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UAE Corporate Tax Alert

FTA Private Clarifications: Useful Signal, Not a Safe Harbour

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At a glance

- The FTA's summary provides useful insight into how certain fact-specific Corporate Tax issues have been approached in private clarification cases, but it does not replace the law or create a generally binding safe harbour.
- For Free Zone Persons, the summary reinforces that substance must be assessed by reference to the actual activities performed, including personnel, control, cost, premises and supporting documentation.
- Several Qualifying Free Zone Person ("QFZP") positions are clarified, including branch treatment, return-level transfer pricing adjustments, shared workspaces, related-party visa arrangements and selected Qualifying Activities.
- On Participation Exemption, the summary provides useful confirmations on the AED 4 million minimum acquisition cost route, KSA Zakat and the distinction between fair value movements and impairment.
- Taxpayers should use the summary as a reference point to revisit material positions, assess potential voluntary disclosure exposure and consider a separate private clarification where facts or technical uncertainty remain.

For the last two years, UAE Corporate Tax has developed in layers. It began with the policy direction set out in the public consultation paper, followed by the Corporate Tax Law, Cabinet and Ministerial Decisions, Federal Tax Authority (FTA) guides and decisions, public clarifications and FAQs. Each layer has sharpened the picture. But as most tax practitioners have seen in practice, the hardest questions rarely come from the law in isolation. They come from facts, questions such as:

> Is a service really a headquarter service, or merely routine support?

> Is a Free Zone business doing enough in the UAE, or is its substance only administrative?

> Can a foreign entity have a UAE permanent establishment even without a UAE licence?

> Can a branch outside the Free Zone be ring-fenced without disturbing the Free Zone position?

The FTA's recently published “Corporate Tax – Summary of FTA Private Clarifications issued up to May 2026” matters because it gives taxpayers practical insight into how certain fact-driven issues have been approached in specific private clarification cases. It covers permanent establishment, unincorporated partnerships, family foundations, Free Zone persons, adequate substance, Qualifying Income, Participation Exemption, deductions, losses, tax groups, registration, tax periods and transitional relief. We focus below on the themes we think are most commercially significant, permanent establishment, Free Zone substance and branches, transfer pricing adjustments, Qualifying Activities, and the Participation Exemption.

The summary does not replace the law. It does not convert private clarifications into generally binding public rulings either. What it does is connect the dots between the legislation, the FTA's guides and the practical positions that have been emerging in the market.

Why this matters

In many areas, the law and the guides had already set out the framework. What the new summary adds is colour, how that framework may be applied to real commercial situations.

Permanent establishment: presence without a licence still counts
The summary confirms that the absence of a UAE trade licence does not, by itself, mean a non-resident person has no UAE permanent establishment. The test remains whether there is a fixed or permanent place in the UAE at the disposal of the non-resident person, whether business is conducted through that place, and whether the activities carried out are core income-generating activities rather than preparatory or auxiliary in nature.

The summary also points to aggregate presence of more than six months in a relevant twelve month period, even if not continuous, as an indicator of permanence. That is particularly relevant for foreign groups using UAE premises, employees, related party infrastructure or third-party service providers. The form of the arrangement matters, but it is not decisive.

Unincorporated partnerships: informal profit sharing may require Corporate Tax analysis
The summary is a useful reminder that a landowner-developer profit-sharing arrangement, whether written or oral, may constitute an Unincorporated Partnership where the arrangement amounts to persons carrying on a business, such as property development. Where that is the case, Corporate Tax registration and filing obligations may need to be assessed.

Free Zone substance: passive income still needs real activity behind it

The summary is clear that substance cannot be assumed simply because income is passive or asset based. In one example, a Free Zone Person leasing property to related parties may fail the adequate substance requirement if it has no personnel involved in lease administration, compliance monitoring, renewal oversight or enforcement of contractual rights.

