Bizilance
Consultants

# TAXATION OF CORPORATIONS AND BUSINESSES – UNITED ARAB EMIRATES

## A SYNOPSIS OF THE FEDERAL DECREE-LAW NO. 47 OF 2022

The United Arab Emirates (the UAE) has issued Federal Decree-Law No. 47 of 2022 governing the taxation of corporations and businesses (the Corporate Tax Law). This synopsis tends to summarize significant provisions of the Corporate Tax Law.

www.bizilance.ae

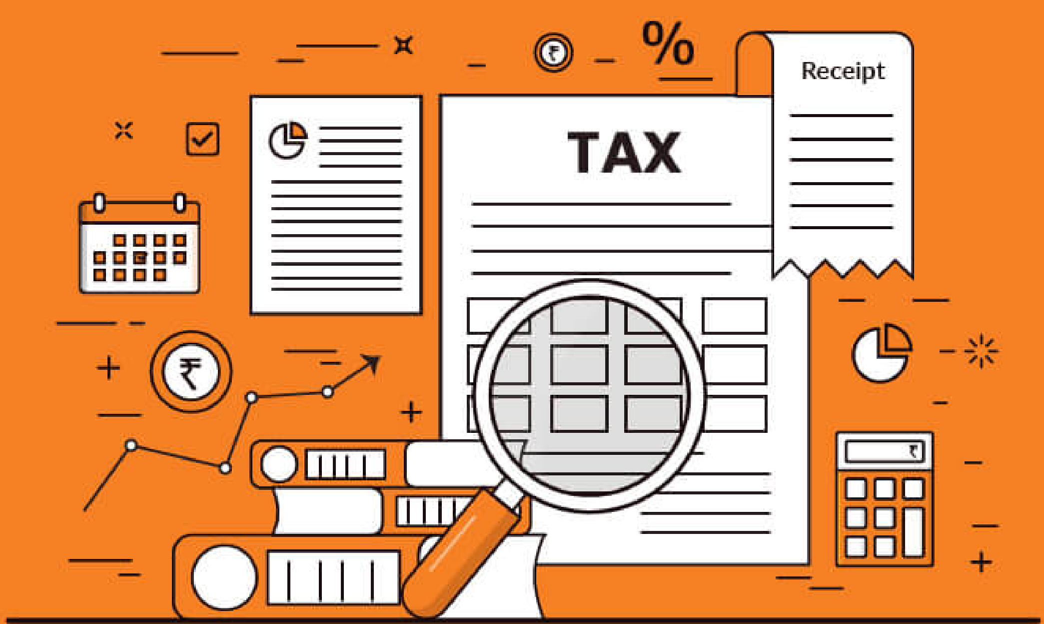
# Commencement, Tax Period, Registration, Tax Return

The Corporate Tax Law is applicable to Tax Periods commencing on or after June 01, 2023. Tax Period is Gregorian calendar or a period of twelve months for which a Taxable Person prepares its financial statements. Taxable Persons are required to file tax return for Corporate Tax with the Federal Tax Authority (the Authority). The Tax Return is to be filed within a period of nine months from the end of the relevant Tax Period. For instance, a company having Gregorian calendar (January – December) as its financial year, the first Tax Period after the commencement of the Corporate Tax Law would be from January 01, 2024 to December 31, 2024. The first Tax Return is, in that case, is to be filed on or before September 30, 2025.

## Corporate Tax Rate

**Corporate Tax is imposed on Taxable Income at the following rates:**

| | |
|---|---|
| **Normal Taxable Person** | |
| 0% | On Taxable Income not exceeding the amount to be specified by a decision to be issued by the Cabinet – (the said decision has not been issued, however the Ministry of Finance has announced that amount to be **AED 375,000)** |
| 9% | On Taxable Income exceeding **AED 375,000** |
| **Qualifying Free Zone Person** | |
| 0% | On Qualifying Income |
| 9% | On Taxable Income that is not Qualifying Income (a Cabinet decision is to be issued to specify the Qualifying Income) |



