

اقتصاد

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Economy and Tourism

TAXATION OF INCOME FROM QUALIFYING INTELLECTUAL PROPERTY (IP) RIGHTS BY FREE ZONE COMPANIES

A UAE CORPORATE TAX GUIDE

CURRENT UAE CORPORATE TAX FRAMEWORK

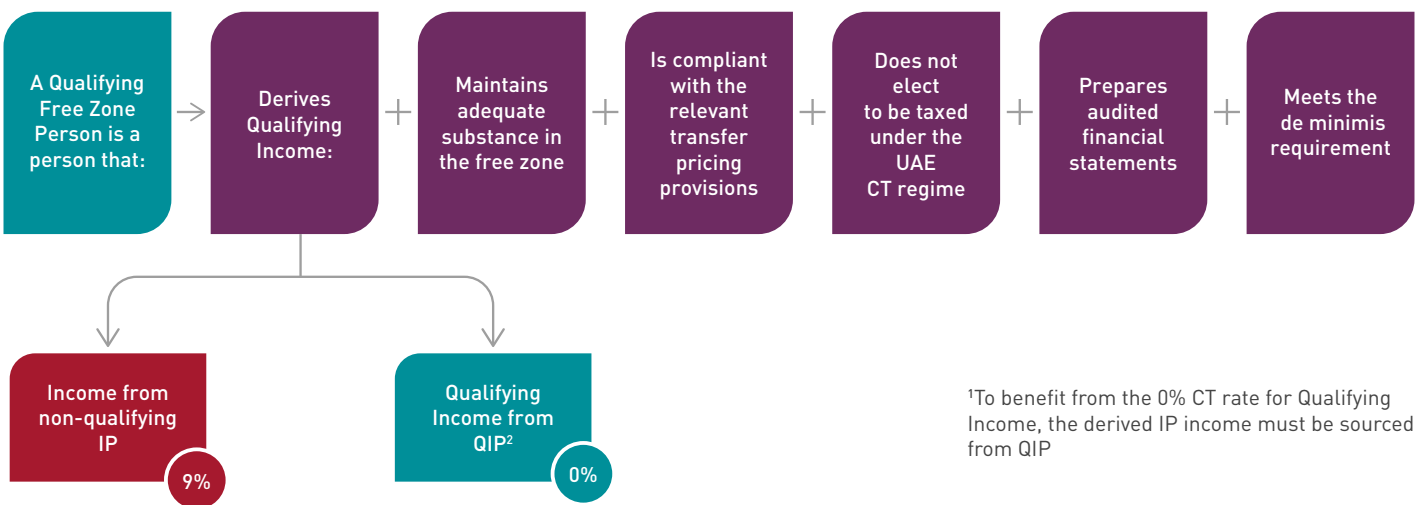
Federal Decree-Law No. (47) of 2022 on the Taxation of Corporations and Businesses and its amendments (the “CT Law”) is applicable in Dubai, as well as across all other emirates in the UAE.

Following the introduction of the CT Law, taxable profits of UAE tax resident companies may be subject to corporate tax at a rate of 9% plus a top-up tax if subject to Pillar 2 except where certain exemptions or preferential rates apply.

TAXATION OF INCOME FROM QUALIFYING INTELLECTUAL PROPERTY (“QIP”)

Income derived by a Qualifying Free Zone Person (“QZFP”) from the ownership or exploitation of QIP is Qualifying Income, which is subject to CT at the rate of 0%. The preferential tax regime for QZFPs has been confirmed by the OECD as “not-harmful” according to the requirements set by the Forum on Harmful Tax Practices.

All of the following requirements must be met in order to meet the conditions to be considered a QZFP and be subject to the 0% rate on QIP. Generating income that is not Qualifying Income may disqualify the FZP from the 0% CT rate under the FZ regime if the de minimis threshold is breached. To satisfy the de minimis requirement, the non-qualifying revenue generated by a FZP must not exceed the lower of either 5% of their total revenue or AED5 million.



WHAT IS QUALIFYING IP?

Patents - whether granted under the law regulating patents in the UAE or another jurisdiction.

Copyrighted software - any copyright subsisting in software granted under the law regulating copyrights in the UAE or another jurisdiction.

Other legal rights which are functionally equivalent - similar to patents and subject to a similar approval and registration process (excluding marketing-related intellectual property such as trademarks). This includes, for example, utility models to new varieties, orphan drug designations and extensions of patent protection such as supplementary protection certificates.

²Core income-generating activities relating to QIP must be performed by the QZFP’s own relevant R&D activities or may be outsourced to a non-related party inside or outside the UAE provided adequate supervision is in place by the QZFP.

