

Corporate Tax Alert

Public Clarification on the First Tax Period of a Juridical Person



Introduction

The Federal Tax Authority (FTA) has recently issued a Corporate Tax (CT) Public Clarification on the First Tax Period of a juridical person. This clarification intends to clarify the First Tax Period (FTP) under Federal Decree Law No. 47 of 2022 on Taxation of Corporations and Business ('UAE CT Law') for the below categories of Taxable Persons (along with illustrative examples).

- Juridical person who is a resident taxable person and subject to Commercial Companies Law (Companies Law). FTP for Taxable Person formed under Free Zone regulations shall be determined in a similar manner, subject to the requirements under FZ regulations being nonetheless the same as Companies Law.
- A non-resident person having a Permanent Establishment (PE) in the UAE.
- Overseas entities whose place of effective management (PoEM) is in the UAE.
- The Public Clarification also addresses the timelines for Tax Deregistration in case of cessation of business/business activities before or during the FTP.

We have summarized below the key clarifications from this guide:

Part I – Identification of the First Tax Period (FTP)

A. FTP for Juridical Persons incorporated, formed, or established under Companies Law

- UAE CT Law is applicable to Tax Periods commencing on or after 1 June 2023. A Taxable Person's tax period is the financial year (FY) or part thereof for which a tax return is required to be filed.
- FTP for a newly incorporated company will depend on the first FY under the Companies Law.
- As per Article 28 of Companies Law, the first FY of a newly incorporated company starting from its incorporation date must not be less than 6 months and not more than 18 months. Subsequent FYs shall consist of consecutive periods, each of 12 months, commencing directly upon the expiry of the preceding FY.

We have discussed below a few examples of FTPs considering different First FYs under Companies Law.

S. No.	Incorporation Date	FY of the Company	First FY (Companies Law)	First Tax Period	Subsequent Tax Period
Incorporation date before 1 June 2023 (i.e. effective date of UAE CT Law)					
1.	1 Feb 23	1 Jan- 31 Dec	1 Feb 23 – 31 Dec 23 (11 months)	1 Jan 24 – 31 Dec 24	1 Jan 25 – 31 Dec 25
2.	1 Feb 23	1 Apr – 31 Mar	1 Feb 23 – 31 Mar 24 (14 months)	1 Apr 24 – 31 Mar 25	1 Apr 25 – 31 Mar 26
3.	1 Feb 23	1 Sep – 31 Aug	1 Feb 23 – 31 Aug 23 (7 months)	1 Sep 23 – 31 Aug 24	1 Sep 24 – 31 Aug 25
Incorporation date after 1 June 2023					
4.	5 Jun 23	1 Jan – 31 Dec	5 Jun 23 – 31 Dec 23 (6 months 26 days)	5 Jun 23 – 31 Dec 23	1 Jan 24 – 31 Dec 24
5.	16 Aug 23	1 Jan – 31 Dec	16 Aug 23 – 31 Dec 24 (16 months 16 days)	16 Aug 23 – 31 Dec 24	1 Jan 25 – 31 Dec 25
6.	2 Jan 24	1 Apr – 31 Mar	2 Jan 24 – 31 Mar 25 (14 months 30 days)	2 Jan 24 – 31 Mar 25	1 Apr 25 – 31 Mar 26

Impact of FTP being longer or shorter than 12-month period

- **No application required for change in subsequent tax period:** In the above cases, where incorporation date is after 1 June 2023 and first CT period is longer or shorter than 12-month period, no application is required to be made to the FTA for change in the subsequent tax period.
- **Interest capping threshold:** In order to determine the threshold for non-applicability of interest capping provisions, the AED 12 mn limit for net interest expenditure (NIE) shall be adjusted in proportion to the length of the tax period.
- **Other thresholds:** Where FTP is longer or shorter than a 12-month period, the pro-rata approach is not to be applied to other thresholds (except interest capping) prescribed under UAE CT Law like the:
 - taxable income threshold of AED 375,000;
 - revenue threshold of AED 3 mn for small business relief;
 - revenue threshold of AED 50 mn for maintenance of audited FS,
 - revenue threshold of AED 200 mn for preparing local and master files; etc.