# Qualifying Free Zone Person

**A Qualifying Free Zone Person, is a free zone person, meeting all of the following conditions:**

- Who maintains adequate substance in the UAE
- Who derives Qualifying Income as specified in a decision issued by the Cabinet
- Who has not elected to be subjected to Corporate Tax
- Who meets the transfer pricing principles and documentation requirements under the Corporate Tax Law
- Any other condition as may be prescribed by the Minister of Finance

## Exempt Person

The Corporate Tax Law gives exemption from Corporate Tax to following persons (in accordance with the conditions stated in the Corporate Tax Law):

- Government entity
- Government controlled entity
- Persons engaged in extractive business
- Persons engaged in non-extractive natural resource business
- Qualifying public benefit entity
- Qualifying investment fund
- Public pension or social security fund, private pension or social security fund
- A juridical person incorporated in UAE that is wholly owned and controlled by Government entity, Government controlled entity, Qualifying investment fund, or by the public/private pension or social security funds (as mentioned above)

## Exempt Income

The following income and related expense is not to be taken into account to work out the taxable income in accordance with the relevant provisions of the Corporate Tax Law:

- Dividends and other profit distributions received from a resident juridical person
- Dividends and other profit distributions and any other income received from a participating interest in a foreign juridical person
- Income of a foreign permanent establishment
- Income derived by a non-resident person from operating aircraft or ships in international transportation

# Resident and Non-Resident Person

The Corporate Tax is applicable differently on the basis of tax residential status of a person. The Corporate Tax Law, therefore, provides who is a Resident Person and who is a Non-Resident Person, as follows:

## Resident Person

- A juridical person incorporated or otherwise established or recognized under the applicable law of the UAE (including a Free Zone Person)
- A juridical person, which is incorporated or otherwise established or recognized under the applicable law of a foreign jurisdiction, which is effectively managed and controlled in the UAE
- A natural person who conducts a business or business activity in the UAE
- Any other person as may be determined in a decision issued by the Cabinet

## Non-Resident Person

A Non-Resident Person is a person who is not a Resident Person and that either:

- Has a permanent establishment in the UAE in accordance with the Corporate Tax Law
- Derives the UAE sourced income in accordance with the Corporate Tax Law
- Has a nexus in the UAE as specified in a decision issued by the Cabinet

# Corporate Tax Base

**Taxable persons are subject to corporate tax based upon their residential status (Corporate Tax Base) in accordance with the provisions of the Corporate Tax Law, as follows:**

### Resident Person

- A juridical resident person is subject to corporate tax on its taxable income derived from the UAE or from outside the UAE
- A natural resident person is subject to corporate tax on its taxable income derived from the UAE or from the UAE insofar as it relates to business or business activity conducted by the resident natural person in the UAE

### Non-Resident Person

- Taxable income that is attributable to a permanent establishment of the non-resident person in the UAE
- The UAE sourced income that is not attributable to a permanent establishment of the non-resident person in the UAE
- Taxable income that is attributable to the nexus of the non-resident person in the UAE

# Calculating Taxable Income

## General Rules

The taxable income of taxable persons is to be determined on the basis of adequate, standalone financial statements prepared for financial reporting purposes in accordance with accounting standards accepted in the UAE.

The Authority may request a taxable person to submit financial statements used to determine the taxable income for a tax period. The Minister of Finance may issue a decision requiring categories of taxable persons to prepare and maintain audited or certified financial statements. The taxable person is required to maintain all records and documents for a period of seven years following the end of tax period to which they relate.

## Deductions – General Principle

**The general principles, subject to the provisions of the Corporate Tax Law, regarding deduction of expenditure are as follows:**

- Expenditure incurred wholly and exclusively for the purposes of taxable person's business (not of capital nature) is a deductible expense for a tax period in which it is incurred.
- Any expenditure, that is incurred for more than one purpose, is to be allowed as a deduction on a proportional basis.
- **No deduction is to be allowed in respect of following:**
  - Expenditure not incurred for the purposes of business of the taxable person
  - Expenditure incurred to derive exempt income
  - Losses not connected with or arising out of the business of taxable person
  - Any expenditure as may be specified in a decision issued by the Cabinet

