



M2K UAE Knowledge Series

India - UAE DTAA Key Provisions & Way Forward

ALERT #14

Preface

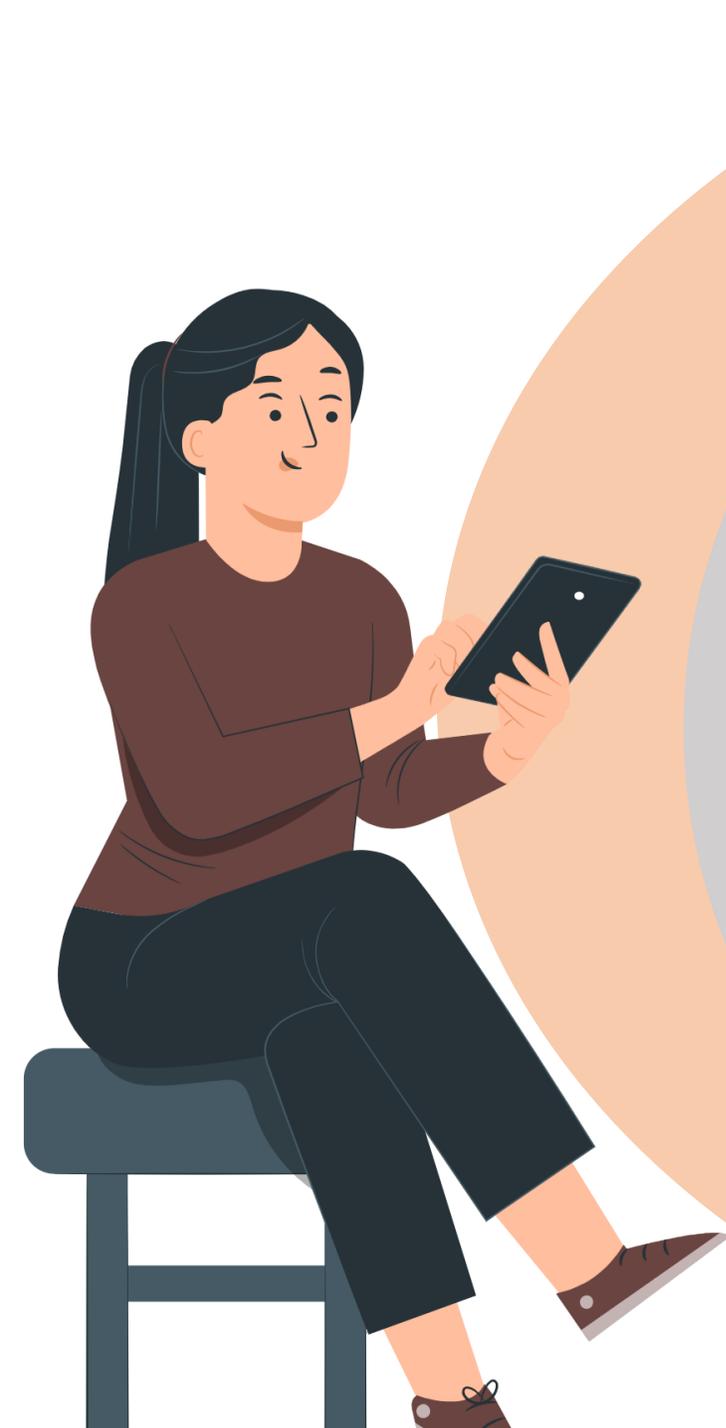
The provisions of the Corporate Tax¹ Law and Tax Procedures Law² have been comprehensively covered in the previous alerts of this series. Further, the details of key cabinet decisions were briefly summarized as part of these alerts.

When it comes to the taxability of cross-border transactions, the analysis is incomplete, without looking into the tax treaties (also called Double Taxation Avoidance Agreements ('DTAA')) between countries.

In this alert, we are set to look into certain key aspects of India – UAE DTAA with respect to the residential status and passive income, along with their interplay with the domestic tax laws. Further, we are also sharing some of our thoughts on way forward for UAE businesses to get geared up for implementation of Corporate Tax.

