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M2K UAE Knowledge Series

General anti-abuse rules (‘GAAR’) & Corporate Tax Compliances

ALERT #11

Preface

This alert of the series includes discussion on the following:

- **GAAR provisions:**

  The tax laws across the world allow certain exemptions, deductions, benefits etc. to the taxpayers. Enjoying these advantages provided in line with the intent with which these are provided is generally considered as tax planning and exploitation of the provisions which is not in line with the legislative intent is considered to be tax avoidance. However, the distinction between tax planning and tax avoidance is becoming blurred in the recent times.

  In order to mitigate tax avoidance, often, the benefits provided in the tax law are subject to conditions. Further, specific anti-abuse provisions are also enacted to ensure that these provisions are not taken advantage of for tax avoidance.

  In the contemporary, we witness that, in addition to specific provisions addressing anti-abuse, various countries have also enacted GAAR to combat tax avoidance. In line with the same, UAE Corporate Tax has also incorporated GAAR Provisions.

- Various **Corporate Tax Compliances**

- **Recent updates**

General anti-abuse rules (1/3)

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The provisions in relation to GAAR are summarized below in the form of Q&A.

When can GAAR be invoked?

GAAR can be invoked in respect of a transaction or an arrangement (duly taking into account all the relevant circumstances), where it is reasonably concluded that:

- The transaction or arrangement (in whole or in part) is not for a valid commercial or other non-fiscal reason reflecting the economic reality **and**

- The main purpose or one of the main purposes of the transaction or the arrangement (in whole or in part) is to obtain a corporate tax advantage[1] which is not in line with the intention or purpose of the corporate tax law.

What are the factors to be considered to determine whether it is a fit case for invocation of GAAR?

- The manner of entering into or carrying out the transaction or arrangement,
- The form and substance of the transaction or arrangement,
- The timing of the transaction or arrangement,
- The results of application of the corporate tax law to the transaction or arrangement,
- Any change/ expected change in financial position of the taxable person or another person as a result of the transaction or arrangement,
- Whether the transaction or arrangement has created abnormal rights or obligations, which would not be expected when transacting at arm's length

Further, the authorities must demonstrate that the invocation of GAAR is just and reasonable.

[1] "Corporate Tax Advantage" includes but is not limited to: tax refund or increased tax refund, avoidance or reduction of Corporate Tax liability, deferral of payment of Corporate Tax or advancement of refund of Corporate Tax and avoidance of an obligation to deduct or account for Corporate Tax.

General anti-abuse rules (2/3)

What is the consequence of invoking GAAR?

The tax authorities may counteract or adjust one or more Corporate Tax advantages obtained as a result of the transaction or arrangement in respect of which GAAR was invoked.

What is the mechanism to be followed for invocation of GAAR?

The tax authorities must issue an assessment giving effect to the counteraction or adjustment as discussed above, which may include the following:

- Disallowance/ denial of exemption, deduction or relief (wholly or partly) in calculating the taxable income or the corporate tax payable
- Allocation of exemption, deduction or relief (wholly or partly) to any other person(s)
- Recharacterizing the payment or other amount (wholly or partly) for the purpose of application of Corporate Tax Law
- Disregarding the effect of application of any provisions of the Corporate Tax Law

The tax authorities can also make compensating adjustments to the Corporate Tax liability of any other person affected by invocation of GAAR in the hands of a taxable person

General anti-abuse rules (3/3)

The following are the certain noteworthy aspects in connection with GAAR:

The taxpayer is permitted to optimize their tax position using the incentives and opportunities provided in the Tax Law to alter their behaviour to reduce their tax liabilities in a manner consistent with the purpose and the provisions of the legislation. The same would not be hit by the GAAR provisions. However, the behavior of the taxpayer to seek to reduce their tax liabilities in a way that is <u>not consistent with the original intent and purpose of the law while still complying with the letter of the law</u> is typically considered abusive and is sought to be curbed by the GAAR Provisions*.

GAAR can also be invoked to a situation, where the person who enters into tainted transaction or arrangement to allow another person to obtain a tax benefit*.

It has been provided that GAAR applies even to a transaction or arrangement where <u>one of the main purposes</u> is to obtain a tax benefit. This is in line with the Principal Purpose Test (PPT) included in Multilateral Instruments (MLI) introduced as a result of one of the Base Erosion and Profit Shifting (BEPS) Action Plans of the Organization for Economic Co-operation and Development (OECD).

