

# UAE Corporate Tax: Ministerial Decisions No. 125, 126 & 127 releases

Key Takeaways



June 2023



# UAE Ministerial Decisions Release



On 22nd, 23rd and 24th of May 2023, the Ministry of finance issued a number of decisions respectively:

- Decision No 125 of 2023 on Tax Group;
- Decision No.126 of 2023 on the General Interest Deduction Limitation Rule; and
- Decision No. 127 on Unincorporated Partnership, Foreign Partnership and Family Foundation.

All as mentioned under the Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses (hereinafter referred to as the 'CT Law'). These Decisions came into effect the day following their publication.

## Key highlights

### Decision No 125 of 2023: Tax Group

#### Ownership & Residence

The Decision clarifies the meaning of share capital for the purposes of satisfying the condition that the group parent must own at least 95% share capital of the subsidiary. Share capital shall mean the nominal issued and paid-up share capital, or Membership or Partnership Capital of each Subsidiary, as applicable.

It also clarifies that a foreign juridical person may form or join a Tax Group if such foreign juridical person is considered as a Resident Person by virtue of being effectively managed and controlled from the UAE, provided the relevant authority confirms that the Person is not a resident of that foreign country.

#### Administration & Computation

The Decision also provides the following administrative and computation mechanism for a Tax Group:

- The application to form a Tax Group or join an existing group must be submitted before the end of the relevant Tax Period.
- It includes rules in relation to transactions between members of a Tax Group prior to forming or joining the group, including when to eliminate such transactions, and when to recognise any subsequent income.
- It clarifies what should be included when consolidating financial results, assets, and liabilities of to calculate the Taxable Income of a Tax Group, including transactions between members of the same Tax Group, as well as adjustments and provisions related to those transactions.
- If a member of a Tax Group has Tax Losses accumulated before joining the Tax Group, those losses can be used to offset the Taxable Income of the Tax Group. However, there are certain limitations on the amount of Tax Losses that can be utilized. Specifically the amount that could be utilised is the lesser of:
  - The Taxable Income of the Tax Group that can be attributed to that specific member.
  - The Tax Loss that is allowed to reduce the Taxable Income of the Tax Group in the relevant tax period.
- The Tax Group shall calculate the Taxable Income, in accordance to transfer pricing rules, that is attributable to one or more of its members where any of the following occurs:
  - A member of the Tax Group has unutilised pre-Grouping Tax Losses;
  - A member of the Tax Group has earned income for which the Tax Group can claim a Foreign Tax Credit against;
  - A member of the Tax Group benefits from any Corporate Tax incentives; and
  - A member of the Tax Group has unutilised carried forward pre-Grouping Net Interest Expenditure.
- Tax Group should notify tax authority if a member of Tax Group is leaving a Tax Group or a Tax Group ceases to exist within twenty business days from the date the conditions are no longer met.



# UAE Ministerial Decisions Release



## Key highlights

### Decision No. 126 of 2023: General Interest Deduction Limitation Rule

The Decision expands on the General Interest Deduction Limitation Rule (“GIDLR”) and sets out the provisions relating to the application of this Rule. The key highlights of the Decision are detailed below.

#### Interest

The Decision explains that any financial returns on a financial asset or liability that comprise interest or payments economically equivalent to Interest will be considered for the purpose of the GIDLR, regardless of the classification and treatment under IFRS.

The Decision also highlights that the following would be considered as interest for the purpose of the GIDLR:

- Amounts incurred in connection with raising finance (including Guarantee fees, Arrangement fees, Commitment fees and any other fees similar in nature).
- Interest on Islamic Financial Instruments that is compliant with the Sharia principles or any equivalent instruments or the combination of both.
- Interest component on forward contracts, futures contracts, options, interest rate and foreign exchange swap agreements or any other financial derivative instruments.
- The finance element of Finance and Non-Finance Lease payments.
- Foreign Exchange gains and losses accruing from interest.
- Capitalised Interest.

The Decision now specifies a safe harbour amount of AED 12 Million of Net Interest Expenditure (NIE) below which the GIDLR will not be applicable. If the NIE threshold is exceeded, the Taxable Person may deduct the higher of the threshold or 30% of Earnings before Interest, Tax, Depreciation and Amortisation (‘EBITDA’).

