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Economy and Tourism

TAXATION OF REAL ESTATE STRUCTURES IN THE UAE

UAE CORPORATE TAX GUIDE

UAE CORPORATE TAX INSIGHTS

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”) is applicable in the emirate of Dubai, as well as across all other Emirates in the UAE.

Following the introduction of the CT Law, taxable profits exceeding AED 375,000 on real estate held by UAE tax resident companies are subject to corporate tax at a rate of 9% unless a relief or exemption applies (e.g. REIT exemption, transitional relief). This includes all rental income and gains on disposal of real estate held by the company.

Due to the application of Transfer Pricing rules, UAE tax resident companies will also be required to charge an arm's length or fair market rent on any properties which are used personally by related parties and pay corporate tax at the rate of 9% on this deemed rent.

The 9% CT rate applies to all UAE mainland, UAE free zone and foreign entities managed and controlled from the UAE.

The 0% CT rate is applicable to income derived from the rent of a commercial real estate located in a free zone, when leased by a Qualifying Free Zone Person to another Free Zone Person.

Real Estate Investment income is not subject to Corporate Tax when earned by a natural person if it is related, directly or indirectly, to the selling, leasing, sub-leasing, and renting of land or real estate property in the UAE that is not conducted through a license nor requiring a license from the competent licensing authority.





THERE ARE A NUMBER OF WAYS FOR YOU TO STRUCTURE THE ACQUISITION OR CURRENT OWNERSHIP OF YOUR REAL ESTATE IN DUBAI AND REMAIN TAX EFFICIENT.

TAX EFFICIENT REAL ESTATE OWNERSHIP IN DUBAI

OWNERSHIP THROUGH A DUBAI FOUNDATION

A DIFC foundation can protect your real estate, facilitate asset protection and benefit from tax transparent status (i.e. no corporate tax on income and gains).

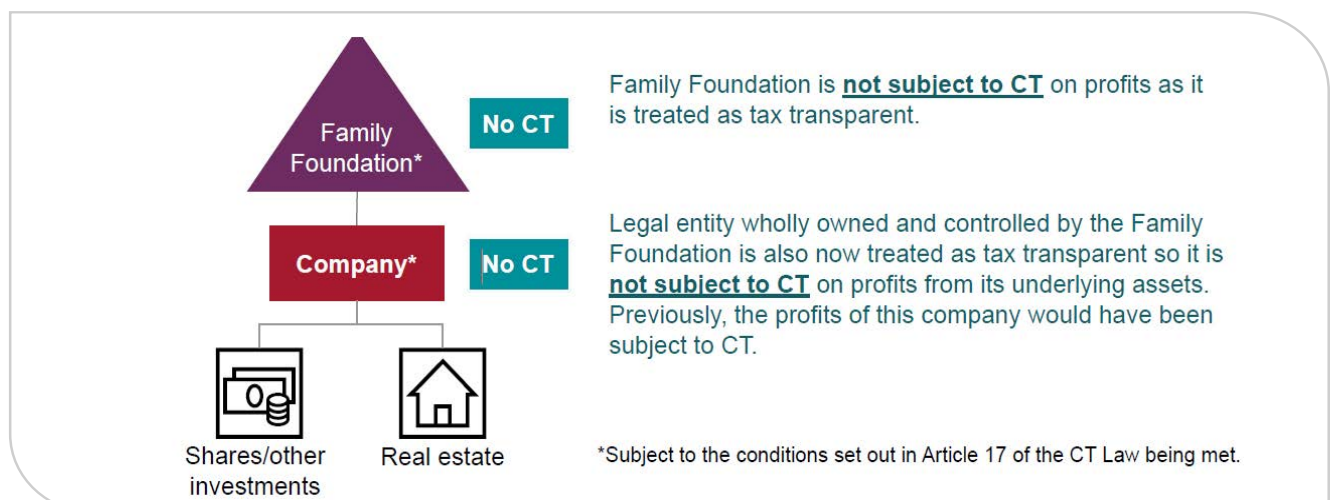
A foundation is an “orphan” legal entity without an owner like a company with no shareholders. It is established based on the laws and regulations of the Dubai International Financial Centre (DIFC). The founder transfers legal title of the assets to the foundation, which holds them for the benefit of the beneficiaries, which could be the founder, their family members, etc.

The CT Law includes special provisions for Family Foundations, which, subject to the conditions set out on the following page, can apply to be treated as tax transparent and the beneficiaries would be considered (for UAE tax purposes) as receiving the income directly.

This means the ownership of the real estate via a qualifying DIFC foundation is assimilated to personal ownership for CT purposes.

An entity that meets the conditions set out in Article 17 of the UAE CT Law to qualify as a “Family Foundation” is eligible to apply to be treated as a tax transparent Unincorporated Partnership. This means that any underlying entity with legal personality (juridical person) which meets the conditions set out in Article 17(1) of the CT Law may elect to be treated as tax transparent, 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).