It is a welcome step that the GAAR Provisions of UAE Corporate Tax Law allows compensating adjustment in the Corporate Tax liability of other person who is affected in the course of application of GAAR. The same demonstrate the equitable approach of UAE's taxation and mitigates the possibility of double taxation.

* *Explanatory Guide on Corporate Tax Law published by the Ministry of Finance*

Corporate Tax Compliances (1/6)

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Tax Registration:

Taxable persons are required to make an application in the prescribed form within prescribed timelines to obtain Tax Registration Number.

The authority may require the following persons to register for Corporate Tax and obtain Tax Registration Number:

- Unincorporated Partnerships that have not opted to be treated as a taxable person[2]
- The following exempt persons:
  - Qualifying Public Benefit entity
  - Qualifying Investment Fund
  - Pension or Social security Fund subject to regulatory oversight
  - UAE Juridical person wholly owned and controlled by specified persons[3]
  - Any other person as per cabinet decision

  Refer Slides #10 & #11 of our Alert #8 for the details of timelines prescribed for making an application for tax registration by the above exempt persons.

Further, the tax authority has discretion to register a taxable person for corporate tax based on the available information.

Refer Slide #9 of our Alert #6 for the provisions of Ministerial Decision No. 68 of 2023 on exemption from obtaining tax registration.

[2] The tax registration is for the purpose of filing of declaration as required under Article 53(6) of the Corporate Tax Law
[3] Government entity or Government controlled entity or qualifying investment fund and Pension or Social Security fund

Corporate Tax Compliances (2/6)

Tax Deregistration:

- A person having a tax registration number should file an application for deregistration in case of cessation of business or business activity by way of dissolution, liquidation or otherwise. The form, manner and timelines for application are as prescribed[4].

- The taxable person would not be deregistered unless all corporate tax and administrative penalties due are paid and tax returns (including for the period upto the date of cessation) are filed.

- The Tax authority would deregister the person for corporate tax purposes with effect from (w.e.f.) the date of cessation or other date as determined by the authority upon approval of the application for deregistration.

- Where the person does not comply with the requirements for deregistration, the tax authority has discretion to deregister a person[5] based on available information.

[4] Timelines for 3 months have been prescribed in Federal Tax Authority Decision No. 6 of 2023. Also refer **Slide #10** of our **Alert #8**

[5] Effective date of deregistration shall be the later of –

1. The last date of the tax period in which it became apparent to the tax authority that all tax and administrative penalties due have been paid and tax returns have been filed,
2. The date of taxable person ceases to exist.

Corporate Tax Compliances (3/6)

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Tax Returns:

- A taxable person must file a tax return in manner and form to be prescribed[6] within 9 months from the end of the relevant tax period or such other date as per the directions of the tax authority.

- The information that must be part of the return of income are as follows (to the extent applicable):

Relevant tax period	The name, address and tax registration no. of the taxable person	The date of submission of the tax return	The accounting basis used in the financial statements	The taxable income for the tax period
The amount of tax loss relief claimed	The amount of tax loss transferred	Withholding tax credit and foreign tax credit claimed	The Corporate tax payable for the tax period.	

- The taxable person would be required to provide information, documents or records reasonably required by the tax authority.

[6] The Finance Minister may prescribe form and manner in which the tax return and other information is to be filed with the tax authority, making exceptions from the provisions of the Corporate Tax Law, where the disclosure of information may impede national security or may be contrary to the public interest.

Corporate Tax Compliances (4/6)

- The tax authority may request the following persons to submit a declaration:

Qualifying Public Benefit entity	Qualifying Investment Fund	Pension or Social security Fund subject to regulatory oversight
UAE Juridical person wholly owned and controlled by specified persons[7]	Any other person as per cabinet decision	Unincorporated Partnerships that have not opted to be treated as a taxable person[8]

- In case of a tax group, the parent company must file a tax return.

- The following aspects have been clarified.

  - Taxpayers are required to file the tax return, irrespective of the level of income or the status of the Company.

  - Taxpayers are required to file the tax return even when they have not made profits. The taxpayers incurring losses should file the tax return in order to ensure that such losses can be used to reduce the taxable income of future years (i.e. tax loss relief can be claimed in future).

