Ministerial Decision No.134 of 2023 on the General Rules for Determining Taxable Income for the Purposes of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses

Minister of State for Financial Affairs:

- 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,

Has decided:

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.

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.

Accrual Basis of Accounting: An accounting method under which the Taxable Person recognises income when earned and expenditure when incurred.

Financial Asset: Financial asset as defined in the Accounting Standards applied by the Taxable Person.

Financial Liability: Financial liability as defined in the Accounting Standards applied by the Taxable Person.

Equity Method of Accounting: The equity method of accounting as defined in the International Financial Reporting Standards ("**IFRS**"), or an equivalent method of accounting under the Accounting Standards applied by the Taxable Person.

Cost Method of Accounting: The cost method of accounting as defined in the International Financial Reporting Standards ("**IFRS**"), or an equivalent method of accounting under the Accounting Standards applied by the Taxable Person.

Article (2)
Other Adjustments to the Accounting Income for Determining the Taxable Income

For the purposes of paragraph (i) of Clause (2) of Article (20) of the Corporate Tax Law, the Accounting Income shall be adjusted for the following in the calculation of the Taxable Income:

1. To include any realised or unrealised gains and losses that are reported in the Financial Statements insofar as they would not be subsequently recognised in the statement of income.

2. To make adjustments to replace the effect of Equity Method of Accounting, if applied, with the effect of Cost Method of Accounting as allowed under the Accounting Standards.

3. Where the Taxable Person elects to take into account gains and losses on a realisation basis in accordance with paragraph (a) of Clause (3) of Article (20) of the Corporate Tax Law, to make the following adjustments for the assets and liabilities under that paragraph:

    a. In cases other than upon realisation, to exclude any depreciation, amortisation or other change in the value of the asset, other than a Financial Asset, to the extent that the adjustment amount relates to a change in the net book value exceeding the original cost of that asset.
    b. To exclude any change in the value of a liability or a Financial Asset, including any amortisation, except when calculating the gain or the loss upon the realisation of the liability or the Financial Asset.
    c. Upon the realisation of an asset or a liability, to include any amount that has not been recognised for Corporate Tax purposes under paragraphs (a) and (b) of this Clause and paragraph (a) of Clause (3) of Article (20) of the Corporate Tax Law, other than any such amount that arose prior to the most recent acquisition which was not under the application of either Clause (1) of Article (26) or Clause (1) of Article (27) of the Corporate Tax Law.

4. Where the Taxable Person elects to take into account gains and losses on a realisation basis in accordance with paragraph (b) of Clause (3) of Article (20) of the Corporate Tax Law, to make the following adjustments for the assets and liabilities under that paragraph:

    a. In cases other than upon realisation, to exclude any depreciation, amortisation or other change in the value of the asset, other than a Financial Asset, to the extent that the adjustment amount relates to a change in the net book value exceeding the original cost of that asset.

b. To exclude any change in the value of a liability or a Financial Asset, including any amortisation, except when calculating the gain or the loss upon the realisation of the liability or the Financial Asset.

c. Upon the realisation of an asset or a liability, to include any amount that has not been recognised for Corporate Tax purposes under paragraphs (a) and (b) of this Clause and paragraph (b) of Clause (3) of Article (20) of the Corporate Tax Law, other than any such amount that arose prior to the most recent acquisition which was not under the application of either Clause (1) of Article (26) or Clause (1) of Article (27) of the Corporate Tax Law.

Article (3)
Other Adjustments to the Accounting Income for Determining the Taxable Income in Relation to Transactions with Related Parties

1. For the purposes of paragraph (i) of Clause (2) of Article (20) of the Corporate Tax Law, and for the purposes of Chapter Ten of the Corporate Tax Law, the following adjustments shall be made by the transferee when calculating the Taxable Income in case of a transfer of an asset or a liability between Related Parties:

    a. Where the amount of consideration paid by the transferee exceeds the Market Value:

        1) In cases other than upon realisation, to exclude any depreciation, amortisation or other change in value of the asset or liability, to the extent that the adjustment amount relates to a change in value between the net book value of that asset or liability as recognised by the transferee upon the transfer and the Market Value.