# Deduction – Interest Expenditure

- Interest expenditure, of a taxable person, is deductible up to 30% of the accounting earnings before deduction of interest, tax, depreciation and amortization (EBITDA) for the relevant tax period
- The limit of 30%, as aforesaid, will not apply where net interest expenditure does not exceed an amount to be specified by the Minister of Finance
- Any net interest expenditure, disallowed as above in a tax period, may be carried forward to subsequent ten tax periods in the order in which amount was incurred
- **The above rules do not apply on the following:**
  1. Bank
  2. Insurance provider
  3. A natural person undertaking a business or business activity in the UAE
  4. Any other person as may be determined by the Minister of Finance
- No deduction is allowed for interest expenditure, subject to the provisions of the Corporate Tax Law, incurred on a loan obtained directly or indirectly from a related party

# Deduction – Entertainment Expenditure

**Subject to the provisions of the Corporate Tax Law, entertainment expenditure is allowed a of deduction at 50% of the entertainment expenditure incurred by taxable person during a tax period. The entertainment expenditure, without limitation, includes expenditure on:**

- Meals
- Accommodation
- Transportation
- Admission fees
- Facilities and equipment used in connection with such entertainment, amusement or recreation
- As may be specified by the Minister of Finance

# Non-deductible Expenditure (Specific)

**Following expenditures are specifically not deductible in accordance with the provisions of the Corporate Tax Law:**

- Donations, grants or gifts made to a non-qualifying public benefit entity
- Fines and penalties (other than amounts awarded as compensation for damages or breach of contract)
- Bribes or other illicit payments
- Dividends, profit distributions or benefits of a similar nature paid to an owner of taxable person
- Amounts withdrawn from business by a natural person who is taxable person or a partner in an unincorporated partnership
- Corporate tax imposed under the Corporate Tax Law
- Input VAT which is recoverable under the relevant provisions of the Federal Decree-Law No. (8) of 2017
- Tax on income imposed on taxable person outside the UAE
- Any such expenditure as specified by a decision issued by the Cabinet

