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Economy and Tourism

STRUCTURING OWNERSHIP OF THE FAMILY BUSINESS AND PRIVATE WEALTH: LEVERAGING TAX TRANSPARENCY AND FAMILY BUSINESS LAW

The recent developments in the UAE related to wealth preservation, asset protection, and succession planning, such as the Federal Law in relation to Family Businesses, aim to facilitate the smooth intergenerational transfer of wealth while promoting strong governance and sustainable business practices. Family businesses constitute approximately 90% of privately-owned companies in the UAE, employing over 70% of the workforce and contributing around 40% to the nation's GDP. Given their significant role, the stability and continuity of family enterprises are critical to the UAE's long-term economic resilience.

The UAE's tax and legal frameworks offer significant opportunities for families to formalise ownership and governance arrangements to ensure long-term sustainability and facilitate effective succession planning.

This alert provides an overview of how family businesses can leverage these developments to formalise the ownership and management of both family businesses and personal wealth in a tax-efficient manner.

FEDERAL FAMILY BUSINESS LAW AND THE CURRENT UAE CORPORATE TAX FRAMEWORK

The Federal Decree-Law No. (37) of 2022 in relation to Family Businesses (Federal Decree-Law No. (37) of 2023) (the "FB Law") is applicable in Dubai, as well as all other Emirates in the UAE. The FB Law establishes a comprehensive legal framework to regulate the ownership and governance of family businesses, boost the sector's contribution to economic and social development, and to facilitate the transfer of wealth between successive generations. The FB Law is only applicable to UAE mainland and free zone entities which are owned by a single family and registered under the FB Law with the relevant competent authority.

The FB Law provisions may be used to regulate the management functions of a family business, define the rights and responsibilities of the company directors, specify the conditions for a director's appointment and removal, and outline the formation and functioning of the company's board.

Importantly, the transfer of shares or assets of a family business, under the provisions of the FB Law (or the laws of the free zones, if applicable), whether through sale, gift, or usufruct, would also be considered compliant with the UAE Federal Personal Status Law, provided the transfer occurs during the lifetime of the transferring shareholder. This enables families to transfer their shares in the family business to a structure which will preserve and safeguard the assets for future generations.

Where a family-owned company holds real estate located in areas designated for Emirati ownership only, the company's shareholders must be limited to Emirati or GCC nationals.

An exception exists for cases of inheritance: if shares are passed to non-Emirati heirs of Emirati nationals, those heirs may retain ownership of the inherited real estate under the same terms as Emiratis. However, should the heirs choose to sell their inherited interest, the transfer must be made exclusively to Emirati or GCC nationals.

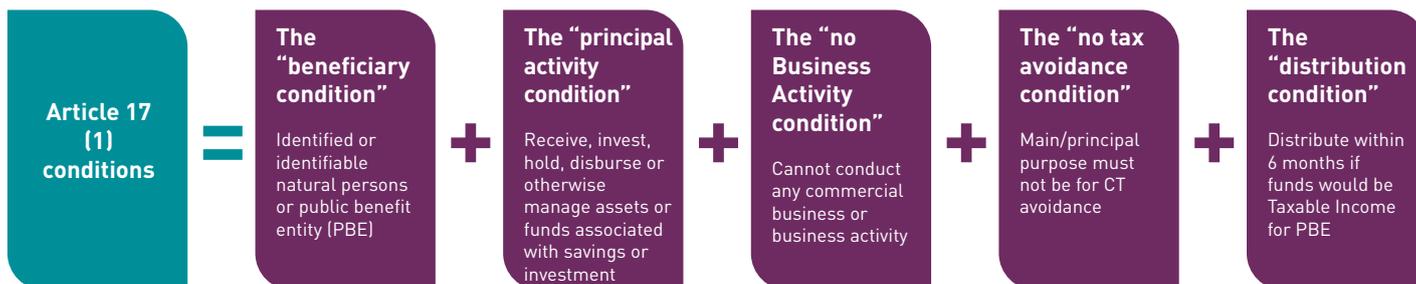
For more details, please refer to our [Guide on Family Business Law](#).

