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In this article, the authors discuss the complex treatment of immovable property income under the corporate tax effective in the United Arab Emirates as of June 1, 2023, and consider international tax implications for UAE and foreign investors.

The opinions expressed in this article are solely those of the authors and do not necessarily reflect the views of any organizations with which they are affiliated.

I. UAE Corporate Tax

The United Arab Emirates introduced a corporate tax regime with effect from June 1, 2023, based on Federal Decree-Law No. 47 of 2022.[1] The enactment of a tax on corporations and businesses in the UAE was first announced January 31, 2022, and was followed by a public consultation in April 2022.[2] The text of the decree, which includes 20 chapters and 70 articles, was issued October 3, 2022; featured in the October 10, 2022, official gazette; and was publicly released December 9, 2022.

Besides Federal Decree-Law No. 47 of 2022, the UAE corporate tax regime consists of several regulations and guidance documents issued by various governmental authorities — namely, the president of the UAE, the UAE cabinet, the Ministry of Finance, and the Federal Tax Authority.[3] The MOF explained the rationale

[1] UAE President, "Federal Decree-Law No. 47 of 2022 on Taxation of Corporations and Businesses" (Oct. 3, 2022) (UAE CT).

[2] Ministry of Finance, "Public Consultation Document — UAE Corporate Tax" (Apr. 28, 2022).

[3] The MOF published an explanatory guide to help businesses cope with the new corporate tax. MOF, "Explanatory Guide on Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses" (May 2023). The Federal Tax Authority published its own guide. Federal Tax Authority, "Corporate Tax — General Guide," CTGGCT1 (Sept. 11, 2023) (CT guide). A list of frequently asked questions is regularly updated and available for consultation on the MOF's website. MOF, "Corporate Tax FAQs." All references to the MOF FAQ in this article are to the version available on November 20, 2023.

behind the introduction of a federal corporate tax, which, besides meeting international standards for tax transparency and preventing harmful tax practices, was introduced in an effort to cement the UAE's position as a world-leading hub for business and investment and accelerate the nation's development and transformation to achieve its strategic objectives.[4]

UAE corporate tax applies to adjusted worldwide accounting net profits[5] of UAE resident businesses and on UAE-source adjusted profits of nonresident businesses for tax periods commencing on or after June 1, 2023.[6] The tax is levied on companies and other legal entities, as well as on resident and nonresident individuals.[7] However, for individuals, it is only charged if they are conducting business activities.[8] No personal income tax exists in the UAE. Therefore, neither corporate nor personal income tax applies to employee salaries, private persons' investments and savings, real estate investment income, or any other income from nonbusiness activities.[9]

The new UAE corporate tax encompasses various design elements, making it one of the most competitive regimes globally. It features one of the lowest headline corporate tax rates worldwide: 9 percent. Moreover, businesses with taxable profits below or equal to AED 375,000 can benefit from a 0 percent tax rate.[10] In addition, a 0 percent corporate income tax rate is applicable on qualifying income for so-called qualifying free zone persons — entities located in any of the more than 40 UAE free zones — provided that certain conditions are fulfilled.[11] A 0 percent withholding tax rate applies to outbound income payments for commercial activities conducted by non-UAE businesses in the nation's territory.[12] Other features contributing to the new UAE corporate tax's attractiveness relate to the specific design of exclusions, exemptions (for example, a liberal participation exemption), deductions, safe

[4]Question 2 of MOF FAQ, *supra* note 3.

[5]Art. 20 of UAE CT, *supra* note 1, provides general rules for determining the taxable income of a taxable person. As clarified by the Federal Tax Authority, "the general rules for determining Taxable Income apply equally to foreign source income earned by a Taxable Person." Federal Tax Authority, "Taxation of Foreign Source Income — Corporate Tax Guide," CTGFSI1, at 27 (Nov. 2023) (foreign-source income CT guide).

[6]Foreign entities are considered residents for UAE corporate tax purposes if effectively managed and controlled from within the UAE. For entities that do not meet the residency criteria but have a permanent establishment in the UAE, the relevant PE definition under UAE corporate tax encompasses fixed PE, agency PE, and — unknown under most corporate tax regimes — nexus PE. *See* UAE CT, *supra* note 1, at arts. 11(4) and 14; Federal Tax Authority, "Non-Resident Persons Corporate Tax Guide," CTGNRP1 (Oct. 2023) (nonresident persons CT guide). For an analysis of the PE clauses under UAE CT, see Thomas Vanhee, Varun Chablani, and Giorgio Beretta, "CIT in the UAE: The PE Clause for Companies," Kluwer International Tax Blog, Apr. 20, 2023; Vanhee, Chablani, and Beretta, "CIT in the UAE: The PE Clause for Individuals," Kluwer International Tax Blog, Apr. 21, 2023.

[7]Concerning the definition of residence of individuals for UAE CT, see CT guide, *supra* note 3, at 26, stipulating that "residence for Corporate Tax purposes is not determined by where a natural person resides or is domiciled. For natural persons, residence for Corporate Tax purposes is concerned with the person's business connection to the UAE. . . . This approach means, for example, that natural persons conducting Businesses or Business Activities in the UAE are Resident Persons for Corporate Tax irrespective of their nationality, whether they hold a residency visa in the UAE, whether their income is sourced in the UAE or from abroad, or how much time they may physically spend in the UAE." Concerning the definition of residence of individuals in the UAE in general, see Federal Tax Authority, "Determination of Tax Residency," Cabinet Decision No. 85 of 2022 (Sept. 2, 2022); MOF, "On Implementation of Certain Provisions of Cabinet Decision No. 85 of 2022 on Determination of Tax Residency," Ministerial Decision No. 27 of 2023 (Feb. 22, 2023).

[8]According to the public consultation document, *supra* note 2, at paras. 3.2 and 3.3, "the UAE CT regime will be implemented without a parallel tax on the income of natural persons, namely individuals. In order to level the playing field between incorporated businesses and unincorporated businesses owned by individuals, UAE CT will also apply to natural persons engaged in a business or commercial activity in the UAE. This will also include sole establishments or proprietorships and individual partners in an unincorporated partnership that conduct business in the UAE. Similar approaches are taken in other jurisdictions without a parallel personal income tax on business profits." Based on the foreign-source income CT guide, *supra* note 5, at 18, a UAE resident individual's "income derived from outside the UAE, insofar as it relates to the Business or Business Activity conducted by the natural person in the UAE," is taxable.

[9]"On Specifying the Categories of Businesses or Business Activities Conducted by a Resident or Non-Resident Natural Person That Are Subject to Corporate Tax," Cabinet Decision No. 49 of 2023, at art. 1 (May 8, 2023). *See also* questions 34-37 of MOF FAQ, *supra* note 3; CT guide, *supra* note 3, at 26-27.