#### EBITDA

The Decision provides the methodology for computing EBITDA which is mainly the Taxable Income adjusted for the following items:

- NIE for the relevant Tax Period (excluding any in relation to Qualifying Infrastructure Projects)
- Depreciation and amortisation expenditure taken into account in determining the Taxable Income for the relevant Tax Period
- Any Interest income or expenditure relating to historical financial assets or liabilities held prior to 9 December 2022

If the EBITDA arrived at after the above calculation is negative, the amount of EBITDA to be considered for determining the 30% limit will be AED 0.

The decision further explains that the NIE attributed to debt instruments, the terms of which are agreed prior to 9 December 2022 are exempt from the application of the GIDLR.

NIE incurred by a Qualifying Infrastructure Project Person (who meets the conditions prescribed under the Decision) will not be subject to GIDLR.



# UAE Ministerial Decisions Release



## Key highlights

### Decision No. 127: Unincorporated Partnership, Foreign Partnership and Family Foundation.

#### Unincorporated Partnership

The Decision clarifies certain aspects of the treatment of Unincorporated Partnerships (“UP”) under the CT Law, which provides that UPs should not be considered as Taxable Persons in the UAE, with each partner will be treated as individual Taxable Persons for the purposes of CT.

It clarifies that a UP shall not be considered as a Taxable Person in its own right, provided it is not a juridical person. However, a UP may choose to be considered as a Taxable Person by making an irrevocable (save exceptional circumstances) application to the Federal Tax Authority. In the event the application is approved, the UP should notify the FTA within 20 business days from the date a partner leaves or joins the UP.

The CT Law provides a set of conditions for a Foreign Partnership (“FP”) and Family Foundations (“FF”) to be treated as a UP for CT purposes, and the Decision prescribes further conditions as follows:

#### With regards to FPs:

- FPs should submit an annual declaration to the FTA confirming meeting the conditions as set out in the CT Law (form, manner, and timeline to be determined by the FTA); and
- The UAE and the relevant foreign jurisdiction have arrangements in place relating to the sharing of tax information regarding the partners in the FP.

#### With regards to FFs:

In the event there is at least one beneficiary that is a public benefit entity, the FF may be treated as a UP to the extent the income derived by the beneficiaries would not be taxable for CT purposes had it been derived by the beneficiaries in their own right. In the event that is not the case, then an FF may still be treated as a UP to the extent that such income is distributed to the relevant beneficiaries within 6 months from the end of the relevant tax period.

## Key takeaway and next steps

The released Decisions provide clarity on major areas of the UAE CT Law. In this context, Tax Grouping is a significant tool presented by the UAE regime to promote less administrative burdens and achieve tax savings. The released Decision provides further clarity on certain topics such as the ability of foreign juridical person to join a Tax Group, level of consolidation and notifications to be made.

On the other hand, the General Interest Limitation Rule is an important concept designed to prevent excessive interest deductions that can be used to shift profits and erode the tax base. By setting a Safe Harbour amount, the UAE CT regime promotes simplicity and less compliance burdens for taxpayers.

For further assistance, you can reach us by emailing [CT.UAE@pwc.com](mailto:CT.UAE@pwc.com).

# UAE Ministerial Decisions Release

## The PwC UAE team



**Camiel Van der Meij**  
Senior Executive Advisor  
UAE CT Leader



**Driaan Ruppung**  
Partner  
UAE CT



**Charles Collett**  
Partner  
UAE CT



**David van der Berg**  
Director  
UAE CT



**Muzaffar Salaev**  
Director  
UAE CT

Scan the code to  
know more





# Thank you



[www.pwc.com/me](http://www.pwc.com/me)

©2023 PwC. All rights reserved. PwC refers to the PwC network and/or one or more of its member firms, each of which is a separate legal entity. Please see [www.pwc.com/structure](http://www.pwc.com/structure) for further details. This publication has been prepared for general guidance on matters of interest only, and does not constitute professional advice. You should not act upon the information contained in this publication without obtaining specific professional advice. No representation or warranty (express or implied) is given as to the accuracy or completeness of the information contained in this publication, and, to the extent permitted by law, PricewaterhouseCoopers, its members, employees and agents do not accept or assume any liability, responsibility or duty of care for any consequences of you or anyone else acting, or refraining to act, in reliance on the information contained in this publication or for any decision based on it.