



M2K UAE Knowledge Series

Reliefs – Part I

ALERT #7



M2K Advisors

Preface

In continuation of various aspects of UAE Corporate Tax Law being looked at in this series, this alert aims to focus on following reliefs provided to the taxable persons:

- Tax loss relief (i.e., privilege to set-off losses against the taxable income earned subsequently)
- Group relief (i.e., transfers within 'Qualifying Group')



Tax Loss Relief (1/3)

A tax loss incurred in a tax period can be carried forward and set-off against the taxable income of subsequent tax periods, subject to a cap of a maximum of 75%¹ of the taxable income of such tax period. The tax losses remaining unadjusted can be carried forward for an indefinite period. However, tax loss relief cannot be claimed in respect of the following cases:



1
Losses incurred before the period of levy of Corporate Tax.

2
Losses incurred by a person before he becomes a 'Taxable Person' under UAE Corporate Tax Law.

3
Losses incurred from an asset or activity, income from which is exempt or not includible in taxable income under UAE Corporate Tax Law

¹Cabinet has been empowered to prescribe any other percentage as cap on set-off of losses

Tax Loss Relief (2/3)

Set off of tax losses (to the extent permissible), before transfer² or carry forward of the same is mandatory. For example, let us consider the below information of an individual businessman in UAE.

Financial Year (FY) (for example, June to May)	Results of the business activities	Income/ (loss) from personal investments	Total Amounts in AED
2022-23	(2,000,000)	500,000	(1,500,000)
2023-24	(1,500,000)	(200,000)	(1,700,000)
2024-25	1,900,000	100,000	2,000,000
2025-26	300,000	50,000	350,000

The following are to be noted in connection with the tax loss relief available in the computation of taxable income for the FY 2024-25:

- Corporate Tax is levied in UAE in respect of FYs starting on or after 1st June 2023. Hence, the losses incurred in FY 2022-23 (before the levy of corporate tax) cannot be set-off.
- Income from personal investments of an individual are not subject to Corporate Tax in UAE. Hence, loss of the said nature AED 200,000 incurred in FY 2023-24 cannot be set-off.



² Provisions in relation to transfer of tax losses are to be discussed in subsequent slides.

Tax Loss Relief (3/3)

§ **Tax loss relief for FY 2024-25 would be AED 1,425,000, being lower of the following amounts:**

- AED 1,500,000 (the loss from business activities incurred in FY 2023-24).
- AED 1,425,000 (Taxable income of FY 2024-25 of AED 1,900,000 * 75%).

Further, the remaining losses of AED 75,000 would be carried forward to subsequent years.

§ **It is to be noted that the set-off of remaining tax loss of AED 75,000 (lower of the following amounts) against the taxable income of FY 2025-26 is mandatory.**

- AED 75,000 (balance available loss from business activities incurred in FY 2023-24).
- AED 225,000 (taxable income of FY 2025-26 of AED 300,000 * 75%).



As it has been specifically provided that set-off of losses to the extent permissible is a mandatory provision, the possibility of not claiming the tax loss relief in FY 2025-26 (as the taxable income for the year without set-off of losses is lower than basic exemption limit of AED 375,000) and carry forward of the same to subsequent years is ruled out.

Transfer of Tax Losses³

Set-off of tax losses incurred by a person is allowed to be set-off in the hands of another person, where all the below conditions are satisfied:

- Both the transferor and the transferee are UAE resident judicial persons.
- Either of them hold direct or indirect ownership of at least 75% in other entity, or a third person holds ownership of at least 75% in both of these entities.
- The ownership criteria mentioned above should be satisfied throughout the period(s) from the year in which losses were incurred till the year in which the same is set-off.
- Both the entities are neither exempt persons nor qualifying free zone persons.
- Both the entities follow same financial year and prepare the financial statements using the same accounting standards.

The cap imposed on set-off of losses to the extent maximum of 75% of taxable income would be applicable even under this case.

The transferor of losses should reduce the losses transferred to other entity under these provisions from the losses carried forward by him.



³ It may be noted that these provisions are distinct from the provisions in relation to “Tax Group”, which is to be discussed in subsequent alert(s) of this series.

Limitations on carry forward of Tax Losses

- The privilege of carry forward and set-off of losses (to the extent permissible) to the taxable person is subject to the condition that same person or persons should continuously hold at least 50% ownership in the taxable person throughout the period(s) from the year in which losses were incurred till the year in which the same is set-off.
- However the carry forward and set off of tax losses by the taxable person is allowed even if there is a change in ownership of more than 50%, if the taxable person continues to conduct the same or a similar business or business activity.
- The law provides for the following tests to determine whether the taxable person continues to conduct same or similar business or business activity after the change of ownership by more than 50%:
 - Continued use of some or all of the same assets as before the change in ownership
 - No significant changes made to the core identify or business operations since ownership change
 - Further it has been provided that where there have been significant changes, it should be looked into whether the same has resulted from the development of or
 - exploitation of assets, services, processes, products or methods that existed before the ownership changes.
- These provisions on limitations on carry forward of Tax Losses shall not apply to an entity whose shares are listed in a recognized stock exchange. It is to be noted that 'recognized stock exchange' also includes the stock exchanges subject to regulations outside UAE.