        2) Upon the realisation of an asset or a liability by the transferee, to include any amount to which the net book value used by the transferee when calculating the gain or loss, exceeds the Market Value identified under subparagraph (1) of this paragraph.

    b. Where the amount of consideration paid by the transferee is lower than the Market Value, and where the transferor has included the difference between the Market Value and the consideration in its Taxable Income:

        1) In cases other than upon realisation, to exclude any change in value of the asset or liability, to the extent that the adjustment amount relates to a change in the value between the Market Value of that asset or liability and its net book value as recognised by the transferee upon transfer.

        2) Upon the realisation of an asset or a liability by the transferee, to reduce an amount of gain by the difference in the Market Value and the net book value at the time of transfer, other than any net amount that has not been included in the Taxable Income under subparagraph (1) of this paragraph.

2. Where subparagraph (1) of paragraph (a) of Clause (1) of this Article applies, the transferee may elect to recognise the excess derived from the difference between

the net book value of the asset or liability of the transferee and the Market Value as an adjustment in calculating the Taxable Income.

3. Where the net book value of the asset or liability under paragraph (a) of Clause (1) of this Article becomes equal or less than the Market Value, or an election is made under Clause (2) of this Article for that asset or liability, subparagraphs (1) and (2) of paragraph (a) of Clause (1) of this Article shall no longer apply to that asset or liability.

4. Where the net book value of the asset or liability under paragraph (b) of Clause (1) of this Article becomes equal or higher than the Market Value, subparagraphs (1) and (2) of paragraph (b) of Clause (1) of this Article shall no longer apply to that asset or liability.

Article (4)
Other Adjustments to the Accounting Income for Determining the Taxable Income in Relation to Transfers Within a Qualifying Group

For the purposes of paragraph (i) of Clause (2) of Article (20) of the Corporate Tax Law, and where there has been a transfer of assets or liabilities between Taxable Persons that are members of the same Qualifying Group that is not a Tax Group under Article (26) of the Corporate Tax Law, and where Clause (1) of Article (26) of the Corporate Tax Law applies, the following adjustments shall apply in the calculation of the Taxable Income of the transferee:

1. In cases other than upon realisation, to exclude any depreciation, amortisation or other change in the value of an asset or a liability, to the extent that it relates to a gain or loss that arose to the transferor that has not been recognised as a gain or loss under the application of Clause (1) of Article (26) of the Corporate Tax Law.

2. Upon the realisation of an asset or a liability, to include any amount that has not been recognised for Corporate Tax purposes under Clause (1) of this Article and Article (26) of the Corporate Tax Law, other than any such amount that arose prior to the most recent acquisition where Clause (1) of Article (26) of the Corporate Tax Law did not apply.

Article (5)
Other Adjustments to the Accounting Income for Determining the Taxable Income in Relation to Business Restructuring Relief

For the purposes of paragraph (i) of Clause (2) of Article (20) of the Corporate Tax Law, where there has been a transfer of assets or liabilities between a Taxable Person and any other Person that constitute a transfer of an entire Business or an independent part of the Business under Article (27) of the Corporate Tax Law, and where Clause (1) of Article (27) of the Corporate Tax Law applies, the following adjustments shall apply in the calculation of the Taxable Income of the transferee:

1. In cases other than upon realisation, to exclude any depreciation, amortisation or other change in the value of an asset or a liability, to the extent that it relates to a

gain or loss that arose to the transferor that has not been recognised as a gain or loss under the application of Clause (1) of Article (27) of the Corporate Tax Law.

2. Upon the realisation of an asset or a liability, to include any amount that has not been recognised for Corporate Tax purposes under Clause (1) of this Article and Article (27) of the Corporate Tax Law, other than any such amount that arose prior to the most recent acquisition where Clause (1) of Article (27) of the Corporate Tax Law did not apply.

