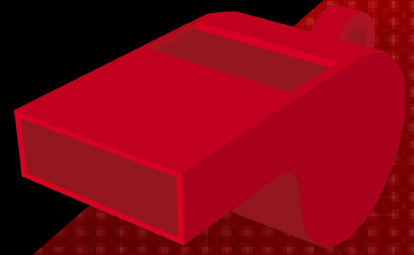


TAX ALERT

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Qualifying Group Relief -UAE CT Guide

Introduction

Continuing with the series of guides on important aspects of Corporate tax (CT), the Federal Tax Authority (FTA) unveiled a Guide focusing on the Qualifying Group (QG) Relief. This guide offers crucial insights into various aspects of QG Relief, including clarification on conditions, relief mechanisms, claw back provisions, the tax implications concerning multiple transfers within and outside the QG, interplay with business structuring reliefs and transitional provisions. In this alert, we've brought out the essence of the guide in a simplified format, highlighting key points for quick reference.

A quick recap of QG provisions :

What are the QG provisions

As per Article 26 of UAE CT law, no gain or loss is considered for tax purpose in relation to intra-group transfers of capital assets / liabilities between two Juridical Taxable Persons within the same Qualifying Group subject to fulfilment of certain conditions.

Essential conditions

- Transferor and Transferee are Juridical Taxable Persons i.e. either of the following:
 - Resident
 - Entity incorporated in UAE; or

- incorporated outside UAE but effectively managed and controlled in UAE.
- Non-Resident with a Permanent Establishment (PE) in the UAE.
- Transferor or Transferee must hold at least 75% ownership interest in the other party, or a third person (not necessarily a juridical and / or taxable person) must hold at least 75% ownership interest in both Juridical Taxable Persons ("Ownership Test");
- Neither the Transferor or Transferee is an exempt person or a free zone person;
- Transferor and Transferee have the same financial year end and must prepare financial statements based on same accounting standards.

Important aspects of QG relief:

We have provided hereunder a table highlighting the applicability of QG relief

Applicable	Not Applicable
Transfers such as sale, exchange, relinquishment, sale, and lease back, etc.	Transfer pursuant to liquidation, dissolution, or merger.
Transfer of capital account assets / liabilities recorded in the balance sheet of the Transferor.	Transfer of non-capital account assets / liabilities or capital assets / liabilities not recorded in the balance sheet of the Transferor.



Applicable	Not Applicable
	<i>This may qualify for business restructuring relief.</i>
Juridical taxable person being a partner in or held by an unincorporated partnership.	Unincorporated partnership.
Non-resident persons having a PE in UAE	Transfer between the PE and the overseas head office.
Two or more taxable juristic person owned by a foreign person.	Transfer between the taxable juristic person and foreign shareholder.
Presence of economic ownership to meet the Ownership Test.	Ownership by agent, nominee, fiduciary or administrator.

- Transfer pricing rules are not applicable if QG Relief is chosen.
- A Juridical Taxable Person can be part of multiple QGs.
- For a member, aggregate of ownership held by members of tax group to be considered for determining 75% ownership interest for the purpose of QG Relief.

Is the relief automatic?

- No, the Transferor is required to make an election.
- **Period of election:** Election to be made in the Tax Return for the Tax Period in which the transfer, to which the Taxable Juridical Person wishes to apply this relief for the first time, takes place.
- Once made, the Transferor's election for QG relief is irreversible without FTA approval, applying to all transfers of capital account assets by the Transferor within the Qualifying Group for the relevant Tax Period and subsequent periods.

- Each Transferor must make their own election, except in asset exchange situations (wherein election by either of the transferor results in applicability of relief on both the transfers while treating each of such transfers to be independent for the purpose of availing QG relief – discussed later).

Consequences of election for the QG relief

- **For Transferor:** Transfers deemed to be done at net book value, disregarding any difference in payment for taxation purposes, resulting in no taxable gain/loss for the Transferor. Thus, depreciation, amortization, and other adjustments (from the beginning of the tax period in which transfer is done) up to the transfer date can lower the Transferor's tax without actual gains or losses.
- **For Transferee:** For tax purposes, such transfer within QG will be recorded at net book value in the books of Transferee. Accordingly, the Transferee excludes depreciation, amortization, or other changes in value to the extent attributable to the gain or loss that arose to the Transferor (and was exempt pursuant to QG relief).

Exchange of asset / liability

- In case of an exchange transaction, the transaction would be treated as two separate transactions and thus, the QG relief to be applied separately to each transfer (provided the relevant conditions are met).
- The distinguishing factor is that if one taxable juridical person elects for the relief, it is applicable on the other person as well (i.e. irrespective of such election by the other party).