Group relief (1/4)*

Transfer of assets or liabilities between members of qualifying group would be tax-neutral, subject to conditions. The taxable persons are to be considered as **'members of a qualifying group'** upon satisfaction of all the below conditions:

- Both the transferor and the transferee are judicial persons and UAE resident or a non-resident having a PE in UAE
- Either of them hold direct or indirect ownership of at least 75% in other entity, or a third person holds ownership of at least 75% in both of these entities
- Both the entities are neither exempt persons nor qualifying free zone persons
- Both the entities follow same financial year and prepare the financial statements using the same accounting standards.



The following conditions must be satisfied in order to be eligible for group relief.

- The value of assets and liabilities (in the hands of the transferee entity) should be at net book value at the time of transfer.
- The consideration paid/ received should be equal to the net book value of such assets/ liabilities.
- The assets or liabilities in respect of which group relief was claimed should not be further transferred outside the qualifying group within 2 years from the date of transfer.
- The transferor and transferee of the assets or should continue to be the member of the qualifying group at least for a period of 2 years from the date of transfer.

** Relief in respect of transfers within a qualifying group*

Group relief (2/4)

Where the previously mentioned conditions to be satisfied for a period of 2 years are violated, the transfer of asset or liability would be treated as having taken place at the market value as at the date of transfer for the purpose of determining the taxable income of both the transferor and transferee for the relevant tax period.

Where there has been a subsequent violation of prescribed conditions that were to be satisfied for a period of 2 years, it is provided that the group relief would be withdrawn, and the prescribed tax implications arise in relevant tax period. Prima facie, it appears that the financial year in which transfer of assets or liabilities took place and group relief was claimed is referred to as 'relevant tax period'.

It is noted that it is in contrast with the consequences provided for subsequent violation of condition of continuous holding of participating interest for a period of 12 months provided for availing participation exemption, wherein it was provided that the income in respect of which participation exemption was availed earlier would be taxable in the period of violation of the said condition.

The mechanics in the given situation as to the compliance requirements on the part of taxable person like filing of revised return of income or voluntary disclosure or the manner in which the recomputed income of the earlier year would be assessed to tax are to be pondered upon.



Group relief (3/4)

Analysis of the Corporate-tax implications in different scenarios for a given example of transfer of an asset may be useful to obtain a better understanding of the group relief and the interplay with certain other provisions in the Corporate Tax Law.

Let us consider an example of transfer (sale) of an **asset with book value (at Cost) of AED 1 Million and market value of 10 Million for: Case (A)** - A consideration of AED 1 Million (amount equal to the book value); **Case (B)** - A consideration of AED 10 Million (amount equal to the market value)

Scenario	Consideration = AED 1 Million (Book value)	Consideration = AED 10 Million (Market value)
<p>Transfer to a Third (i.e., unrelated party))</p>	<p>Transfer is not within qualifying group and hence group relief is not applicable.</p> <p>Further, transactions with third parties are not subject to transfer pricing provisions*.</p> <p>However, the valid commercial rationale and the main purpose(s) of the transaction (being entered into below the market value) may be examined under the General anti-abuse rules (GAAR)*.</p> <p>Assuming that the implications under GAAR are not triggered in the instant case, the consideration being an equal to book value of the asset, there would not be any gain or loss on this account includible in the taxable income.</p>	<p>Transfer is not within qualifying group and hence group relief is not applicable.</p> <p>Further, transactions with third parties are not subject to transfer pricing provisions.</p> <p>The gain on sale of AED 9 Million would be taxable in the hands of transferor entity.</p>



Group relief (4/4)

Scenario	Consideration = AED 1 Million (Book value)	Consideration = AED 10 Million (Market value)
Transfer to a related party outside qualifying group	<p>Transfer is not within qualifying group and hence group relief is not applicable.</p> <p>Transactions with related parties are subject to transfer pricing provisions. Hence, the consideration would be restated at arm's length price of AED 10 Million (for the purpose of computation of taxable income) and the gain on sale of asset of AED 9 Million, so computed, would be taxable in the hands of transferor entity.</p>	<p>Transfer is not within qualifying group and hence group relief is not applicable.</p> <p>In the instant case, the transaction with related party has been carried out at arm's length price and hence there would not be any transfer pricing adjustment.</p> <p>The gain on sale of asset of AED 9 Million would be taxable in the hands of transferor entity.</p>
Transfer within qualifying group	<p>Group relief applicable. Transaction tax neutral.</p> <p>There should not be any adverse transfer pricing implications, as the law specifically provides for the transaction to be carried out at book value as a condition for availing group relief.</p>	<p>The condition for eligibility of group relief that, the transfer should be for a consideration equal to book value not satisfied. Hence, Group relief not available.</p> <p>Gain on sale of asset AED 9 Million taxable in the hands of transferor entity.</p>



** To be discussed in detail in subsequent alert(s) of this Series.*

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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