[10]"On the Annual Taxable Income Subject to Corporate Tax," Cabinet Decision No. 116 of 2022, arts. 2 and 3 (Dec. 30, 2022).

[11]"The UAE offers investors more than 40 multidisciplinary Free Zones, in which expatriates and foreign investors can have full ownership of companies. These zones are characterized by their highly efficient infrastructure, and distinct services that facilitate smooth workflows, saving businesses considerable time and effort." MOF, "More Than 40 Multidisciplinary Free Zones in the UAE" (last visited Dec. 1, 2023). For an analysis of the corporate tax regime for UAE free zone entities, see Eva Leclercq, Vanhee, and Beretta, "United Arab Emirates: The Corporate Tax Regime for Free Zone Persons," 77(11) *Bull. Int'l Tax'n* 526 (2023).

[12]Art. 45 of UAE CT, *supra* note 1. *See also* question 269 of MOF FAQ, *supra* note 3; CT guide, *supra* note 3, at 111-112.

harbors, credits, and the associated flexibility to opt in or out of certain regimes.[13] The UAE's extensive treaty network equally helps domestic and international investment insofar as international tax agreements may limit the application of UAE corporate tax.[14]

This article focuses on the new UAE corporate tax's application to income from immovable property, one of the pivotal sectors of this Gulf country's economy and a driving force of its continuous growth. The authors also discuss international tax implications and corporate structures for project developments in the UAE real estate market for domestic and foreign businesses or individuals investing in the UAE.

II. UAE Real Estate Sector

Real estate is a thriving and dynamic sector within the UAE's economy. This sector is an important foreign direct investment source to sustain the UAE's continuous growth, attracting many investors from around the world each year. Real estate is the nation's sixth most important non-hydrocarbon sector, accounting for 8.2 percent of the non-oil GDP of the UAE.[15] In recent years, the UAE's booming real estate market has undergone unprecedented growth, with Dubai alone registering over 84,000 immovable property transactions in 2021 worth almost AED 300 billion.[16] For the first six months of 2023, Dubai recorded over 61,000 real estate transactions worth nearly AED 179 billion, and Abu Dhabi accounted for 10,557 real estate transactions amounting to over AED 46.33 billion.[17]

The UAE's confederal structure provides that each emirate has jurisdiction in matters not assigned to the exclusive jurisdiction of the federation.[18] Recognizing the pivotal role of the real estate market within its economy, each emirate in the UAE has implemented real estate legislation at the emirate level in the form of decree laws, bylaws, resolutions, and decisions. Only federal property has been assigned to the exclusive jurisdiction of the federation. Each emirate has its own regulator. In Dubai, responsibility for registration, organization, monitoring, and promotion of real estate investments is entrusted to the Dubai Land Department and the Real Estate Regulatory Agency.

Each emirate has legislated separately on the rights of foreign persons to own and be granted property rights.[19] In addition, certain free zones have implemented legislation governing property ownership and rights.[20]

A major division in ownership treatment exists in the UAE real estate market, depending on whether immovable property is located on the UAE mainland or any of the UAE free zones. All real estate properties established in UAE free zones are eligible for 100 percent foreign ownership, whereas some restrictions on 100 percent foreign ownership may apply to UAE mainland real estate properties.

In November 2020, through an amendment in the commercial companies decree law, the UAE government allowed foreign investors to establish companies with 100 percent full ownership for certain specified commercial and industrial activities.[21] As per the guidelines published by Dubai Economy, these activities include building contracting and buying and selling real estate.[22]

[13]For example, the UAE CT includes a participation exemption regime and an exclusion for dividends and other profit distributions. *See* arts. 22 and 23 of UAE CT, *supra* note 1; Federal Tax Authority, "Exempt Income: Dividends and Participation Exemption — Corporate Tax Guide," CTGEXI1 (Oct. 16, 2023).

[14]Art. 66 of UAE CT, *supra* note 1. The UAE has double tax treaties with 142 countries, which are primarily based on the OECD model.

[15]*See* Central Bank of the UAE, "Annual Report 2022: Safeguarding Stability," at section 8.3.2.

[16]*See* Government of Dubai, "Residential Sales Price Index."

[17]Department of Municipalities and Transport of Abu Dhabi, "Department of Municipalities and Transport Records AED46.33bn+ in Abu Dhabi Real Estate Transactions in H1 2023" (July 31, 2023).

[18]UAE Federal Constitution of 1971. For discussion, see also Roberto Scalia, "The UAE Fiscal Federalism," 47(11) *Intertax* 968 (2019).

[19]See Dubai Law No. 7 of 2006, concerning land registration in the emirate of Dubai, providing non-Gulf Cooperation Council nationals a freehold or usufruct right (limited to 99 years) in areas designated by the ruler. These designated areas have expanded significantly since the issuance of the law and often include free zones. See also Abu Dhabi Law No. 13 of 2019 (amending Law No. 19 of 2005), concerning real estate ownership, which provides that non-nationals may own and acquire all real rights of property located within investment areas. Other emirates have implemented similar legislation.

[20]*See, e.g.*, DIFC Law No. 10 of 2018, also referred to as the real property law.

[21]Federal Law by Decree No. 26 of 2020, amending certain provisions of Federal Law No. 2 of 2015 on commercial companies.

[22]*See* UAE, "Full Foreign Ownership of Commercial Properties" (last accessed Nov. 20, 2023).

Therefore, since November 2020, even foreign investors or companies have been permitted to engage in activities such as buying and selling real estate on the UAE mainland without needing a local Emirati sponsor holding 51 percent of the shares in the onshore company, which was required before the change.

III. Immovable Property Definitions

Federal Decree-Law No. 47 of 2022 on the taxation of corporations and businesses contains no general definition of immovable property or real estate and the income thereof.

