UAE Corporate Tax: Ministerial Decision #261 of 2024 on “Unincorporated Partnerships and Family Foundations”

Key Takeaways

December 2024

MD#261 on “Unincorporated Partnerships and Family Foundations”

The new Ministerial Decision #261 of 2024 (“**MD#261**”) introduces additional UAE Corporate Tax (“**CT**”) related rules on Unincorporated Partnerships and Family Foundations. It provides much needed clarifications and revisions to earlier legislation. However, certain challenges potentially still remain, in particular in respect of domestic partnerships, so taxpayers will need to review the impact of this Decision carefully.

Domestic partnerships

Revised tax transparency conditions

- MD#261 states that an **Unincorporated Partnership** shall not be considered a Taxable Person in its own right **unless it is a juridical person**. However, it remains silent on whether **partnerships with separate legal personality** are considered juridical persons and hence are subject to tax in their own right, which is the interpretation of the FTA according to the earlier guide on partnerships.
- A considerable number of partnerships already registered in the UAE (before the introduction of the CT law) and operating as investment funds have elected to have separate legal personalities. The FTA interpretation would result in these funds **automatically being considered as subject to tax.**
- In many other comparable jurisdictions globally, funds are generally capable of being structured as flow-through tax neutral vehicles. Considering a legal personality to be the determining factor for whether a partnership is subject to tax or transparent **may therefore not be fully aligned with international best practice**.
- Without further clarification on this interpretation, it remains to be seen whether this could negatively impact the **attractiveness of the UAE as a global hub for alternative investment and asset/wealth managers** to setup partnership structures/collective investment vehicles in the UAE.

Irrevocable election

- The election to treat a partnership as a taxable person in its own right is **irrevocable**, except under exceptional circumstances and with the FTA approval.

Update requirements

- The details of partners who join or leave the Unincorporated Partnership during the relevant Tax Period, must be provided when filing the **annual tax return**. This eliminates the previous burden on partnerships required to notify any changes in the partnership within 20 working days.

Foreign partnerships

Updated treatment of foreign partnerships

- MD#261 has introduced much-needed amendments to **align the UAE CT treatment of foreign partnerships with their treatment in their foreign jurisdictions**. These updates are welcome, and help to align this aspect of the UAE regime with international best practices.
- Unlike UAE partnerships, when considering the treatment of foreign partnerships as Unincorporated Partnerships, it seems to be **irrelevant whether they have separate legal personality**.
- For a foreign partnership to be an Unincorporated Partnership, it is clarified that (for the purposes of Article 16(7)(a) of the UAE CT Law) it shall not be subject to **any tax of a similar character to CT** under the laws of the foreign jurisdiction.
- Further, for a foreign partnership to be an Unincorporated Partnership, partners are now considered to meet the **"subject to tax"** requirement (under Article 16(7)(b) of the UAE CT Law) if a foreign partnership **is not subject to tax in its own right** in its foreign jurisdiction. This clarification resolves the previous circular reference issue (e.g. UAE investors were unable to determine their treatment of a foreign partnership without knowing the treatment applied by other partners in the foreign partnership).
- MD#261 also eliminates the need for an **exchange of information** arrangement between the UAE and the foreign partnership’s jurisdiction. However, an **annual declaration by a foreign partnership** to FTA on compliance with Article 16(7)(a-b) is required.

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Family Foundations

Family Foundations with one or more beneficiaries which are public benefit entities

- Ministerial Decision No. 127 of 2023, which previously set out additional conditions for Family Foundations where one or more of the beneficiaries of a Family Foundation are public benefit entities, has been repealed.
- The additional conditions are now specified in the new Ministerial Decision. To be treated as an **Unincorporated Partnership**, where one or more of the beneficiaries of a Family Foundation are public benefit entities, the Family Foundation must meet any of the following additional conditions:

    a. **The beneficiaries are not deriving income that would be considered as Taxable Income** in the event they had derived it in their own right;

    b. The income that would be considered as Taxable Income is **distributed to the relevant beneficiaries within six months** from the end of the relevant Tax Period.

Tax treatment of wholly owned juridical persons held by Family Foundations

- Where an entity meets the conditions set out in Article 17 of the UAE CT Law to qualify as a “Family Foundation” it is eligible to apply to be treated as a **tax transparent Unincorporated Partnership**.
- The latest Decision extends this option to elect for tax transparent status to **any underlying entity with legal personality (juridical person)** which meets the conditions set out in Article 17(1) of the CT Law provided it is wholly owned and controlled by the Family Foundation (either directly or indirectly through an uninterrupted chain of other entities which are treated as Unincorporated Partnerships).
- Whereas a Family Foundation previously **had to hold the assets directly** in order for any income they generate to benefit from the structure’s tax transparent status, this amendment **allows Family Foundations to hold assets via a legal entity** such as a company without compromising the overall tax efficiency of the structure.

Next steps

- Businesses with UAE and foreign partnerships and family foundations need to carefully consider the impact and relevance of this MD#261.
- The existing and future potential family foundation, holding, partnership structures may need to be revisited for UAE tax efficiency and compliance matters.
- For further assistance, you can reach us at CT.UAE@pwc.com or your dedicated PwC tax contact.

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