Article (6)
Other Adjustments to the Accounting Income for Determining the Taxable Income of a Partner in an Unincorporated Partnership

For the purposes of paragraph (i) of Clause (2) of Article (20) of the Corporate Tax Law, the following adjustments shall apply in relation to a Taxable Person that is a partner in an Unincorporated Partnership where an application under Clause (8) of Article (16) of the Corporate Tax Law is approved:

1. To exclude from the Taxable Income of the partner any such income or loss that is recognised as Taxable Income for the Unincorporated Partnership.

2. To exclude any gains or losses on the transfer, sale, or other disposal of the interest of the Taxable Person in the Unincorporated Partnership, or part thereof, provided that the interest meets all the conditions under Clause (2) of Article (23) of the Corporate Tax Law.

Article (7)
Other Adjustments on Deductions

1. For the purposes of paragraph (i) of Clause (2) of Article (20) of the Corporate Tax Law, to the extent that any expenditure is determined as deductible under Chapter Nine of the Corporate Tax Law where certain conditions are met, any expenditure that does not meet these conditions shall not be deductible.

2. For the purposes of paragraph (i) of Clause (2) of Article (20) of the Corporate Tax Law, no deduction shall be allowed for depreciation, amortisation or other change related to capitalised expenditure, where such an expenditure would not have been deductible had it been an expenditure that is not capital in nature.

3. For the purposes of paragraph (i) of Clause (2) of Article (20) of the Corporate Tax Law, expenditures that are capital in nature that have not been deducted for the purpose of calculating the Taxable Income, other than those under Clause (2) of this Article, shall be deductible in the calculation of gains or losses upon the realisation of the asset or liability.

4. For the purposes of this Article, expenditures that are capital in nature shall be those treated as such under the Accounting Standards applied by the Taxable Person.

Article (8)
Conditions to Elect the Use of the Realisation Basis

1. For the purposes of Clause (3) of Article (20) of the Corporate Tax Law, a Taxable Person that prepares Financial Statements on an Accrual Basis of Accounting may elect to recognise gains and losses on a realisation basis, subject to the provisions of Clause (2) of this Article.

2. Banks and Insurance Providers that are Taxable Persons and that prepare Financial Statements on an Accrual Basis of Accounting may elect to recognise gains and losses only on a realisation basis in accordance with paragraph (b) of Clause (3) of Article (20).

3. For the purposes of Clauses (1) and (2) of this Article, the decision to make an election, or not to make an election, shall be made by the Taxable Person during the first Tax Period and shall be deemed irrevocable, except under exceptional circumstances and pursuant to approval by the Authority.

Article (9)
Realisation of Assets or Liabilities

1. For the purposes of this Decision, the following transfers of assets or liabilities shall not be considered as a realisation of the assets or the liabilities:

   a. The transfer of assets or liabilities between Taxable Persons that are members of the same Qualifying Group that is not a Tax Group under Article (26) of the Corporate Tax Law, where Clause (1) of Article (26) of the Corporate Tax Law applies.

   b. The transfer of assets or liabilities between a Taxable Person and any other Person that constitute a transfer of an entire Business or an independent part of the Business under Article (27) of the Corporate Tax Law, where Clause (1) of Article (27) of the Corporate Tax Law applies.

2. For the purposes of this Decision, a realisation of an asset or a liability shall include, but is not limited to, the following:

   a. The sale, disposal, transfer, other than the transfers under Clause (1) of this Article, settlement and complete worthlessness of an asset as per the Accounting Standards applied by the Taxable Person.

   b. The settlement, assignment, transfer, other than the transfers under Clause (1) of this Article, and forgiveness of a liability as per the Accounting Standards applied by the Taxable Person.

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.

TEL +971 2 6726000 هاتف • FAX +971 2 6713333 فاكس • ABU DHABI, UNITED ARAB EMIRATES أبوظبي، الإمارات العربية المتحدة • P.O. BOX 433 ص.ب.
TEL +971 4 3939000 هاتف • FAX +971 4 3939090 فاكس • DUBAI, UNITED ARAB EMIRATES دبي، الإمارات العربية المتحدة • P.O. BOX 1565 ص.ب.
www.mof.gov.ae

Mohamed bin Hadi Al Hussaini
Minister of State for Financial Affairs

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