

Key amendments to Ministerial Decisions

Tax Alert

January 2025



The Ministry of Finance has announced significant updates to the existing Ministerial Decisions in relation to Tax Groups, and the participation exemption and foreign permanent establishment exemption:

- Ministerial Decision No. 301 of 2024 on Tax Groups replaces Ministerial Decision No. 125 of 2023.
- Ministerial Decision No. 302 of 2024 on the Participation Exemption and Foreign Permanent Establishment Exemption, supersedes Ministerial Decision No. 116 of 2023.

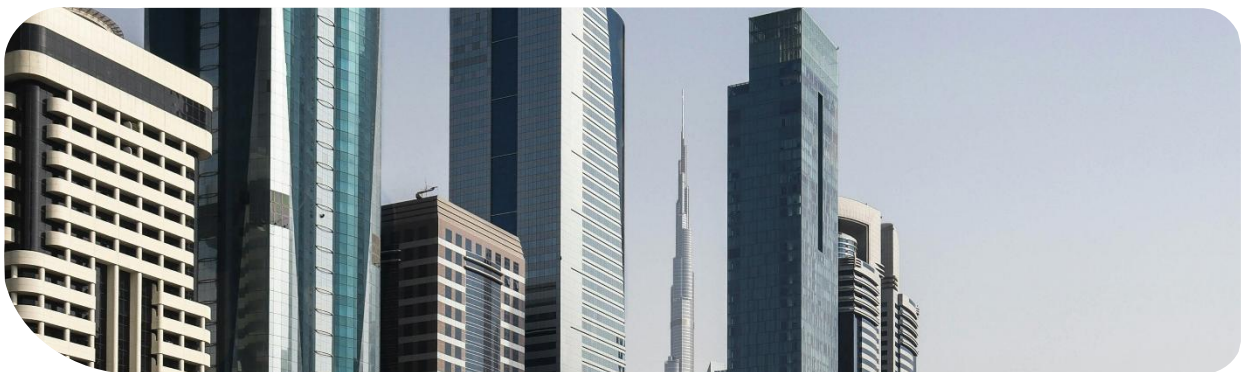
Let's dive into what this means for businesses operating in the UAE.



Tax Groups: What You Need to Know

Ministerial Decision No. 301 of 2024, provides more comprehensive guidelines for Tax Groups. Here's the key highlights:

- 1. Resident Person:** There is no longer a requirement for foreign juridical persons, classified as UAE tax residents, or any juridical persons considered as resident in the UAE by virtue of having its Place of Effective Management (PoEM) in the UAE, to provide detailed documentation on their overseas tax status (e.g. confirmations from tax authorities that they are not tax residents in another jurisdiction).
- 2. Utilization of Losses and Interest:** Pre-grouping tax losses and pre-grouping carried forward net interest expenditure must be fully utilized against any taxable income of the group before any amount can be carried forward to any subsequent tax period. The tax group will forfeit such attributes if it does not calculate the attributable taxable income for each relevant member of the tax group, or if pre-grouping losses or pre-grouping net interest expenditure is not fully utilized in the relevant tax period.
- 3. Foreign Tax Credit:** Any member of a tax group which earns foreign income on which the tax group is eligible to claim a foreign tax credit against, is no longer required to compute the taxable income attributable to each member of the group. Instead, the foreign tax credit can be offset against the taxable income of the group.
- 4. New Member's Joining a Tax Group:** When a new member with unutilized losses joins a tax group, a computation of attributable income must be calculated relative to the new member.
- 5. Transfer Pricing Disclosures:** When a tax group is calculating the taxable income for any of its members, consideration must be given to the Transfer Pricing provisions in accordance with Clause (1) or Article 55 of the Corporate Tax Law.



Participation exemption and foreign permanent establishment exemption: What You Need to Know

Ministerial Decision No. 302 of 2024, provides a more detailed guidance pertaining to the participation exemption and foreign permanent establishment exemption. Here's the key takeaways:

- 1. New definitions:** Under recent amendments, two new categories have been outlined for foreign permanent establishments (FPEs): qualifying foreign permanent establishments (QFPEs) and non-qualifying foreign permanent establishments (NQFPEs). A QFPE refers to a permanent establishment that is subject to Corporate Tax, or a comparable levy, within the relevant foreign jurisdiction at a rate of at least 9%. An NQFPE encompasses any foreign permanent establishment that does not meet the tax-rate criteria required for QFPE designation.
- 2. Transfer of Ownership Interests:** Ministerial Decision 302 builds on the rules for the transfer of ownership interests, offering more comprehensive and detailed guidance. Under Clause 9 of Article 23 of the UAE CT law, the participation exemption is disallowed for two years if the participation was acquired:
 - a) In exchange for transferring an ownership interest that did not satisfy Clause 2 of Article 23, or
 - b) Through an exempt transfer (Article 26: transfers within a qualifying tax group; Article 27: business restructuring relief).