At the same time, the summary recognises operating models that are common in the UAE. Employees sponsored by another group entity may still count for substance purposes if the Free Zone Person bears their economic cost, controls and supervises them, and is responsible for the substance of the employment relationship. A shared workspace can also be sufficient, provided the space is commensurate with the level of Qualifying Activity carried out. The message is not that shared resources, seconded staff, centralised HR arrangements or common office infrastructure are unacceptable. It is that the taxpayer needs to be able to evidence who is doing what, where, under whose control, and at whose economic cost.

Branches: Multiple FZ branches in UAE to be looked at on a collective basis

Where a Free Zone Person has branches in one or more Free Zones, the conditions for QFZP status are assessed for the Free Zone Person collectively, as one Taxable Person. Each activity, however, still needs to be assessed independently for Qualifying Activity status and adequate substance.

Where the Free Zone Person has a branch outside a Free Zone, that branch is treated as a domestic or foreign permanent establishment, and the income attributable to it is computed as though the permanent establishment were a separate and independent taxable person dealing at arm's length with the Free Zone Person. This is relevant for groups operating through a Free Zone head office and a UAE mainland branch. It supports the principle that mainland branch income can be taxed separately, without necessarily disturbing the Free Zone position, provided the arrangement is properly analysed, documented and priced.

Transfer pricing adjustments: tax return adjustment should not automatically disqualify you

The summary also offers welcome reassurance on transfer pricing adjustments for Free Zone Persons. An arm's length adjustment made in the Corporate Tax return, rather than in the financial statements, should not by itself disqualify a Free Zone Person from Qualifying Free Zone Person status. That said, this should not be read as reducing the importance of contemporaneous transfer pricing analysis and documentation.

Qualifying Activities: the FTA is looking past the label

The summary also gives useful indications on several Qualifying Activities:

- High seas sales or third port trading using overseas warehouses is not automatically disqualifying, provided the core income generating activities, adequate assets, employees and expenditure sit in the Designated Zone.

- Packaging and repackaging may fall within processing of goods or materials, even where no new product is created.

- For ships, ownership, management and operation are independent limbs. Time chartering without ownership, port agency and cargo handover services may potentially qualify depending on the facts.

- Treasury and financing may include investing surplus funds in interest bearing deposits, US treasuries and corporate bonds.

- Headquarter services may be provided to a single related party, but the services should be for the wider benefit of the group and should involve responsibility for the group's overall success, or an important aspect of its performance. Routine IT or marketing support to a single group entity is unlikely, on its own, to qualify.

- For logistics, first mile or last mile delivery outside the Free Zone can still form part of the Qualifying Activity where the Free Zone Person performs most of its logistics services within the Free Zone.

These examples matter because they show the FTA is not looking only at labels. A licence description, invoice narration or intercompany agreement may not be enough on its own. The real test is the nature of the activity, the functions actually performed, and the evidence available to support the position.

Participation Exemption: Welcome confirmations

The summary also brings clarity to the Participation Exemption. It indicates that dividends from a KSA company subject to Zakat at 2.5 percent may meet the subject-to-tax condition, on the basis that the KSA levies corporate tax on a similar basis at 20 percent.

It also clarifies the AED 4 million minimum acquisition cost route under Ministerial Decision No. 302 of 2024. The AED 4 million threshold is not restricted to investments acquired before 1 June 2023. The FTA Summary states that it applies to income derived from a Participation in tax periods starting on or after 1 June 2023, and it overrides both the 5 percent ownership test and the 5 percent entitlement tests for profits available for distribution and liquidation proceeds, subject to the other Participation Exemption conditions being met.

A further clarification worth flagging is the distinction between fair value movements and impairment. Fair value gains and losses are not covered by the Participation Exemption, whereas impairment gains and losses may be covered. The accounting classification under IFRS will therefore matter and should be reviewed carefully.

The caution: Private clarifications remain private

A critical point is that the summary should not be read as a blanket permission to adopt positions without a separate analysis.