¹ Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations & the Businesses

² Federal Decree-Law No. 28 of 2022 on Tax Procedures



India - UAE DTAA Key Provisions

Background



Generally, countries levy **income-tax** exercising their **sovereign right** on:

- Income of its subjects based on various criteria like **citizenship, residential status, place of management** etc. and
- Income earned by natural and juridical persons, where the **source** of such income is **within the country**.



In case of cross-border transactions, the above may lead to a situation where the **same income may be taxed in two jurisdictions**, say, the **jurisdiction where the source of the income lies** and the **jurisdiction where the income of the recipient is a resident or a citizen**



In order to **allow taxing rights** and to **grant relief from the said double taxation**, countries have entered into **treaties** (or **DTAA**) with each other, providing for **allocation of the taxation** between the two and other provisions, as applicable in various cases.

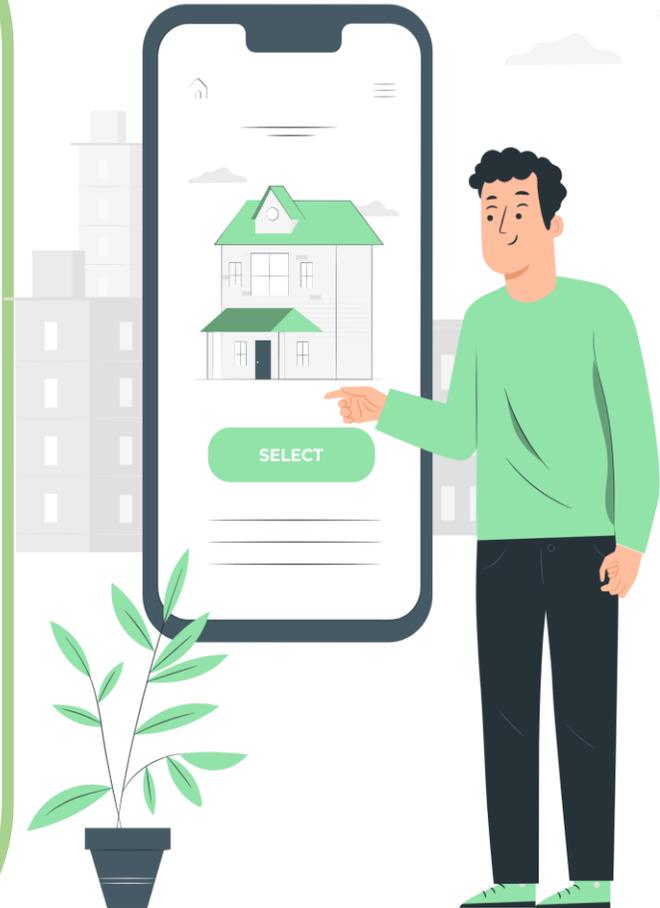


With this background, we shall delve into the interesting and frequently used aspects of **India – UAE DTAA**, which should be applicable for cross border transactions between residents of India and UAE.



Determination of tax residency of Individuals in India

- Indian Income-tax Act, 1961 ('IT Act') provides criteria for determining tax residency. India – UAE DTAA also draws reference to the laws of India in connection with the determination of residential status. Thus, there are no inconsistencies between the two.
- Indian IT Act includes the concepts of deemed residence, wherein, a citizen of India, having a total income (other than foreign source income) > INR 15 Lakhs is deemed to be a resident of India, if he is not liable to tax in any other country, by reason of his domicile or residence or similar criteria.
- Whether the deemed residence in India would be triggered, in case of an Indian citizen residing in UAE and having total income other than foreign sources of INR 15 Lakhs, in the following cases?
 - (a) Where he conducts business or business activity (income from which is subject to Corporate Tax in UAE).
 - (b) Where he does not conduct any business or business activity in UAE and hence does not pay tax in UAE.
- In a situation where he is determined as a resident in both countries, the tie-breaker provisions of the India – UAE DTAA can be applied to resolve such situations and other provisions of DTAA may be applied accordingly.