Article 4(2) explains that for transfers under Article 27, this two-year period starts on the date of the first exempt transfer and continues through any subsequent transfers.





Additionally, if a participation exemption was not claimed for a participation acquired via an exempt transfer, but later becomes taxable due to non-compliance with exempt transfer conditions, the taxpayer may reverse previously recognized income linked to the Article 9 restriction. This adjustment must occur in the tax period when the violation takes place.

3. Foreign Permanent Establishment

Exemption: the taxable person's qualifying foreign permanent establishment is required to aggregate and fully utilize any tax losses of its PEs before any election can be made to apply for the foreign permanent establishment exemption. Additionally, there are now rules for determining exemption eligibility after asset transfers from PEs to participations. Previously, this was not established in such detail for utilizing PE tax losses or transitions.

4. Minimum acquisition cost: The participation exemption is disallowed if more than half of the direct or indirect assets in a Participation are ownership interests or rights that would not have qualified for a Corporate Tax exemption if owned directly by the Taxable Person. The recently issued decision clarifies that this rule only applies when the Participation is a related party of the Taxable Person. In all other cases, the exemption remains valid.

5. Application of the asset test: there is now a requirement for the asset test to be met under Clause (2)(d) of Article 23 of the Corporate Tax Law. This test mandates that participations must qualify as a Related Party of the Taxable Person.

6. Liquidation Proceeds and Losses: There are more detailed provisions for the treatment of liquidation proceeds and losses, expanding significantly on what was provided previously.

Loss Adjustments:

Decision 302 specifies that liquidation losses must be reduced by:

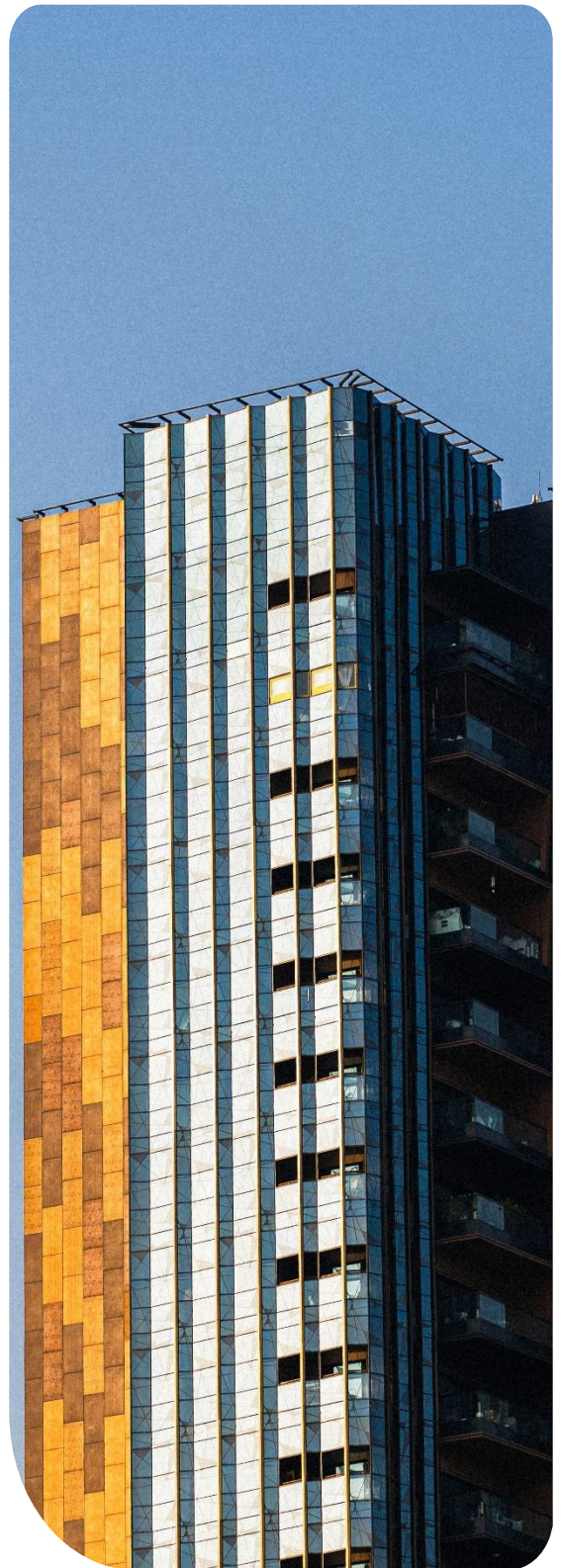
- Tax losses transferred by the Participation or its Participations to the Taxable Person or its Related Parties.
- Exempt dividends or other profit distributions received from the Participation.
- Market value adjustments related to asset or liability transfers between the Taxable Person and the Participation that have not been accounted for earlier.

