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## **Cabinet Decision No. (100) of 2023**

### **On Determining the Qualifying Income for a Qualifying Free Zone Person for the purposes of the Federal Decree-Law No. (47) of 2022 on the Taxation of Corporations and Businesses**

#### **The Cabinet:**

Having reviewed the Constitution,

And Federal Decree-Law No. (47) of 2022 on the Taxation of Corporations and Businesses,

And Cabinet Decision No. (55) of 2023 on Determining the Qualifying Income for a Qualifying Free Zone Person for the purposes of Federal Decree-Law No. (47) of 2022 on the Taxation of Corporations and Businesses,

And based on the proposal of the Minister of Finance and the approval of the Cabinet,

#### **Has decided:**

##### **Article (1)**

##### **Definitions**

The definitions contained in Federal Decree-Law No. (47) of 2022 on the Taxation of Corporations and Businesses shall apply to this Decision, and unless the context otherwise requires, the following words and phrases shall have the meanings assigned to each of them:

|                                         |                                                                                                                                                                                                                                                                                                                  |
|-----------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Domestic Permanent Establishment</b> | : A place of business or another form of presence in the State outside the Free Zone for a Qualifying Free Zone Person.                                                                                                                                                                                          |
| <b>Qualifying Activities</b>            | : Any activities specified in a decision issued by the Minister, which are conducted by a Qualifying Free Zone Person and from which Qualifying Income is derived.                                                                                                                                               |
| <b>Excluded Activities</b>              | : Any activities specified in a decision issued by the Minister, which are conducted by a Qualifying Free Zone Person and from which non-Qualifying Income is derived.                                                                                                                                           |
| <b>Non-Free Zone Person</b>             | : Any Person that is not a Free Zone Person.                                                                                                                                                                                                                                                                     |
| <b>Qualifying Intellectual Property</b> | : Patents, copyrighted software, and any right that is functionally equivalent to a patent and legally protected and subject to similar approval and registration procedures as a patent, such as utility models, intellectual property assets that grant protection to plants and genetic material, orphan drug |

designations, and patent protection extensions, but does not include any marketing-related intellectual property assets such as trademarks.

- Patent** : Any patent granted under the law regulating patents in the State or granted under the relevant law of another country or foreign jurisdiction.
- Copyrighted Software** : Any copyright existing in software granted under the law regulating copyright in the State or granted under the relevant law of another country or foreign jurisdiction.
- Commercial Property** : A property or part thereof used exclusively for a business or business activity and not used as a residence or accommodation, including hotels, motels, serviced apartments, and the like.
- Designated Zone** : A designated zone as defined in Federal Decree-Law No. (8) of 2017 on Value Added Tax and which is listed as a Free Zone for the purposes of the Corporate Tax Law.
- Corporate Tax Law** : Federal Decree-Law No. (47) of 2022 on the Taxation of Corporations and Businesses.

## **Article (2)**

### **Scope of Application**

The provisions of this Decision shall apply to Qualifying Free Zone Persons.

## **Article (3)**

### **Qualifying Income**

1. For the purposes of applying the provisions of Article (18) of the Corporate Tax Law, the Qualifying Income of a Qualifying Free Zone Person shall include the following categories of income, provided that such income is not attributable to a Domestic Permanent Establishment or a Foreign Permanent Establishment under Article (5) of this Decision, or derived from the ownership or exploitation of Immovable Property under Article (6) of this Decision, or is considered Taxable Income under Clause (2) of Article (7) of this Decision:

- a. Income derived from transactions with a Free Zone Person, except for income derived from Excluded Activities.
- b. Income derived from transactions with a Non-Free Zone Person, but only in respect of Qualifying Activities that are not Excluded Activities.
- c. Income derived from the ownership or exploitation of Qualifying Intellectual Property in accordance with Clause (1) of Article (7) of this Decision.
- d. Any other income, provided that the Qualifying Free Zone Person meets the de minimis requirements under Article (4) of this Decision.

2. For the purpose of paragraph (a) of Clause (1) of this Article, income is considered derived from transactions with a Free Zone Person where the Free Zone Person is the beneficial recipient of the relevant services or goods.

3. For the purposes of this Article, "beneficial recipient" means the person who has the right to use and enjoy the service or good and does not have a contractual or legal obligation to supply this service or good to another person, and "good" means tangible or intangible property that has a physical value in dealing, including real and movable property.

4. For the purpose of determining whether a Qualifying Free Zone Person has a Domestic Permanent Establishment, the provisions of Article (14) of the Corporate Tax Law shall apply, on the basis that the phrase "Qualifying Free Zone Person" shall replace the phrase "Non-Resident Person", and the phrase "geographical areas in the State outside the Free Zones in the State" shall replace the word "State", wherever they appear in that Article.

#### **Article (4)**

##### **De Minimis Requirements**

1. The de minimis requirements shall be considered satisfied where the non-Qualifying Revenue derived by the Qualifying Free Zone Person in a Tax Period does not exceed the percentage specified by the Minister of the total revenue of the Qualifying Free Zone Person in that Tax Period, or the amount specified by the Minister, whichever is lower.