Determination of tax residency of Individuals in the UAE (1/2)

According to the Corporate Tax Law, the following individuals are considered as residents of UAE (i.e., upon satisfaction of any one of the below criteria) :

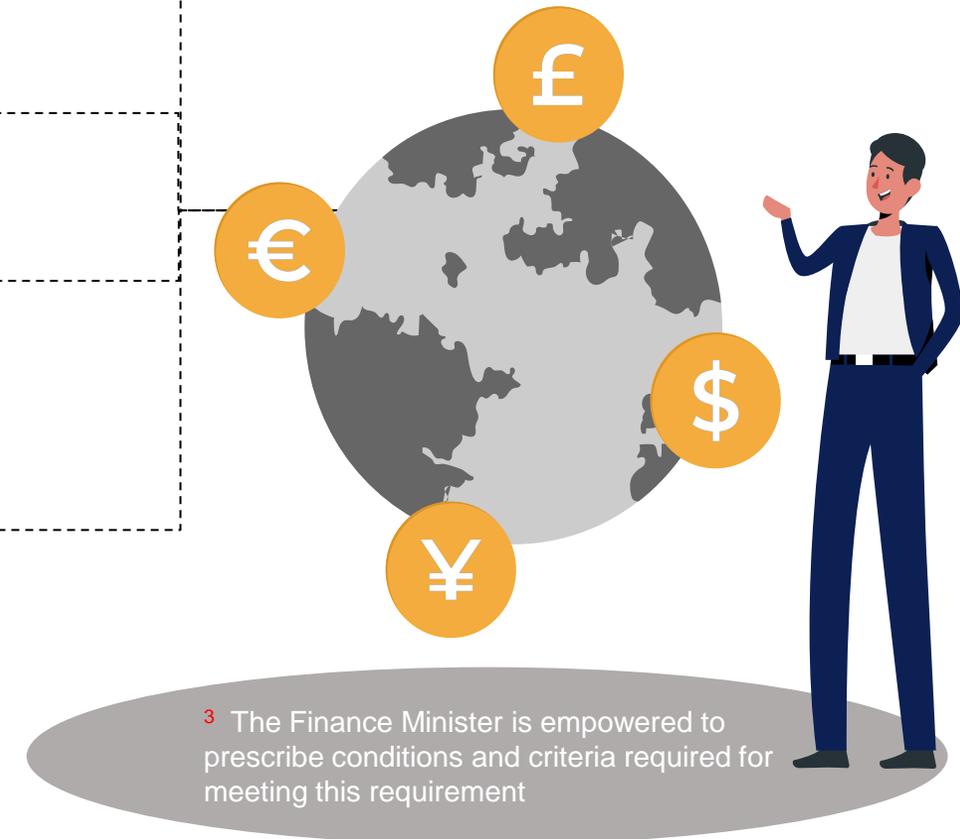
An individual who conducts a business or business activity in the UAE

An individual whose usual or primary place of residence and the center of his financial **and** personal interests are in the UAE³

An individual who has been physically present in the UAE for a period of 183 days or more within a **relevant 12 month period**

UAE National holding a valid residence permit in the UAE or the nationality of Gulf Cooperation Council (GCC) member state, physically present in the UAE for 90 days or more **and**:

- Having a Permanent Establishment ('PE') in UAE or
- Carries on employment or business in the UAE.



Determination of tax residency of Individuals in the UAE (2/2)



India – UAE DTAA provides that an individual physically present in the UAE for a total of at least 183 days during the relevant calendar year.

It has been provided that the international agreements in force would prevail over the Corporate Tax Law, in case of any inconsistencies between both⁴. Hence, the conditions for residency in UAE as India – UAE would supersede the provisions of the Corporate Tax Law.

⁴ Article 66 of the Federal Decree-Law No. 47 of 2022 and the Cabinet Decision No. 85 of 2022.

