

# Tax and Regulatory Alert | Tax Residency Conditions

November 02, 2022



## Introduction

The Ministry of Finance (MoF) has released a UAE Cabinet Decision (No. (85) of 2022) specifying the conditions for determining the Tax residency status of legal and natural persons in the UAE.

The conditions of the Cabinet Decision would come into force from March 01, 2023.



## Key Aspects

Summarised below are the key aspects of the Cabinet Decision:

### 1 Conditions for a Legal Person

- » A legal person would be a tax resident of the UAE in case it meets any of the following two conditions:
  - The legal person was established, formed, or recognized by the laws and regulations in force in the UAE and does not include a Branch of a Foreign Company; or
  - The legal person is considered as a tax resident under the prevailing tax laws of the UAE.

#### WTS Dhruva Comments

Clarity on the conditions relevant for a legal person to be a tax resident of the UAE is imperative, given that the country is at the cusp of introducing a corporate tax regime.

## 2

### Conditions for Natural Person

- » A natural person would be a tax resident of the UAE in case any of the following conditions are met:
  - The usual or principal place of residence, economic activities and personal interests are in the UAE or meet the criteria laid down by a decision of the Minister;
  - The person has been physically present in the UAE for a period of 183 days or more during the relevant 12-month period;
  - The person is physically present in the country for 90 days or more (during the 12-month period) and either holds the nationality of the UAE or holds a valid residency permit or holds the nationality of any of the member states of the Cooperation Council for the Arab States of the Gulf (GCC) and
    - Has a permanent place of residence in the UAE; or
    - Has a job or a business in the UAE

#### WTS Dhruva Comments

The conditions of being physically present in the country for 90 days or more and having a permanent place of residence in the UAE is a significant relief for many individuals, including talented personnel, artists and sportspersons who often travel across the globe for events, shows and tournaments.

## 3

### Tax residency certificate

- » Any legal or natural person who meets the above criteria can apply to the Authority to issue a tax domicile certificate.
- » The application must be submitted in the form and method prescribed by the Authorities.
- » The Authorities, if satisfied that the applicant meets the conditions of tax residency, shall approve and issue the tax domicile certificate.

#### WTS Dhruva Comments

Such applications are submitted at the portal managed by the Federal Tax Authority (FTA).

Currently, an online form needs to be submitted, which is reviewed by the FTA and post-approval the tax domicile certificates are issued to the applicant.

## Impact of international agreements

- » In case any international agreement specifies conditions for determining the tax domicile of a legal or natural person, the provisions of that international agreement shall apply.
- » The tax minister shall issue a decision specifying the form and method of issuing certificates to determine the tax domicile for the purposes of the international agreement.

### WTS Dhruva Comments

This Cabinet Decision, together with the provisions of the corporate tax law and applicable DTAAs would need to be considered before determining the taxability and residency of a person.

## Powers of the Authority

- » The Authority has the power to request information, data and documents from all government agencies in the UAE to determine tax residency.
- » The government agencies in the UAE must cooperate with the Authority to implement the provisions of the Cabinet Decision.

### WTS Dhruva Comments

In order to satisfy whether the legal or natural person meets the residency criteria, the Authorities may request multiple documents from applicants. An indicative list of the key documents which may be requested are:

#### Legal person:

- » Trade license copy
- » Audited financial statements (12 months)
- » 6 months of certified bank statements
- » Power of Attorney of General Manager

## Contd..

### Individuals:

- » Immigration report for the period of stay in UAE from the Ministry of Foreign Affairs
- » Residency proof – copy of Ejari (tenancy/ ownership contract)
- » 6 months bank statement detailing expenses being incurred in the UAE
- » Valid UAE visa copy

## 6

## Conclusion

The tax and regulatory environment in the UAE are undergoing changes, and increasingly the focus is on the alignment with global best practices.

The Cabinet Decision on tax residency is one such move towards a global tax compliance framework which becomes relevant in the future years.

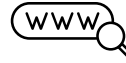
Clear and precise tax residency policy is the first step towards minimal cross-border disputes which may emanate as the UAE implements a corporate tax regime.

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