



# UAE Announces Tax Residence Rules

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## Introduction

Until recently the matter of tax residency in the United Arab Emirates (UAE) was driven by certain basic criteria, such as an individual's nationality, duration of physical presence in the UAE, issuance of residency visas to individuals engaged in employment in the country and the place of incorporation of a corporate entity. Certain additional parameters for determining the eligibility for obtaining a tax residency certificate (TRC) were outlined in the relevant [TRC User Guide](#).

The new tax residency rules (yet to be effective) factor in additional parameters for assessing and determining the tax residency for the UAE purposes. This is another attempt for the UAE to synchronise itself with the global tax fraternity by adopting internationally accepted tax principles.

## In brief

In September 2022, the Ministry of Finance (MoF) released Cabinet Decision No. (85) of 2022 (the "Decision") which details out the requirements and conditions for determining the tax residency of legal and natural persons in the UAE. Branches of foreign entities shall not be considered as tax residents in the UAE. The Decision acknowledges the parallel importance of the international agreements and stipulates that the provisions of the double taxation treaties could apply to determine the tax residency of a person. Further, the FTA may request any information from any government entities in the UAE in order to identify the tax residency of a person.

## In detail

### Legal Person (Article 3 of the Decision)

A legal person will be regarded as a tax resident of the UAE in case one of the following conditions is satisfied:

- The legal person is established, formed, or recognised by the laws and regulations in force in the UAE (registered branches of foreign legal entities are out of the scope); or
- The legal person is considered as a tax resident under a tax law in force in the UAE (say, VAT or corporate tax).

### Natural Person (Article 4 of the Resolution)

A natural person is regarded as a tax resident in the UAE if any of the following conditions are met:

- The individual's usual or principal place of residence, and the center of his financial and personal interests are in the UAE, or the individual meets the conditions and criteria specified by a decision of MoF (say, under special circumstances);

- The individual has been physically present in the UAE for a period of 183 days or more during the relevant 12 consecutive month period (this may or may not coincide with a tax year);
- The individual has been physically present in the UAE for 90 days or more, during a period of 12 consecutive months, and holds the nationality of the UAE, holds a valid UAE residence permit, or holds the nationality of any of the member states of the Gulf Cooperation Council (GCC), and fulfills any of the following conditions:
  - Has a permanent place of residence in the UAE.
  - Undertakes an employment or conducts business in the UAE.

### Tax Residency Certificate (Article 5 of the Decision)

The eligible legal or natural persons will be able to obtain a TRC from the Federal Tax Authority (FTA). Applications for a TRC must be submitted in the form and method to be prescribed by the FTA.

The current procedure is outlined in [TRC User Guide](#), issued by the FTA. The procedure will have to be updated in view of the Decision.

### International Agreements (Article 6 of the Decision)

The Decision acknowledges the importance of the double taxation treaties and the compliance with the wider international tax rules. In that sense, the Decision stipulates that in case any international agreement (for instance, a double tax treaty) specifies conditions for determining the tax residency of a legal or natural person, the provisions of that agreement shall apply for the purpose of such an agreement (e.g., applying the tax resident definition in a specific double tax treaty in order to apply/benefit from its provisions). The MoF will release a decision specifying the form and the method of issuing tax residency certificates for the purpose of tax treaties.

### Cooperation with the FTA (Article 7 of the Decision)

The Decision demonstrates that the FTA has the power to request any information, data and documents from all government entities in the UAE that will enable the FTA to apply the provisions of the Decision (i.e., to determine the person's tax residency). Further, The Decision stipulates that all government entities in the UAE must cooperate fully with the FTA for this purpose.

## Food for Thought

- To determine whether the person is a UAE tax resident in the relevant tax period, the Decision should be read in conjunction with the applicable tax treaty and provisions of the domestic tax laws and regulations (this shall include the Federal Corporate Tax Law which is not released yet).
- The Decision provides clarity on the definition of a tax resident. For the effective implementation of the Decision, it is expected that FTA will issue further directives and clarifications related to procedural aspects.
- A proper consideration should be given by a foreign entity when deciding on establishing a branch or a subsidiary in the UAE, since a branch may not be recognised as tax resident, thus might not be able to obtain TRC and have access to double tax treaties (this should further be confirmed once the CT law is released).

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