



M2K UAE Knowledge Series

Tax Group

ALERT #9

Preface

Corporate Tax Law provides an option for charge of Corporate Tax on a group basis (i.e. parent and subsidiaries together), subject to certain conditions. This alert aims to discuss the provisions of the Corporate Tax Law in relation to tax group.



Tax Group (1/6)

A Parent Company with one or more subsidiaries, may form a tax group, subject to the below conditions (all the conditions to be met). Such tax group will be treated as a single taxable person, represented by the Parent Company.



- The parent company and subsidiaries should be UAE resident juridical persons
- The parent company should, directly or indirectly, hold at least 95% of the share capital, voting rights and should be entitled to at least 95% of the subsidiary's profits and net assets.
- The parent company/ subsidiary should not be an exempt person¹ or a qualifying free zone person.
- The parent company and the subsidiaries should follow the same financial year and prepare the financial statements using the same accounting standards.

¹ Relaxation from this condition has been provided to a case, where Parent Company is a Government Entity.

Tax Group (2/6)

The following aspects have been clarified in connection with foreign entities:

- Having an ultimate foreign parent company does not preclude UAE Subsidiaries from forming a tax group. However, UAE Subsidiaries should be held by an intermediary UAE Parent Company, which would be considered as “parent” for the purpose of Corporate Tax Provisions.
- Foreign entities cannot be included in tax group, unless such entity is managed and controlled in the UAE, in which case the same would be considered as a resident of UAE.

Parent Company and each of the subsidiaries intending to be a member of tax group are required to make an application to the tax authorities. A subsidiary can join the existing tax group in the same manner. The relevant date of constituting a tax group/ a subsidiary joining the existing tax group shall be from the beginning of the tax period specified in the application or from the beginning of the tax period as determined by the Tax Authority. In case of a tax group, the responsibility for ensuring various Corporate Tax compliances would vest in the following manner :

Parent Company	Respective Companies (Parents/Subsidiaries)	Parent Companies and Subsidiaries (jointly and severally)
Payment of Corporate Tax Tax registration & deregistration Filing of Tax returns	Withholding Tax	Corporate Tax payable by the Tax Group ²

² The joint and several liability may be limited to one or more members of the tax group following approval by the Authority

Tax Group (3/6)

Circumstances under which a subsidiary shall leave an existing tax group

Following approval by the tax authority in respect of the application to such effect made by the parent and the relevant subsidiary³

Relevant subsidiary no longer meets the conditions to be a member of the tax group⁴

Circumstances under which a Tax Group shall cease to exist

Following approval by the tax authority in respect of the application to such effect made by the parent company

Parent company no longer meets the conditions to constitute a tax group (subject to exception as follows)

Circumstances under which the Parent Company shall be replaced without the discontinuation of the Tax Group⁵

The new parent company meets the conditions to constitute a tax group

Former parent company ceases to exist, and the new parent company (or a subsidiary) is its universal legal successor

³ **Date of leaving the tax group:** The date of beginning of the Tax Period specified in the application or the date of beginning of any other tax period as determined by the tax authority ⁴ **Date of leaving the tax group:** The date of beginning of the Tax Period in which the conditions to be a member of tax group is no longer met or the date of beginning of any other tax period as determined by the tax authority ⁵ Application to such effect to be made by the Parent Company

Tax Group (4/6)

The tax authority has been empowered to exercise discretion for dissolution of a tax group or change the parent company of a tax group, based on information available and notify the parent company of such action taken.

Computation of taxable income of a tax group: The parent company is required to prepare a consolidated financial statements of the tax group in accordance with the accounting standards applied in the state and the taxable income of the tax group should be determined based on the same.

In common parlance, consolidated financial statements are prepared duly consolidating the results, assets and liabilities of the parent company and all its subsidiaries (over which the parent company has control) and eliminating the transactions within these entities. Additionally, different accounting treatment have been provided for consolidation of joint ventures, associates etc.

It may be noted that, the subsidiaries over which the parent company has control but the shareholding is less than 95% is not permitted to be part of a tax group. Further, whether a subsidiary should form part of tax group is a matter of choice.

