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## Tax Group for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses

Ministerial Decision No. 301 of 2024 – Issued 9 December 2024 – (Effective from 10 December 2024)

### Minister of State for Financial Affairs has decided:

- Having reviewed the Constitution,
- Federal Law No. 1 of 1972 on the Competencies of Ministries and Powers of the Ministers, and its amendments,
- Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses, and its amendments,
- Ministerial Decision No. 125 of 2023 on Tax Group for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses.

### Article 1 – Definitions

Words and expressions in this Decision shall have the same meanings specified in the Federal Decree-Law No. 47 of 2022 referred to above (“Corporate Tax Law”), and the following words and expressions shall have the meanings assigned against each, unless the context otherwise requires:

- Parent Company : A Resident Person that can make an application to the Authority to form a Tax Group with one or more Subsidiaries in accordance with Clause (1) of Article (40) of the Corporate Tax Law.
- Subsidiary : A Resident Person in which the share capital or Membership or Partnership Capital, as applicable, is held by a Parent Company, in accordance with Clause (1) of Article (40) of the Corporate Tax Law.
- Membership or Partnership Capital : The capital paid to a juridical person where the paid capital is divided into membership or partnership interests by a Person in order to be a member or a partner and have the rights of membership or partnership in that juridical person.



Financial Statements : A complete set of statements as specified under the Accounting Standards applied by the Taxable Person, which includes, but is not limited to, statement of income, statement of other comprehensive income, balance sheet, statement of changes in equity and cash flow statement.

## Article 2 – Ownership Requirements

1. For a Tax Group to be formed or continue to exist, the conditions specified under Clause (1) of Article (40) of the Corporate Tax Law must be met continuously throughout the relevant Tax Period.
2. For the purposes of paragraph (b) of Clause (1) of Article (40) of the Corporate Tax Law, share capital shall mean the nominal issued and paid-up capital, or Membership or Partnership Capital of each Subsidiary, as applicable.

## Article 3 – Resident Person

1. For purposes of Article (40) of the Corporate Tax Law, a Parent Company and a Subsidiary must be Resident Persons that are not considered resident for tax purposes in another country or foreign territory under a relevant international agreement in force in the State.
2. Where a member of a Tax Group becomes a resident for tax purposes in another country or foreign territory in accordance with Clause (1) of this Article, the relevant member shall be treated as leaving the Tax Group from the beginning of the Tax Period in which it became a resident for tax purposes in such other country or foreign territory.

## Article 4 – Rules in relation to Transactions prior to Forming or Joining a Tax Group

1. For the purposes of Clause (1) of Article (42) of the Corporate Tax Law, transactions between members of a Tax Group must not be eliminated insofar as a member has recognised a deductible loss in a Tax Period in respect of those transactions prior to forming or joining the Tax Group, until such deductible loss is reversed in



full.

2. If, as a result of Clause (1) of this Article, a relevant transaction is not eliminated, the Tax Group must include any income in relation to that transaction in determining the Taxable Income of the Tax Group for the Tax Period in which that income arises up to the amount of the deductible loss that was previously deducted prior to forming or joining the Tax Group.

## Article 5 – Date of Formation of or Joining a Tax Group

1. For the purposes of Clause (1) of Article (41) of the Corporate Tax Law, the application to form a Tax Group or to join an existing Tax Group must be submitted to the Authority before the end of the Tax Period within which the formation of or joining a Tax Group is requested.
2. The application referred to in Clause (12) of Article (40) of the Corporate Tax Law must be made before the end of the relevant Tax Period.
3. For the purposes of Clause (2) of this Article, the new Parent Company should meet the conditions specified in Clause (1) of Article (40) of the Corporate Tax Law from the beginning of the relevant Tax Period.
4. For the purposes of paragraph (b) of Clause (12) of Article (40) of the Corporate Tax Law, where a Parent Company transfers its entire Business to another member of the same Tax Group and the Parent Company ceases to exist as a result of this transfer, the Parent Company shall be replaced by that member as of the date the transfer is effective.
5. Subject to Clause (1) of this Article, a newly established juridical person may join an existing Tax Group from the date of its incorporation where that juridical person is either of the following:
  - a. A newly established Subsidiary.
  - b. A newly established Parent Company replacing the existing Parent Company of the Tax Group under paragraph (a) of Clause (12) of Article (40) of the Corporate Tax Law.