- The Corporate Tax Law has provided that the following juridical persons would be considered as residents of UAE.
 - A juridical person incorporated or established or recognized under the UAE law, including the free zone persons.
 - A foreign juridical person that is **effectively managed and controlled in the UAE.**
- India – UAE DTAA provides that the following juridical persons to be a resident of UAE.
 - A company that is incorporated in the UAE
 - A company that is **managed and controlled wholly in UAE.**
- Though the term '**effectively** managed and controlled' is not defined in the Corporate Tax Law, the Explanatory Guide released by the Ministry of Finance provides guidance on the same. The term 'managed and controlled **wholly** in UAE' appears to suggest that 100% of the management and control of a foreign company should be in UAE in order to construe the same to be a resident of UAE.



Tax implications of certain cross-border passive income (1/3)

A) Income received from UAE source in the hands of an Indian resident

Nature of Income	Tax implications in the UAE	Tax implications in India	Net effective tax expenditure
Dividend	Dividend from company resident of UAE is exempt under CT Law ⁵	Taxed @ applicable rates for different class of persons.	Based on applicable tax rate in India.
Interest	Interest received from a borrower in UAE is included within the ambit of State Sourced Income under CT Law ⁶ . Withholding tax rate is currently set at 0%.		Based on applicable tax rate in India. Where withholding tax rate is prescribed in the UAE, tax credit should be allowed in India, Subject to conditions and limitation on amount of credit allowed.
Royalty	Income from intangible property in the UAE is included within the ambit of State Sourced Income under the CT Law ⁷ . Withholding tax rate is currently set at 0%		
Fee for technical services (FTS)	Income from provision of services rendered from the UAE are included within the ambit of State Sourced Income under the CT Law ⁸ . Withholding tax is currently set @ 0%		

⁵ India – UAE DTAA provides that dividend may also be taxed in the UAE at a rate not exceeding 10%.

⁶ India – UAE DTAA provides that interest may be taxed in the UAE @ tax rates not exceeding 5% or 12.5%, as applicable in different cases.

⁷ India – UAE DTAA provides that royalties may also be taxed in the UAE at a rate not exceeding 10%.

⁸ There is no separate Article dealing with “fee for technical services” or “services” in India – UAE DTAA. The possible interpretations in this regard are discussed in **Slide 10**.

Tax implications of certain cross-border passive income (2/3)

B) Income received from UAE source in the hands of a UAE resident

Nature of Income	Tax implications in India ⁹	Tax implications in the UAE #	Net effective tax expenditure	
A) Dividend	Dividend would be taxed in India @ 10% under India – UAE DTAA ¹⁰	A. Dividend income is exempt in UAE, if participation conditions are met. B. Taxable @ 9%, if participation conditions are not met.	A. India – 10% UAE – 0% Net – 10%	B. India – 10% UAE – 0%* Net – 10%
B) Interest	Interest would be taxed in India A. @ 5% (in case of loan granted by bank or financial institution) and B. @ 12.5% in other cases.	Taxable @ 9%	A. India – 5% UAE – 4%* Net – 9%	B. India – 12.5% UAE – 0%* Net – 12.5%

* Tax rate in UAE indicated is net of credit for tax paid in India (i.e., Foreign Tax Credit ('FTC')), based on the assumption that no expenditure is incurred in earning the income. In case there are any expenditures, the same may be deductible, subject to the provisions of the Corporate Tax Law, and the net income would be taxed in UAE. The credit for tax paid in India can neither be in excess of the tax due in UAE on this income nor be carried forward.

The tax implications are given, assuming that the recipient is not an exempt person or a qualifying free zone person in UAE

⁹ Application of the provisions of DTAA are subject to conditions (i.e., obtaining Tax Residency Certificate from UAE Tax Authorities, Limitation of Benefits (main purpose test) ¹⁰ The same is more beneficial than tax rate of 20% plus surcharge and cess prescribed in the Indian IT Act.