The term "immovable property" is mentioned only twice, and the expression "real estate" does not appear in the legislative text of the UAE corporate tax. Notably, article 13 lists "income from movable or immovable property in the State" among items of income considered UAE-source "without limitation." Additional information concerning this provision can be derived from the MOF's May 12 explanatory guide, which clarifies that "rental income from property located in the UAE . . . would generally be considered State Sourced Income." The same paragraph of the explanatory guide stipulates that an interest in immovable property also falls under the scope of this provision.[23]

Holding immovable property in the UAE might also have spillover effects when sourcing other types of income. In particular, interest income is deemed to be sourced in the UAE if "the loan is secured by movable or immovable property located in the State."[24] It follows that interest income is deemed UAE-source if the immovable property used as collateral for the financial arrangement is situated in the UAE.[25] In a similar vein, although only reflected in the explanatory guide, income from a contract involving "movable or immovable property" is sourced "where the property is located."[26]

Federal Decree-Law No. 47 of 2022 contains other expressions relating to the concepts of immovable property and real estate. Notably, article 14(2)(f) lists among the illustrative examples of a fixed permanent establishment "land, buildings and other real property." No specific comment on any of these terms is included in the explanatory guide. In this context, the October corporate tax guide for nonresident persons stipulates only that "land, buildings and other real property means immovable property."[27] Regarding the PE definitions included in article 14 of the UAE corporate tax, the explanatory guide considers that because the relevant terms used in article 14 are not defined in the text of Federal Decree-Law No. 47 of 2022, they should "take their natural meanings in the appropriate contexts."[28] Given this framework, the corporate tax guide for nonresident persons considers that a foreign company that acquires land in the UAE as an investment opportunity and leases it out to an unrelated event management company to organize various conferences does not have a PE in the UAE.[29] However, it is worth noting that a "building site, a construction project, or place of assembly or installation" may constitute a PE if the foreign business's activities within the UAE last longer than six months.[30]

Another expression used in the text of the UAE corporate tax and somehow pointing to the concepts of immovable property and real estate is "real property." Other than in article 14(2)(f), as specified above, the term is used in article 15, laying down the so-called investment manager exemption. In this context, an investment manager does not create a PE for a foreign investment fund in the UAE if, *inter alia*, the investment manager carries out "transactions in . . . real property."[31] The explanatory guide also clarifies that qualifying investment funds, which might be tax exempt, provided that the conditions specified in article 10 of Federal Decree-Law No. 47 of 2022 are met, also include real estate

[23] Explanatory guide, *supra* note 3, at 39.

[24] Art. 13 of UAE CT, *supra* note 1.

[25] Explanatory guide, *supra* note 3, at 39; nonresident persons CT guide, *supra* note 6, at 53.

[26] Explanatory guide, *supra* note 3, at 39; nonresident persons CT guide, *supra* note 6, at 53. A similar rationale can be found in the public consultation document, *supra* note 2, at 16.

[27] Nonresident persons CT guide, *supra* note 6, at 29.

[28] Explanatory guide, *supra* note 3, at 41.

[29] Nonresident persons CT guide, *supra* note 6, at 29.

[30] Art. 14(2)(i) of UAE CT, *supra* note 1.

[31] *Id.* at art. 15(2)(a).

investment trusts.[32] The same considerations apply, mutatis mutandis, to family foundations, as defined in article 17 of Federal Decree-Law No. 47 of 2022, which might also hold and manage personal assets in the form of real estate.[33]

Other than in Federal Decree-Law No. 47 of 2022, expressions relating to immovable property or real estate can be found in various regulations and guidance documents issued by UAE governmental authorities. Notably, a definition of immovable property is contained in Cabinet Decision No. 56 of 2023:

> a. Any area of land over which rights or interests or services can be created.
>
> b. Any building, structure or engineering work attached to the land permanently or attached to the seabed.
>
> c. Any fixture or equipment which makes up a permanent part of the land or is permanently attached to the building, structure or engineering work or attached to the seabed.[34]

This definition, which seems to be inspired by UAE VAT law,[35] is given in the context of specifying when a foreign business has a nexus in the UAE, and therefore becomes liable for UAE corporate tax.[36] Reference to the concept of immovable property can also be found in Ministerial Decision No. 120 of 2023.[37] Given their sector specificity, the value of these clauses for applying other real estate provisions under UAE corporate tax is uncertain.[38]

The term "immovable property" can also be encountered in the MOF FAQ. In the context of real estate located in the UAE free zones, the concept of immovable property is linked to article 101 of the civil transactions law, which defines it as "anything which is settled and fixed in its space and cannot be moved without deterioration or alteration of its shape."[39] Whether the definition of immovable property under the civil transactions law is susceptible to general application is also doubtful, considering the legal status of the MOF FAQ answer in which this reference is found. It is noteworthy that Dubai defines property as "any immobile object with a fixed space that cannot be moved without destroying or changing its feature."[40]

Article 2(2) of Cabinet Decision No. 56 of 2023 also contains a description of income items from immovable property, which includes "income derived from the right in rem, sale, disposal, assignment, direct use, letting, including subletting and any other form of exploitation of Immovable Property."[41] This clause's value for applying other provisions relating to immovable property under the UAE corporate tax regime is unclear. The authors are also unsure of whether any interpretive significance can be attributed in this regard to the list of services that are treated as

[32] Explanatory guide, *supra* note 3, at 14 and 30.

[33] *Id.* at 49.

[34] "Determination of a Non-Resident Person's Nexus in the State for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses," Cabinet Decision No. 56 of 2023, at art. 1 (May 30, 2023).

[35] "Real estate" includes the following: "a. Any area of land over which rights or interests or services can be created. b. Any building, structure or engineering work permanently attached to the land. c. Any fixture or equipment which makes up a permanent part of the land or is permanently attached to the building, structure or engineering work." Federal Tax Authority, "The Executive Regulation of the Federal Decree-Law No. 8 of 2017 on Value Added Tax," Cabinet Decision No. 52 of 2017, art. 21(1) (Nov. 26, 2017) (UAE VAT executive regulations).

[36] Art. 11(4)(c) of UAE CT, *supra* note 1. This definition of immovable property is also repeated in the glossary of both the CT guide, *supra* note 3, at 8, and the nonresident persons CT guide, *supra* note 6, at 3-4. Because the CT guide and nonresident persons CT guide are neither legally binding documents nor modify or are intended to modify the requirements of any legislation, the authors submit that their interpretative value for the general application of UAE corporate tax is unclear.

[37] See MOF, "The Adjustments Under the Transitional Rules for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses," Ministerial Decision No. 120 of 2023 (May 16, 2023), which provides for certain adjustments that a taxable person may make (by way of an election) in relation to intangible assets, immovable property, and financial assets and liabilities owned by the taxable person before it becomes subject to corporate tax. *See also* CT guide, *supra* note 3, at 84-86.

[38] *See* Vanhee and Guillemette Thomas, "VAT on Real Estate Transactions — A Comparative View of Saudi Arabia and the United Arab Emirates," 29(6) *Int'l VAT Monitor* 225 (2018) (noting that the definition of immovable property under UAE VAT "is completely independent from any other domestic legislation, which may be a missed opportunity for harmonization").

[39] Questions 83 and 121 of MOF FAQ, *supra* note 3.