Tax Group Treatment:

Decision 302 explicitly addresses liquidation losses within a tax group, requiring reductions for:

- Tax losses attributable to the Participation during its membership in the tax group.
- Dividends or other profit distributions eliminated under group-level consolidation rules.

Additionally, it prohibits the realization of liquidation losses if the Participation leaves the tax group due to specific conditions.

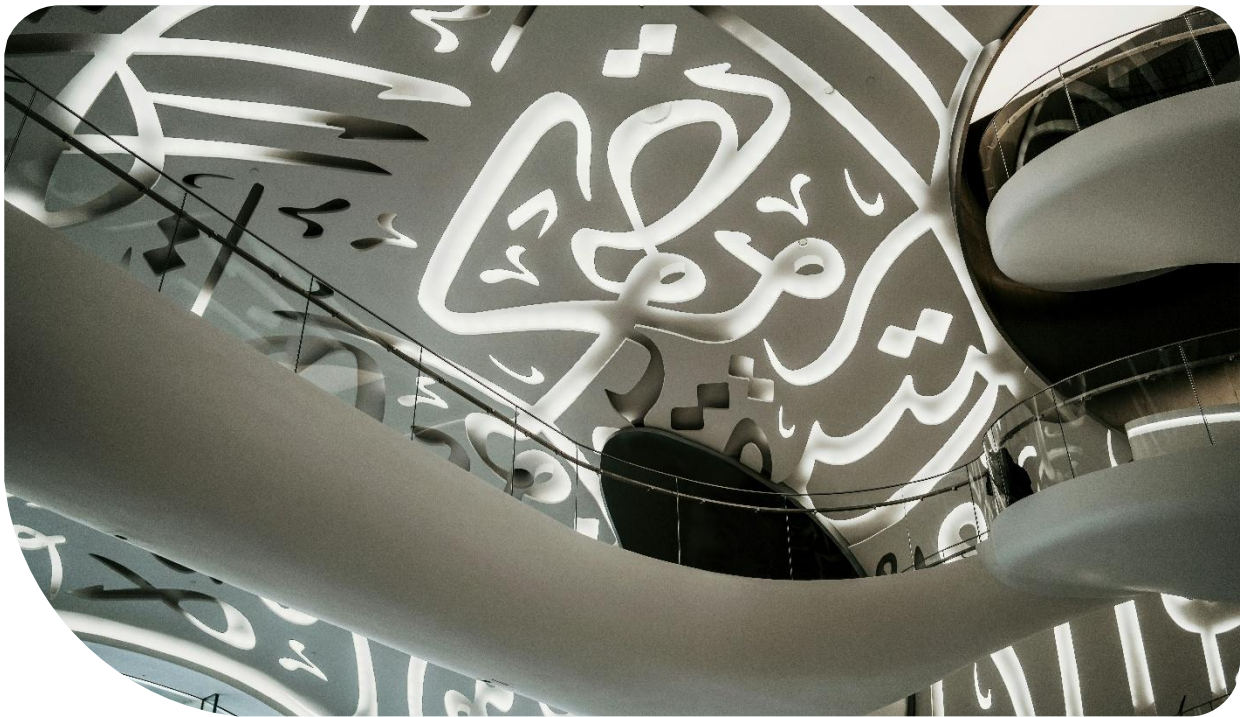


The bigger picture: Impact on UAE Corporate Tax

The new Ministerial Decisions shall apply for tax periods beginning on or after 1 January 2025. The earlier Decisions shall continue to apply for tax periods that commenced before 1 January 2025.

In the ever-evolving landscape of UAE Corporation Tax, the updated Decisions provide further clarity on the rules and regulations for businesses operating in the UAE. These changes represent not just a regulatory rethink, but an opportunity to optimally strategize your business operations in the UAE.

Please reach out to our team of experts, and together we can decipher how your organisation may be impacted by the new changes.



Contact our Tax team

For more details regarding this Tax alert or other Tax issues, reach out to our team of experts on the latest Tax developments within the UAE and the Middle East region.



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