Tax implications of certain cross-border passive income (3/3)

Nature of Income	Tax implications in India	Tax implications in UAE [#]	Net effective tax expenditure
C) Royalty	Royalty would be taxed in India @ 10% under India – UAE DTAA ¹¹	Taxable @ 9%	India – 10% UAE – 0%* Net – 10%
D) Fee for technical services (FTS)	FTS would not be taxable in India, where the UAE resident does not have a Permanent Establishment in India ¹²	Taxable @ 9%	India – 0% UAE – 9% Net – 9%

¹¹ The same is more beneficial than tax rate of 20% plus surcharge and cess prescribed in the Indian IT Act.

¹² There is no separate article dealing with “fee for technical services” or “services” in India – UAE DTAA. Courts / Appellate Authorities in India have held that the provisions of Article 7 on “Business Profits” should be applied. The same is more beneficial than tax rate of 20% + surcharge & cess prescribed in the Indian IT Act. * Refer the previous slide.



Corporate Tax Implementation - Way Forward (1/5)

With the introduction of Corporate Tax in UAE, it is imperative for the businesses to be geared up for implementation of the same! Key aspects to be evaluated are listed below for ready reference.

Subject	Key Aspects
Books of accounts, Financial Statements & Audit	<ul style="list-style-type: none">• Exercising the choice for financial year.• Evaluating the applicable framework for financial statements [IFRS/ IFRS (SME)], availability of option of cash basis of accounting etc.• Evaluating the applicability of mandatory audit.• Evaluating and making necessary changes to the chart of accounts for recording adjustments in computation of taxable income, non-deductible expenditure etc. in separate / appropriate ledgers for easy identification.• Preparation of opening balance sheet, duly considering the transitional rules.



Corporate Tax Implementation - Way Forward (2/5)



Subject	Key Aspects
Transactions with related parties (RP) & payments to connected persons (CP)	<ul style="list-style-type: none">• Identification of related parties and connected persons.• Pricing/ remuneration of RP transactions and CP payments:<ul style="list-style-type: none">○ Ascertaining the current pricing methodology in respect of transactions with related parties○ Determination of arm's length price for the same and○ Comparison of the above and taking suitable actions○ Ensuring necessary documentation• Evaluation of applicability of Transfer Pricing Documentation (Master file and Local file).

Corporate Tax Implementation - Way Forward (3/5)

Subject	Key Aspects
 <p>Free Zone Businesses</p>	<ul style="list-style-type: none">• Evaluation of compliance with conditions to be a “qualifying free zone person”.• Identification of excluded activities and other activities with respect to transactions with free zone persons.• Identification of qualifying activities and non-qualifying activities with respect to transactions with non-free zone persons.• Evaluation of existence of PE in mainland, transactions with such mainland PE, arm’s length pricing for the same.• Understanding the Corporate Tax implications to the current business structure and evaluation of any restructuring required.• Maintenance of books of account – processes for identification of expenditure in relation to free zone operations, others, manner of allocation of common expenses etc.• Monitoring of revenue threshold for non-qualifying income on a regular basis.• Evaluation of cost – benefit in respect of free-zone operations and decide whether free zone person should choose to be subject to corporate tax.

Corporate Tax Implementation - Way Forward (4/5)