The FTA's guide on private clarifications states that a clarification is issued to a specific applicant, based on the clarification request and documents submitted through EmaraTax. The FTA's response is based solely on the information and documents provided by the applicant, and the FTA does not verify the specific facts submitted.

The same guide states that a clarification applies only to the specific applicant, the specific questions asked, the facts provided and the tax type indicated, and that clarifications should not be used by anyone other than the applicant. That distinction is critical.

The new summary is a useful guide to the FTA's thinking. It is persuasive, practical and commercially valuable. It is not, however, the same as undertaking a separate technical analysis and, where appropriate, obtaining a private clarification on the taxpayer's own facts.

If a taxpayer adopts a position based on the summary, the FTA may still challenge that position during a review or audit if the facts differ. Even small factual differences can matter, who bears employee costs, where decisions are made, whether a customer is the beneficial recipient, whether an activity is core or auxiliary, whether a mandate supports investment intention, whether an investment is classified as fair value or impairment, whether pricing has been adjusted to arm's length terms, or whether a branch has been properly attributed income.

The same FTA guide states that issued clarifications may be treated as void from the outset where the actual facts differ from the facts provided, where there is fraud, misrepresentation or non-disclosure of a material fact, or where a condition or assumption in the clarification is not satisfied.

Taxpayers should not simply copy conclusions from the summary. They should compare their own facts carefully against the facts and assumptions that appear to underlie each FTA position.

What taxpayers should consider now

The summary is a good opportunity to revisit material Corporate Tax positions before they become audit issues.

This review is particularly relevant for businesses that have taken positions on Free Zone Qualifying Income, adequate substance, mainland branches, permanent establishments, family foundations, unincorporated partnerships, holding company structures, participation exemption, deductions, tax losses, tax grouping, financial statements and first tax period matters.

Where a taxpayer's position is consistent with the summary, the next step is to make sure the supporting documentation exists. Board minutes, intercompany agreements, transfer pricing workings, employee records, cost allocation schedules, lease administration records, investment mandates, invoices, accounting entries and management reports may all become relevant.

Where a taxpayer's position appears inconsistent with the summary, the conclusion should not be rushed. There may be factual differences that justify the taxpayer's treatment, or a technical basis under the law or other guidance. Either way, the position should be reviewed carefully.

In some cases, taxpayers may need to consider whether a voluntary disclosure is appropriate. This should not be done mechanically, simply because a different position appears in the summary. A voluntary disclosure should follow a proper technical and factual assessment. A poorly considered disclosure can raise wider questions and may lead to a broader review of related matters.

Equally, where a genuine error exists, delaying correction can increase exposure.

For significant or uncertain positions, taxpayers should evaluate whether a clarification route is available for the specific matter, bearing in mind the FTA's eligibility criteria and the scope of the clarification service applicable at the time of filing. The FTA's guidance on the clarification request service notes that a request should be made where the taxpayer has analysed the relevant law, regulations and guidance and the answer remains uncertain, and that requests may be rejected where there is no genuine legal uncertainty, where the request is effectively seeking tax advice, or where the matter is already under FTA audit.

Our view

The FTA's summary is a welcome development. It gives taxpayers and advisers more visibility into areas where the market has had questions, and where the legislation and guides did not always provide a complete answer. Even so, it needs to be used the right way.

Treat it as a reference point for analysis, not a substitute for analysis. Use it to test whether your positions are aligned with the FTA's direction of travel, and let it prompt you to strengthen your factual records, especially where the conclusion depends on substance, intention, control, beneficial receipt, attribution of income, accounting classification, or the true nature of an activity.

The question is not whether the summary contains a helpful answer. Rather, it is: “Can we demonstrate, with evidence, that our facts support the position we have taken?” That is usually the difference between a position that appears reasonable on paper and one that can be defended if it is ever reviewed.

How Andersen can support your business

We help businesses review existing Corporate Tax positions against the FTA's summary, assess Free Zone and permanent establishment exposures, evaluate whether a voluntary disclosure is required, strengthen supporting documentation, and prepare private clarification applications where available and appropriate.

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