Under the **Federal Decree-Law No. (47) of 2022 on the Taxation of Corporations and Businesses and its amendments (Federal Decree-Law No. (60) of 2023) (the "CT Law")**, taxable profits of UAE tax resident companies should be subject to corporate tax ("CT") at a rate of 9% or 9% plus a top up tax, unless specific exemptions or special tax treatment apply.

TAX-EFFICIENT STRUCTURING OPTIONS FOR FAMILY BUSINESSES

However, there are several tools and structures, which can be used in conjunction with the FB Law to hold and manage family businesses and non-business assets in a tax-efficient manner, taking advantage of specific provisions that apply to certain structures established for the benefit of families.

A trust or foundation established in the Dubai International Financial Centre ("DIFC"), or an Incorporated Trust in the UAE mainland are asset ownership vehicles which can hold shares in the family businesses and non-business assets. Provided the vehicle meets the conditions listed under Article 17(1) of the CT Law, the foundation or trust should qualify as a "Family Foundation".



Family Foundation can make an application to the FTA to be treated as an "Unincorporated Partnership", i.e. tax transparent for CT purposes. If the trust (e.g. DIFC trust) is already an Unincorporated Partnership, it should be automatically treated as tax transparent and no separate application is required. For more details, please refer to our alert covering key takeaways from Corporate Tax Guide on the Taxation of Family Foundations.

Under the Ministerial Decision No. (261) of 2024 and the **CT Public Clarification (CTP008)** issued by the Federal Tax Authority ("FTA"), the tax transparent status can also be extended to any subsidiary that also meets the conditions of Article 17(1) of the CT Law provided it is wholly owned and controlled by the Family Foundation either directly or indirectly through an uninterrupted chain of other entities which are treated as Unincorporated Partnerships in accordance with the CT Law. It is important to note that entities that do not meet the above conditions, e.g. if they are conducting a commercial Business or Business Activity, will not be eligible to apply for tax transparent status.

This special tax treatment provides families with tax-efficient structuring solutions which support with planning for succession events and preserving the ownership of the family business for the ongoing benefit of family members.

MECHANISM OF THE TAX TRANSPARENT STATUS

Family Foundation/Qualifying subsidiaries

The Family Foundation and any qualifying subsidiary companies must register with the FTA and then, subject to meeting the conditions set out above, can make the application to be treated as a tax transparent "Unincorporated Partnership" before the end of the relevant Tax Period. However, for any Tax Periods ending on or before 31 December 2025, the application can be made on or before 31 December 2025.

Once the application is approved, the Family Foundation would be treated as an Unincorporated Partnership for CT purposes i.e. it should not be considered as a taxable person and should not be subject to CT on its income in its own right. Instead, the FTA will "look through" the entity and the entity's income will be treated as income of its partners, in this case, the beneficiaries of the Family Foundation.

The tax transparent entities must complete an Annual Confirmation on the FTA's portal within 9 months from the end of the relevant Tax Period, but it will not be required to file an annual CT return, which significantly reduces the administrative/compliance burden and associated cost.