[40] Art. 1 of Dubai Law No. 7 of 2006, concerning land registration in the emirate of Dubai.

[41] *See* CT guide, *supra* note 3, at 30-31; nonresident persons CT guide, *supra* note 6, at 55-56.

directly connected with immovable property for UAE VAT purposes.[42]

IV. Real Estate Income: Taxable?

Real estate transactions may constitute a business activity and, as such, fall within the scope of the UAE corporate tax. Although not explicitly referencing real estate activities, the definition of business in Federal Decree-Law No. 47 of 2022 is broad enough to encompass "any other activity related to the use of tangible . . . properties."[43] Real estate is a form of tangible property, and therefore income from its use may constitute a business activity subject to UAE corporate tax. The circumstance that the real estate sector is, in principle, liable for UAE corporate tax gains further confirmation in the MOF FAQ, which stipulates that "businesses engaged in real estate management, construction, development, agency and brokerage activities will be subject to UAE Corporate Tax."[44]

However, not all real estate activities constitute a business activity and, as such, are liable for UAE corporate tax. Notably, income from real estate investment is not subject to UAE corporate tax if it is earned by an individual in a personal capacity. This is because real estate investment is not considered a business activity. Because UAE corporate tax only applies to income attributable to businesses or companies and the UAE does not have a personal income tax, no tax liability arises for an individual investing in the UAE real estate sector.[45]

The expression "real estate investment" is defined in Cabinet Decision No. 49 of 2023 as "any investment activity conducted by a natural person related to, directly or indirectly, the sale, leasing, sub-leasing, and renting of land or real estate property in the State that is not conducted, or does not require to be conducted through a License from a Licensing Authority."[46] A slightly different definition of real estate investment income can be found in the MOF FAQ, in which this concept is defined as "income earned by a natural person from an investment activity related directly or indirectly to land or real estate property in the UAE, which is not conducted, or required to be conducted, through a License issued by a Licensing Authority in the UAE."[47]

Therefore, individuals investing in real estate property in the UAE are not subject to UAE corporate tax and related compliance obligations.[48] However, the investment must be made by the individual in a personal capacity, which occurs if the investment activity is neither conducted through a license nor requires a license from a licensing authority in any of the nation's emirates.[49] Real estate income, such as rental income or capital gains realized by an individual acting in a personal capacity from the disposition of immovable property,[50] is exempt from UAE corporate tax. This exemption applies even if the individual buys the specified immovable property for pure investment purposes, without any intention to use it as a private accommodation.[51] The immovable property may

[42] Art. 21(3) of UAE VAT executive regulations, *supra* note 35 ("A supply of Services directly connected with real estate includes: a. The grant, assignment or surrender of any interest in or right over real estate. b. The grant, assignment or surrender of a personal right to be granted any interest in or right over real estate. c. The grant, assignment or surrender of a license to occupy land or any other contractual right exercisable over or in relation to real estate, including the provision, lease and rental of sleeping accommodation in a hotel or similar establishment. d. A supply of Services by real estate experts or estate agents. e. A supply of Services involving the preparation, coordination and performance of construction, destruction, maintenance, conversion and similar work.").

[43] Art. 1 of UAE CT, *supra* note 1. The CT guide, *supra* note 3, at 27, clarifies that the concept of "business" also encompasses "short-term commercial activity."

[44] Question 274 of MOF FAQ, *supra* note 3.

[45] *Id.* at question 30; nonresident persons CT guide, *supra* note 6, at 14.

[46] Art. 1 of Cabinet Decision No. 49 of 2023, *supra* note 9. *See also* CT guide, *supra* note 3, at 11; nonresident persons CT guide, *supra* note 6, at 5.

[47] Question 37 of MOF FAQ.

[48] For example, the need to register for UAE corporate tax. *See* art. 2(3) of Cabinet Decision No. 49 of 2023, *supra* note 9.

[49] In all seven UAE emirates, six types of business licenses exist (and there are more than 2,000 economic activities from which to select) — namely, (1) industrial license, (2) commercial license, (3) crafts license, (4) tourism license, (5) agricultural license, and (6) professional license. *See* UAE Ministry of Economy, "Establishing Business in the UAE" (last accessed Nov. 20, 2023). In Dubai, in the real estate sector, only commercial and professional licenses are available (for example, a commercial license for the buying and selling of real estate, and a professional license for a real estate brokerage).

[50] Definitions of real estate income and real estate gains can be found in "On Conditions for Qualifying Investment Funds for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses," Cabinet Decision No. 81 of 2023 (July 18, 2023).

[51] Public consultation document, *supra* note 2, at 8. See also nonresident persons CT guide, *supra* note 6, at 29, concerning the acquisition of land in the UAE as an investment by a foreign company that does not trigger any PE in the UAE. However, the foreign company will have a nexus in the UAE. *See id.* at 56.

be held directly by the individual investor or through a private or family trust.[52]

The above conclusions apply to UAE nationals and foreign individuals, whether or not they are residents of the UAE.[53] The MOF FAQ also confirms that foreign individuals can invest in real estate property in the UAE without being subject to UAE corporate tax and related compliance obligations.[54] Similarly, investments in real estate property outside the UAE held by UAE resident individuals directly or indirectly, through private or family trusts, are exempt from UAE corporate tax. However, this does not mean that the foreign country where the immovable property is located will not levy any personal income tax, as discussed in Section VI of this article.

Under certain circumstances, income from immovable property may be exempt from UAE corporate tax even if it constitutes business income. As provided by Cabinet Decision No. 49 of 2023, business activities — without any further specifications, therefore, income from real estate businesses is also in scope — are not subject to UAE corporate tax if the total annual turnover derived from those business activities does not exceed AED 1 million. However, this exemption applies only to activities conducted by individuals conducting businesses, whether they are UAE residents or not.[55] Although not expressly indicated, the authors believe that this exemption should also be available to individuals conducting business activities through private or family trusts,[56] provided that those legal entities are treated as transparent under UAE corporate tax (a look-through approach).[57]

Finally, in certain instances, income from immovable properties may not be liable to UAE corporate tax even if attributable to companies or other legal entities. Notably, this exemption applies if the legal entity's taxable income in the tax period is below or equal to AED 375,000, as specified by article 3(1)(a) of Federal Decree-Law No. 47 of 2022 and UAE Cabinet Decision No. 116 of 2022. If a business's revenues are equal to or below AED 3 million in a relevant tax period and previous tax periods (all those ending on or before December 31, 2026), the individual resident business or company can elect for small business relief and be treated as having no taxable income during the relevant tax period under article 21 of Federal Decree-Law No. 47 of 2022 and Ministerial Decision No. 73 of 2023.[58] Both de minimis provisions apply across all business activities, including the real estate sector.[59] Finally, income derived from real estate investment funds, structured as either corporate or partnership funds, can be exempt from UAE corporate tax if the funds meet specific requirements laid down for qualifying investment funds under articles

[52] In regards to investment through a private fund, the explanatory guide, *supra* note 3, at 30, considers that the "Corporate Tax Law seeks to ensure the tax neutrality of investment funds so that investors, whether domestic or foreign, are in the same or a similar tax position as if they had invested directly in the underlying assets of the fund. It is internationally common for a tax system to provide for neutrality between direct investments and investment through collective investment vehicles by not subjecting the income of such entities to taxation."