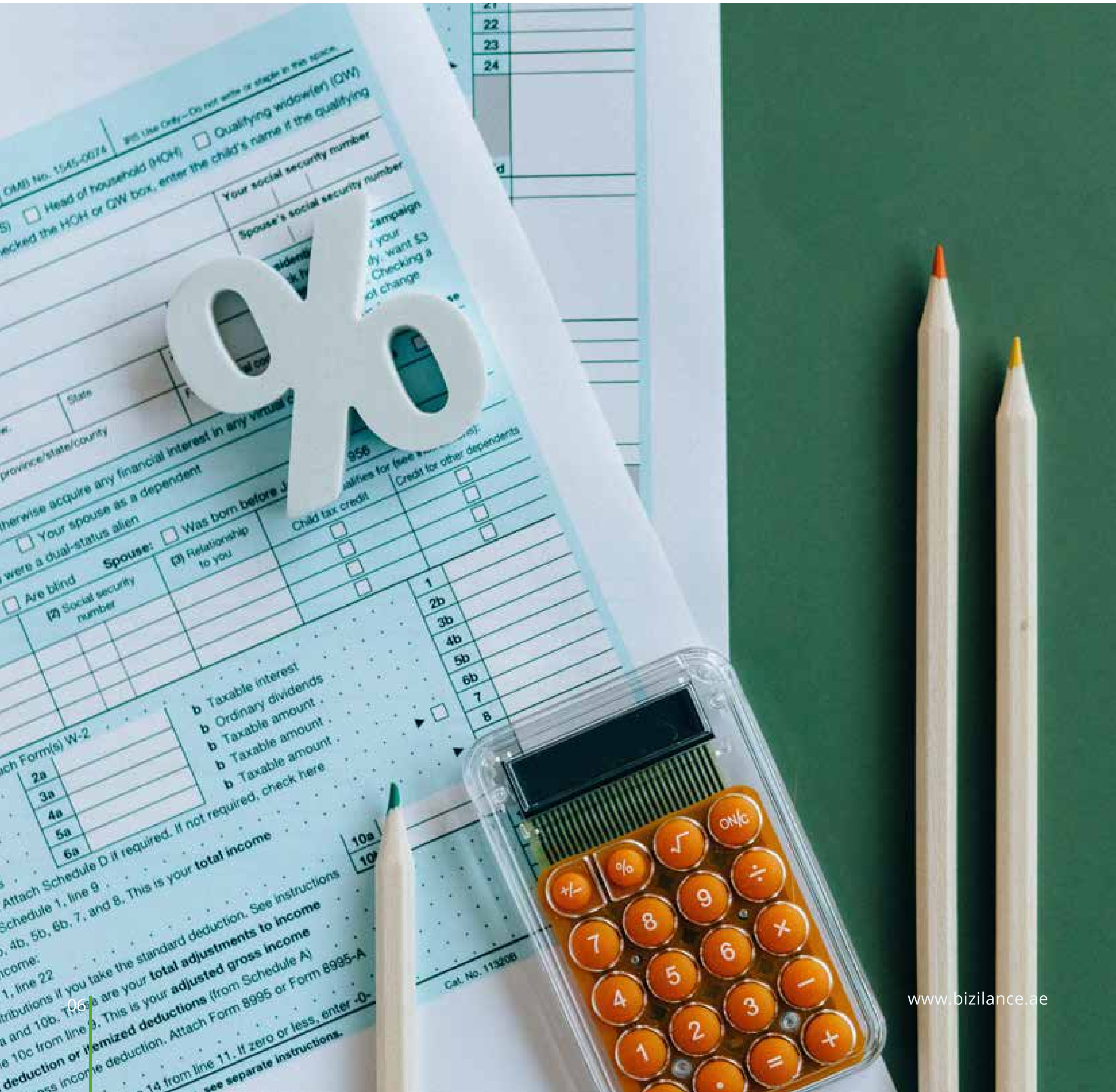
# Non-deductible Expenditure

### Payments to Connected Persons

A payment or benefit provided by a taxable person to its connected person shall only be deductible to the extent the payment or benefit corresponds with the market value of the service, benefit provided by the connected person. The amount is question, further, is to be wholly and exclusively incurred for the purposes of the business of taxable person.

**A connected person of a taxable person is:**

- Owner of the taxable person
- Director or officer of the taxable person
- Related party of above-mentioned persons



# Reliefs

## Transfers Within a Qualifying Group

No gain or loss needs to be accounted for, while determining taxable income, on transfer of assets or liabilities between two taxable persons who are member of same qualifying group. In this case, asset or liability is to be treated as being taken place on net book value and value of the consideration paid or received will be equal to the net book value.

**Two taxable persons are treated as members of the same qualifying group on meeting all the following conditions:**

- Taxable persons are juridical persons and residents in the UAE, or non-residents persons having a permanent establishment in the UAE
- Taxable person has a direct or indirect ownership interest of at least 75% in the other taxable person, or a third person has a direct or indirect ownership interest of at least 75% in each of the taxable persons
- None of the person is exempt person
- None of the person is a qualifying free zone person
- Financial year of each of the person ends on same date
- Both persons prepare their financial statements on same accounting standards

In case, within two years from the date of transfer, there is a subsequent transfer outside the qualifying group or that the taxable persons cease to be members of the same qualifying group, then the above-mentioned relief will not be applicable. In that case, the transfer is to be treated as being taken place at market value at the date of transfer for the purpose of determining taxable income of both the taxable persons for the relevant tax period.

# Business Restructuring Relief

**Subject to the provisions of the Corporate Tax Law, no gain or loss is to be considered while determining taxable income in following cases:**

- When a taxable person transfers its entire business or an independent part of its business to another person who is a taxable person or will become a taxable person as a result of the transfer in exchange for shares or other ownership interests of the transferee
- When one or more taxable persons transfer their entire business to anther person who is a taxable person or will become a taxable person as a result of transfer in exchange for shares or other ownership interest of transferee, and the transferor cease to exist as a result of transfer