  - Tax returns are to be filed electronically. Further guidance to be provided in due course.

[7] Government entity or Government controlled entity or qualifying investment fund and Pension or Social Security fund

[8] The authorized partner may file the declaration on behalf of all the partners of the Unincorporated Partnership

Corporate Tax Compliances (5/6)

Financial Statements :

- The tax authority may request the taxable person to submit the financial statements used to determine the taxable income of a tax period in form, manner and timelines to be prescribed.
- A partner in an unincorporated partnership may be required to provide financial statements with the following information:
  - The total assets, liabilities, income and expenditure of the unincorporated partnership
  - The partner's distributive share in the above.
- The minister has notified[9] that Persons having a revenue exceeding AED 50 Million and a qualifying free zone persons are required to prepare and maintain audited financial statements under the powers conferred under the Corporate Tax Law.

Transfer Pricing Documentation: ***Refer Slides #12 & #13 of our Alert #10.***

Record Keeping[10]:

The following records and documents and required to be maintained for a period of 7 years following the end of the relevant tax period:

- records and documents that support the information provided in the tax return and any other documents to be filed with the tax authority
- records and documents that enables the tax authority to ascertain the taxable income of the taxable person

[9] Ministerial Decision No. 82 of 2023. Also refer Slide #9 of our Alert #9 [10] It is to be noted that the following provisions override the provisions of the Tax Procedures Law.

Corporate Tax Compliances (6/6)

The illustrative list of records to be kept by the businesses have been provided as below*:

- a cash book recording daily sales, including credit sales (i.e. sales book);
- a salary and wages register, if the business has employees.

* Explanatory Guide on Corporate Tax Law published by the Ministry of Finance

The 'exempt persons' are required to maintain the records that enables the tax authority to ascertain the status of the exempt person for a period of 7 years from the end of the relevant tax period.

Tax Period:

- The tax period of a taxable person would be the financial year (i.e. Gregorian calendar year or any 12 month period for which the taxable person prepares financial statements[11]) or part thereof, where applicable[12], for which a tax return is required to be filed.

- The provisions of the Corporate Tax Law read with the Federal Tax Authority Decision in relation to change in tax period of a taxable persons have been discussed in ***Slide #9 of our Alert #8.***

Clarifications:

Any person is allowed to make an application to the tax authority for clarification in relation to Corporate Tax Law or conclusion of an advance pricing agreement with respect to proposed transactions or arrangements in the form and manner to be prescribed.

[11] Also refer Slide #3 of our Alert #1 [12] Typically, part of the year may be applicable in first year of incorporation/ undertaking the business and the year of cessation of business or the existence of taxable person

Recent Updates (1/3)

Conditions for relaxation of consequence of violation of conditions in case of an exempt person:

Where an exempt person fails to meet any of the prescribed conditions during a tax period, such person would cease to be an exempt person from the beginning of the tax period in which the conditions are not met.

However, the Corporate Tax Law has empowered the finance minister to prescribe conditions for relaxation from the said consequence in certain situations[13].In exercise of the above powers, the following have been prescribed[14]:

- Where failure to meet the conditions is on account of liquidation or termination, a notification is required to be submitted by the exempt person to the tax authority within 20 business days from the date of beginning of liquidation or termination procedures.

- Where failure to meet the conditions is temporary in nature and would be promptly rectified and process for remediation and ensuring future compliance is put in place, such person may continue to be an exempt person, provided the following conditions are met:.

    - The failure is on account of a situation or an event beyond the control of the exempt person, which he could not have reasonably predicted or prevented.
    - Such person has made an application to the tax authority to continue to be treated as 'exempt person' within 20 business days from the date of failure to meet the conditions.
    - The tax authority shall review the application and notify its decision to the exempt person with 20 days[15] from the date of submission of application.
    - It is reasonably expected to rectify the failure within 20 business days from the date of submission of aforesaid application to the tax authority.

[13] Refer Slide #7 of our Alert #4 [14] Ministerial Decision No. 105 of 2023 [15] Subject to extension of timelines duly having notified the exempt person

Recent Updates (2/3)

- ➢ The exempt person provides evidence to support implementation of appropriate remedial measures and future compliances within 20 business days from the date of request by the authority or any other period as determined by the authority.

- Where conditions for invocation of GAAR are satisfied, such person shall cease to be deemed as exempt person from the date of failure to meet the prescribed conditions (as against normal provisions of ceasing to be an exempt person from the beginning of the tax period in which the conditions are not met).

