

# Corporate tax in UAE

## Permanent Establishment and its impact



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# Permanent Establishment:

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Corporate Tax in UAE will come into effect from financial years starting on or after 1<sup>st</sup> June 2023. Foreign businesses /other entities carrying out activities in the UAE without having a corporate entity herein, may need to assess whether they create a permanent establishment (PE) in the UAE or not and if yes, evaluate their tax liabilities associated with it.

UAE corporate tax will apply to UAE business, other legal persons incorporated in the UAE, natural persons engaged in a commercial activity in UAE as well as foreign legal entities that have a permanent establishment (PE) in UAE.

Residency is a key determinant of whether business profits will be subject to corporate tax in the UAE.

Non-residents will be subject to UAE corporate tax on:

1. Taxable income from their Permanent Establishment in the UAE; and
2. Income which is sourced in the UAE

## Permanent Establishment (PE)

The main purpose of the PE concept is to determine if and when a company has established sufficient presence in a foreign country to warrant the direct taxation of the business profits of the company in that country.

The PE concept under the proposed UAE corporate tax regime has been designed on the basis of the OECD Model Tax Convention. Article 5 of the OECD Model Tax Convention sets out internationally recognised principles for determining what constitutes a PE, which will form the basis for determining a PE under the UAE corporate tax regime.

The activity threshold that will trigger a PE for a foreign company in the UAE will be determined by the following two main tests:

- Fixed place of business test
- Dependent agent test

## Fixed place of business test

- A foreign company will have a PE in the UAE if it has a “fixed place” in the UAE through which the business of the foreign company is wholly or partly carried on.
- A fixed place of business will include a place of management, a branch, an office (including a temporary field office or an employee’s home office), a factory, a workshop, real property, and a building site where activities are carried on for over 6 (six) months. Installations and structures used in the exploration of natural resources, as well as mines, oil or gas wells, quarries and other places of extraction of natural resources will also be considered PEs.
- No PE may arise if the activities carried out through the “fixed place” in the UAE are preparatory or auxiliary in nature. Generally, preparatory or auxiliary activities are those performed in preparation or in support of more substantive business activities of the foreign company. Examples of preparatory and auxiliary activities include limited marketing and promotional activities, performing market research and attending seminars or conventions.
- A fixed or permanent place in the UAE may also not be considered a PE if it is used only to store, display or deliver the foreign company’s goods or keeping a stock of goods with the sole purpose of making them available to another person for processing.

## Dependent agent test

- In the absence of a “fixed place of business” in the UAE, the activities of a so-called "dependent agent" in the UAE could still create a PE for a foreign company in the UAE.
- The “dependent agent test” may be met where business travellers or UAE based persons act on behalf of the foreign company in the UAE and have, and habitually exercise, the authority to conclude contracts in the name of foreign company. This includes situations where the person negotiates or concludes contracts in the UAE on behalf of the foreign company without material intervention from the non-resident company.
- A PE would not arise where a person carries on the foreign company’s business in the UAE in the ordinary course of their own business. This so-called independent agent exclusion would only apply where the person does not work exclusively for the foreign company and is truly legally and economically independent from the foreign company.
- The same PE rules and principles will apply to determine whether a Free Zone Person has a PE in mainland UAE.
- The UAE corporate regime will allow regulated UAE investment managers to provide discretionary investment management services to foreign customers without triggering a UAE PE for the foreign investor or the foreign investment fund. This exemption will be subject to conditions that are comparable to similar regimes in leading financial centres.

## UAE sourced income

- UAE sourced income earned by a foreign person that does not have a PE in the UAE will be subject to withholding tax at a rate of 0% (zero percent).
- The UAE CT regime will have specific rules and guidance to determine whether income has a source in the UAE . However, income will generally be considered UAE sourced if
  - the income is earned from a UAE resident person,
  - the payment is attributed to a PE in the UAE of a foreign company, or
  - the income is derived from activities or contracts performed in the UAE, assets located in the UAE, or rights used for economic purposes in the UAE.
- The same principles will be applied to determine if a Free Zone Person earns income from a source in mainland UAE

# THANK YOU

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