

Ministerial Decision No. 105 of 2023 | Determination of the Conditions under which a Person may Continue to be Deemed as an Exempt Person, or Cease to be Deemed as an Exempt Person from a Different Date

The Ministry of Finance (MOF) has issued Decision No. 105 of 2023 on the Determination of the Conditions under which a Person may Continue to be Deemed as an Exempt Person, or Cease to be Deemed as an Exempt Person from a Different Date for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses.

Summary of Decision

In accordance with Clause 5 of Article 4 of the Decree Law, an Exempt Person shall cease to be an Exempt Person from the beginning of that Tax Period during which the prescribed conditions have not been met. However, such Person may continue to be an Exempt Person, or cease to be an Exempt Person from a different date in the following instances:

- Failure to meet the conditions is the result of the liquidation or termination of the Person.
 - The Person may continue to be deemed as an Exempt Person from the date the liquidation or termination procedures (as per the applicable legislations in the State) start until the date it is completed.
 - Notification to be submitted to the Authority within 20 business days from the date of beginning of the procedures.
- Failure to meet the conditions is of a temporary nature and will be promptly rectified, and appropriate procedures are in place to monitor the compliance with the relevant conditions of this Decree-Law.
 - Failure to meet the conditions is on account of a situation or an event beyond the Person's control and could not have reasonably predicted or prevented.
 - An application was made to the authority within 20 business days from the date the Person failed to meet the conditions.
 - The Person has reasonable certainty that the conditions would be met within 20 business days from the date of the application.
 - Evidence of appropriate monitoring measures to meet the compliance requirements may have to be provided to the Authority within 20 business days of such request.
- In accordance with the General Anti-Abuse Rules (GAAR), the Person shall cease to be deemed an Exempt Person from the day it fails to meet the conditions in case it can be reasonably ascertained that such cessation is primarily to obtain a Corporate Tax advantage.

Key Takeaways

- The Decision provides clarity and prescribes procedural aspects to be followed by Exempt Persons failing to meet the exemption criteria under special circumstances.
- Proof of a situation being 'temporary in nature' would also involve a fair amount of judgement and is likely to be subject to varied interpretations.
- The onus of providing adequate documentary evidence to demonstrate rectification and monitoring measures lies with the Exempt Person.

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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