

New UAE tax residency criteria

March 2023



In brief

On 9 September 2022, the UAE Cabinet of Ministers issued Decision No. 85 of 2022, 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 UAE tax law or bilateral tax agreement from 1 March 2023.

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, gives further clarification on a number of the definitions relevant to the Tax Resident definition for individuals.

The 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 bilateral tax agreements the UAE has entered into with other territories make reference to the domestic laws of the UAE for determining whether a person is a resident of the UAE for purposes of the respective treaty. This new domestic law provides a clear definition of a Tax Resident in the UAE, which will facilitate the application of these treaties and the issuance of tax residence certificates under such treaties.



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





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; or
- was physically present in the UAE for a period of 183 days or more during a consecutive 12-month period; or
- 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 any 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 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 Decision does not negate the fact that the UAE Corporate Tax Law will treat foreign natural persons conducting business in the UAE as a “Resident Person” (as defined in the Corporate Tax Law) when it comes to determining whether the person's business income is taxable in the UAE. This Corporate Tax Law concept is unrelated to whether the natural person themselves is considered Tax Resident in the UAE for other tax purposes.



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.

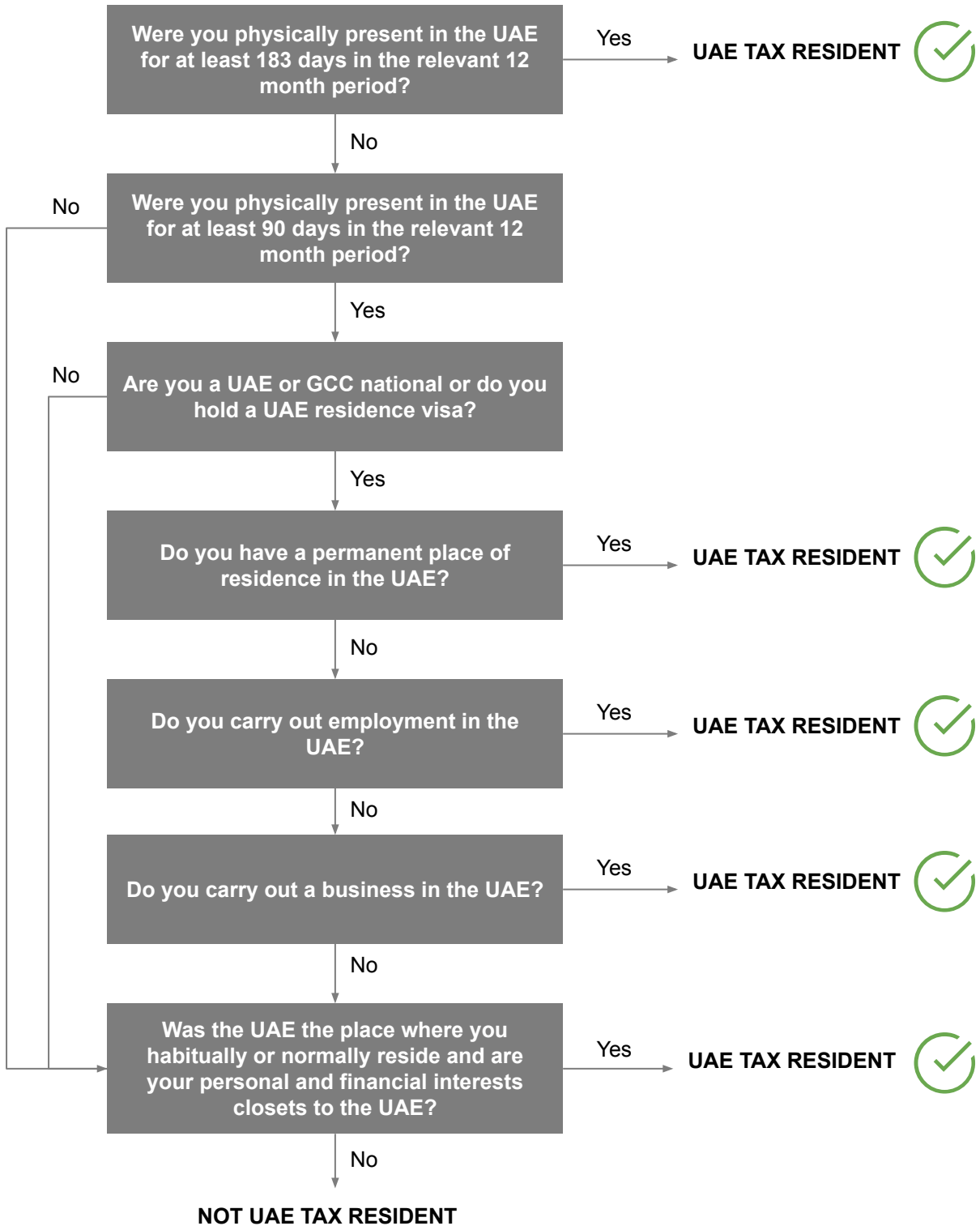
The UAE continues to be free of personal income tax on individuals' employment or other personal income.





UAE tax residency criteria for individuals

UAE personal tax residency flowchart





UAE tax residency criteria for individuals

Meaning of key terms used in the definition of UAE tax residency for individuals

What counts as a day of presence in the UAE?

- In determining whether the individual has met the 183 or 90 day thresholds for a continuous 12 month period, all days or parts of a day on which the individual was physically present in the UAE will be counted. This straightforward rule will make it simple for individuals to track their UAE days. Days spent in the UAE do not need to be consecutive.

Days spent in the UAE due to exceptional circumstances

- Individuals may choose to disregard from the day count, any days on which their presence in the UAE was due to exceptional circumstances.
- An exceptional circumstance is an event or situation outside of the individual's control, which could not have reasonably been anticipated or prevented and which stops the individual from leaving the UAE when they originally planned.

Permanent Place of Residence

- A Permanent Place of Residence is a furnished house, apartment, room or other form of dwelling place.
- The residence must be continuously available to the individual and occupied by them on a regular basis with some degree of permanency and stability.
- The individual does not need to own the residence - it can be rented or otherwise occupied by them.

When is an individual carrying on an employment in the UAE?

- An individual is carrying out an employment if they are party to an employment contract with an employer, which is incorporated or otherwise formed or recognised in the UAE.
- Certain other employment-like arrangements will also qualify, provided all or substantially all of the individual's income for their labour carried out in the UAE is derived from one party.
- The employment can be limited or unlimited and the work may be carried out on a full time or part time basis. Voluntary roles will not be classed as employment.

When is an individual carrying on a business in the UAE?

- An individual will be considered to be conducting a business if they carry out any activity regularly, on an ongoing and independent basis, e.g. industrial, commercial, agricultural, professional, vocational, service or excavation activities or activity related to the use of tangible or intangible properties.

Usual or Primary Place of Residence and Centre of Financial and Personal Interests

- Individuals may also be tax resident in the UAE if this is the place where they normally live as part of their settled routine and where they spend most of their time as compared to any other jurisdiction.
- The UAE must also be the place where their centre of financial and personal interests is the closest or of the greatest significance to them. This takes into account their occupation or place of business, their family and social relations, cultural or other activities and any other relevant facts.



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 Tax Resident of the UAE 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 “parent” or “head office” 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 Tax Resident of the UAE.

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 Corporate Tax Law.
- The Cabinet Decision refers to the “applicable Tax Law” (the 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 Cabinet of Ministers Decision No. 85 for 2022.

The takeaway

New 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.

The 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.

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Let's talk

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