[53] Concerning the determination of "foreign-source income," a term that is not expressly defined under UAE CT, see foreign-source income CT guide, *supra* note 5, at 14-15.

[54] Question 180 of MOF FAQ, *supra* note 3.

[55] No threshold applies to "real estate investment income" as defined above. *See id.* at question 38 ("If a natural person owns several commercial properties in their name, generating rental income above AED 1 million, will such activity still qualify for exclusion for Corporate Tax purposes? Such activity will qualify for exclusion for Corporate Tax purposes, provided it is not conducted, or required to be conducted through a License."); CT guide, *supra* note 3, at 26; nonresident persons CT guide, *supra* note 6, at 12.

[56] *See* arts. 16 and 17 of UAE CT, *supra* note 1; MOF, "On Unincorporated Partnership, Foreign Partnership and Family Foundation for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses," Ministerial Decision No. 127 of 2023 (May 24, 2023). According to question 138 of the MOF FAQ, *supra* note 3, "An Unincorporated Partnership is a relationship established by contract between two Persons or more, such as a partnership or trust or any other similar association of Persons, in accordance with the applicable legislation in the UAE."

[57] The authors derive this conclusion from a joint reading of questions 137, 144, 149, 152, and 336 of the MOF FAQ, *supra* note 3. See also CT guide, *supra* note 3, at 37-38, considering that when family foundations "are merely used to hold and manage personal assets and wealth on behalf and for the benefit of beneficiaries who are natural persons, this will result in an inconsistent Corporate Tax treatment compared with if instead the natural persons were to hold and manage the assets directly."

[58] See Minister of Finance, "On Small Business Relief for the Purposes of Federal Decree-Law No. 47 of 2022," Ministerial Decision No. 73 of 2023 (Apr. 3, 2023), providing, in art. 2(2), that the small business relief will only apply for tax periods ending on or before December 31, 2026.

[59] Free zone entities cannot, however, benefit from the AED 375,000 minimum threshold. *See* question 27 of MOF FAQ, *supra* note 3.

4(1)(f) and 10 of the UAE corporate tax.[60] Although it's not explicit in the legislation, the authors believe that investment funds structured as partnerships, unit trusts, and other unincorporated vehicles are out of the scope of UAE corporate tax for real estate investment income realized by underlying individual investors acting in a personal capacity (a look-through approach).[61]

V. UAE Free Zones

The UAE boasts a vibrant and thriving business community supported by an extensive network of more than 40 free zones. UAE free zones are pivotal in attracting foreign investment, fostering the nation's economic growth, and diversifying its economy. Offering many benefits and incentives, the zones constitute an ideal platform for businesses to establish a presence and leverage the nation's strategic location and favorable business environment.

The UAE's free zones cater to specific industries and sectors.[62] Each zone provides tailored benefits to meet various business needs, ranging from manufacturing and logistics to finance and technology. Among the most prominent zones are the Jebel Ali Free Zone (JAFZA), which hosts more than 9,500 businesses;[63] the Dubai International Financial Centre (DIFC), which hosts over 4,300 active registered companies;[64] the Dubai Multi Commodities Centre (DMCC), which hosts more than 23,000 businesses;[65] the Abu Dhabi Global Market (ADGM), which hosts almost 1,400 operational entities;[66] the Ras Al Khaimah Economic Zone, which hosts more than 15,000 corporate structures;[67] and the Sharjah Airport International Free Zone, which hosts more than 8,000 companies from about 165 countries.[68]

One of the key attractions of the free zones is that they offer significant tax incentives and beneficial treatment to businesses. Free zones generally impose a 0 percent tax rate or grant tax exemptions for specified periods, sometimes up to 50 years. For example, businesses regulated by JAFZA may benefit from a 0 percent tax rate for 50 years, while companies operating in the DIFC are subject to a 0 percent tax rate for 50 years from the date of enactment, with the possibility of renewal.[69]

The most common entity structures within UAE free zones are free zone limited liability companies and free zone establishments. Free zone LLCs are suitable for businesses with multiple shareholders, while free zone establishments are ideal for single-shareholder entities. The business structures offer several advantages, including 100 percent foreign ownership, simplified company formation procedures, and limited liability.

UAE free zone entities are subject to UAE corporate tax and related obligations.[70] However, under certain circumstances, those entities can claim a 0 percent rate on their profits from qualifying income if they are eligible as qualifying free zone persons as defined under article 18 of

[60] *See id.* at question 156 ("Investment funds that are structured as corporate entities, including Real Estate Investment Trusts, or partnership funds that apply to be treated as a "Taxable Person" for UAE Corporate Tax purposes in their own right, can apply to the Federal Tax Authority to be exempt from UAE Corporate Tax as Qualifying Investment Funds subject to meeting certain requirements."). For the specific conditions for a REIT to be treated as a "qualifying investment fund," see art. 3 of Cabinet Decision No. 81 of 2023, *supra* note 50.

[61] Explanatory guide, *supra* note 3, at 30; question 156 of MOF FAQ, *supra* note 3.

[62] Question 112 of MOF FAQ, *supra* note 3.

[63] "JAFZA is home to 9,500+ business from over 130 countries." JAFZA, "We Believe in Connecting People" (last visited Nov. 30, 2023).

[64] "DIFC is home to an internationally recognized, independent regulator and proven judicial system with an English common law framework, as well as the region's largest ecosystem of more than 36,000 professionals working across over 4,300 active registered companies — making up the largest and most diverse pool of industry talent in the region." DIFC, "Who We Are" (last visited Nov. 30, 2023).

[65] "DMCC is currently home to more than 24,000 businesses, including brokers, banks, commodities exchanges, business support firms and professional services companies." DMCC, "Search Our Business Directory" (last visited Nov. 30, 2023).

[66] "ADGM key achievements in 2022" included "operational entities within ADGM showcas[ing] a growth of 30 percent with the total number rising from 1,061 to 1,378." ADGM, "ADGM's Record Performance in 2022 Positions Abu Dhabi as the Fastest Growing IFC in the Region" (last visited Nov. 30, 2023).