B. A.FTP of a non-resident person with a PE in UAE

- Where a PE existed as of 1 June 2023, FTP shall be the first 12-month FY commencing on or after 1 June 2023. For other cases, FTP for a non-resident having a PE in UAE would depend on the date of existence of PE in UAE. Accordingly, FTP under possible scenarios in case of a non-resident having a PE can be:

S. No.	Fixed/Agency PE	FY of the Company	First Tax Period	Subsequent Tax Period	Remarks
PE existed as of 1 June 2023					
1.	Fixed Place of Business in UAE since 1 Feb 22	1 Feb - 31 Jan	1 Feb 24 – 31 Jan 25	1 Feb 25 – 31 Jan 26	FTP shall be first FY after 1 June 23 as fixed place PE existed as of 1 June 23
2.	UAE Person habitually exercising authority to conduct business in UAE since 1 Feb 22	1 Sep – 31 Aug	1 Sep 23 – 31 Aug 24	1 Sep 24 – 31 Aug 25	
PE is created after 1 June 2023					
3.	Fixed Place PE: NR opens a branch in the UAE - 1 Aug 24 PE exists as of 1 Feb 25 (after 6 months)	1 Jan – 31 Dec	1 Aug 24 – 31 Dec 25	1 Jan 26 – 31 Dec 26	While PE is seen to exist after 1 Feb 25, the Fixed Place PE would be effective from when the activities began – 1 Aug 24. FTP shall begin from when the activities began – 1 Aug 24 to 31 Dec 25
4.	Agency PE: UAE Person habitually exercising authority to conduct business on behalf of Non-resident ¹ from 5 May 24 onwards	1 May – 30 Apr	5 May 24 – 30 Apr 25	1 May 25 – 30 Apr 26	Activities conducted by UAE Person constitute existence of PE on 5 May 24. FTP shall begin from when the NR Person's activities began – 5 May 24 to 30 Apr 25

C. FTP of overseas entities whose place of effective management (PoEM) is in the UAE

- FTP shall be the FY or part thereof, commencing on or after 1 June 2023. We have given below a few illustrations in relation to the identification of FTP for overseas entities having PoEM in the UAE.

S. No.	Scenario	FY of the Company	First Tax Period
Company incorporated outside UAE before 1 June 2023			
1.	Company determined that for the period 1 Jan 24 to 31 Dec 24, PoEM was in the UAE	1 Jan - 31 Dec	1 Jan 24 – 31 Dec 24
Company incorporated outside UAE after 1 June 2023			
2.	Company incorporated on 1 Sep 23, and the Company determined that for the period 1 Sep 23 to 31 Aug 24, PoEM was in UAE	1 Sep – 31 Aug	1 Sep 23 – 31 Aug 24

1. If a Non-Resident Person had or has a PE by virtue of a Person habitually exercising an authority to conduct Business or Business Activity on behalf of the Non-Resident Person (Agency PE), then the PE will be considered to exist immediately.

Part II Timelines for Tax Deregistration (business ceased before or during the FTP)

- A Taxable Person is required to deregister on cessation of its Business or Business Activity, whether by dissolution, liquidation, or otherwise (expiry of license or lack of valid license will not constitute cessation of business).
- In case of Cessation of business or Business Activities during its first Tax Period, the Taxable Person would still be required to register for Corporate Tax.
- Only in the case where the business was closed and the company ceased to exist before the commencement of FTP, the Taxable Person is not required to register for CT.
- Lastly, a Taxable Person must be registered first before filing a Tax Deregistration application.

Andersen Takeaway

- This is a welcome clarification that brings clarity and certainty to many businesses about the first tax period. Further certainty has been brought in with clarification that there will not be a pro-rata approach for various thresholds prescribed under CT Law (except interest capping).
- It is important to note that for companies incorporated in June 2023 and following the Gregorian calendar year as the FY as per Companies Law, the FTP shall be June to December 2023.
- Accordingly, the due date for the first CT return filing would be 30 September 2024 (9 months from the end of the tax period).
- In case the of a non-UAE person having a Fixed Place PE in the UAE, the Public Clarification provides that the Fixed Place PE would be with effect from when business activities began (and not 6 months thereafter). Thus, this may mean that the income earned from the first day of business activity resulting in a Fixed Place PE shall be considered for the purpose of levying tax.
- Taxable persons intending to liquidate during the FTP must ensure timely registration (irrespective of the CT registration deadline) to comply with the deadline for tax deregistration, i.e., 3 months. Failure to deregister within the prescribed time may attract administrative penalties.

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