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# **Business Restructuring Relief for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses**

**Ministerial Decision No. 133 of 2023**

**Issued 25 May 2023 – (Effective the day after publishing in the Official Gazette)**

## **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. 13 of 2016 on the Establishment of the Federal Tax Authority, and its amendments,
- Federal Decree-Law No. 28 of 2022 on Tax Procedures,
- 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:

Accounting Standards	: The accounting standards specified in a decision issued by the Minister for the purposes of the Corporate Tax Law.
Ordinary Shares	: The category of capital stock or equivalent ownership interest, which gives its owner, on a share-by-share basis,



	equal entitlement to voting rights, profits, and liquidation proceeds.
Preferred Shares	: The category of capital stock or equity interest which gives its owner priority entitlement to profits and liquidation proceeds ahead of owners of Ordinary Shares.
Redeemable Shares	: The category of capital stock or equity interest, which the juridical person issuing this instrument has agreed to redeem or buy back from the owner of this instrument at a future date or after a specific event, for a predetermined amount or with reference to a predetermined amount.
Membership and Partner Interests	: The equity interests owned by a member or a partner in the juridical person, which entitles the member or the partner to a share of the profits, determined with reference to the member's or the partner's capital contribution, and which may be transferred to others.
Transferor	: A Taxable Person that transfers its entire Business or an independent part of its Business to another Taxable Person under Article (27) of the Corporate Tax Law.
Transferee	: A Taxable Person to which the entire Business or an independent part of the Business of the Transferor is transferred under Article (27) of the Corporate Tax Law.

## Article 2 – Transfers in Exchange for Shares and Other Forms of Consideration

A transfer will be considered to meet the conditions of Clause (1) of Article (27) of the Corporate Tax Law only where the Market Value of any other forms of consideration received in addition to shares or other ownership interests do not exceed the lower of:

1. The net book value of the assets and liabilities transferred; or
2. 10% (ten percent) of the nominal value of the ownership interests issued.



## Article 3 – Ownership Interest

1. For the purposes of Article (27) of the Corporate Tax Law, an ownership interest shall include, but not be limited to, holding any one or a combination of the following instruments:
  - a. Ordinary Shares.
  - b. Preferred Shares.
  - c. Redeemable Shares.
  - d. Membership and Partner Interests.
  - e. Other types of securities, capital contributions and rights that entitle the owner to receive profits and liquidation proceeds.
2. An ownership interest as referred to in Clause (1) of this Article shall only be treated as such if it is classified as equity interest under the Accounting Standards applied by the Taxable Person holding the ownership interest.
3. For the purposes of Article (27) of the Corporate Tax Law, a Taxable Person shall be treated as holding an ownership interest where the ownership interest is controlled by the Taxable Person and the Taxable Person has the right to the economic benefits produced by the ownership interest under the Accounting Standards applied by the Taxable Person.

## Article 4 – Election to Apply Business Restructuring Relief

1. An election must be made by the Transferor to apply the provisions of Article (27) of the Corporate Tax Law to a transfer meeting the conditions of that Article. The election shall be in the form and manner as prescribed by the Authority and the Transferor and Transferee must maintain the records specified in Article (9) of this Decision.
2. Where Clause (1) of Article (27) of the Corporate Tax Law applies, any adjustments to the Taxable Income of the Transferor and the Transferee shall be made in accordance with the Ministerial Decision on the general rules for determining taxable income.



## Article 5 – Transfer of Unutilised Tax Losses

1. For the purposes of paragraph (d) of Clause (3) of Article (27) of the Corporate Tax Law, any unutilised Tax Losses incurred by the Transferor prior to the Tax Period in which the transfer under Clause (1) of Article (27) of the Corporate Tax Law takes place may become carried forward Tax Losses of the Transferee provided that the Transferee continues to conduct the same or a similar Business or Business Activity that was conducted by the Transferor prior to the transfer.
2. For the purposes of Clause (1) of this Article, relevant factors for determining whether the Transferee has continued to conduct the same or a similar Business or Business Activity which was conducted by the Transferor prior to the transfer include:
  - a. The Transferee uses some or all of the same assets that were used by the Transferor prior to the transfer;
  - b. The Transferee has not made significant changes to the core identity or operations of the Business since the transfer; and
  - c. Where there have been any changes, these result from the development or exploitation of assets, services, processes, products or methods that existed before the transfer.

## Article 6 – Parties to the Transfer

1. For the purposes of paragraph (a) of Clause (4) of Article (27) of the Corporate Tax Law, the shares or other ownership interests must be received by a Person that has a direct or indirect ownership interest of at least 50% (fifty percent) in the Transferor.
2. For the purposes of paragraph (b) of Clause (4) of Article (27) of the Corporate Tax Law, the shares or other ownership interest must be issued by a Person that has a direct or indirect ownership interest of at least 50% (fifty percent) in the Transferee.



## Article 7 – Unincorporated Partnerships

For the purposes of paragraph (c) of Clause (4) of Article (27) of the Corporate Tax Law, where an application has been made by an Unincorporated Partnership to be treated as a Taxable Person under Clause (8) of Article (16) of the Corporate Tax Law, no gain or loss needs to be taken into account in determining Taxable Income irrespective of whether any shares or ownership interests are received by the partners in the Unincorporated Partnership or whether all partners in the Unincorporated Partnership are Taxable Persons.

## Article 8 – Subsequent Transfer

1. Any gain or loss that arises as a result of applying Clause (7) of Article (27) of the Corporate Tax Law shall be taken into account for the purposes of calculating the Taxable Income of the Transferor and included in the Tax Return of the Transferor for the Tax Period in which any of the following circumstances occurs:
  - a. The shares or other ownership interests in the Taxable Person that is the Transferor or the Transferee are sold, transferred or otherwise disposed of, in whole or part, to a Person that is not a member of the Qualifying Group to which the relevant Taxable Persons belong.
  - b. There is a subsequent transfer or disposal of the Business or the independent part of the Business which was transferred.
2. Notwithstanding Clause (1) of this Article, any gain or loss that would have accrued to the Transferor under Clause (1) of this Article shall be attributed to the Transferee if any of the following applies:
  - a. The Transferor has ceased to be a Taxable Person; or
  - b. The Transferor is a natural person.
3. Where Clause (2) of this Article applies, the Transferee shall take into account any gain or loss that arises for the purposes of calculating Taxable Income and such a gain or loss shall be included in the Tax Return of the Transferee for the Tax Period in which any of the circumstances set out in paragraphs (a) and (b) of Clause (1) of this Article occurs.
4. Where Clause (7) of Article (27) of the Corporate Tax Law applies to a transfer the



following shall apply:

- a. The Transferee shall make any necessary adjustments to their Taxable Income during the relevant Tax Period in which Clause (7) of Article (27) of the Corporate Tax Law applies to reverse any depreciation, amortisation or other change in the value of an asset or liability that has been previously adjusted by the Transferee for this transfer subject to the Ministerial Decision on the general rules for determining taxable income.
- b. The relevant provisions of the Ministerial Decision on the general rules for determining taxable income shall no longer apply for the current and future Tax Periods in relation to this transfer.

## Article 9 – Record Keeping

For the purposes of Article (56) of the Corporate Tax Law, where Clause (1) of Article (27) of the Corporate Tax Law has been applied, both the Transferor and the Transferee must maintain a record of the agreement to transfer the Business or the independent part of the Business at the value prescribed under Article (27) of the Corporate Tax Law and that of the requirements to make any adjustments prescribed under the Ministerial Decision on the general rules for determining taxable income.

## Article 10 – Publication and Application of this Decision

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