[67] Ras Al Khaimah Economic Zone, "Ras al Khaimah Economic Zone" (last visited Nov. 30, 2023).

[68] Sharjah Airport International Free Zone, "Welcome to a New Way of Doing Business" (last visited Nov. 30, 2023).

[69] Howard Hull, "United Arab Emirates: Corporate Tax on International Investment," 77(3) *Bull. Int'l Tax'n* 94 (2023), at section 3.4.3.

[70] *See* question 129 of MOF FAQ, *supra* note 3 ("All Free Zone Persons will be required to register, obtain a Tax Registration Number, and file a Corporate Tax return, irrespective of whether they are a Qualifying Free Zone Person or not."); Federal Tax Authority, "Registration of Juridical Persons Corporate Tax Guide," CTGRJP1 (Aug. 2023).

Federal Decree-Law No. 47 of 2022.[71] More detailed requirements for free zone persons to attain this status have been provided in a cabinet decision and a ministerial decision issued in May and June, respectively[72] — both of which were replaced in October and November, respectively.[73] Importantly, the free zone corporate tax regime is only available to legal persons that are incorporated in the UAE free zones or have a foreign company's branch registered therein.[74] Individuals, unincorporated partnerships, and sole establishments cannot benefit from this regime.[75] For individuals, the general considerations regarding real estate investment income made in Section IV of this article also apply to income from immovable property located in any of the UAE free zones.

This article does not thoroughly discuss the application of UAE corporate tax to free zone entities,[76] but rather only the treatment of income from immovable property in relation to the UAE free zones.[77] It must be underlined that income derived from immovable property can arise from immovable property situated within a UAE free zone, the UAE mainland, or outside the UAE, each location triggering a different tax treatment under UAE corporate tax.

Income from immovable property not located in a UAE free zone, either because the immovable property is on the UAE mainland or outside UAE territory, is always treated as income from "excluded activities," and is thus subject to the standard 9 percent UAE corporate tax rate.[78] In the case of immovable property located within a UAE free zone, a distinction must be made between commercial property and noncommercial property.[79] Cabinet Decision No. 100 of 2023 defines commercial property as "immovable property or part thereof" that fulfills two cumulative requirements: (1) It is used exclusively for a business or business activity; and (2) it is not used as a place of residence or accommodation, such as a hotel, motel, bed and breakfast establishment, or serviced apartment.[80] The tax implications for commercial and noncommercial property in any UAE free zone are summarized in the table.

[71] The special corporate tax regime applies to qualifying free zone persons automatically. However, a qualifying free zone person can elect to apply the standard corporate tax regime. *See* question 98 of MOF FAQ, *supra* note 3.

[72] "On Qualifying Income for the Qualifying Free Zone Person for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses," Cabinet Decision No. 55 of 2023 (May 30, 2023); "Regarding Qualifying Activities and Excluded Activities for the Purposes of Federal Decree Law No. 47 of 2022 on the Taxation of Corporations and Businesses," Ministerial Decision No. 139 of 2023 (June 1, 2023).

[73] "On Determining Qualifying Income for the Qualifying Free Zone Person for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses," Cabinet Decision No. 100 of 2023 (Oct. 25, 2023); "Regarding Qualifying Activities and Excluded Activities for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses," Ministerial Decision No. 265 of 2023 (Oct. 27, 2023).

[74] *See* questions 79 ("The Free Zone Corporate Tax regime is a form of UAE Corporate Tax relief which enables Free Zone companies and branches that meet certain conditions to benefit from a preferential 0 percent Corporate Tax rate on income from qualifying activities and transactions."), 80 ("Free Zones are an integral part of the UAE economy that continue to play a critical role in driving economic growth and transformation both in the UAE and internationally. In recognition of their continued importance and the tax related commitments that were made at the time Free Zones were established, Free Zone companies and branches that meet certain conditions can continue to benefit from 0 percent corporate taxation on income from qualifying activities and transactions."), 87 ("The conditions of the Free Zone Corporate Tax regime are set under the Corporate Tax Law and apply uniformly across all Free Zones in the UAE. This means that the conditions for being a Qualifying Free Zone Person and benefiting from the Free Zone Corporate Tax regime are the same, irrespective of the Free Zone in which the Free Zone Person is established or registered."), and 89 ("A foreign company can register a branch in a Free Zone and benefit from the Free Zone Corporate Tax regime in respect of the Qualifying Income that can be attributed to that Free Zone branch. Additionally, there are no ownership restrictions or requirements that would prevent a Free Zone company benefiting from the Free Zone Corporate Tax regime if it was wholly or partially owned by a foreign person.") of MOF FAQ, *supra* note 3.

[75] Art. 1 of UAE CT, *supra* note 1, defines a free zone person as "a juridical person incorporated, established or otherwise registered in a Free Zone, including a branch of a Non-Resident Person registered in a Free Zone." *See also* explanatory guide, *supra* note 3, at 8; question 88 of MOF FAQ, *supra* note 3.

[76] The authors have analyzed this regime in depth in another article. *See* Leclercq, Vanhee, and Beretta, *supra* note 11.

[77] To define immovable property in relation to the corporate tax regime for free zone entities, reference is made to the definition laid down in art. 101 of the civil transactions law ("anything which is settled and fixed in its space and cannot be moved without deterioration or alteration of its shape"). *See* questions 83 and 121 of MOF FAQ, *supra* note 3.

[78] Question 122 of MOF FAQ, *supra* note 3. *See also* art. 2(2)(e) of Ministerial Decision No. 265 of 2023, *supra* note 73 (listing, among "excluded activities," "ownership or exploitation of immovable property, other than Commercial Property located in a Free Zone where the transaction in respect of such Commercial Property is conducted with a Free Zone Person").

[79] Art. 6(1) of Cabinet Decision No. 100 of 2023, *supra* note 73.

[80] *Id.* at art. 1.

Income From Immovable Property Under UAE Corporate Tax

Property Type	Other Party to the Transaction	Applicable Tax Rate
Commercial	Non-free-zone entity	9%
	Free zone entity	0%
Noncommercial	Non-free-zone entity or free zone entity	9%

The table illustrates the three scenarios as follows:

(1) When a transaction involving commercial property located in a UAE free zone occurs between a UAE free zone entity and a non-free-zone entity, the income generated from the transaction is always subject to the standard tax rate of 9 percent.[81]

(2) When a transaction involving commercial property located in a UAE free zone occurs between two free zone entities (according to the authors, possibly, even if not located in the same UAE free zone),[82] the income derived from the transaction enjoys a 0 percent tax rate.[83]

(3) Any transaction or dealing involving noncommercial property, regardless of the status and location of the parties involved, will result in the income being taxed at the standard UAE corporate tax rate of 9 percent.

