

United Arab Emirates

Introduction

The United Arab Emirates (UAE) is a federation of seven emirates, namely Abu Dhabi, Dubai, Sharjah, Fujairah, Ras Al Khaimah, Ajman, and Umm Al Quwain.

The information in this chapter applies to all emirates unless there is a material difference, which is addressed separately.

Legislative Position in the United Arab Emirates

Federal Companies Law

The Federal Companies Law No. 8 concerning commercial companies as amended (the Law) is relevant when considering a merger or acquisition (M&A) in the UAE.

The scope of the Law covers all commercial operations established in the UAE except companies operating in a Free Trade Zone (FTZ), companies with activities in the oil and gas industry, and companies that have special agreements with the UAE government or one of the emirates, such as foreign oil companies and branches of foreign banks.

A merger under the Law can be effected either by one company absorbing another company, or by a combination of two or more companies being absorbed by a new company.

An acquisition can also take place by buying shares in a company, subject to foreign investment regulations.

Foreign Investment

Although the Law permits foreign participation, unless the company is incorporated in a FTZ, local sponsorship or ownership is mandatory. The alternative for foreign entities that only want to export goods to the UAE is to appoint a local commercial agent.

A limited liability company can be set up for trading purposes in an emirate by a foreign parent, but 51 percent of the shares must be held by a UAE national or a company controlled by UAE nationals. Management of such a company can be vested in either the majority or minority shareholder. If a foreign company wishes to open a branch in the UAE, it must be sponsored by a

UAE national or by a locally registered company that is wholly-owned by UAE nationals.

A foreign company can set up a representative office in the UAE, but a local sponsor is required. However, this representative office can only undertake marketing and promotional activities.

Tax Decrees

The UAE does not have any all-encompassing corporate tax legislation at the federal level. Some of the UAE's seven emirates have issued their own income tax decrees, which are quite similar in nature and wording. Although corporate income tax is, in theory, applicable to all corporate entities, in practice, corporate income tax is presently only enforced on foreign oil companies (such as companies dealing in oil or oil rights, including crude oil, or other hydrocarbon materials produced in the emirates) and branches of foreign banks.

Foreign oil companies enter into concession agreements with the ruler of the emirate under which they extract/produce the oil. In practice, the tax paid by an oil company can range from 55 percent to 85 percent. Individual emirates have also issued separate corporate income tax decrees for the assessment of tax on the branches of foreign banks. In the case of branches of foreign banks, corporate tax is generally calculated at the rate of 20 percent of taxable income.

The tax decrees are quite concise and no mention is made of the consequences of company mergers, acquisitions, or disposals in these decrees.

Asset Purchase or Share Purchase Purchase of Assets

There are no specific provisions relating to an asset purchases or M&A in any of the tax decrees. In situations where a merger or an acquisition takes place involving an entity or entities that are currently subject to corporate tax in the UAE, the tax implications, including purchase price allocation, treatment of goodwill, continuity of tax attributes, etc., will have to be considered on a case-by-case basis.

Value-Added Tax (VAT)

There is currently no sales tax or VAT legislation in the UAE. The UAE government is actively considering the introduction of VAT. However, a final decision is still to be taken by the federal authorities.

Transfer Taxes

There is no stamp duty on the acquisition of assets, except on the acquisition of real property, where a registration fee may be payable, depending on the emirate in which the property is situated.

Purchase of Shares

As stated above, an acquisition can take place by buying shares in a company, subject to foreign investment restrictions. Also there are no specific provisions governing M&A in any of the tax decrees. In situations where a merger or an acquisition takes place involving an entity or entities that are currently subject to corporate tax in the UAE, the tax implications including treatment of pre-sale dividend, treatment of tax losses, etc., will have to be considered on a case-by-case basis.

Transfer Taxes

There is no stamp duty on the acquisition of shares.

