



M2K UAE Knowledge Series

Reliefs – Part II

ALERT #8

Preface

Further to the discussion on the concepts of 'tax loss relief' and 'Group relief' discussed in the last alert, we continue with our discussion on reliefs under UAE Corporate Tax law and proceed to elucidate the provisions on '**Business Restructuring relief**'.

We would also delve into some of the recent updates in the legislation.



Business Restructuring Relief (1/5)

There would not be any gains or loss to be considered in the determination of taxable income in case of business restructuring, subject to conditions. Further, the unutilized tax losses of the transferor would be available to the transferee, subject to conditions to be prescribed. *Where an independent part of the business is transferred (Refer Situation - I below), unutilized tax losses that can be reasonably attributed to such independent part of business would only be available to the transferee. Circumstances where business restructuring relief would be applicable are as follows:*



It is a welcome step to allow the unutilized tax losses of the business or independent part thereof in the hands of the transferor to the transferee. This sort of relief facilitates mergers, demerger and other corporate reorganization related transactions.

However, in case of transfer of independent part of businesses, there could be no. of practical challenges in attribution of unutilized tax losses, in the absence of separate books of accounts and computation of taxable income/ losses. The reasonableness of such attribution may become a matter of debate or litigation, unless the manner of attribution or an objective methodology for the same is prescribed.

* One or more transferors may be involved. As entire business is transferred, the transferors should cease to exist in **Situation - II.** # - Refer Next Slide

Business Restructuring Relief (2/5)



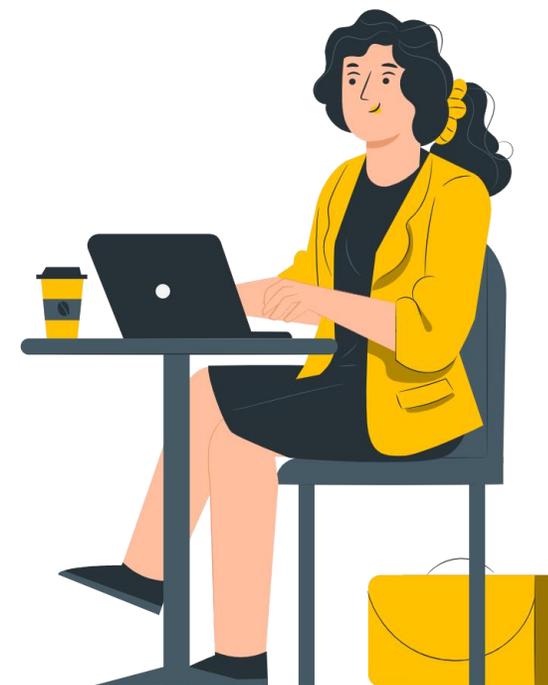
The relief has also been extended to certain cases, as follows :

- where the shares or ownership interest is received by a person other than the transferor,
- where the shares or ownership interest is issued or granted by a person other than the transferee or
- no shares or ownership interest are received by the partner of an unincorporated partnership firm which is treated as a separate taxable person.

Business Restructuring Relief (3/5)

The following conditions must be satisfied in order to be eligible for business restructuring relief:

- The transfer is undertaken in accordance with and satisfies the conditions imposed by applicable legislations of UAE.
- The transferor(s) must be a taxable person(s) and UAE resident or a non-resident having a PE in UAE. The transferee must also be taxable person or should become a taxable person as a result of transfer and be a UAE resident or a non-resident having a PE in UAE as well.
- Both/ all of them should neither be exempt persons nor qualifying free zone persons
- Both/ all of them should follow the same financial year and prepare the financial statements using the same accounting standards.
- The transfer referred to above must be undertaken for valid commercial or other non-fiscal reasons which reflect the economic reality.
- The value of assets and liabilities (in the hands of the transferee) should be at net book value at the time of transfer.
- The value of shares or ownership interests received should not exceed:
 - a) **Under Situation – I above:** net book value of assets and liabilities reduced by value of consideration received in any other form.
 - b) **Under Situation – II above:** book value of the shares or ownership interest surrendered reduced by the value of consideration received in any other form.