The latest update of the MOF FAQ in September also clarified the treatment of income from mixed-use property located in a UAE free zone. Notably, in the case of a property used for both commercial and noncommercial purposes (such as a residential building with retail space), the qualifying free zone person must "apportion income and expenditure between both types of income, and maintain relevant transfer pricing documentation and other records to support such allocations."[84] It should also be highlighted that no requirements exist regarding the minimum investment in real estate by a free zone entity to obtain the coveted qualifying free zone person status.[85]

VI. Foreign Tax Treatment

Many international tax aspects concerning income from immovable property need to be considered. International tax implications arise when non-UAE residents hold immovable property on the UAE mainland or in any free zones (inbound real estate investments). International tax also plays a role in the case of UAE residents holding immovable property located outside the UAE (outbound real estate investments). Both situations are within the scope of UAE corporate tax.

An item of immovable property may trigger a nexus PE in the UAE for a nonresident person.[86] Cabinet Decision No. 56 of 2023 says that a nonresident juridical person earning income from immovable property in the UAE, either on the mainland or in any free zone, is considered to have nexus in the UAE.[87] The nexus concept does not apply to natural persons.[88] When a nexus PE exists in the UAE, the nonresident juridical person must register for UAE corporate tax, which will apply to the income attributable to immovable

[81] Income from immovable property earned by a qualifying free zone person with a non-free-zone entity is also disregarded for the purposes of the so-called de minimis requirements. *See id.* at art. 4(3)(a)(1).

[82] As it can be assumed from question 87 of MOF FAQ, *supra* note 3.

[83] Income from noncommercial immovable property earned by a qualifying free zone person with a free zone entity is also disregarded for the purposes of the so-called de minimis requirements. *See* art. 4(3)(a)(2) of Cabinet Decision No. 100 of 2023, *supra* note 73.

[84] *See* question 127 of MOF FAQ, *supra* note 3, which also adds that "certain income and expenditure may be directly attributable, whereas other income and expenditure may need to be apportioned on a fair and reasonable basis in accordance with the arm's length principle."

[85] *Id.* at question 96 ("The Free Zone Corporate Tax regime does not prescribe any minimum investment, job creation or business expansion requirements. However, a Qualifying Free Zone Person must have adequate staff and assets and incur adequate operating expenditure in a Free Zone relative to the Qualifying Income it earns.").

[86] On the concept of "nexus PE," see arts. 11(4)(c) and 14(1)(c) of UAE CT, *supra* note 1.

[87] Art. 2(1) of Cabinet Decision No. 56 of 2023, *supra* note 34. *See also* CT guide, *supra* note 3, at 30-31; nonresident persons CT guide, *supra* note 6, at 55-56.

[88] Nonresident persons CT guide, *supra* note 6, at 55.

property in the UAE.[89] In this regard, taxable income relates to income derived from the right in rem, sale, disposal, assignment, direct use, letting (including subletting), and any other form of exploitation of the UAE immovable property.[90] However, the impact of double tax treaties concluded by the UAE must be considered. UAE double tax treaties follow the principles of the OECD model income tax treaty, which does not provide for a nexus PE in its PE definition in article 5. Therefore, in a cross-border situation to which a double tax treaty is available, the nexus PE will not apply because international tax agreements prevail over domestic provisions under UAE corporate tax.[91]

Apart from the nexus PE, the treatment of income derived from immovable property under UAE corporate tax aligns with international tax best practices. This circumstance has also been recognized by statements from UAE government officials.[92] Based on article 6(1) of the OECD model, income derived from immovable property is taxable in the state in which the immovable property is located (the source state). Income derived from the direct use, letting, or use in any other form of immovable property falls under this definition.[93] Taxation of the source state also arises regarding the profits of an enterprise derived from immovable property.[94] A similar situs rule applies to the taxation of gains arising from the sale of immovable property under article 13(1) of the OECD model.[95] The residence state may also tax that income, but it is obliged to grant double tax relief for the taxes paid in the source state.[96]

Articles 6 and 13 of the OECD model presuppose a definition of the term "immovable property." Article 6(2) of the OECD model only partially defines the term.[97] It is left to the state where the immovable property is located to complete this definition.[98] As explained above, the UAE corporate tax does not contain a general definition of immovable property. Instead, various references to this concept can be found in the legislation. The lack of a uniform definition might cause complications in applying UAE double tax treaties. The OECD model does not contain any rule prescribing how income is to be made attributable to immovable property. Therefore, the state where the immovable property is located, as the source state, is at liberty to resort to its domestic law regarding how income from immovable property should be taxed.[99]

When UAE businesses generate income from real estate investments in another contracting state, the UAE limits its taxing rights by granting a tax credit on foreign-source real estate income.[100] Conversely, non-UAE residents that earn income from immovable property in the UAE will be subject to UAE corporate tax. The applicable foreign country may also tax the income from the

[89] Art. 12(3)(c) of UAE CT, *supra* note 1; art. 4 of Cabinet Decision No. 56 of 2023, *supra* note 34. As recalled in Section III of this article, the definition of immovable property to apply the nexus PE includes "any of the following: a. Any area of land over which rights or interests or services can be created. b. Any building, structure or engineering work attached to the land permanently or attached to the seabed. c. Any fixture or equipment which makes up a permanent part of the land or is permanently attached to the building, structure or engineering work or attached to the seabed."

[90] Art. 2(2) of Cabinet Decision No. 56 of 2023, *supra* note 34. As mentioned in nonresident persons CT guide, *supra* note 6, at 56, a nexus PE exists when a foreign company installs a wind turbine fixed on the seabed in a location that falls within the territorial waters of the UAE.

[91] Art. 66 of UAE CT, *supra* note 1. *See also* explanatory guide, *supra* note 3, at 104-105; CT guide, *supra* note 3, at 31.

[92] *See* "Properties of Non-Residents in UAE Are Subject to Tax," *Gulf Today*, June 5, 2023, which reports the following declaration by Younis Haji Al Khoori, undersecretary of the MOF: "The Corporate Tax treatment of income derived from UAE real estate and other immovable property by foreign juridical persons is in line with international best practice which stipulates that income derived from immovable property is taxable in the country in which such property is located. The UAE's Corporate Tax Law incorporates features that honor international taxation principles and ensures neutrality between domestic and foreign companies earning income from immovable property in the UAE."