Beneficiaries

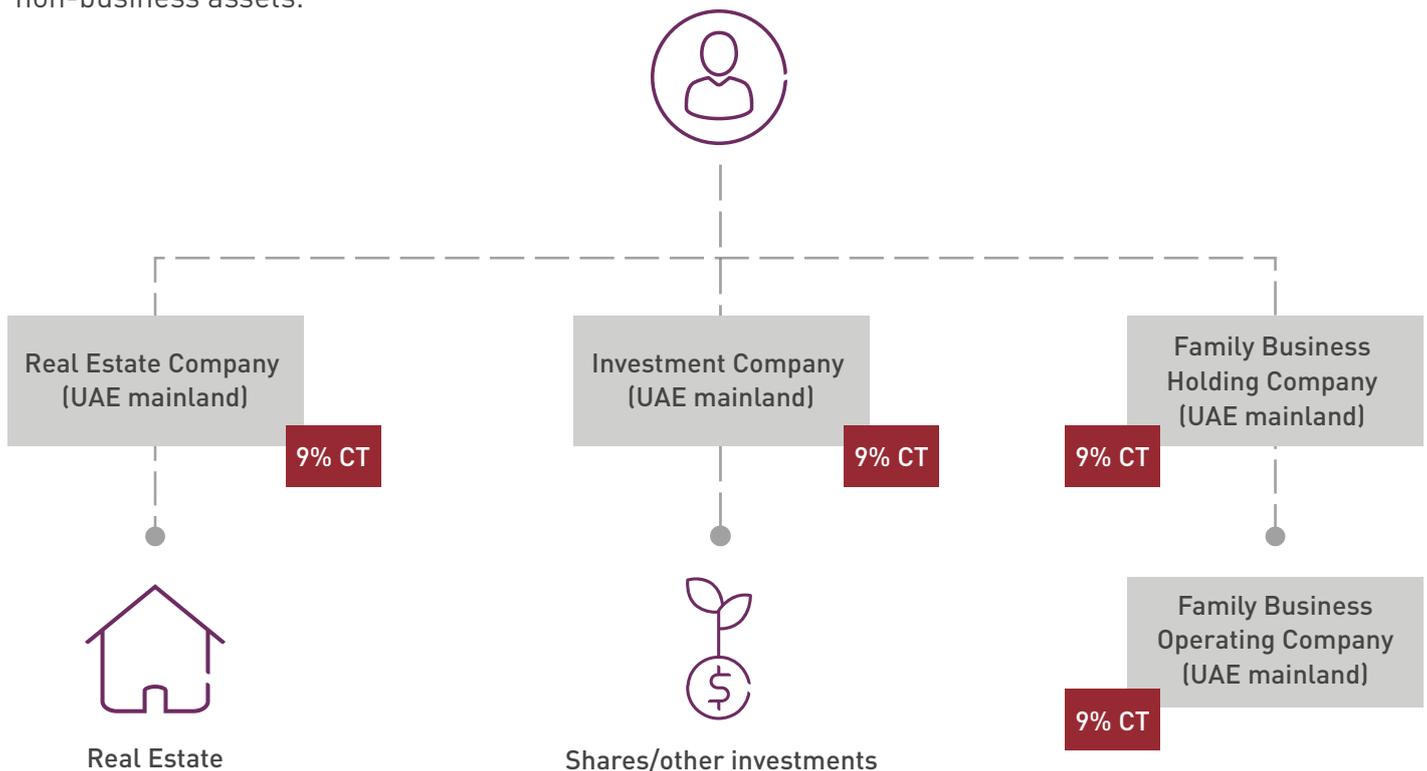
The beneficiaries that are natural persons (i.e. individuals) should not be subject to CT on the income of the tax transparent Family Foundation that is attributed or distributed to them on the basis that such income would either be considered Personal Investment income or Real Estate Investment income, which is not subject to UAE CT.

As there is no personal income tax in the UAE, the beneficiaries will not be subject to UAE personal income tax on the income they are deemed to receive from the tax transparent Family Foundation.

The beneficiaries will not be required to register with the FTA or file an annual CT return in respect of this income.

THE CURRENT SITUATION FOR MANY FAMILY BUSINESSES IN THE UAE

Shares and other personal investments are exposed to any legal challenge against the owner(s) and would be proliferated amongst their heirs on succession. All of the companies are subject to CT regardless of whether they are performing commercial activities or holding and/or managing non-business assets.