Consequently, rental income or gains arising from a disposal of real estate would not be subject to Corporate Tax at the Family Foundation level and the beneficiaries who are individuals would not be subject to CT, provided the income meets the definition of Real Estate Investment Income. You can also enjoy the use of any personal property rent-free with no Corporate Tax implications.*



*Real Estate Investment income is not subject to Corporate Tax when derived by natural persons if it is related, directly or indirectly, to the selling, leasing, sub-leasing, and renting of land or real estate property in the UAE that is not through a License nor requiring a License from a Licensing Authority. 3

CONDITIONS FOR THE FOUNDATION TO QUALIFY FOR TAX TRANSPARENT STATUS

The CT law includes specific provisions for Family Foundations, enabling them to make an application to be treated as an Unincorporated Partnership, which is transparent for CT purposes. To obtain the tax transparent status, the foundation must qualify as a Family Foundation, which requires meeting the following conditions:

- It is established for the benefit of identified or identifiable natural persons, or for the benefit of a public benefit entity, or both.
- Its principal activity is to receive, hold, invest, disburse, or otherwise manage assets or funds associated with savings or investment.
- It does not conduct any activity that would be classed as a Business or Business Activity according to the CT law if it had been undertaken, or if its assets had been held, directly by its founders, settlor, or any of its beneficiaries.
- Its main or principal purpose is not the avoidance of Corporate Tax.
- It satisfies any other conditions as may be prescribed by the Minister of Finance.

OVERVIEW OF FOUNDATION SETUP STEPS



Initial approval from DIFC - Advise DIFC of the proposed name of the foundation and provide details of the founder(s), council members, objectives, registered agent, UBOs, etc.



Registration - Following the initial approval, provide DIFC with the registered address and the authorised signatories of the foundation. Prepare and submit the foundation's charter and by-laws to the DIFC Registrar of Companies.

It is recommended to take professional tax and legal advice to help you determine whether a foundation is right for you and support with the foundation setup process. This will ensure the accuracy of the foundation's charter and by-laws and the DIFC registration documents.



Corporate tax reporting - Once incorporated, register the foundation for UAE corporate tax and apply to the FTA for tax transparent status*.

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

It is important to note that while there are no legal restrictions on the ownership of real estate assets in mainland Dubai by Dubai International Financial Centre (DIFC) entities, in practice, these entities could only obtain title at the Dubai Land Department (DLD) with approval on a case-by-case basis.

To streamline this process, the DIFC and DLD have signed a memorandum of understanding (MOU) that permits DIFC entities licensed by DIFC to acquire title to real estate in mainland Dubai.

As a result, DIFC Foundations are permitted to own onshore Dubai real estate assets, subject to certain conditions related to ownership of designated areas in Dubai ie where freehold ownership is available for Emiratis and non-nationals.

Expatriates can also own property in non-designated areas as leasehold property, granting them the right to lease the property for a specified period, typically up to 99 years. These leases can be obtained from either the government or private developers.

It is to note that any lease with a term exceeding 10 years and up to 99 years is considered a long-term lease and is registrable in accordance with Dubai Law No. 7 of 2006 concerning Real Property Registration in the Emirate of Dubai.

OWNERSHIP THROUGH AN UNINCORPORATED PARTNERSHIP

An unincorporated partnership can benefit from tax transparent status (i.e. no corporate tax on income and gains).

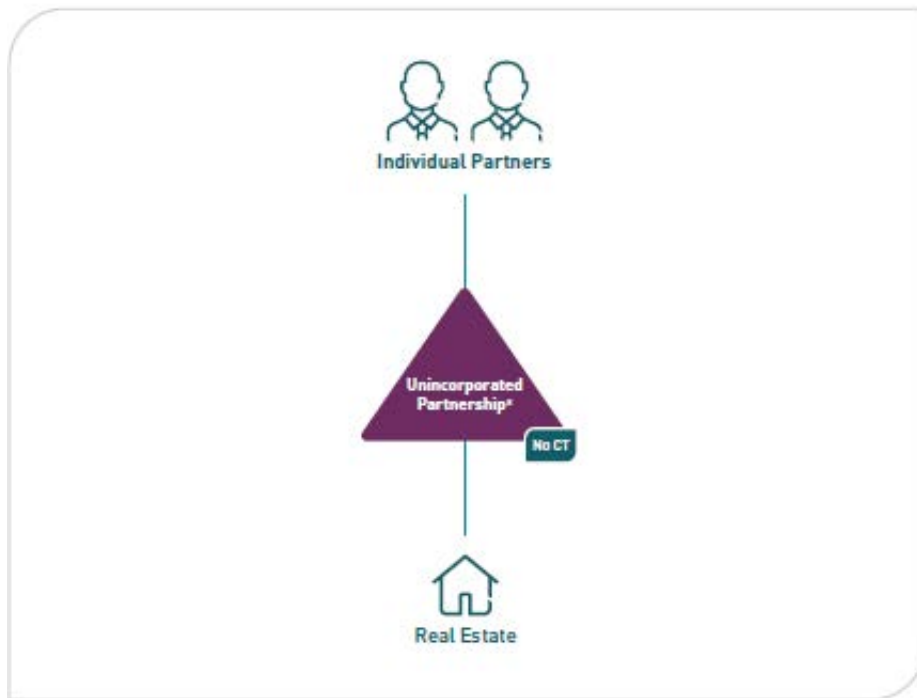
The CT Law includes special provisions for Unincorporated Partnerships, which can be treated as tax transparent. For Corporate Tax purposes, an unincorporated partnership is a contractual arrangement between multiple individuals (or entities) such as a partnership, trust or similar association of persons, which does not have a separate legal personality.