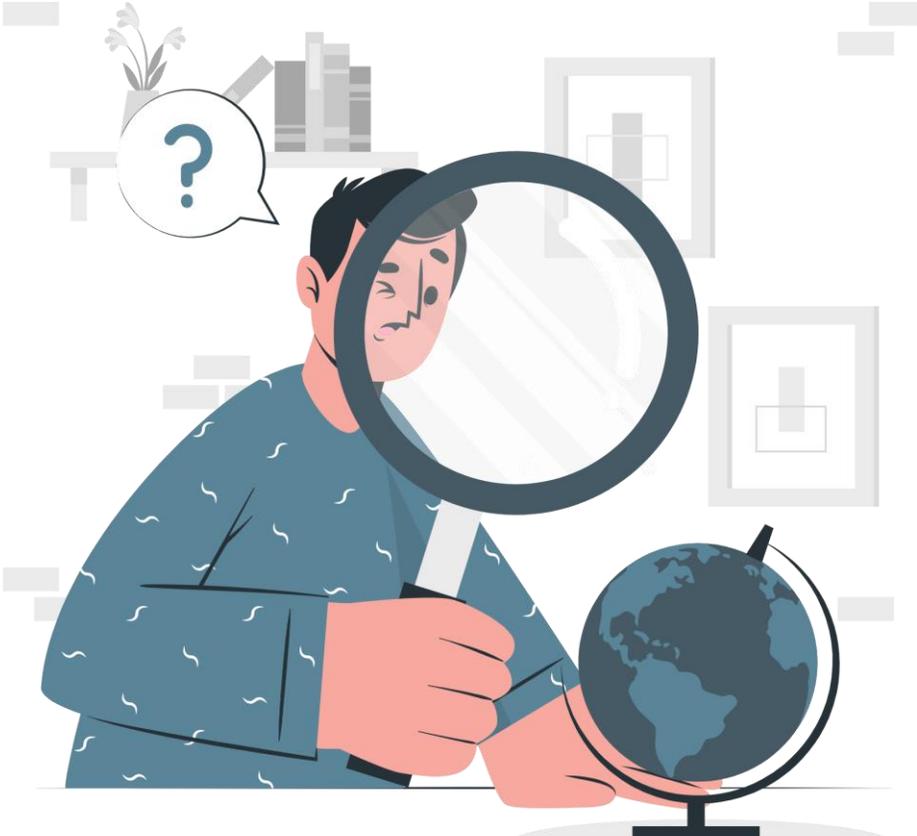
Subject	Key aspects
Strategic Matters	<ul style="list-style-type: none">• Review of capital structure, duly considering the limitations on deductibility of interest expenditure.• Evaluating the applicability of anti-abuse rules in all important transactions/ decisions, ensuring necessary safeguards and documentation.• Applicability of Tax loss relief, relief for transfer of assets within the group, business restructuring relief etc., during change in shareholding / transactions/ restructuring etc.
Group of Companies	<ul style="list-style-type: none">• Review of existing group structure and shareholding for identification of companies that would qualify for constitution of tax group.• Cost – benefit analysis in respect of forming tax group vis-à-vis opting for taxation on separate legal entity basis.• Decision for constitution of central tax team for the group of companies.



Corporate Tax Implementation - Way Forward (5/5)

Subject	Key aspects
Unincorporated Partnerships and Family Foundation	<ul style="list-style-type: none">• Evaluation of cost – benefit in respect of the entity and its partners/ beneficiaries and decide whether option to be treated as a separate taxable person should be exercised.
Tax Function	<ul style="list-style-type: none">• Identification of Corporate Tax Compliances applicable to the business, tracking the compliances on timely basis.• Keeping abreast with the ongoing developments/ new pronouncement of decisions etc., evaluating the applicability and consequences.• Ongoing involvement in all material transactions/ arrangements and evaluation of the implications etc.• Ensuring maintenance of records for required period.





Do let us know if you consider any other matters as “key aspect” for your business!



For any queries, reach us at:
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Stay tuned for more updates on UAE!

Please find below the list of completed & upcoming alerts from the series. In case you have missed the previous alerts, click on the hyperlink for the completed alerts to refer the same.

- 1
Levy Of Corporate Tax
- 2
Taxation of Non-residents - State Sourced Income
- 3
Permanent Establishment
- 4
Exempt Persons & Exempt Income
- 5
Deductions & Determination of Taxable Income
- 6
Corporate Tax calculations, payments, tax credits & refund
- 7 & 8
Reliefs – Part I & Reliefs – Part II
- 9
Tax Group
- 10
Transfer Pricing
- 11
General anti-abuse rules & Corporate Tax Compliances
- 12 & 13
Tax Procedures Part I & Part II
- 14
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