## Article 6 – Assets, Liabilities and Financial Positions of Members of a Tax Group

1. For the purposes of Clause (1) of Article (42) of the Corporate Tax Law and Article (4) of this Decision, transactions between the Parent Company and each Subsidiary that is a member of the Tax Group must include:
  - a. Transactions between two or more Subsidiaries that are members of the same Tax Group.
  - b. Valuation adjustments and provisions in relation to transactions between two or more members of the same Tax Group.
2. Where a gain or loss in respect of a transaction between members of the same Tax Group has been eliminated under Clause (1) of Article (42) of the Corporate Tax Law, such elimination must include any change in accounting value of the relevant assets and liabilities that may have arisen in consequence of that gain or loss.

## Article 7 – Relief for Pre-Grouping Tax Losses

1. For the purposes of Clause (3) of Article (42) of the Corporate Tax Law, the amount of the pre-Grouping Tax Losses of a Subsidiary that can be used to offset the Taxable Income of the Tax Group in a Tax Period shall be the lesser of the following two amounts:
  - a. The Taxable Income of the Tax Group that is attributable to that Subsidiary.
  - b. The Tax Loss that can be used to reduce the Taxable Income of the Tax Group in the relevant Tax Period under Clause (2) of Article (37) of the Corporate Tax Law.
2. Where the calculation of the Taxable Income of a Tax Group, as specified under Clause (1) of Article (42) of the Corporate Tax Law, resulted in a Tax Loss and became a carried forward Tax Loss, any pre-Grouping Tax Losses available to be utilised in a subsequent Tax Period must be offset against the Taxable Income of the Tax Group in that Tax Period in accordance with Clause (1) of this Article before the other carried forward Tax Losses of the Tax Group can be utilised in that same Tax Period, subject to the provisions of Article (37) of the Corporate Tax Law.
3. Where the total pre-Grouping Tax Losses available to be utilised in a Tax Period



exceed the amount specified under Clause (1) of this Article, the Parent Company must determine which Subsidiary's pre-Grouping Tax Losses remain carried forward Tax Losses of the Tax Group.

4. The provisions of Clause (4) of Article (37) of the Corporate Tax Law shall also apply to pre-Grouping Tax Losses.

## **Article 8 – Arm's Length Principle and Transfer Pricing Documentation Requirements and the Calculation of the Taxable Income of a Tax Group**

1. The Tax Group must calculate the Taxable Income that is attributable to one or more of its members in accordance with Clause (2) of this Article where any of the following occurs:
  - a. A member of the Tax Group has unutilised pre-Grouping Tax Losses and the Tax Group opts to use the pre-Grouping Tax Losses to offset the Taxable Income of the Tax Group for the relevant Tax Period.
  - b. A new member joins an existing Tax Group, and that existing Tax Group has unutilised Tax Losses.
  - c. A member of the Tax Group benefits from any Corporate Tax incentives as specified under paragraph (g) of Clause (2) of Article (20) of the Corporate Tax Law.
  - d. A member of the Tax Group has unutilised carried forward Net Interest Expenditure under Clause (4) of Article (30) of the Corporate Tax Law (referred to in this Article as "pre-Grouping carried forward Net Interest Expenditure") and the Tax Group opts to use the pre-Grouping carried forward Net Interest Expenditure in determining the Taxable Income of the Tax Group for the relevant Tax Period.
2. If the Tax Group is required to calculate the Taxable Income that is attributable to any of its members as per Clause (1) of this Article, the Tax Group shall:
  - a. Calculate the Taxable Income that is attributable to each relevant member of the Tax Group in accordance with Article (34) of the Corporate Tax Law.
  - b. Disclose any information as may be required by the Authority in accordance



with Clause (1) of Article (55) of the Corporate Tax Law regarding transactions and arrangements between the relevant members and other members of the Tax Group and between the relevant members and their Related Parties and Connected Persons.

3. Pre-Grouping Tax Losses must be used to offset the Taxable Income of the Tax Group to the fullest extent possible in accordance with Clause (3) of Article (7) of this Decision for the relevant Tax Period before any remainder can be carried forward to a subsequent Tax Period in accordance with Clause (4) of Article (37) of the Corporate Tax Law.
4. Without prejudice to Clause (3) of this Article, any pre-Grouping Tax Losses of a member of the Tax Group shall be forfeited if both of the following occurred:
  - a. The Tax Group does not calculate the Taxable Income attributable to the relevant member of the Tax Group in accordance with paragraph (a) of Clause (1) of this Article.
  - b. The amount of pre-Grouping Tax Losses utilised by the Tax Group is less than the amount that could have been used to reduce the Taxable Income of the Tax Group in the relevant Tax Period under Clause (2) of Article (37) of the Corporate Tax Law.
5. Pre-Grouping carried forward Net Interest Expenditure of a member of a Tax Group must be utilised to the fullest extent possible in determining the Taxable Income of the Tax Group in accordance with Article (30) of the Corporate Tax Law before any remainder can be carried forward to any subsequent Tax Period.
6. Without prejudice to Clause (5) of this Article, any pre-Grouping carried forward Net Interest Expenditure of a member of the Tax Group shall be forfeited if both of the following occurred:
  - a. The Tax Group does not calculate the Taxable Income attributable to the relevant member of the Tax Group in accordance with paragraph (d) of Clause (1) of this Article.
  - b. The amount of pre-Grouping carried forward Net Interest Expenditure utilised by the Tax Group is less than the amount that could have been used in determining the Taxable Income of the Tax Group for the relevant Tax Period under Article (30) of the Corporate Tax Law.



