

## Tax Residency Criteria in the UAE

Double Taxation Agreements (“DTAs”) are bilateral agreements between two countries designed to prevent double taxation of income and promote cross-border trade and investment. These agreements typically establish rules for determining tax residency for individuals and entities, as well as rules for allocating taxing rights on specific types of income between the two countries.

The UAE has signed DTAs with over 130 jurisdictions, and these agreements often reference UAE domestic laws to ascertain an individual's residency status for DTA purposes. The introduction of the new domestic tax residency criteria enhances clarity and streamlines the application of DTAs and the issuance of Tax Residency Certificates (“TRC”) by the UAE concerning specific DTAs.

In order to benefit from a DTA, a person generally requires providing a TRC to prove that he is resident in another country and subject to tax in that country. The TRC is a certificate issued to individuals and entities to take advantage of DTAs.

Effective 01 March 2023, the United Arab Emirates (“UAE”) has implemented new criteria for TRC issued by the UAE Ministry of Finance.

The Cabinet Decision outlines tax residency criteria separately for natural persons (individuals) and legal persons (entities), with distinct criteria for each category.

### For Individuals:

There are three scenarios in which a natural person qualifies as a UAE tax resident:

1. The individual maintains his primary place of residence and the centre of his financial and personal interests in the UAE; or
2. The individual has physically resided in the UAE for 183 days or more within a consecutive 12-month period; or
3. The individual has been physically present in the UAE for 90 days or more within a consecutive 12-month period, and the individual is:
  - a. A UAE national
  - b. A GCC national
  - c. An individual holding a valid UAE residence permit, and:
    - i. Possesses a permanent place of residence in the UAE, or
    - ii. Engages in employment or business activities within the UAE.

The introduction of the new tax residency criteria does not mean that individuals will be subject to income tax on their personal income in the UAE. It's important to note that the UAE does not impose any personal income tax on individuals, i.e. UAE nationals and residents are not subject to taxation on their income from employment or personal investments.

The primary purpose of the new tax residency criteria is to facilitate individuals seeking to claim tax treaty benefits under the relevant DTAs.

### **For Legal Entity:**

A legal entity qualifies as a UAE tax resident under either of the following conditions:

- The legal entity is incorporated, formed, or recognized in accordance with the UAE legislation; or
- The legal entity is considered a tax resident of the UAE in accordance with the Corporate Tax Law in the UAE, i.e. a legal entity is deemed as a UAE tax resident if it is incorporated or otherwise established, recognized under UAE legislation, or effectively managed and controlled within the UAE.

It is important to note here that the requirement to have a physical office space to be eligible for a TRC has been removed.

The Cabinet Decision also clarifies that a branch of a foreign legal entity will not be regarded as a tax resident in the UAE. This distinction arises because a branch is not a separate legal entity from its parent company and is not considered a distinct taxpayer. However, it is possible for a foreign legal entity to be classified as a UAE tax resident if it is effectively managed and controlled from the UAE branch.

### **Key Takeaway:**

The introduction of the new UAE tax residency criteria aims to provide additional clarity and streamline the application of DTAs and the issuance of tax residency certificates, benefiting individuals and legal entities seeking to claim tax treaty benefits under these agreements.

### **How can DTOS assist?**

DTOS can assist with the application for Tax Residency Certificates for your UAE based companies. DTOS can also assist with the setting up, ongoing administration, as well as board and governance services to companies willing to structure their investments through the United Arab Emirates.

Get in touch with us

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