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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. 125 of 2023

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The 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:

- 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 partner and have the rights of membership or partnership in that juridical person.

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 share 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 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.
3. A foreign juridical person that is considered a Resident Person under paragraph (b) of Clause (3) of Article (11) of the Corporate Tax Law or a juridical person that is incorporated or otherwise established or recognised under the applicable legislation of the State but that is effectively managed and controlled in another country or territory shall maintain documentation that supports the position that it is not resident for tax purposes in that other country or foreign territory as specified under Article (56) of the Corporate Tax Law.



4. The documentation to be maintained for the purposes of Clause (3) of this Article shall include either of the following:
 - a. A confirmation issued by the relevant tax authority of that other country or foreign territory.
 - b. A confirmation issued by the relevant competent authorities for the purposes of the application of the relevant international agreement in force in the State.

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 shall not be eliminated insofar as a member has recognised a deductible loss in a Tax Period in respect of those transactions prior to joining or forming 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 shall 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 joining or forming the Tax Group.

Article 5 – Date of Formation or Joining of 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 or joining of a Tax Group is requested.
2. Clause (1) of this Article shall also apply where a new Parent Company replaces a former Parent Company under Clause (12) of Article (40) of the Corporate Tax Law, including in cases where the new Parent Company is the legal successor of the former Parent Company.
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 other 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 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 shall 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 shall also 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 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 results in a Tax Loss and becomes 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 shall determine which Subsidiary's pre-Grouping Tax Losses shall 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 be applied 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 shall 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.
 - b. A member of the Tax Group has earned income for which the Tax Group can claim a Foreign Tax Credit against as specified under Article (47) of the Corporate Tax Law.
 - 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 pre-Grouping Net Interest Expenditure under Clause (4) of Article (30) of the Corporate Tax Law.
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 must:
 - 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 notice or through a decision issued by the Authority 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.

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 shall 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 deemed 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 Articles (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, 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 Termination 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 shall notify the Authority within (20) twenty business days from the date the conditions are no longer met.

Article 13 – Preparing Financial Statements upon 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 and the former Parent of the Tax Group, as the case may be, shall prepare its standalone financial statements on the same accounting basis as applied by the Tax Group and shall 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 – Publication and Application of this Decision

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