules of more than one jurisdiction and, therefore, is a tax resident in more than one jurisdiction. For the purposes of the CRS, UAE RFIs must ensure account holders disclose all tax residences in the required self-certification forms and related documentation.

UAE tax residency criteria for individuals

A natural person will be considered a "UAE Tax Resident" if the individual:

- **has their usual or primary place of residence and their centre of financial and personal interests in the UAE;**
- **was physically present in the UAE for a period of 183 days or more during a consecutive 12-month period;**
- **was physically present in the UAE for a period of 90 days or more in a consecutive 12-month period and the individual is a UAE national, holds a valid residence permit in the UAE or holds the nationality of any GCC Member State, where:**
  (i) he or she has a permanent place of residence in the UAE; or
  (ii) he or she carries on an employment or a business in the UAE.

What does the new UAE Tax Resident definition mean for individuals?

- The introduction of the new UAE tax residency criteria for individuals does not mean individuals will be subject to personal income tax in the UAE.
- The UAE does not levy personal income tax on the employment or other personal income of individuals. As such, where an individual meets the above criteria to be considered a UAE Tax Resident, they would generally not be subject to taxation in the UAE on their personal income.
- The new UAE Tax Resident definition gives additional clarity to individuals in respect of their UAE tax residency position under bilateral tax agreements the UAE has entered into with other territories, many of which make reference to the domestic laws of the UAE for determining whether a person is a resident of the UAE for purposes of the treaty.
- The introduction of the new UAE tax residency rules may require individuals to update their existing CRS documentation with UAE RFIs where there has been a change in the tax residency they originally certified as there is an obligation to declare such changes under most disclaimers signed at the time of account opening.

The introduction of the new UAE tax residency criteria for individuals does not mean they will need to pay personal income tax in the UAE.

The UAE continues to be free of personal income tax on individuals' employment or other personal income.

UAE tax residency criteria for juridical persons

The new definition of juridical person generally refers to an entity established or otherwise recognised under the laws and regulations of the UAE, or under the laws of a foreign jurisdiction, that has a legal personality separate from its founders, owners and directors. Examples of UAE juridical persons include a limited liability company, a foundation, a public or private joint stock company, and other entity forms that have separate legal personality under the applicable UAE mainland legislation or the regulations of a free zone.

A juridical person is considered to be a UAE Tax Resident if:

a. it is incorporated or otherwise formed or recognised in the UAE; or
b. it is otherwise considered a Tax Resident of the UAE under the applicable legislation in the UAE.

UAE branches of a domestic or a foreign juridical person are an extension of their “principal” and are not considered separate juridical persons. A branch of a foreign juridical person registered in the UAE would therefore generally not be considered a UAE Tax Resident.

What does the new UAE Tax Resident definition mean for juridical persons?

- Juridical persons which are considered to be UAE Tax Resident may be liable to corporate tax in the UAE under the applicable tax laws.
- Juridical persons which are considered to be UAE Tax Resident may be required to be reported for CRS purposes by the RFIs they maintain an account with.
- The introduction of the new UAE tax residency rules may require controlling persons or the ultimate beneficial owners of certain entities to update their existing CRS documentation with UAE RFIs where there has been a change in the tax residency they originally certified as there is an obligation to declare such changes under most disclaimers signed at the time of account opening.
- The Cabinet Decision refers to the “applicable Tax Law” (i.e. corporate tax law) to determine whether a foreign juridical person is Tax Resident. For any other person, the UAE tax residency requirements are set out in the Resolution.

What does the new UAE Tax Resident definition mean for UAE RFI’s?

- UAE RFIs may need to request additional documentation (e.g updated CRS self-certification form) and update their onboarding processes to assess whether or not to accept a declaration from an account holder (individual, entity or controlling person(s)) on their tax residency status (by observing the number of days an individual was physically present in the UAE).
- UAE RFIs may also need to update their reasonableness test checklists in line with the new rules to validate information received from their account holders as per the CRS requirements in the UAE.

Key takeaway

Updated UAE tax residency criteria

The UAE Cabinet of Ministers issued Decision No. 85 of for 2022, which provides a new domestic definition and criteria for when an individual or a legal entity are considered a Tax Resident of the UAE for the purposes of any UAE tax law or Double Tax Treaty. The effective date of the new rules is 1 March 2023.

Given that there was no statutory definition of UAE tax residency previously, the introduction of statutory rules around the subject gives additional clarity to individuals and legal entities in respect of their UAE tax residency position, making it easier for Financial Institutions to identify UAE residents and comply with their obligations to determine the jurisdiction of tax residence of Reportable Persons under CRS.

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Let's talk

To discuss the impact of the new UAE tax residency criteria on CRS and how this might affect you or your business, please contact:

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