## Article 9 – Determination of Ownership Interest for the purposes of Transfer of Tax Loss and Qualifying Group Provisions

For the purposes of the ownership requirements under paragraph (b) of Clause (2) of Article (26) and paragraph (c) of Clause (1) of Article (38) of the Corporate Tax Law, the direct and indirect ownership interest held by members of the same Tax Group must be determined on the basis of the aggregation of the assets and liabilities of the Parent Company and each Subsidiary in accordance with Clause (1) of Article (42) of the Corporate Tax Law.

## Article 10 – Business Restructuring

1. For the purposes of Clause (3) of Article (41) of the Corporate Tax Law, the following shall apply:
  - a. Where a member of the Tax Group transfers its entire Business to another member of the same Tax Group and the first mentioned member ceases to exist as a result of that transfer, this member shall be considered to remain a member of the Tax Group until the date it ceases to exist and the Tax Group shall continue to exist.
  - b. Where the Tax Group is comprised of only two members, and one member transfers its entire Business to the other member and the first mentioned member ceases to exist as a result of that transfer, the Tax Group shall be considered to cease to exist on the date that the transfer is effective.
2. For the purposes of Article (40) of the Corporate Tax Law, where a member of a Tax Group transfers its entire Business or an independent part of its Business to a newly established juridical person, and this new juridical person joins the existing Tax Group under Clause (5) of Article (5) of this Decision from the date of its establishment, the transfer shall be considered as having taken place within the Tax Group.
3. No election for Business Restructuring Relief under Article (27) of the Corporate Tax Law shall be required for the situations described in Clauses (1) and (2) of this Article.



## Article 11 – Income from Intra-Tax Group Transfers and Business Restructuring Transactions

1. For the purposes of Clause (9) of Article (42) of the Corporate Tax Law, where a transfer of one or more assets or liabilities between members of a Tax Group would have met the conditions under Article (26) or (27) of the Corporate Tax Law if the parties to that transfer had not been members of a Tax Group, the associated income shall be considered as not having been taken into account for Corporate Tax purposes as if the relevant members of the Tax Group have chosen to apply Clause (1) of Article (26) or Clause (1) of Article (27) of the Corporate Tax Law, as the case may be.
2. Where Clause (1) of this Article applies and the conditions under Clause (4) of Article (26) or Clause (6) of Article (27) of the Corporate Tax Law are met, as the case may be, the provision of Clause (10) of Article (42) of the Corporate Tax Law shall apply to any income that was not taken into account in respect of the transfer under Clause (1) of this Article.

## Article 12 – Notification to the Authority of a Subsidiary Leaving or Cessation of a Tax Group

Where a Subsidiary leaves a Tax Group or where a Tax Group ceases to exist as a result of no longer meeting the conditions under Article (40) of the Corporate Tax Law or this Decision, the Tax Group must notify the Authority within (20) twenty business days from the date the conditions are no longer met.

## Article 13 – Preparing Financial Statements upon a Subsidiary Leaving or Cessation of a Tax Group

For the purposes of Article (20) of the Corporate Tax Law, where a Subsidiary leaves a Tax Group or a Tax Group ceases to exist, each Subsidiary leaving the Tax Group or the former Parent of the Tax Group, as the case may be, must prepare its standalone Financial Statements on the same accounting basis and elections as applied by the Tax Group and must adopt the values of the relevant assets and liabilities as recorded by the Tax Group as the opening values of those assets and liabilities in the standalone Financial Statements.



## **Article 14 – Repeals**

Ministerial Decision No. 125 of 2023 referred to above shall be repealed, but it shall continue to apply to Tax Periods that commenced before 1 January 2025.

## **Article 15 – Application of this Decision to Tax Periods**

This Decision shall apply to Tax Periods commencing on or after 1 January 2025.

## **Article 16 – Publication and Application of this Decision**

This Decision shall be published and shall come into effect the day following the date of its publication.