

Cabinet Decision No. (81) of 2023

Regarding the Conditions for Qualifying Investment Funds for the purposes of Federal Decree-Law No. (47) of 2022 on the Taxation of Corporations and Businesses

The Cabinet,

- Having reviewed the Constitution,
- And upon 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. Otherwise, the following words and phrases shall have the meanings assigned to them below, unless the context requires otherwise:

Investment Business: The issuance of investment interests to raise funds, pooling investor funds, or establishing a collective investment fund with the aim of enabling the holders of such invested funds to benefit from the profits or gains arising from the entity's acquisition, holding, management, or disposal of investments, in accordance with the legislation in force in the State.

Real Estate Gains: Gains derived from the sale or disposal of land or real estate.

Real Estate Income: Income derived from the lease of land or real estate, excluding Real Estate Gains.

Real Estate Asset Percentage: The portion of assets generating Real Estate Income as a percentage of the total value of the Investment Fund's assets.

Real Estate Investment Trust (REIT): A real estate fund as defined in accordance with the legislation in force in the State.

Corporate Tax Law: Federal Decree-Law No. (47) of 2022 on the Taxation of Corporations and Businesses.

Article (2)

Conditions for Exempting an Investment Fund from Corporate Tax

1. Without prejudice to the conditions stipulated in Clause (1) of Article (10) of the Corporate Tax Law, an Investment Fund, other than a REIT, must meet all of the following conditions to apply to the Authority to be exempt from Corporate Tax as a Qualifying Investment Fund:

a. The main business or business activities carried out by the Investment Fund are Investment Business activities, and any other business or business activities carried out by the Investment Fund are ancillary or incidental.

b. A single investor and their Related Parties do not own the following:

(1) More than (30%) thirty percent of the ownership interests in the Investment Fund, if the Investment Fund has fewer than (10) ten investors.

(2) More than (50%) fifty percent of the ownership interests in the Investment Fund, if the Investment Fund has (10) ten or more investors.

c. The Investment Fund is managed or advised by an Investment Manager who has at least (3) three investment professionals.

d. The investors do not have control over the day-to-day management of the Investment Fund.

2. For the purpose of applying paragraph (a) of Clause (1) of this Article, the following shall be observed:

a. If the business or business activities of a Resident Investment Manager are attributed to a Resident Investment Fund, the Taxable Income of the Investment Manager shall be adjusted to include the

income attributed to the Investment Fund in accordance with the provisions of Article (20) of the Corporate Tax Law.

b. The business or business activities of an Investment Manager attributed to a Resident Investment Fund shall be considered Investment Business activities if they meet at least one of the following conditions:

(1) They are subject to Corporate Tax in the State through the Investment Manager.

(2) They are carried out by an Investment Manager who meets the conditions stipulated in Clause (1) of Article (15) of the Corporate Tax Law, as if the reference to a Non-Resident Person in that Clause related to a Resident Person.

c. Other business or business activities carried out by the Investment Fund shall be considered ancillary or incidental if the combined revenue from such business or business activities does not exceed (5%) five percent of the total revenue of the Investment Fund in the same Financial Year.

3. An Investment Fund shall be considered to meet any of the ownership interest conditions specified in paragraph (b) of Clause (1) of this Article, as the case may be, during the first two Financial Years of the Investment Fund's establishment if there is sufficient evidence indicating the investors' intention to meet those conditions after the first two Financial Years, as determined by the Authority.

4. If the Investment Fund fails to meet the conditions set out in Clause (3) of this Article, the treatment of the Investment Fund as an Exempt Person shall cease from the beginning of the third Financial Year of its establishment.

Article (3)

Conditions for Exempting a Real Estate Investment Trust from Corporate Tax

Notwithstanding the provisions of Article (2) of this Decision, a Real Estate Investment Trust (REIT) must meet all of the following conditions, in addition to the conditions stipulated in Clause (1) of Article (10) of the

Corporate Tax Law, to apply to the Authority to be exempt from Corporate Tax as a Qualifying Investment Fund:

1. The value of the real estate assets under the management or ownership of the REIT, excluding land, exceeds AED (100,000,000) one hundred million UAE Dirhams.
2. At least (20%) twenty percent of the share capital of the REIT is traded on a Recognised Stock Exchange, or it is wholly and directly owned by two or more Institutional Investors as specified in Article (5) of this Decision, provided that at least two of these Institutional Investors are not Related Parties.
3. The REIT has an average Real Estate Asset Percentage of not less than (70%) seventy percent during the relevant calendar year or the relevant (12) twelve-month period for which financial statements are prepared.

Article (4)

Investor's Income

1. If a Taxable Person is an investor in a Qualifying Investment Fund during a Tax Period, the income of that Taxable Person for the relevant Tax Period shall be adjusted to include the income and expenditure of the Qualifying Investment Fund as shown in the financial statements of the Qualifying Investment Fund, in proportion to their ownership interest, in accordance with the provisions of Article (20) of the Corporate Tax Law.
2. The income of an investor shall not include any distribution received from a Qualifying Investment Fund if it has already been included as their income in accordance with the provisions of Clause (1) of this Article.

Article (5)

Institutional Investor

An Institutional Investor is any of the following:

1. The Federal Government.
2. A Local Government.
3. A Government Entity.

4. A Government Controlled Entity.
5. A foreign government and its competent authorities, bodies, and institutions, or companies wholly owned by any of them.
6. International organisations.
7. A bank.
8. An insurance provider.
9. A pension or social security fund.
10. An investment entity licensed by a competent authority or a similar regulatory body in or outside the State.
11. Any other juridical person determined by the Authority.

Article (6)

Unincorporated Partnership

An Unincorporated Partnership that is treated as a Taxable Person in its own right in accordance with the provisions of Article (16) of the Corporate Tax Law shall be considered an entity for the purposes of the definition of a Qualifying Investment Fund in accordance with the provisions of the Corporate Tax Law.

Article (7)

Implementing Decisions

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

Article (8)

Publication and Entry into Force

This Decision shall be published in the Official Gazette and shall come into force on the day following the date of its publication.

Mohammed bin Rashid Al Maktoum
Prime Minister

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