

UAE CORPORATE TAX LAW

CT Alert - 8 JUNE 2023

Cabinet Decision No. 55 of 2023 read with Ministerial Decision No.139 of 2023 Determining Qualifying Income for the Qualifying Free Zone Person

The Cabinet has issued Decision No. 55 of 2023 on Determining Qualifying Income for the Qualifying Free Zone Person and Decision No. 139 of 2023 Regarding Qualifying Activities and Excluded Activities for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses.

Summary of Decision

The following constitute **Qualifying Income** of a Qualifying Free Zone Person (QFZP):

- Income derived from transactions with another Free Zone Person (FZP), where such Free Zone Person is the ultimate beneficiary of the goods or service i.e where there is no contractual liability or obligation to pass on such good or service to another Person.
- Income derived from Non-Free Zone Persons (NFZP), in respect of **Qualifying Activities** (Note1), that are not **Excluded Activities** (Note2).
- Other income within the **De-minimis limits** (Note3).

The following income **shall not** be a part of Qualifying Income:

- Income attributable to a Domestic Permanent Establishment or a Foreign Permanent Establishment - will be computed as if such PE is a separate and independent Person and taxed at 9%, without basic exemption.
- Income attributable to ownership or exploitation of Immovable Property, as follows, to be taxed at 9%, without basic exemption.
 - Transactions with NFZP, in case of commercial property.
 - Transactions with any Person, in terms of non-commercial property.

A QFZP that fails to meet the conditions prescribed in the Decree-Law and the Decisions thereon will cease to be a QFZP from the beginning of such Tax Period and for subsequent 4 Tax Periods.

Note 1

The following activities shall be considered **Qualifying Activities:**

- a. Manufacturing of goods or materials.
- b. Processing of goods or materials.
- c. Holding of shares and other securities.
- d. Ownership, management & operation of Ships.
- e. Reinsurance services that are subject to the regulatory oversight of the competent authority in the State.
- f. Fund management services that are subject to the regulatory oversight of the competent authority in the State.
- g. Wealth and investment management services that are subject to the regulatory oversight of the competent authority in the State.
- h. Headquarter services to Related Parties.
- i. Treasury and financing services to Related Parties.
- j. Financing and leasing of Aircraft, including engines and rotatable components.
- k. Distribution of goods or materials in or from a Designated Zone to a customer that resells such goods or materials, or parts thereof or processes or alters such goods or materials or parts thereof for the purposes of sale or resale.
- l. Logistics services.
- m. Any activities that are ancillary to the activities listed in paragraphs (a) to (l).

Note 2

The following activities shall be considered **Excluded Activities:**

- a. Any transaction with natural persons, except for the following activities:
 - Ownership, management and operation of Ships.
 - Fund management services that are subject to the regulatory oversight of the competent authority in the State.
 - Wealth and investment management services that are subject to the regulatory oversight of the competent authority in the State.
 - Financing and leasing of Aircraft, including engines and rotatable components.
- b. Banking activities
- c. Insurance activities, other than reinsurance services specified in Note 1
- d. Financing and leasing activities, other than the following services specified in Note 1:
 - Treasury and financing services to Related Parties.
 - Financing and leasing of Aircraft, including engines and rotatable components.
- e. Ownership or exploitation of an immovable property, other than transactions pertaining to commercial Free Zone immovable property between FZPs.
- f. Ownership or exploitation of intellectual property assets.
- g. Any activities that are ancillary to the activities listed in paragraphs (a) to (f).

Note 3

De minimis requirements are considered to be satisfied if the non-qualifying Revenue of the QFZP does not exceed 5% of the total Revenue of the QFZP or AED 5 million, whichever is lower.

Non-qualifying revenue constitutes the following:

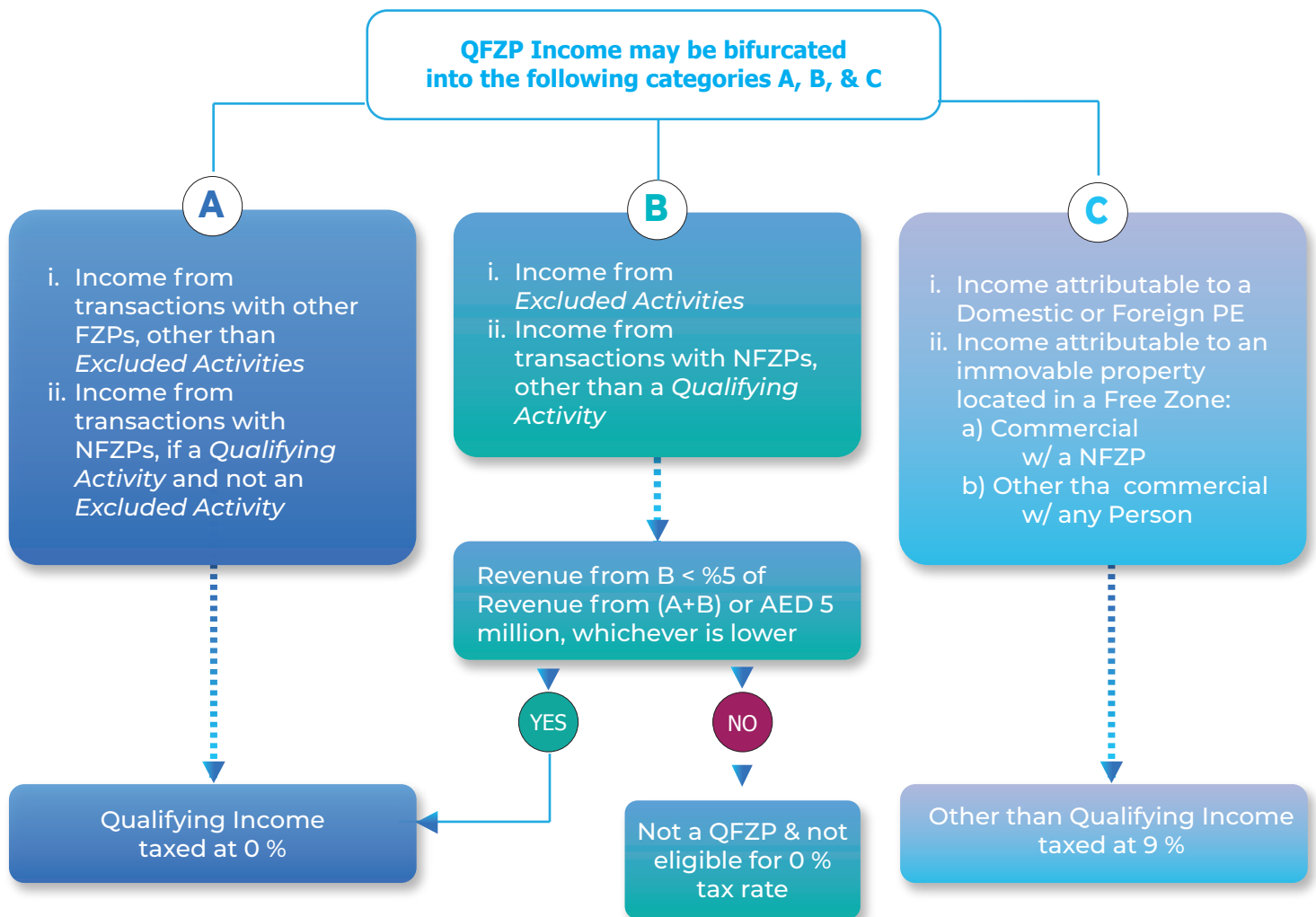
- a. Revenue from excluded activities
- b. Revenue derived from NFZP from activities that are not Qualifying Activities.

The following Revenue shall not be a part of non-qualifying Revenue or total Revenue for the purposes of the said calculation:

- Revenue attributable to a Domestic

Permanent Establishment or a Foreign Permanent Establishment.

- Revenue attributable to Immovable Property located in a Free Zone derived from:
 - Transactions with NFZP, in case of commercial property.
 - Transactions with any Person (including a FZP), in terms of non-commercial property.



Key Takeaways

- The Decision requires evaluation of transactions on the basis of the legal status of the recipient of goods or services i.e FZP or NFZP and not the location of such recipients.
- QFZPs would need to maintain strict monitoring of qualifying conditions as there are consequences prescribed for not meeting the conditions.
- FZPs may need to incorporate necessary changes to the chart of accounts to ensure that the requisite data and information are available from the books of account.

Disclaimer

The above seeks to summarise the update from the relevant authority. The same may not be construed to be a written opinion on matters that may require specific examination of the Decree on a case-to-case basis.

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