**The above relief is available subject to meeting following conditions:**

- Transfer is in accordance with and meets all conditions imposed by applicable law in the UAE
- Taxable persons are residents, or non-resident persons having a permanent establishment in the UAE
- Noe of the persons is an exempt person
- None of the persons is a qualifying free zone person
- Financial year of each of the taxable persons ends on same date
- Taxable persons prepare their financial statements using same accounting standards
- Transfer is undertaken for valid commercial or other non-fiscal reasons reflecting economic reality
- Transferred assets and liabilities are treated as being transferred on net book value
- Value of shares or other ownership rights are not to exceed the net book value of transferred/ surrendered assets (or liabilities) less consideration received in any other form
- Any unutilized tax losses of transferor may be carried forward to transferee (subject to the conditions to be prescribed by the Minister of Finance)

In case, with in two years, the aforesaid shares or other ownership interest is sold, transferred or otherwise disposed (to a person who is not a member of the qualifying group to which relevant person belongs) or there is a subsequent transfer/disposal of the business or independent part of transferred business, then the transfer will be considered as being taken place at market value (means that relief will not be available).

# Transactions with Related Parties and Connected Persons

**To determine taxable income, transactions and arrangements between related parties, arm's length principle is to be met. Such transactions meet the arm's length standard if the results of the transactions or arrangements are consistent with the results that would have been if persons are not related parties. The arm's length result of such a transaction is to be determined by applying any one or a combination of the following transfer pricing methods:**

- Comparable uncontrolled price method
- Resale price method
- Cost-plus method
- Transactional net margin method
- Transactional profit split method

A taxable person may use any other method where it can demonstrate that none of the above methods can be reasonably applied.

In case, the result of the transactions or arrangements between related parties does not meet the arms' length standard, then the Authority shall adjust the taxable income to achieve the arms' length result that best reflects the related facts and circumstances.

# Tax Losses

## Carried Forward of Losses to Subsequent Tax Periods

Tax loss can be carried forward for adjustment against the taxable income of subsequent tax periods.

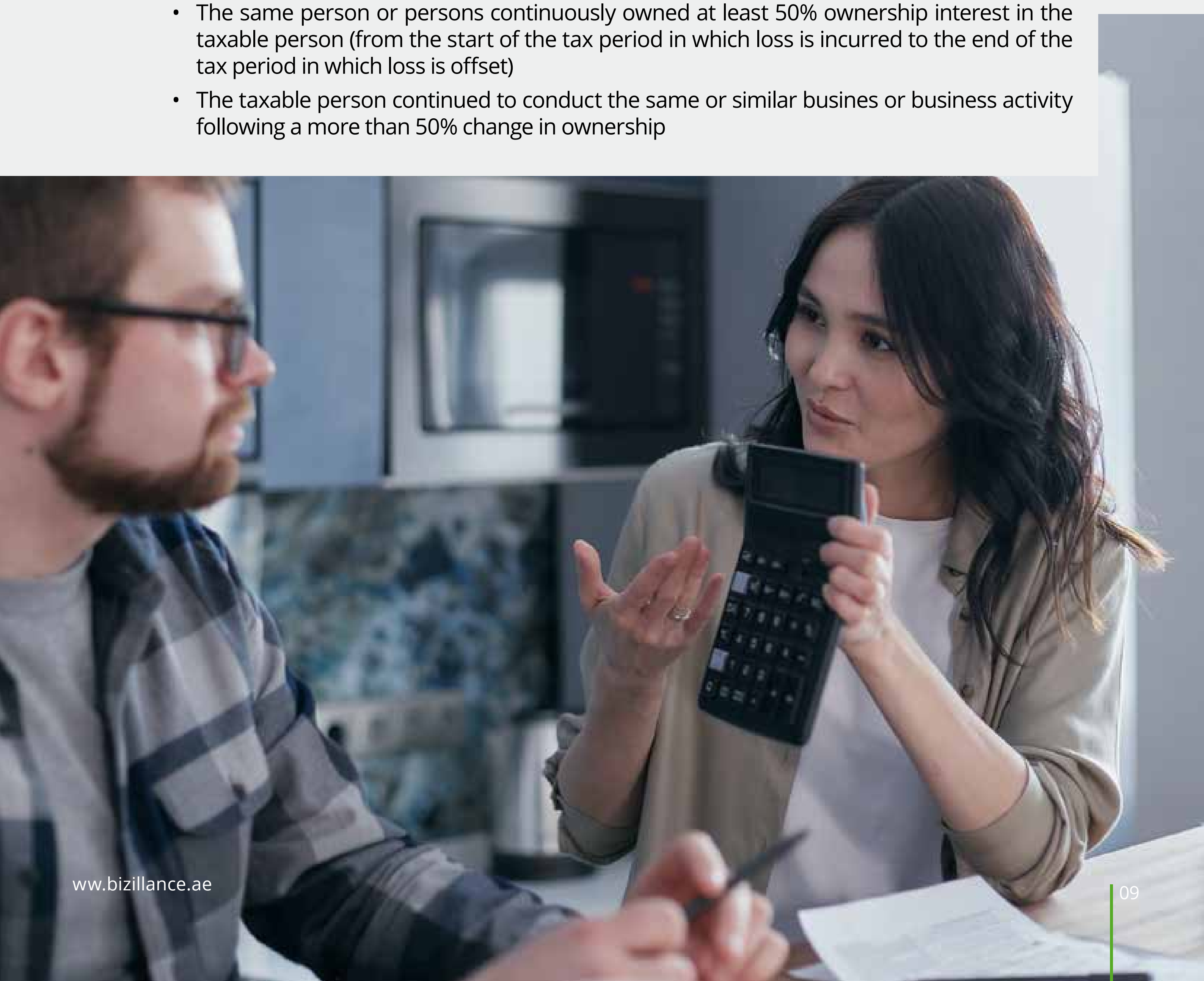
The amount of tax loss, used to set off taxable income in a subsequent tax period, cannot exceed 75% (or any other percentage as specified by a decision issued by the Cabinet) of the taxable income of the subsequent tax period.

