



UAE Tax Flash

Tax Flash News – Corporate Tax Guide on Tax Resident and Tax Residency Certificate

The UAE Federal Tax Authority (FTA) has recently released a comprehensive Corporate Tax Guide on Tax Residency and the Tax Residency Certificate (hereinafter referred to as 'Guide').

The Guide offers valuable insight into the criteria for determining when an individual or legal entity qualifies as a Resident Person under the UAE Corporate Tax (CT) law or as a Tax Resident for the purposes of UAE domestic tax law and the Double Taxation Avoidance Agreements (DTA). Additionally, the Guide also provides a detailed overview of the procedure for obtaining a Tax Residency Certificate (TRC).

In light of the Guide, being a Resident Person for the purposes of Corporate Tax is distinct from being a Tax Resident of the UAE under domestic laws or under the applicable DTA. Below are the key observations into these distinctions and their implications.

A. Resident Person under the UAE Corporate Tax law

1. Juridical person

- While the clarifications in the Guide regarding juridical persons being treated as Resident Persons are consistent with those outlined in the CT law and earlier guidance, the Guide provides further confirmation.
It emphasizes that any juridical person incorporated, established, or recognized under UAE legislation, including offshore companies, will be treated as a Resident Person irrespective of where its effective management and control is exercised.
- A UAE branch of a UAE juridical person is considered a Resident Person for UAE CT purposes as it is merely an extension of its head office and not a separate legal entity. Likewise, a UAE branch of a foreign entity is considered an extension of its parent or head office and therefore a non-resident person for UAE CT purposes.
- The Guide provides further clarity on branches registered in UAE free zones, stating that a branch of a foreign company established or registered in a UAE free zone is treated as the head office, while the foreign parent is regarded as a foreign branch (a legal fiction made for applying the free zone taxation regime for UAE CT purposes). However, for tax residency purposes, if a branch of a foreign company is established in a UAE free zone, the foreign company is classified as a Non-Resident Person and therefore the branch would not be able to obtain the TRC.
- The Guide highlights an important aspect concerning Exempt Persons under Article 4 of the CT law. These entities will not be considered Resident Persons subject to CT unless they engage in a Business or Business Activity that is not an exempted activity.

Place of effective management (PoEM)

- The Guide provides much-awaited guidance on the concept of PoEM which can bring foreign companies into the tax net of UAE CT on their worldwide income. Some of the key clarifications provided are highlighted below:
- The emphasis again is on the place where key management and commercial decisions (KMCD) are made and not on the ones related to day to day or operational management. Some of the examples of KMCD include setting the company policies, determining the strategic direction of the company's operations, appointing senior executives, and handling key finance matters such as the determination of how profits are used and declaration of dividends.
- The Guide has emphasized the substance over form approach; active involvement and actual decision-making capabilities of the directors are necessary to qualify for KMCD, and mere rubber stamping decisions are not to be considered.
- Further, the Guide outlines two steps for determining the PoEM, consisting of identifying the person ("Who") and place ("Where"), the KMCD are made.
 - The person test involves evaluating the role, qualification and decision-making authority of the Board of Directors; assessing whether the Board of Directors has delegated the decision-making authority to others; and 3) involvement of shareholders.
 - The place test involves identifying the location of key management decisions taken by the persons identified under the person test. In cases where the KMCD are taken by the Board of Directors, the relevant factor is the location of the Board meetings.
 - The Guide also addresses certain practical challenges surrounding meetings not being conducted physically, but virtually, in a hybrid manner, or by way of email/written resolutions. In such cases, the Guide highlights that various factors are required to be considered, such as the frequency of virtual Board meetings, the physical attendance of directors, the location of directors during the meetings, the level of influence or the overriding decision making power of any director, and the comparison between the number of directors attending virtually versus in person.
- The Guide highlights the relevance of maintaining detailed Board minutes evidencing how the Board reached a particular decision (papers circulated in advance of Board meetings, Board discussions and deliberations, alternate arguments presented and the role played by each director in the ultimate decision-making process).
- If the determination of PoEM remains inconclusive, the place in which the juridical person has the strongest economic nexus such as majority employees, assets, revenues or where the senior management functions are carried on, may be considered.

2. Natural person

- The Guide reaffirms that regardless of domicile or residence, natural persons would be subject to CT on their income from business activities in the UAE, provided their total turnover exceeds AED 1 million in a calendar year.

