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## *UAE sets out new tax residency test for individuals and legal entities effective from 1 March 2023*

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The UAE did not previously have a statutory definition for tax residency. Legal entities were regarded as tax residents in the UAE if they were incorporated for a minimum period of one year and could provide evidence of their activity in the UAE as required from time to time by the Federal Tax Authority.

Tax residency for individuals was determined primarily on the number of days spent in the UAE – more than 183 days in a 12-month period – this was mainly documented by the records of the airport authorities.

We have set out below the new regulations with some comments based on our understanding as to how they should be interpreted. These comments cannot be considered as valid until the FTA provides clarifications of their own.

### **1. Cabinet Decision No. 85/2022 On the Determination of the Tax Domicile (“CD 85/2022”):**

#### **A. Legal entity as a tax resident**

Under CD 85/2022, a legal entity will be considered a tax resident in the UAE either based on the commercial law or the applicable tax law which is to say either because:



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- the legal entity was incorporated, formed, or recognised in accordance with the legislation in force in the UAE, or
- it is considered a Tax Resident in accordance with the applicable tax law in force in the UAE.

### **Our comments:**

**As a result, a branch of a foreign legal entity which has no legal personality will not be recognised as a tax resident in the UAE.**

**This is consistent with the treatment of branches in most jurisdictions outside of the UAE. The main consequences are that branches registered by foreign legal entities in the UAE will not be eligible to the benefits of the tax treaties signed by the UAE.**

### **B. Individual as a tax resident**

An individual will be considered a Tax Resident in the UAE where any of the following conditions are met:

- The individual's usual or principal place of residence is in the UAE and the centre of his/her financial and personal interests are in the UAE, or the individual meets the conditions and criteria determined by a decision from the Minister.
- The individual has been physically present in the UAE for a period of 183 days or more within a 12-month period.
- The individual has been physically present in the UAE for a period of 90 days or more over a 12-month period and is a UAE citizen, holds a valid UAE Residence Permit or holds the nationality of any member state of the Gulf Cooperation Council, and meets any of the following criteria:
  - Has a permanent place of residence in the UAE.
  - Carries out a job or business in the UAE.



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**Our comments:**

**CD 85/2022 provides three situations in which an individual will be regarded as a tax resident.**

**Tax residency will be recognized based on the number of days spent in the UAE (more than 183 days which is six months) which is the current situation.**

**If this criterion is not met an individual may be regarded as tax resident in the UAE if he/she has a principal abode in the UAE and his investments and personal affairs are in the UAE. This criterion does not provide for a number of days in the UAE, this might be the reason why the tax residency can be granted by a decision of the Minister based on its appreciation of the fact and circumstances.**

**Finally, an individual who either (a) is a UAE citizen, (b) has a valid residency permit, or (c) is a national of any member state of the Gulf, may be regarded as a UAE resident if he/she has spent less than 183 days but more than 90 days and has a principal abode in the UAE and is either an employee or an entrepreneur in the UAE.**

**This last criterion opens new possibilities to obtain the UAE tax residency status for people travelling extensively outside of the UAE.**

**2. Modalities for obtaining a tax residency certificate**

A person who is considered a Tax Resident in the UAE under the provisions outlined above can apply to the FTA for a Tax Residency Certificate. If the FTA is satisfied that the applicant meets the requirements set out, it can approve the application and issue the Tax Residency Certificate.

The FTA has the power to ask for any relevant information and documentation regarding the applicant, whether an individual or a legal entity, from any UAE government agency



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and will be responsible for issuing clarifications and directives for implementing the provisions of the new regulations.

**Our comments:**

**CD 85/2022 is unclear on whether the 12-month period criterion for assessing the tax residency for individuals must be computed on the basis of the calendar year which is our understanding of the current regulation.**

**This is important for individuals setting up their tax residency in August and who could not claim tax residency in the UAE before the following year.**

**3. Impact of double tax treaty**

Any conditions for determining tax residency specified under a Double Tax Agreement (DTA) that the UAE has concluded will prevail.

The Minister will issue a decision specifying the form and manner of issuing certificates for determining the tax residency for the purposes of DTAs.

**Our comments:**

**This means that in case that the UAE and another country claim that an individual or a legal entity is tax resident in their country based on their respective domestic law and regulations, the matter will be decided by the provision of the tax treaty.**

**END**

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## **Notes to editors:**

Hervé is our global Tax Partner based in Dubai. He is graduated of the Ecole Nationale des Impôts (1983), holder of a Masters in Banking and Finance from the University of Paris I Pantheon-Sorbonne (1982) and a Masters in Economic Sciences, Public Economic Option and Economic Policy, from the University of Paris I Pantheon-Sorbonne (1981).

Hervé Israël started his career as an auditor at the DVNI (Department of National and International Verification). In 1988, he joined Pechiney and then took responsibility for group tax management for Europe, Asia and South America at Schlumberger Industries. In 1995, he joined the Caisse Nationale du Crédit Agricole, then became international tax manager at BNP-Paribas. Hervé has been admitted to the Paris Bar since 1996 and worked at Salans law firm, before becoming partner in charge of the tax practice of Lovells (now Hogan Lovells) then of Holman Fenwick Willan. In 2014, Hervé joined the Paris office of DLA Piper and then the law office of Bornhauser in 2017 to create and develop the Tax practice for companies and CEOs-Investors. At the same time, he was a lecturer and associate professor in tax law at the University of Paris X Nanterre from 2010 to 2019.

Hervé Israël has been involved for nearly 25 years in the tax structuring of French and international transactions, in particular in the structuring and financing of Merger and Acquisition and LBO transactions, asset financing, securitization and acquisition structuring.

Hervé also advises investment funds, companies and managers, in many sectors such as finance, insurance, aeronautics, real estate, maritime transport and energy.

Finally, Hervé assists companies and managers/investors in the context of tax audits and litigation procedures.

Hervé is recognized in tax law by Chambers Partners Europe and The Legal 500 for his “spot-on advice”.

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