**Following tax losses cannot be claimed:**

- Losses incurred before the commencement date of the Corporate Tax Law
- Losses incurred before a person becomes taxable person
- Losses incurred from an asset or activity the income of which is exempt, or otherwise not accounted for under the Corporate Tax Law

**Carry forward of tax losses is subject to following limitations:**

- The same person or persons continuously owned at least 50% ownership interest in the taxable person (from the start of the tax period in which loss is incurred to the end of the tax period in which loss is offset)
- The taxable person continued to conduct the same or similar busines or business activity following a more than 50% change in ownership



# Transfer of Tax Loss

**Tax loss or a portion thereof may be offset against the taxable income of another taxable person when all the following conditions are met:**

- Both taxable persons are juridical persons
- Both taxable persons are resident persons
- Taxable person has a direct or indirect ownership interest of at least 75% in the other, or a third person has a direct or indirect ownership interest of at least 75% in each of the two taxable persons
- The common ownership (as aforesaid) must exist from the start of the tax period in which tax loss is incurred to end of the tax period in which the other taxable person offsets the said loss
- None of the persons are exempt persons
- None of the persons are a qualifying free zone person
- Financial year of each of the taxable persons ends on the same date
- Both taxable persons prepare their financial statements using same standards

# International Agreements

The terms of the international agreement (that is in force in the UAE) will prevail to the extent of any inconsistency with the provisions of the Corporate Tax Law. This effectually means, that agreements for avoidance of double taxation will prevail over the provisions of the Corporate Tax Law.

# How Can We Help You?

The Corporate Tax Law, in the UAE, is a new taxing measure and therefore the companies/businesses need to evaluate their position with respect to applicability of each provision of the Corporate Tax Law. Such evaluation, without limitation of others, include registration requirements, taxable income, treatment of free zones, deductible expenses, transactions with related parties and relevant treatment, reliefs available if any, international transactions etc.

We offer a tailored approach to meet above determinations to our clients that best suits their respective business circumstances. Our strategy is to offer a complete suite of services addressing all the aspects of the Corporate Tax Law, in particular:

- **Initial assessment**
- **Strategic planning**
- **Consulting and advisory**
- **Compliance**


# For Further Information, Contact Us:

Office No. 3413, 34th Floor,
Churchill Tower 1, Business Bay,
Dubai, United Arab Emirates.

saeed.hasan@bizilance.ae
www.bizilance.ae

+971 4 580 8060
+971 52 914 1118
+971 4 580 7912