B. Tax Residency under the UAE domestic law

1. Juridical person

- For TRC purposes, juridical persons are treated as tax residents under domestic law if they are incorporated or recognized in the UAE (including in free zones), or deemed tax resident persons under relevant laws (e.g., CT law) such as a non-UAE entity having its PoEM in the UAE.
- Exempt Persons under Article 4 of the CT law though not regarded as Resident Persons for CT purposes, would be treated as Tax Residents for TRC purposes.

2. Natural person

- In alignment with Cabinet Decision No. 85 of 2022, an individual will be considered a Tax Resident if they meet any of the following criteria:
 - 183-day rule: physically present in the UAE for 183 days or more within 12 consecutive months
 - 90-day rule: physically present in the UAE for at least 90 days within 12 consecutive months and is either a UAE or a GCC national, or holds a valid UAE resident permit; or has a permanent place of residence in the UAE or carries on employment or business in the UAE
 - Primary residence and interests: usual or primary place of residence and center of financial and personal interests are in the UAE
- The Guide presents several illustrative examples of scenarios in which a natural person qualifies as a tax resident under domestic laws for TRC purposes.

C. Tax Residency under DTA

- Each DTA has its own rules for determining tax residency, which may differ from the criteria for determining who is a UAE Tax Resident under domestic law, or a Resident Person under the CT law. Tax Residency is assessed case-by-case, based on the specific DTA's terms, facts, and circumstances, to determine whether a juridical or natural person qualifies as a Tax Resident in a particular country and therefore is eligible for obtaining a TRC.

1. Juridical person

- The residency test must be evaluated in accordance with the applicable DTA, which typically considers factors such as being liable to tax, legal connections (e.g., incorporation), economic ties (e.g., PoEM), or a combination of both within a specific country.
- Government entities, government-controlled entities, and Exempt Persons are generally classified as Tax Residents under the DTA. However, if a DTA offers a different definition for these categories, that definition will take precedence. Additionally, it is clarified that if the criteria under the DTA for tax residence is 'to be liable to tax', the Exempt Persons will be considered to have met the test.

2. Natural person

- The Guide states that, similar to the provisions for juridical persons, the DTA sets out its own rules and criteria where the natural person is considered a Tax Resident. Generally, a natural person is considered a tax resident in the country where they are liable to tax, hold relevant citizenship or nationality, maintain a physical presence, or are domiciled or resident.
- Additionally, the Guide clarifies that if the DTA refers to being resident under the laws of the UAE, the criteria set forth in Cabinet Decision No. 85 of 2022 should be used to establish tax residency.

D. Obtaining a Tax Residency Certificate

- The Guide outlines the criteria and procedures for obtaining a TRC. A TRC can only be requested for the current or a previous tax period. For applications related to the current period, the FTA will process them as follows:
 - Juridical person: after 3 months into the period
 - Government entities and government-controlled entities: one day into the period
 - Natural person: as soon as the criteria to be a Tax Resident are met
- Key points to note:
 - A TRC cannot be issued for future periods or for more than 12 months
 - Newly incorporated companies must complete 12 months of establishment before becoming eligible to apply for a TRC, especially if they have not yet filed a CT return

Please refer to our [tax flash](#) for more details on the procedure for obtaining a TRC.

E. Key takeaways

- **Categories of UAE residents for CT law purposes**

The UAE CT Guide outlines three resident categories:

- Resident under UAE CT law
- Tax Resident under CT law for TRC purposes
- Tax Resident under DTA for TRC purposes

Note: since DTAs take precedence over domestic law, meeting the criteria for a Resident Person or a Tax Resident under the CT law does not ensure recognition as a Tax Resident for DTA purposes.

Examples:

- A free zone branch is considered a Resident under UAE CT law but not a Tax Resident under CT law or DTA.
- A juridical person with its PoEM in the UAE qualifies as a Resident under the UAE CT law and may obtain a TRC under CT law. However, whether it qualifies as a Tax Resident under the DTA depends on the DTA's tie-breaker clause.

- **Obtaining a Tax Residency Certificate**

TRCs can be separately obtained for applying the CT law and for DTA purposes.

- **Determining PoEM for non-resident entities**

A substance over form approach should be used for determining PoEM for non-resident entities. This requires a fact-specific, annual assessment of all relevant factors. Detailed Board minutes should substantiate “Who” and “Where” the decisions are made.

- **Dividend exemption for shareholders of exempt entities**

Dividends or other profit distributions by exempt entities may not qualify for an exemption under Article 22 of the CT law as an exempt entity is not considered a resident under CT law unless it conducts a business activity outside its exempt scope.

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