
UAE FTA issues Corporate Tax Guide on Real Estate Income of Natural Persons



About Vivad Se Vishwas 2.0:

Quick Rundown

- The Federal Decree No. 47 of 2022 ('UAE CT Law') excludes Real Estate Investment Income earned by a Natural Person from the scope of taxation.
- The UAE Federal Tax Authority ('FTA') has issued a tax guide that provides general guidance on the tax implications for Natural Persons in relation to Real Estate Investment and income derived from the same.

Criteria for exclusion

- Income from Real Estate Investment shall only pertain to sale, renting and sub-leasing of property to qualify for exclusion for the purposes of UAE CT Law.
- In other words, income must be earned through utilisation of the property itself. Income earned through rendering services in relation to property such as property management services is not considered for exclusion.

Scope of 'property'

- For the purpose of Real Estate Investment, property refers to any:
 - a. Area of land on which rights or interests can be created
 - b. Building, structure or engineering work permanently attached to land or seabed
 - c. Equipment which is a permanent part of property mentioned in point a & b.
- Income from the property can be from commercial use, residential use of such property or a combination of both.

Location of property

- The property shall be located either in UAE or outside UAE for the income through investment into the same to be excluded from tax under UAE CT Law.

Impact of Licensing

- The UAE CT Law does not provide for any requirement for a Natural Person to obtain a Licence for conducting a business activity.
- However, relevant Licensing Authority and legislation under which the business operates mandates obtaining a Licence.
- Any business activity in relation to Real Estate Investment for which a Licence is required to be obtained, income from such activity shall not qualify for exclusion under UAE CT Law.

Involvement of intermediaries

- Income earned by a Natural Person from Real Estate Investment through an intermediary shall also qualify for exclusion. Such intermediary can be an agent or property management company.
- It is irrelevant whether such intermediary has a License to carry on their business for the Natural Person to claim exclusion for the income derived from relevant property.

Business and Non-Business Activity

- Income realised from Real Estate Investment by a Natural Person, not in relation of a business activity, shall qualify for exclusion from UAE Corporate Tax.
- A Natural Person must be able to provide basis and distinguish Real Estate Investment Income earned in a non-business capacity from Income earned from business activities in order to claim aforesaid exclusion.

The FTA has provided an example in the guide wherein the CT Law implications for the income earned by a Natural Person undertaking property management and leasing as a business is captured.

In said example, the Natural Person undertakes said activities through an sole establishment after obtaining appropriate License from relevant Licensing Authority. In the context of CT Law, the Natural Person and sole establishment is considered one and the Natural Person is the Taxable Person.

Since the sole establishment has undertaken activities in business capacity and through a License, income derived from such activities is taxable in hands of the Natural Person and does not benefit from the Real Estate Income Exclusion.

Implications for Sole Proprietorship

- In case of a sole proprietorship, the Natural Person and the sole proprietorship are the same person, owing to their direct relationship, control over the business and the unlimited liability towards obligations of the business.
- In said case, the Taxable Person under UAE CT Law is the Natural Person. If the Natural Person has established a sole proprietorship which performs an activity in relation to Real Estate Investment for which a Licence is required to be obtained, the income earned from such activity is taxable in the hands of such Natural Person.

Arm's length standard

- Transactions entered into by the Natural Person with Related Parties in respect of Real Estate Investment must adhere to the arm's length standard provided thereunder in the UAE CT Law.

Apportionment of expenditure

- Common expenditure incurred for Real Estate Investments qualifying for exclusion and not qualifying for exclusion must be allocated using a fair and consistent apportionment method.
- The basis of apportionment can be headcount, floor space, time spent or any other measurable and reasonable basis.
- A Natural Person must ensure consistency in application of the apportionment method across different Tax Periods, unless there is change in fact pattern that necessitates a change in method.

Jointly owned property

- Wherein a property is jointly owned by multiple Natural Persons, the income earned from such property must be allocated to each Natural Person based on the fact pattern on a case-to-case basis.

General Anti-Abuse Rule

- If the FTA observes that a Real Estate Investment and related arrangements lack economic substance and has been entered into for obtaining a undue tax advantage under UAE CT Law, FTA shall require the relevant income to be treated as Taxable Income in UAE.

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