

UAE Corporate Tax Alert

*Detailed Guidance on Connected Persons
– Directors & Officers*

Background and Context

Under the UAE Corporate Tax Law, payments or benefits provided to Connected Persons are only deductible to the extent that they meet the arm's length (market value) standard and are incurred wholly and exclusively for business purposes. In addition, such transactions may need to be disclosed in the tax return where thresholds are met.

A key area of uncertainty for taxpayers has been the identification of who qualifies as a Connected Person, particularly in the context of Directors and Officers. In practice, businesses have struggled with interpreting whether job titles, seniority, or functional roles trigger Connected Person classification.

The recent clarification issued by the Federal Tax Authority (FTA) provides important interpretational guidance on these aspects, helping taxpayers navigate this complexity with greater certainty.

Key Challenges Faced by Taxpayers

Prior to this clarification, businesses commonly faced the following challenges:

1. Over-reliance on Job Titles

Many organisations relied on titles such as "Director", "Manager", or "Head of Department" to determine Connected Person status. However, such titles often do not reflect actual governance roles or decision-making authority.

2. Ambiguity Around Senior Employees

It was unclear whether senior employees (e.g., CFOs, General Managers, Business Heads) should be treated as Officers and therefore as Connected Persons.

3. Lack of Clarity on Decision-Making Authority

Taxpayers struggled to assess what level of authority (strategic vs operational) would bring an individual within the scope of "Officer".

4. Risk of Non-Compliance

Due to the above uncertainties, businesses faced risks such as:

- ▶ Incorrect classification of Connected Persons
- ▶ Non-deductibility of payments
- ▶ Incomplete or inaccurate tax disclosures

Clarification on the Definition of "Director"

The FTA has clarified that a "Director" refers to a person who:

- ▶ Holds a formal position on the Board of Directors; or
- ▶ Is a member of an equivalent governing body (e.g., board of trustees or governors), as determined by the entity's constitutional documents or applicable laws.

Key Considerations:

- ▶ The definition includes executive, non-executive, temporary, permanent, and alternate directors.
- ▶ Membership in board committees is also included where relevant.
- ▶ In cases where no formal board exists, the focus shifts to equivalent governing bodies defined in the legal or constitutional framework.

Important Clarification:

The inclusion of the term “Director” in a job title alone does not result in classification as a Director for Corporate Tax purposes.

For example, a “Sales Director” or “Marketing Director” who does not sit on the Board or an equivalent governing body would not qualify as a Director under this definition.

Clarification on the Definition of “Officer”

The term “Officer” is defined more broadly and is based on substance rather than designation. An individual may be considered an Officer if they:

1. Exercise Strategic Control

Have authority and responsibility for planning, directing, and controlling the activities of the business.

2. Make Key Strategic Decisions

Have the ability to make decisions relating to financial, operational, or commercial matters at a strategic level.

3. Can Bind the Business

Have authority to enter into agreements or approve actions that legally or contractually bind the entity.

Substance Over Form

The clarification explicitly states that:

- ▶ Formal designation or title is only an indicator and not determinative.
- ▶ Individuals without formal titles may still qualify as Officers based on their actual conduct and authority.

Conversely, individuals with senior titles may not qualify if they lack final decision-making or binding authority.

Practical Examples Highlighted by the FTA

The clarification includes several examples that provide practical insight into how the definitions should be applied:

Senior Management Roles

- ▶ CEOs, CFOs, COOs, and General Managers are typically considered Officers where they have overall authority and control over business activities.

Heads of Departments

- ▶ A Head of Division or Department may qualify as an Officer if they have final authority over strategic decisions.
- ▶ However, if their role is limited to executing decisions within frameworks set by senior management, they would not qualify.

HR Leadership

- ▶ A Head of HR with authority over workforce planning and organisational structure may be considered an Officer.
- ▶ Conversely, a purely administrative HR role would not qualify.

Power of Attorney Holders

- ▶ Individuals with power of attorney may qualify as Officers if they have discretionary authority to make strategic decisions.
- ▶ If the authority is limited to administrative or pre-approved actions, they would not qualify.

Outsourced or Interim Roles

- ▶ Interim executives or consultants performing C-suite functions may be treated as Officers if they exercise real authority.

Employees Named in Legal Documents

- ▶ Individuals named in trade licenses or board resolutions with binding authority may qualify as Officers.

Implications for Taxpayers

This clarification has several important implications:

1. Reassessment of Organisational Structures

Businesses must evaluate their organisational hierarchy to identify individuals who may qualify as Directors or Officers based on actual authority.

2. Connected Person Identification

Businesses must evaluate their organisational hierarchy to identify individuals who may qualify as Directors or Officers based on actual authority.

3. Review of Payments and Benefits

Payments made to such individuals must:

- ▶ Reflect arm's length value; and
- ▶ Be supported by appropriate documentation.

4. Disclosure Requirements

Where applicable thresholds are exceeded, such transactions must be disclosed in the tax return.

5. Increased Audit Scrutiny

Given the emphasis on substance, tax authorities may closely examine governance structures and decision-making processes.

Recommended Actions for Businesses

In light of the clarification, businesses should consider the following steps:

- ▶ Perform a detailed review of roles and responsibilities across the organisation
- ▶ Map decision-making authority and approval thresholds
- ▶ Identify individuals with strategic or binding authority
- ▶ Reassess Connected Person classification
- ▶ Review compensation arrangements for arm's length compliance
- ▶ Strengthen documentation and internal policies

How Andersen Can Support

- ▶ Connected Person identification and assessment
- ▶ Functional and authority mapping
- ▶ Compensation benchmarking and arm's length analysis
- ▶ Development of documentation and governance frameworks
- ▶ Ongoing advisory and compliance support

Key Takeaway

This clarification is a welcome development that shifts the focus from job titles to actual authority and control. It provides taxpayers with an opportunity to proactively reassess their positions, strengthen documentation, and align with UAE Corporate Tax requirements before potential scrutiny arises.

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