2. Subject to Clause (3) of this Article, the following provisions shall apply:

a. Non-Qualifying Revenue is the revenue derived in a Tax Period from any of the following:

(1) Excluded Activities.

(2) Activities that are not Qualifying Activities where the other party to the transaction is a Non-Free Zone Person.

(3) Transactions with a Free Zone Person where that Free Zone Person is not the beneficial recipient of the relevant service or good.

b. Total revenue is the total revenue derived by the Qualifying Free Zone Person in a Tax Period.

3. The following revenue shall not be included in the calculation of non-Qualifying Revenue and total revenue:

a. Revenue derived from the following transactions in respect of Immovable Property located in a Free Zone:

(1) Transactions with a Non-Free Zone Person in respect of Commercial Property.

(2) Transactions with any person in respect of Immovable Property that is not Commercial Property.

b. Revenue attributable to a Domestic Permanent Establishment or a Foreign Permanent Establishment of the Qualifying Free Zone Person.

c. Revenue derived from the ownership or exploitation of Intellectual Property, except for revenue related to the Qualifying Income referred to in Clause (1) of Article (7) of this Decision.

4. For the purposes of this Article, a Qualifying Free Zone Person and its Domestic Permanent Establishment or Foreign Permanent Establishment shall be treated as if the establishment were a separate and independent person that is a Related Party of the Qualifying Free Zone Person.

#### **Article (5)**

##### **Income attributable to a Domestic Permanent Establishment or a Foreign Permanent Establishment**

1. Income attributable to a Domestic Permanent Establishment or a Foreign Permanent Establishment of a Qualifying Free Zone Person shall be considered Taxable Income and shall be taxed in accordance with paragraph (b) of Clause (2) of Article (3) of the Corporate Tax Law.

2. The income attributable to a Domestic Permanent Establishment or a Foreign Permanent Establishment of a Qualifying Free Zone Person in a Tax Period is the Taxable Income of either of those establishments for that period, calculated as if the establishment were a separate and independent person that is a Related Party of the Qualifying Free Zone Person.

#### **Article (6)**

##### **Income derived from Immovable Property located in Free Zones**

1. Income derived from Immovable Property located in a Free Zone from the following transactions shall be considered Taxable Income and shall be taxed in accordance with paragraph (b) of Clause (2) of Article (3) of the Corporate Tax Law:

a. Transactions with a Non-Free Zone Person in respect of Commercial Property.

b. Transactions with any person in respect of Immovable Property that is not Commercial Property.

2. For the purposes of Clause (1) of this Article, the Taxable Income for the Tax Period shall be the income derived from the Immovable Property referred to in paragraphs (a) and (b) of Clause (1) of this Article, calculated in accordance with the relevant provisions of the Corporate Tax Law.

#### **Article (7)**

##### **Income derived from Qualifying Intellectual Property**

1. The Qualifying Income derived from the ownership or exploitation of Qualifying Intellectual Property shall be calculated in the manner determined by a decision issued by the Minister.
2. Income derived from the ownership or exploitation of Intellectual Property that is not Qualifying Intellectual Property, as well as any income that exceeds the Qualifying Income calculated in accordance with Clause (1) of this Article, shall be considered Taxable Income and shall be taxed in accordance with paragraph (b) of Clause (2) of Article (3) of the Corporate Tax Law.

#### **Article (8)**

##### **Maintaining adequate substance and outsourcing in a Free Zone**

1. A Qualifying Free Zone Person must conduct its core income-generating activities in a Free Zone or a Designated Zone, depending on where such activity is required to be conducted, and, having regard to the level of activities carried on by it, have adequate assets and an adequate number of qualified full-time employees in a Free Zone or a Designated Zone, depending on where such activity is required to be conducted, and incur adequate operating expenditure in respect of each activity.
2. Core income-generating activities may be outsourced to another person in a Free Zone or a Designated Zone, depending on where such activity is required to be conducted, provided that the Qualifying Free Zone Person exercises adequate supervision over the outsourced activity.
3. Notwithstanding Clause (2) of this Article, core income-generating activities in respect of Qualifying Intellectual Property may be outsourced to any other person in the State or any other person that is not a Related Party outside the State, provided that the Qualifying Free Zone Person exercises adequate supervision over the outsourced activity.
4. For the purposes of this Article, core income-generating activities may vary depending on the specific activity but generally consist of the significant functions that drive the business value for each activity undertaken by the Qualifying Free Zone Person and are not exclusively or largely supporting activities.

#### **Article (9)**

##### **Implementing Decisions**

The Minister shall issue the decisions necessary to implement the provisions of this Decision.

#### **Article (10)**

##### **Repeals**

Cabinet Decision No. (55) of 2023 on Determining the Qualifying Income for a Qualifying Free Zone Person for the purposes of Federal Decree-Law No. (47) of 2022 on the Taxation of Corporations and Businesses is hereby repealed.

## **Article (11)**

### **Publication and Entry into Force**

This Decision shall be published in the Official Gazette and shall come into effect on 1 June 2023.

Issued by us:

Date: 10 /Rabi' Al-Akhir/ 1445 H

Corresponding to: 25 /October/ 2023 AD

Mohammed bin Rashid Al Maktoum  
Prime Minister

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