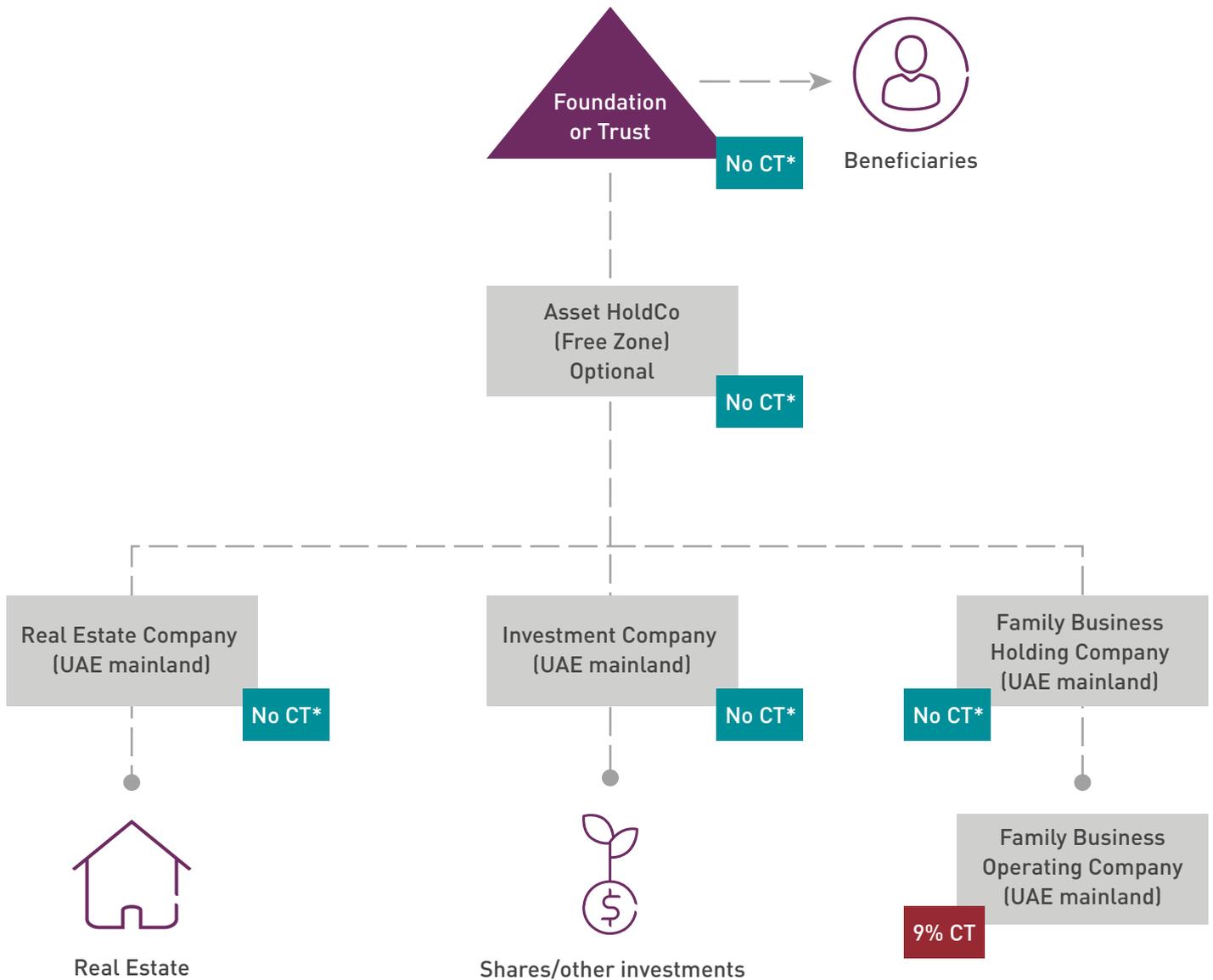
Availability of specific exemptions or special tax treatment, e.g. domestic dividend exemption and Participation Exemption may reduce the companies' CT exposure.



TAX-EFFICIENT STRUCTURING OPTIONS FOR FAMILY BUSINESSES

In addition to the asset protection and succession planning benefits of structuring the assets under a foundation or trust, the vehicle can also pass down tax transparent status to qualifying companies it 100% owns and controls.

The tax transparent entities - i.e. foundations/trusts, holding companies, etc. - are not themselves subject to CT, instead the owners/partners/beneficiaries would be treated as if they had earned the income personally.



*Subject to certain conditions being met for the vehicle to qualify for tax transparent status.

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