[93] OECD, "Model Tax Convention on Income and on Capital 2017" (full version), art. 6(3).

[94] Art. 6(4) of the OECD model convention prioritizes art. 6 over art. 7 of the OECD model convention. *See also* para. 4 of the OECD model convention commentary on art. 6.

[95] Under art. 13(4) of the OECD model convention, the sale of shares, when the value of the underlying immovable property is more than 50 percent of their value, is treated in the same manner as the sale of immovable property.

[96] Arts. 23A and 23B of the OECD model convention.

[97] Under art. 6(2) of the OECD model convention, immovable property shall in any case include "property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships and aircraft shall not be regarded as immovable property."

[98] *See* para. 2 of the OECD model convention commentary on art. 6.

[99] *See* para. 4 of the OECD model convention commentary on art. 6.

[100] *See, e.g.*, art. 21(1) of the United Arab Emirates-United Kingdom income tax treaty (2016).

immovable property located in the UAE. Still, the foreign country must grant its residents double tax treaty relief in the form of either an exemption (with progression)[101] or a tax credit.[102]

When no double tax treaty exists between the UAE and the foreign country, UAE businesses may be eligible for the foreign tax credit for taxes paid where the immovable property is located, according to article 47 of Federal Decree-Law No. 47 of 2022.[103] For foreign businesses holding properties on the UAE mainland or in any UAE free zone, it must be considered that the income thereof is included among the items of income listed as UAE-source and therefore subject to withholding tax under article 13 of the Federal Decree-Law No. 47 of 2022. However, the withholding tax rate is set at 0 percent. Finally, immovable property can constitute a fixed PE for a foreign company or entrepreneur if the immovable property is used to carry out business.[104]

VII. UAE Real Estate Project Structures

Traditionally, real estate project development structures in the UAE include the setting up of a land company (which is responsible for buying and owning the land) and a development company (which is responsible for the development of the real estate property on the land). The purpose of the overall structure is mainly to avoid local corporate ownership restrictions, but it also serves as a risk management strategy.

The land company usually executes a property development agreement with the development company whereby the development company agrees to construct a building on the plot owned by the land company at its own expense. The developed properties are then sold by the development company to the buyers, typically on behalf of the land company.

Under these structures, in most cases the development company collects the sales proceeds for the property unit sold to third-party buyers. Concerning the land company's share, inconsistent practices are followed by members of the UAE's real estate industry. Sale proceeds collected are shared with the land company either in the form of a fee under the development agreement, in the form of the profit from the development project, in the form of the consideration for the land title sold to the buyers, or in the form of a combination of the above.

Although the income generated by such a real estate project will mostly be taxed at the standard rate of 9 percent under the UAE corporate tax regime, certain complexities must be analyzed vis-à-vis the structure of contractual arrangements between the land and development companies.

The first difficulty relates to the mechanism for determining the amount of the remuneration of the land company under the property development agreements. This will be important if the land and development companies are related parties to ensure that the transaction is conducted at arm's length.

Apart from valuation issues, another complexity concerns identifying and documenting the nature of the remuneration of the land company under the property development agreement (such as consideration for the transfer of land, profit share for the developed project, service income, or income for the transfer of property rights). Determining income qualification is important to ensure that those amounts are appropriately deducted under UAE corporate tax as expenses in the hands of the development company, or properly taxed as profits in the hands of the land company. This evaluation becomes even more critical in a scenario in which one of the entities is established in any UAE free zone and another on the UAE mainland.

Finally, insofar as the development company prepares, concludes, and negotiates sale contracts

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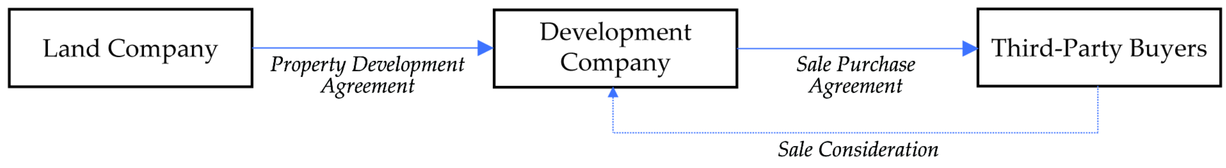
[101] *See, e.g.*, art. 22(2) of the Netherlands-United Arab Emirates income tax treaty (2007).

[102] *See, e.g.*, art. 23(2) of the Italy-United Arab Emirates income tax treaty (1995).

[103] *See* CT guide, *supra* note 3, at 113-114. The explanatory guide, *supra* note 3, at 89, provides that "a Foreign Tax Credit is available for any foreign tax that is of a similar character to Corporate Tax. An amount of tax paid in a foreign jurisdiction may be considered to be of a similar character to Corporate Tax where the amount is imposed by, and payable to, a non-UAE government, and the payment of such an amount is compulsory and enforceable by law in that foreign jurisdiction. In addition, the amount should be imposed on profit or net income (i.e., income less deductions)."

[104] According to art. 14(2)(f) of UAE CT, *supra* note 1, "fixed or permanent place in the State includes . . . land, buildings and other real property." Immovable property can eventually take the form of a building PE. *Id.* at art. 14(2)(i).

Example of UAE Real Estate Project Structure



on behalf of the land company, the authors are unsure about the deductibility of construction-related expenses in the hands of the development company, which could be treated merely as an agent of the land company.

VIII. Conclusions

The introduction of a federal corporate tax in the UAE marked a historic moment for the nation and the Gulf region. The tax aligns with international tax best practices. Its relatively low standard tax rate of 9 percent and certain design elements make it one of the most competitive regimes globally. The regime applies to all corporate and individual businesses. And because no personal income tax exists in the UAE, other types of remuneration, such as real estate investment income, are not subject to tax.

This article addressed tax implications for domestic and foreign businesses and individuals investing in UAE real estate — a thriving and dynamic sector, and an important source of foreign direct investment for the nation's economy. Real estate transactions are business activities that fall within the scope of the UAE corporate tax. However, no general definition of immovable property or real estate exists in, nor are the boundaries of the income thereof set under, the tax. In certain situations, depending on the business's annual turnover or the location of the immovable property, real estate income may be exempt from tax or subject to a 0 percent rate. International tax implications must also be considered for the UAE's inbound and outbound real estate investment. This tax scenario might become more elaborated due to the corporate structures domestic and foreign investors use to access the UAE real estate market.

Given the many intricacies involved in the treatment of immovable property under the UAE's corporate tax and double tax treaties, the authors emphasize the need for both UAE and foreign residents to carefully evaluate all tax implications relating to real estate investment on the UAE mainland, in any of the over 40 UAE free zones, or abroad. ■