

Ministerial Decision No. 132 of 2023 on Transfers Within a Qualifying Group 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.

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 one or more assets or liabilities to another Taxable Person under Article (26) of the Corporate Tax Law.

Transferee: A Taxable Person to which one or more assets or liabilities of the Transferor is transferred under Article (26) of the Corporate Tax Law.

Islamic Financial Instrument: A financial instrument which is compliant with Sharia principles.

Article (2)
Ownership Interest

1. For the purposes of Article (26) 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 as applied by the Taxable Person holding the ownership interest.
3. For the purposes of Article (26) 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.
4. An Islamic Financial Instrument, or combination of arrangements that form part of the same Islamic Financial Instrument, shall be treated as an ownership interest for the purposes of Article (26) of the Corporate Tax Law where it is classified as equity interest under the Accounting Standards applied by the Taxable Person.
5. The percentage of ownership held through ownership interests as specified under Clause (1) of this Article shall be determined with reference to the total paid up capital of the Taxable Person or the total equity interest contributions made to the Taxable Person, as applicable.

Article (3)
Election to Apply Transfers Within a Qualifying Group

1. An election must be made by the Transferor to apply the provisions of Article (26) 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 (6) of this Decision.
2. The election under Clause (1) of this Article shall be made at the time of submission of the Tax Return for the Tax Period in which a transfer occurs for which the Taxable Person elects to apply the provisions of Article (26) of the Corporate Tax Law.
3. An election made under Clause (1) of this Article shall be irrevocable and shall have effect for the purposes of calculating Taxable Income for the Tax Period in relation to which the election is made and all subsequent Tax Periods, unless the Authority, having regard to the circumstances of the case, determines otherwise in response to an application made by the Taxable Person.
4. Where an election under Clause (1) of this Article is made, the provisions of Article (26) of the Corporate Tax Law shall apply to all transfers of assets and liabilities held on the capital account, as defined under paragraphs

(a) and (b) of Clause (4) of Article (20) of the Corporate Tax Law, by the Transferor where the conditions of Article (26) of the Corporate Tax Law are met.

5. Where Clause (1) of Article (26) 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 (4) Exchange of Assets and Liabilities

1. Where the consideration paid for the transfer of the asset or liability is in the form of another asset or liability, the transfer shall be treated as two separate transfers for the purposes of applying Article (26) of the Corporate Tax Law.
2. Where Clause (1) of this Article applies, the provisions of Article (26) of the Corporate Tax Law and the Ministerial Decision on the general rules for determining taxable income shall apply to each transfer where at least one of the Taxable Persons that is party to the transfer has elected to apply Article (26) of the Corporate Tax Law.

Article (5) Subsequent Transfer

1. Any gain or loss that arises as a result of applying Clause (5) of Article (26) 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 occurs:
 - a) There is a subsequent transfer of the asset or liability outside of the Qualifying Group.
 - b) The Transferor or Transferee cease to be members of the same Qualifying Group.
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 the Transferor has ceased to be a Taxable 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 following occurs:
 - a) There is a subsequent transfer of the asset or liability outside of the Qualifying Group.
 - b) The Taxable Persons cease to be members of the same Qualifying Group.
4. Paragraph (a) of Clause (4) of Article (26) of the Corporate Tax Law shall apply proportionately, as the context requires, to a subsequent transfer of part of the asset or liability outside of the Qualifying Group.
5. Where Clause (5) of Article (26) 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 (5) of Article (26) 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 (6)
Record Keeping

For the purposes of Article (56) of the Corporate Tax Law, where Clause (1) of Article (26) of the Corporate Tax Law has been applied, both the Transferor and the Transferee must maintain a record of the agreement to transfer the asset or liability at the value prescribed under Article (26) 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 (7)
Publication and Application of this Decision

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

Mohamed bin Hadi Al Hussaini

Minister of State for Financial Affairs

Issued by MoF

On: 05/DHU'L-QI'DAH/1444

Corresponding to: 25/05/2023