Business Restructuring Relief (4/5)

‘Transaction value’ in respect of transfer of business or independent part thereof: It is to be noted that the conditions imposed for claim of ‘business restructuring relief’ include that: the consideration for transfer of business or independent part thereof should be equal to the book value of net assets/ ownership interest surrendered, as the case may be.

Hence, ‘business restructuring relief’ would not be available in cases, where the consideration for transfer of business or independent part thereof is determined based on internationally accepted valuation methodologies, except for book value method.

Form of consideration for transfer of entire business or independent part thereof:

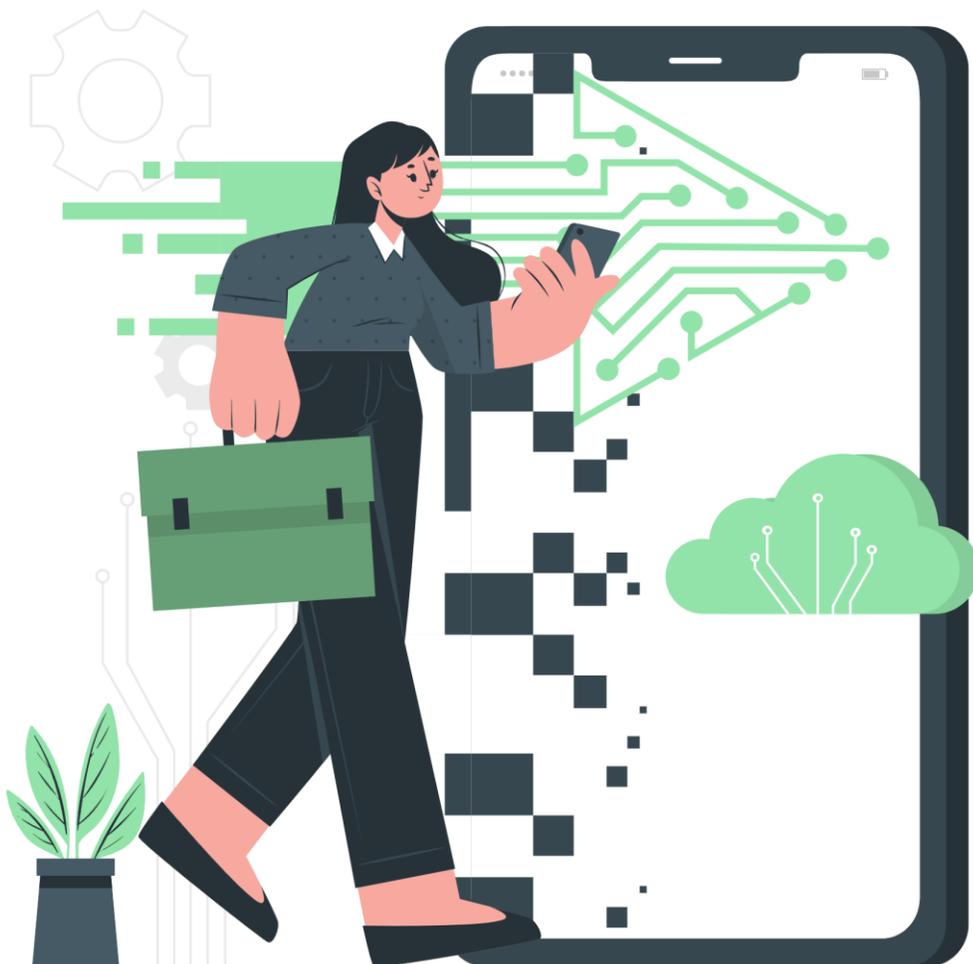
It is provided that the entire business or independent part thereof should be transferred **in exchange of shares or ownership interest**, when explaining the circumstances in which the business restructuring relief would be available.