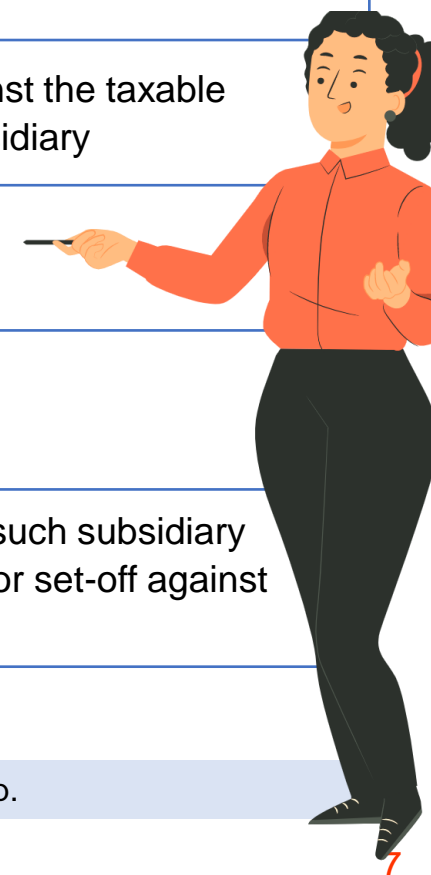
Hence, where the companies whose results, assets and liabilities are considered in the general purpose consolidated financial statements are different as that of the tax group, a distinct consolidated financial statements of the tax group will have to be prepared for the purpose of computation of taxable income of the tax group.

Inter play with transfer pricing: Given that the transactions between the members of the tax group are eliminated in the consolidated financial statements of the tax group and would not impact the taxable income of the tax group, whether the same should be subject to arm's length requirement and related compliances?

Tax Group (5/6)

The manner in which Unutilized tax losses are to be dealt with under various circumstances are as follows:

Circumstances	Provisions in relation to Unutilized tax losses
Subsidiary (having unutilized tax losses) joining a tax group	Available for set-off against the taxable income of the tax group to the extent attributable to the relevant subsidiary
New subsidiary joins an existing tax group having tax losses	The unutilized tax losses of the tax group cannot be set off against the taxable income of the tax group to the extent attributable to the new subsidiary
Subsidiary leaves a Tax Group	The tax losses of the tax group, except the unutilized tax loss of such subsidiary incurred before its joining the tax group, remain with the tax group
Tax group ceases to exist, and the parent company continues to be a taxable person	The tax losses would remain with the parent company
Tax group ceases to exist and the parent company ceases to be a taxable person	The tax losses of the tax group, except the unutilized tax loss of such subsidiary incurred before its joining the tax group, would not be available for set-off against income of the subsidiaries in future ⁶



⁶ However, these provisions would not be applicable, where a parent company has been replaced with a new company in the tax group.

Tax Group (6/6)

- While the taxable income of a tax group is to be computed based on the consolidated financial statements of the tax group, it is to be noted that the separate records as to the amounts attributable to the members of the tax group may have to be maintained, in order to comply with the above provisions in relation to unutilized tax losses.

Further, clarity may be required in the manner of determination of the amounts attributable to the members of the tax group.

- Where there has been a transfer of asset or liability between the members of a tax group and the transferor or the transferee leaves the tax group within 2 years from the date of such transfer, any income not taken into account earlier should be offered to tax.

One could summarize as: As a tax group is treated as a single taxable person,

- The threshold limit up to which tax rate of 0% applies would be AED 375,000 for the tax group, irrespective of no. of members part of the tax group.
- The compliance burden is substantially reduced, when tax group is treated as a single taxable person.

Even where tax group has not been constituted, the corporate tax law enables transfer of tax losses (between group entities with ownership interest > 75%) **[Refer Slide #6 of our Alert #7]**

Hence, detailed evaluation of pros and cons should be carried out before deciding whether to exercise the option of constituting tax group.

Recent Updates (1/2)



The following taxable persons are required to prepare and maintain audited financial statements:

- Persons having a revenue exceeding AED 50 Million
- A qualifying free zone person

Presence of a natural person in UAE under temporary and exceptional situation should not result in constituting a permanent establishment ('PE') of a non-resident person⁸. The conditions when the above clause could trigger have been prescribed (**all the conditions are to be satisfied**)⁹.

- Presence of the natural person in UAE is on account of public or private exceptional circumstances.
- The exceptional circumstances cannot be reasonably predicted by the natural person.
- The natural person did not express any intention to remain in UAE when the exceptional circumstances end.
- The non-resident person did not constitute a PE in UAE before the occurrence of exceptional circumstances.
- The non-resident person did not consider that the natural person has constituted a PE or as to derive UAE sourced income in other jurisdictions.

⁷ Ministerial Decision No. 82 of 2023 ⁸ Article 14(7)(a) of the UAE Corporate Tax Law ⁹ Ministerial Decision No. 83 of 2023

Recent Updates (2/2)

Public exceptional circumstances prescribed:

- Adoption of public health measures by the state authorities having jurisdiction in the original workplace or world health organization
- Imposition of travel restrictions by the state authorities having jurisdiction in the original workplace
- Imposition of legal sanctions for leaving the state's territory
- Wars or terrorist attack
- Natural disaster or force majeure events beyond reasonable control

Private exceptional circumstances prescribed:

- Emergency health condition of the person or his/ her relative up to fourth degree ¹⁰



¹⁰ Including relationship in consequence of adoption or guardianship

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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