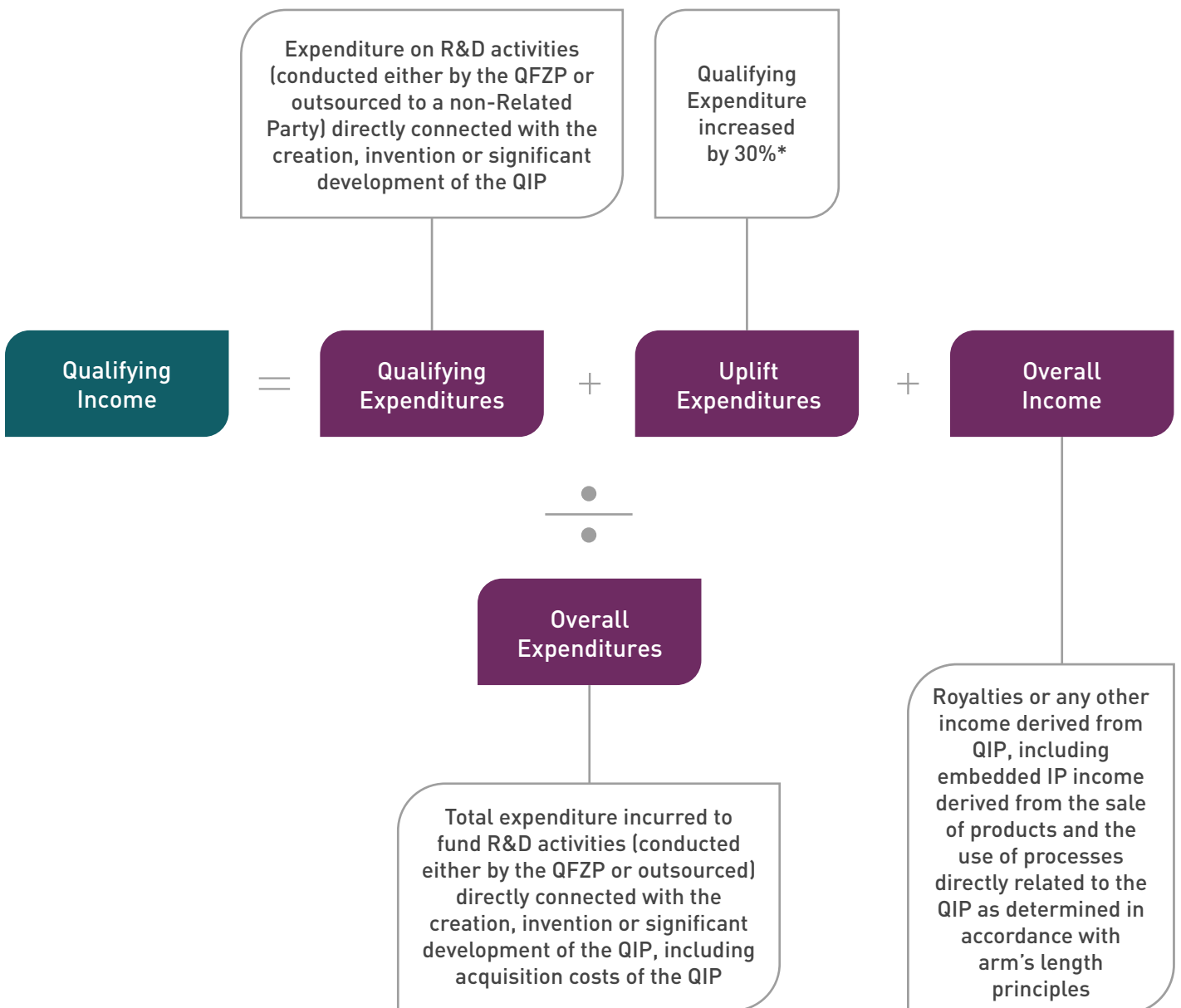
INCOME FROM INTELLECTUAL PROPERTY

For the purposes of the QFZP de minimis requirement, income must be separately identifiable and directly attributed to the ownership or exploitation of the IP, e.g. royalties and licence fees.

Income which is indirectly attributed to IP is not separately identifiable and directly attributed to the ownership or exploitation of IP, e.g. income from the sale of a product or service in which IP is embedded is not considered to be income from the ownership or exploitation of IP for these purposes.

CALCULATION OF QUALIFYING INCOME FROM QIP

Qualifying Income derived from the ownership or exploitation of QIP is calculated according to the formula shown below. In accordance with the CT Law, excess Qualifying Income or non-Qualifying Income will be subject to CT at a rate of 9% plus a top-up tax if subject to Pillar 2.



* Qualifying Expenditures may not exceed Overall Expenditures when accounting for Uplift Expenditures.

RECORD KEEPING FOR QUALIFYING IP

If a QFZP has multiple QIP assets, derives income other than from QIP or engages in outsourcing or acquisition then tracking the link between expenditures and income of the QIP is fundamental.

In cases where tracking the income and expenditure for specific QIP assets would be unrealistic, the QFZP may apply a nexus approach between expenditures, products arising from the QIP assets, and income. If the QFZP is tracking to products, documentation must be maintained detailing the IP business model and rationale for taking the product-based approach.

Without adequate tracking system, the QFZP will not be able to demonstrate the amount of Qualifying Income arising from its QIP and will not be able to apply the 0% rate to income from its QIP.

Businesses generating income from QIP are required to maintain all records, books and documents relating to:

- The ownership and the right to exploit the QIP.
- The Qualifying Expenditures and Overall Expenditures incurred.
- The Overall Income derived from the QIP.
- The link between Qualifying Expenditures and Overall Income derived from the QIP.

The Federal Tax Authority may request these records and the Qualifying Free Zone Person is required to provide them when requested.

Disclaimer

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