However, the provisions imposing a cap on the value of shares or ownership interest appears to suggest that part of **consideration** may be **received in any other form** as well.

Therefore, careful consideration has to be given to manner of consideration and ensure that overall consideration does not exceeds overall book value.



Business Restructuring Relief (5/5)



Restriction on further transfer and consequences of violation:

There is a restriction to carry out any of the below transactions within a period of two years from the date of transfer of business or independent part thereof in respect of which 'business restructuring relief' was claimed:

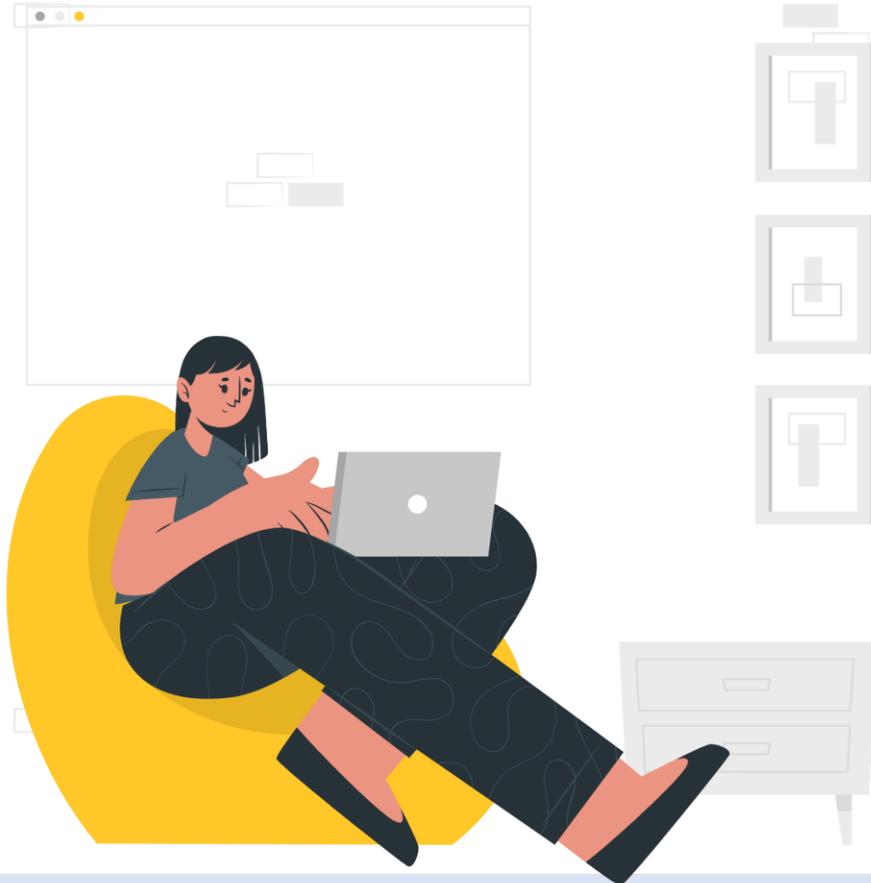
- a) Sale or transfer or disposal in any other mode of the shares or ownership interest in the transferor or transferee to a person other than a member of the qualifying group¹ to which the taxable person belongs to.
- b) Transfer or disposal of the business or independent part thereof

Where the above restriction is not adhered to, the transfer of business or independent part thereof would be treated as having taken place at the market value as at the date of the transfer.

¹ Refer **Slide #8** of our **Alert #7** for the conditions when a taxable person is treated as a member of a qualifying group.

Recent Updates (1/4)

Several Cabinet/ Federal Tax Authority decisions have been published recently, the details of which are summarized below.



Qualifying public benefit entities:

- Qualifying public benefit entities are one of the ‘exempt persons’ under the UAE Corporate Law².
- List of entities which are to be considered as qualifying public benefit entities are specified in a cabinet decision³. Further the procedures to be followed for any amendment to the same have been prescribed.
- It has been provided that the qualifying public benefit entity should provide all relevant documents, data and information for verification of satisfaction of conditions laid down under UAE Corporate Law.

