

New Tax Residency Criteria for Natural Persons



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The Ministry of Finance had in September 2022 vide cabinet Decision 85 of 2022 specified conditions for determining the tax residency of both Juridical and natural Persons effective 1st March 2023. This was followed by Ministerial decision no 27 of 2023 on Implementation of certain provisions of aforesaid Cabinet Decision relating to rules for the determination of tax residency for a natural person.

Outlined below are the guidelines for determining tax residency of a natural person in UAE:

A natural person shall be considered a Tax Resident of UAE where any of the following conditions are met:

1. If a natural person's usual or primary place of residence and the centre of his financial and personal interests are in UAE, he shall be considered a Tax resident of UAE.

Usual or primary place of residence:-

Usual or primary place of residence refers to the jurisdiction:

- a. where the natural person habitually or normally resides.
- b. where the natural person spends most of his time when compared to any other jurisdiction as part of his settled routine in a way that is more than temporary.

Centre of financial and personal interests:-

Centre of financial and personal interests refers to the jurisdiction:

- a. where the natural person's personal and economic interests are the closest or of the greatest significance to the natural person.
 - b. Factors such as occupation, familial and social relations, cultural or other activities, place of business, place from which the property of the natural person is administered, and any other relevant facts and circumstances to be considered in the determination of whether a natural person's centre of financial and personal interests is in the UAE.
2. If a natural person has been physically present in the UAE for a period of (183) one hundred and eighty-three days or more, within the relevant (12) twelve consecutive months, he shall be considered a Tax resident of UAE.

Calculation of Time period:-

All days or parts of a day on which a natural person is physically present in the State count towards the total number of days he is present in the UAE during a relevant consecutive (12) twelve-month period.

While determining whether the 183 or 90-day period as the case may be has been met, the natural person need not be present in the UAE consecutively during the relevant consecutive (12) twelve-month period.

Exceptional Circumstances:-

The Authority may disregard the day/s where the natural person's presence in the UAE was due to exceptional circumstances while determining whether the 183 day or 90 day period as the case may be has been met during the relevant consecutive (12) twelve-month period.

An exceptional circumstance would mean an event or situation beyond the natural person's control, occurring while he is already in the UAE, which he could not reasonably have predicted or prevented, and which prevents him from leaving the UAE as originally planned.

3. If a natural person has been physically present in the UAE for a period of (90) ninety days or more, within the relevant (12) twelve consecutive months, and he is a UAE national, holds a valid Residence Permit in the UAE or holds the nationality of any member state of the Gulf Cooperation Council, and meets any of the following:
 - a. He has a Permanent Place of Residence in the UAE.
 - b. He carries on an employment or Business in the UAE.

Permanent Place of Residence:-

A Permanent Place of Residence would mean a furnished house, apartment, room or any other form of dwelling, made continuously available to the natural person. The place need not be owned by him, but must have a continuous right of occupation therein at all times and on a regular basis with some degree of permanency and stability and not just occasionally or for the purposes of a stay of a short duration.

The Permanent Place of Residence is not required to be owned by the natural person but can be rented or otherwise occupied by him as a dwelling.

Employment:-

1. A natural person shall be considered as carrying on employment in the UAE in either of the following two cases:
 - a. If he has entered into a contract with an employer, which is incorporated in the UAE, and agrees to provide service for a promised remuneration.
 - b. If he is in a continuing relationship where all or substantially all of his income for his labour is derived from one party whereby the income received by him constitutes remuneration for his labour performed in the UAE
2. The nature of the employment can be limited or unlimited and the work may be carried out on a full time or part time basis.
3. A voluntary role for which the natural person does not enter into a contract does not constitute employment.

International Agreements:-

If any International Agreement sets out certain conditions for determining the tax residency, the provisions of that International Agreement on determining the tax residency shall apply for the purposes of this International Agreement.

Any natural person who meets the above criteria can apply to the Federal Tax Authority for a Tax Residency Certificate (TRC) in the UAE with effect from 1 March, 2023 and benefit from Double Tax Avoidance Agreements (DTAA) signed by the UAE with a number of countries.

In case you need any assistance , please get in touch with us.

THANK YOU

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