- The exception to the above rule (of election) is when non-capital assets / liability swaps for capital ones, in which case relief is applicable for capital asset / liability (if elected by the Transferor of capital asset).

Implication of subsequent transfer to an external third party

- Upon realisation (i.e. transfer outside the QG), the Transferee accounts for all previously exempt gains or losses as well as claims the depreciation / amortization / adjustments ignored earlier.
- Realisation refers to sales, disposal, transfer, settlement and complete worthiness of any asset and the settlement, assignment, transfer and forgiveness of any liability.
- **Subsequent transfer made within the QG (of which the Transferor and Transferee were originally part of) is not regarded as realisation.**
- In summary, all gains/losses previously claimed under QG Relief (in single or several transfers) are taxed in the hands of the Transferee at the time of disposal outside the QG. In case of multiple transfers within the QG of the same asset / liability, all the gains / losses shall be considered upon realisation (unless those have been already taxed due to clawback* provisions – as discussed later).
- There will be no implications in the hands of the Transferor if the subsequent transfer is done after two years.

***It is important to note that any disposal/transfer outside the QG within two years would trigger clawback, which is dealt differently for tax purposes.**

Clawback provisions

- QG relief is reversed if within a period of two years, from the date of transfer, any of the following event occurs:
 - a subsequent transfer of the asset or liability outside the QG; or
 - Transferor or Transferee cease to be members of the same QG.
- Clawback provisions will not apply even if the new Transferee was not a member of the QG at the time of original transfer provided it is a member of the QG when the asset or liability is transferred to it.
- Clawback provisions applicability is envisaged in situations such as exiting the QG occurs due to ownership changes; cessation of Taxable Person status of Transferor or Transferee; closure of a Non-Resident Person's PE; Transferor or Transferee become Exempt or Free Zone Persons; change in the financial year etc. Certain changes, like adding members or simultaneous acquisitions, may not trigger clawback.

Clawed back gain/loss for Transferor = Original Market Value - Original Net Book Value (Refer Note below).

Gain/loss for Transferee = Sale/clawback date Market Value - Net Book Value as on the date of sale / clawback - disallowance made earlier such as depreciation/ amortisation / any other change in value + allowance claimed earlier such as change in value of the asset.

Note - The market value to be considered refers to the market value as on the date of original transfer even if differs from the market value as on the date on which clawback is triggered.

Interaction with other provisions granting relief

- **Business restructuring relief** – A transfer can be eligible for both QG relief as well as Business Restructuring relief. In such a case, a clawback under one relief (due to not meeting the conditions under either of the relief) could nullify the relief, even if conditions for another relief were met.
- **Realisation basis** - Under QG Relief, no gain or loss transfers are not treated as realisations, but if the Transferee opts for realisation, previously unaccounted gains / losses / depreciation / amortisation are recognized upon actual realisation.
- **Transitional Relief** – As per the Transitional relief any gain or loss pertaining to the period before introduction of CT is not subject to tax in the hands of the taxpayer. For this purpose, the FTA has provided a mechanism to exclude gains pertaining to the pre-CT period while calculating gains on any transfer of asset. Such relief is available only if elected by the taxpayer in the first tax year. In this regard, following should be noted:
 - Any transfer made under QG relief is not considered as a disposal for the purposes of transitional relief.
 - In case clawback provision is triggered, transitional relief should be claimed in the year in which the clawback is triggered (as the income from original transfer is also taxed in the year in which the clawback is triggered). There may not be a need to reopen the earlier Tax Period when the original transfer took place.

- Period of ownership of assets by the previous owner (being a member of a QG) counts toward determining the ownership period for transitional rules (under Time apportionment method).
- A Taxable Person's election for transitional relief extends to asset / liability transferred under QG Relief, granting the Transferee eligibility for transitional relief on subsequent disposal of such asset / liability, irrespective of their own election status.

Other points:

- QG relief does not cover transfer of losses.
- In case the conditions of QG are not met or the Transferor does not elect for the QG relief, the transfer will be taxable as per the normal provisions of the UAE CT Law. In case of transfer between related parties, the Arm's Length Principle has to be met.



Dhruva comments:

Transfer of assets / liabilities to related parties is quite common. Companies in the UAE who are subject to tax, need to evaluate the benefit of availing QG relief. A decision needs to be made factoring benefits, costs, accounting entries, disclosures, future business plans, scenarios considering election by the Transferor is irrevocable, and the two-year period of maintaining the QG.

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