Conditions for change in tax period:

As discussed in our **Alert #1**, taxable persons may choose any 12 month period for which financial statements are prepared as ‘Tax Period’⁴.

² Refer Slide #6 of our Alert #4 for the brief explanation of the provisions of UAE Corporate Law in connection with the same ³ Cabinet Decision No. 37 of 2023 ⁴ Article 57 of the UAE Corporate Tax Law

Recent Updates (2/4)

Further, it has been provided that the taxable person can make an application to the tax authorities for change in tax period, subject to any conditions as may be imposed⁵. Such conditions have been prescribed⁶ :

- A. The change in tax period may be on account of any of the following reasons:
- The taxable person's liquidation
 - Aligning the financial year with another resident person for the purpose of forming of tax group or joining the existing tax group
 - Aligning the financial year with domestic or foreign head office, subsidiary, parent, or ultimate parent company to benefit from a tax relief available under UAE Corporate Tax Law or any foreign law
 - Other valid commercial, economic, or legal reasons
- B. The tax return for the tax period that he is applying to change is yet to be filed.
- C. The application for change may be for-
- Extension of current tax period to a maximum of 18 months, or
 - Shorten the next tax period to be between 6 and 12 months⁷
- D. The application should be made within 6 months from the end of the original tax period.



⁵ Article 58 of the UAE Corporate Tax Law ⁶ Federal Tax Authority Decision No. 5 of 2023 ⁷ Prior or current tax period shall not be shortened.

Recent Updates (3/4)

Tax Deregistration timelines:

- Where there has been a cessation of business or business activities of a taxable person (pursuant to dissolution, liquidation, or otherwise), such taxable person should make an application for de-registration.
- Application for tax deregistration should be made within 3 months from the date of cessation of business or business activity by a natural person and within 3 months from the entity's date of cessation of existence/ cessation of business/ dissolution, liquidation, or otherwise⁸.

Exemption from Corporate Tax: The following timelines have been prescribed for making an application for tax registration in case of the following exempt persons:

| S. No. | Exempt persons | Timelines for application for tax registration |
|--------|--|--|
| 1 | A Qualifying Public Benefit Entity | 1 st October 2023 |
| 2 | A Qualifying Investment Fund, Pension on Social Security Fund subject to regulatory oversight UAE Juridical Person wholly owned and controlled by specified persons ⁹ , Any other person as per cabinet decision | 1 st June 2024 |

⁸ Federal Tax Authority Decision No. 6 of 2023 ⁹ Government entity or Government controlled entity or qualifying investment fund and Pension or Social Security fund.

Recent Updates (4/4)

Upon approval of application of tax registration, Exempt persons listed out under S. No. 2 above may be entitled to submit an application for exemption from Corporate Tax¹⁰, where relevant conditions are met, within 60 business days from the end of the Tax Period in which the Person met the conditions for exemption¹¹.

The authority may request the above exempt persons to file an annual declaration confirming the fulfilment of conditions for exemption. Once the application for exemption is approved, the exemption would be effective from the start of the Tax Period specified in the application. However, the tax authorities may determine an alternative date in case of the following scenario or other similar scenario.

| Scenario | Alternative effective date determined by tax authorities |
|--|--|
| Incorrect tax period specified in the registration form | Correct date |
| The applicant is acquired by the specified persons during a tax period and the conditions for exemption are not met at that time | As determined by tax authorities to ensure that the effective date of exemption is after the fulfilment of all remaining tax obligations |
| Incorrect tax period specified in the registration form and conditions met within the later tax period, as evidenced and produced to tax authorities | Date of fulfilment of conditions |



Further, other instances may be specified, in case of any other exempt persons as per cabinet decision.

¹⁰ As required under Article 4 of the UAE Corporate Tax Law. Refer **Slide #7** of our **Alert #4** ¹¹ Refer *Slide #7 of our Alert #4 for conditions for exemption*

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.

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