This means that the ownership of real estate via an Unincorporated Partnership is treated for CT purposes similarly to the direct personal ownership by the partners.

Consequently, there would be no CT on rental income or gains arising from the disposal of real estate held by individuals in a Unincorporated Partnership provided the income meets the definition of Real Estate Investment Income.

You can enjoy the use of any personal property in the unincorporated partnership rent-free with no CT implications.

Unincorporated partnerships can be set up in the UAE mainland as well as in Dubai free zones.

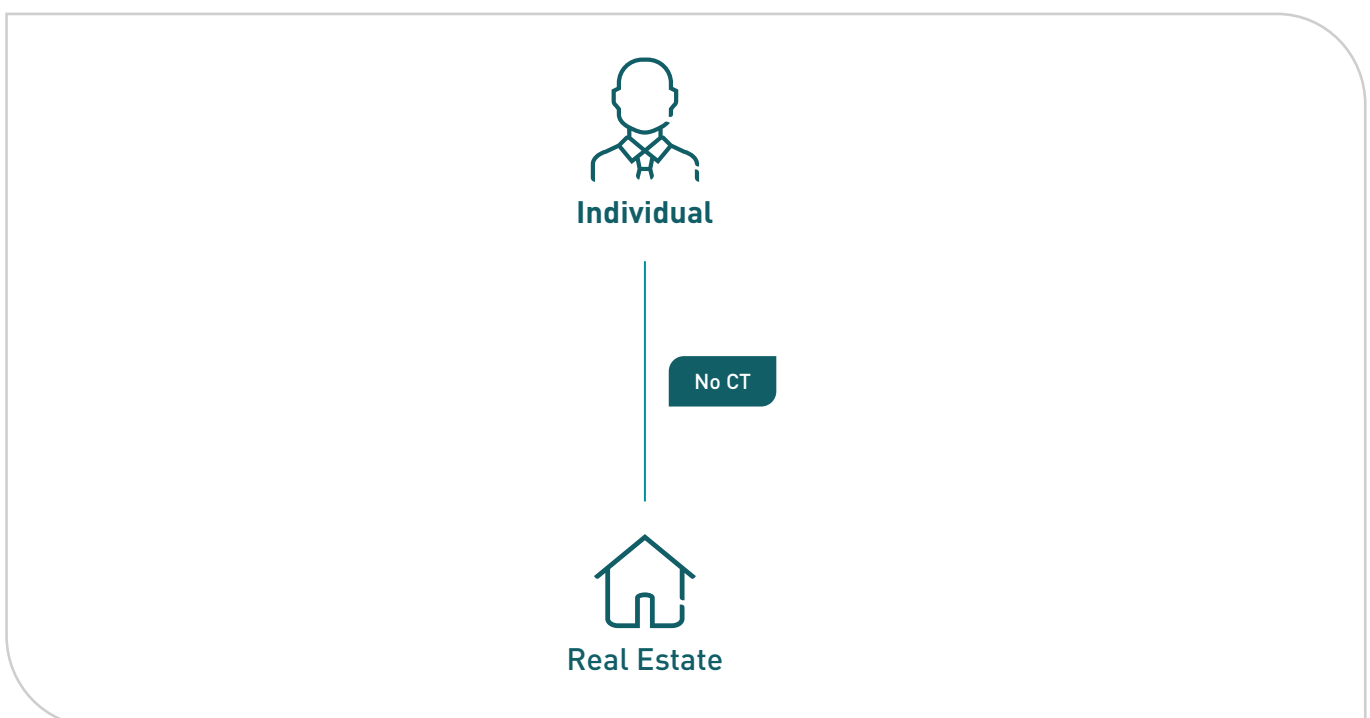


DIRECT PERSONAL OWNERSHIP

Income and capital gains from real estate is generally not subject to corporate tax if held by individuals directly.

The sale, leasing, sub-leasing, and renting of land or real estate in the UAE by individuals is not subject to UAE corporate tax provided it is not conducted or required to be conducted through a Licence from a Licensing Authority.

This is irrespective of the number of properties owned or the level of income/gains derived.



Please note: Where Dubai real estate is transferred and there is a change in the Ultimate Beneficial Owner (UBO), the Dubai Land Department charges a real estate transfer fee of up to 4% of the fair market value of a property at the time of transfer. However, where an individual owner transfers real estate to a vehicle of which they are the UBOs, the transfer typically benefits from a reduced transfer fee of 0.125%.

Disclaimer

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