Specification of categories of Business or Business Activities conducted by natural persons that are subject to Corporate Tax:

- Income from business or business activity carried on by a natural person is part of taxable income. The cabinet is empowered to issue a decision to specify the categories of business or business activities that are subject to Corporate Tax[16].

- In exercise of the aforesaid powers, it has been specified[17] that:

  - ➢ Business or business activities conducted by natural persons are subject to Corporate Tax only where the total turnover derived therefrom exceeds AED 1 Million within a Gregorian calendar year.

[16] Also refer Slides #5, #6 & #7 of our Alert #1 of this Series [17] Cabinet Decision No. 49 of 2013

Recent Updates (3/3)

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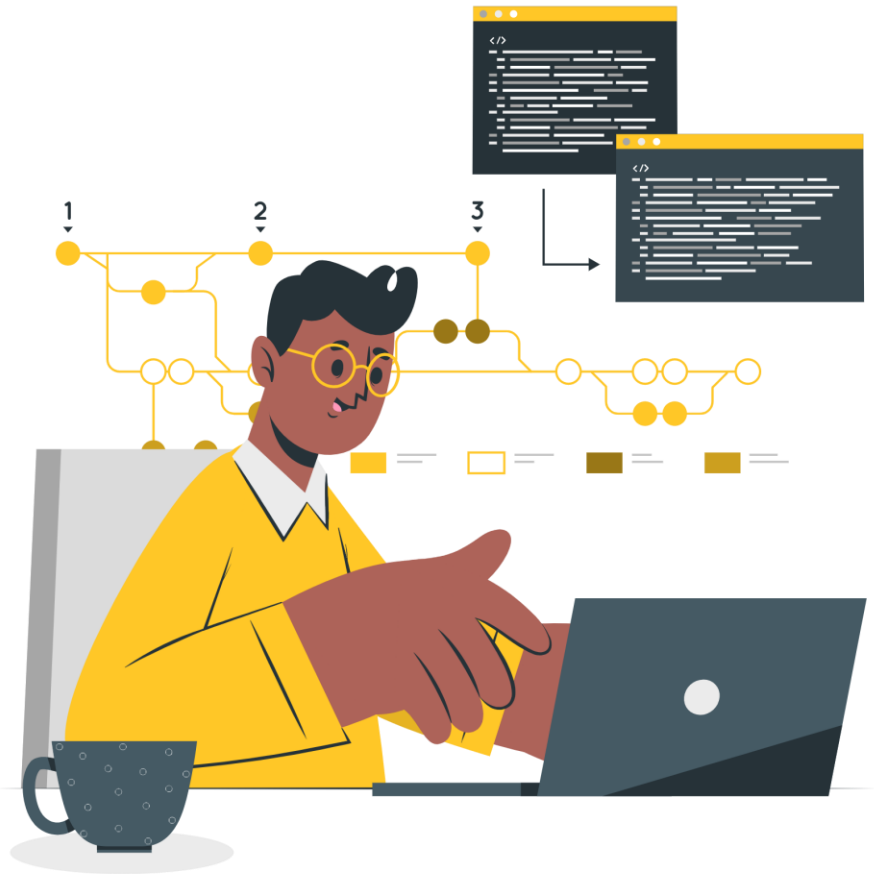

- "Turnover" referred to above represents the gross amount of income derived during a Gregorian Calendar year. However, turnover from the following are not to be considered as 'business' or 'business activities'.

  - **Wage**: consideration for services under employment contract

  - **Personal investment income**: investment activities conducted in personal capacity, neither conducted through a license and does not require a license from relevant authority, nor considered as commercial business under Commercial Transactions Law.

  - **Real Estate investment income**: investment activities directly or indirectly related to the sale, leasing, sub-leasing and renting of land or real estate property in UAE, that is not conducted through a license from relevant authority.

- Natural persons not conducting a business or business activities subject to corporate tax are not required to register for Corporate Tax.

The Ministry of Finance has released **Explanatory Guide** on Corporate Tax Law, which would be useful as an aid for interpretation of the law.

Stay tuned for more updates on UAE!

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Please find below the list of completed & upcoming alerts from the series. In case you have missed the previous alerts, click on the hyperlink for the completed alerts to refer the same.

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