



Tax Flash News – FTA Guide on Qualifying Group Relief

On 3rd April 2024, the UAE Federal Tax Authority ('FTA') issued a Corporate Tax Guide on the Transfers Within a Qualifying Group Relief ('the Guide') as foreseen in Article 26 of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses ('UAE CT Law'). Following the release of the Guide, here we provide an overview of:

- Transactions covered within the scope of the Relief
- Conditions to be met to be eligible for the Relief
- Consequences of electing for the application of the Relief
- Circumstances under which the Relief will be clawed back and the consequences of claw-back
- Compliance requirements and interactions with other provisions of the UAE CT Law

The main purpose of the Qualifying Group Relief is to align with the principles of a "tax neutrality" regime with regard to transfers of assets and liabilities carried between Qualifying Group members, hence no gain or loss should be considered while computing Taxable Income. To generate this "tax neutrality effect", these transfers are considered to be made at book value.

The rationale behind this Relief is that there is no change in the overall ownership of the assets or liabilities from a Group perspective.

Guidance provided on the Qualifying Group Relief:

The Guide elaborates on different topics that were open/subject to interpretation (and not properly defined) in the UAE CT Law or the Ministerial Decision No. 132 of 2023 on Transfers Within a Qualifying Group:

- **Examples of transfers covered under the Relief:** The Guide lists specific transfers that will be considered as such for the Relief purposes (i.e. sale, exchange, relinquishment, sale and leaseback treated as a sale under the accounting standards, exercise on options to sell or acquire an asset or liability and transfers under a universal title).
- **Juridical Person condition:** A Juridical Person must have a separate legal personality from its founders and directors. Limited Liability Companies, or public or private stock companies as well as incorporated partnerships, are considered to be Juridical Persons. Only Juridical Persons can be part of a Qualifying Group. Natural persons and Unincorporated Partnerships are expressly excluded from the application of the Relief.

Notwithstanding the above, it should be noted that the Relief will be available to a Juridical Person who is a partner in an Unincorporated Partnership or a Juridical Person who is directly or indirectly held by an Unincorporated Partnership.

- **Transferor and Transferee are ‘Taxable Persons’ for the UAE CT Law purposes:** The above-mentioned Juridical Person transferring the assets needs to be a ‘Taxable Person’ under UAE CT Law provisions. Resident ‘Taxable Persons’ will be entitled to apply the Relief even if they become resident in the UAE as a consequence of the ‘Place of Effective Management’ provisions. Non-Residents having a permanent establishment in the UAE will be considered Taxable Persons and can benefit from the Relief as well (if the rest of the conditions are met).

A non-resident Person who only derives UAE-sourced income or who only derives income from immovable property in the State (i.e. having a nexus in the UAE) cannot be a member of Qualifying Group even though they are considered a Taxable Person as per the UAE CT Law.

- **Ownership Interest:** The ‘shareholder’ requirement relates to holding a 75% minimum interest when either the transferor or transferee has direct/indirect ownership of at least 75% in the other person or a third person has a direct/indirect ownership interest of at least 75% in both the transferor and transferee.

The Guide elaborates on the different instruments listed in Ministerial Decision No. 132 of 2023 clarifies that the Taxable Person needs to have control of the participated entity/entities and also be entitled to receive the economic benefits by the applicable Accounting Standards. It should be noted that different types of interest held by the Taxable Person need to be aggregated to determine the percentage of ownership.

Where the ownership is indirectly held through one or more intermediaries, it is not necessary that the intermediary should also be a member of the Qualifying Group.

When ownership (i.e. minimum 75%) is by a third person in either the Transferor or the Transferee, it is not required that the common owner is a Taxable Person subject to CT (i.e. it can be a Natural person or a Non- Resident Person that is not a Taxable Person as per UAE CT Law).

- **Exempt Person and Qualifying Free Zone Person status:** Any Taxable Person that can benefit from an exemption on the CT liability in accordance with the provisions of Article 4 of the UAE CT Law, Taxable Persons who have elected for the application of the small Business Relief, and Free Zone Persons who will apply the Qualifying Free Zone Person regime, will not be able to be part of a Qualifying Group for the purposes of the Relief.

A Free Zone person who does not apply the Qualifying Free Zone Person Relief will be part of a Qualifying Group for Relief purposes.

Comments on the consequences of the election for the Qualifying Group Relief:

- **Transfers of Assets and Liabilities at Net Book Value:**

The Guide also provides comments regarding the transfer of assets and liabilities on net book value on the date of the transfer. Different clarifications and examples are given to determine the net book value of the asset or liability. Transfers made under Net Book



Value will determine that no gain or loss is registered at the Transferor level. The Transferee will be required to adjust the taxable income to exclude depreciation, amortization, or any possible change in the value of the asset/liability to the extent of the amount not previously recognized as a taxable gain in the Transferor's taxable income.

- **Exchange of assets and liabilities:**

Specific guidance is given regarding transfers where no monetary consideration is paid to the Transferor by the Transferee, but the consideration consists of an asset or liability exchange. These transactions will be treated as two separate transfers for the application of the Qualifying Group Relief. In the case of an exchange of assets and liabilities, the Relief will also be applicable even if only one of the parties (i.e. the Transferor or Transferee) has made the election (no gain or loss will be determined for tax purposes in both transfers).

- **Transfer of tax losses:**

Transferring tax losses to the Transferee is not permitted under the Qualifying Group Relief provisions. The transfer of tax losses will only be possible under the provisions of Article 38 of the UAE CT Law, thus, pertinent requirements need to be considered.

- **Claw-back of the Qualifying Group Relief:**

The Qualifying Group Relief will not apply where, within two years from the date of the transfer, **i)** there is a subsequent transfer of the asset or liability outside of the Qualifying Group and **ii)** the Transferor and the Transferee ceases to be a member of the Qualifying Group. If the claw-back applies to the transfer, any gain or loss (i.e. the difference between the asset/liability market value and net accounting value not previously taken into account) will need to be considered while determining the taxable income at the Transferor level.

At the Transferee level, it will be mandatory to recapture the depreciation and amortization not taken into account or adjusted while determining the taxable income in previous periods.

- **Compliance requirements**

The transferor must make an election to apply for Qualifying Group relief if the conditions relating to such transfer are satisfied. The election (once approved by the FTA) would apply to all transfers of assets/liabilities made by the transferor within the Qualifying Group for the taxable period in which such election is made. Both the transferor and transferee are required to maintain all records and documents (concerning such transfer of assets/liabilities to validate the amounts recorded).

Even though the Guide is not legally binding, it is a valuable source of information for better understanding the application for Qualifying Group Relief.

Click [here](#) to read the full Guide.

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