Choice of Acquisition Vehicle

Generally, foreign businesses can operate in the UAE by establishing an entity within any one of the two investment locations; that is, mainland UAE (areas outside of the FTZs) and FTZs. The following entity types are generally available:

- In mainland UAE by incorporating a limited liability company or a joint-stock company. This is subject to foreign investment restrictions under which foreign ownership is restricted to only 49 percent of the share capital of the entity.
- In mainland UAE by establishing a branch of a foreign company (a local sponsor is required).
- Incorporating in one of the FTZs in the UAE (100-percent foreign ownership allowed in entities). Branches are also possible without any local sponsorship.

All the above forms of entities must obtain trade licenses on registration (renewable annually) from the relevant authorities.

Local Holding Company

A holding company can be established in the UAE in one of the two investment locations; that is, mainland UAE or FTZs.

In mainland UAE foreign ownership is restricted to 49 percent. Management of such a company can be vested in either the majority or minority shareholder.

Some of the FTZs offer the ability to set up an investment holding company either under a specific offshore company regime or by approval on a case-by-case basis. An offshore holding company can only hold 49 percent of the share capital of a mainland UAE entity.

Foreign Parent Company

A foreign company can make an acquisition in the UAE subject to the foreign investment restrictions outlined earlier

Local Branch

Branches of foreign companies cannot generally be used as acquisition vehicles.

Joint Ventures

A joint venture is not a specific type of entity. A limited liability company has to be set up for a joint venture. Please see the discussion in relation to Local Holding Company for use of a joint venture as an acquisition vehicle

Choice of Acquisition Funding

There are no specific thin-capitalization rules in the income tax decrees and no exchange control regulations in the UAE. Funds can be easily repatriated. In the case of limited liability companies, the UAE Federal Commercial Companies Law requires a minimum of 10 percent of the net profits of the company to be allocated every year to a legal reserve. Such allocations may cease once the reserve reaches 50 percent of the company's issued share capital.

There are no specific tax provisions relating to M&A in any of the tax decrees. In situations where a merger or an acquisition takes place involving an entity or entities that are currently subject to corporate tax in the UAE, the tax implications of various forms of funding including debt, equity, hybrids, discounted securities, etc. will have to be considered on a case-by-case basis.

Other Considerations

Company Law and Accounting

The Companies Law requires locally-registered companies to appoint auditors to audit their annual financial statements. Registered companies in FTZs are also required to have their financial statements audited annually.

Group Relief/Consolidation

The tax decrees contain no provisions for group relief and/or consolidation of tax returns.

Transfer Pricing

Currently, there are no provisions relating to transfer pricing in the UAE.

Dual Residency

There are no provisions in the tax decrees relating to dual residency in the UAE.

Employment of Nationals

Employment of UAE nationals is encouraged, but formal targets have not yet been set, except in certain sectors, such as banking.

Withholding Tax on Debt and Methods to Reduce or Eliminate

There are no withholding taxes in the UAE.

Tax Treaties

The UAE has concluded a number of treaties relating to income and capital with: Algeria (income only), Armenia, Austria (income only), Azerbaijan, Belarus, Belgium, Bulgaria, Bosnia and Herzegovina, Canada, China (income only), Czech Republic, Egypt (income only), Finland (income only), France, Germany (this treaty has expired and has not been renewed, or extended), India, Indonesia (income only), Italy (income only), Korea (income only), Lebanon (income only), Luxembourg, Malaysia (income only), Malta, Mauritius, Mongolia (income only), Mozambique (income only), Morocco, the Netherlands, New Zealand (income only), Pakistan (income only), Poland, Philippines, Romania, Seychelles, Singapore (income only), Spain, Sri Lanka (income only), Sudan (income only), Syria (income only), Thailand (income only), Tajikistan (income only), Tunisia, Turkey (income only), Turkmenistan (income only), Ukraine, Uzbekistan, and Yemen (income only).

Treaties with many other countries are currently under negotiation.

Comparison of Asset and Share Purchases

According to the income tax decrees, in general, if a profit is made on a sale or transfer, it will be taxed. When a merger or acquisition involves one or more entities that are currently subject to corporate tax in the UAE, the brevity of the legislation does not mean that the tax authorities will accept without argument that the value at which the asset is transferred for accounts purposes is the value for tax purposes. Therefore, even if assets are sold or transferred at book value, the authorities can argue there is a profit. The tax authorities scrutinize transactions for fairness.

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