UAE TAX RESIDENCY CRITERIA

SPRING 2024

In a nutshell

Embracing global standards, the UAE has fully redefined criteria for Tax Residency Certificates

On 2 September 2022, the UAE Cabinet (Cabinet) issued Decision No. 85 of 2022 (Decision 85) redefining the criteria of tax residency for both individual and legal persons in the UAE.

Decision 85 was followed by Decision No. 27 of 2023 (Decision 27) on implementing certain provisions of the new tax residency regime.

The two Decisions introduce granular conditions to be met for a natural or legal person to be considered a tax resident of the UAE, as well as procedural aspects of the application for issuance of Tax Residency Certificates (TRC/s). They also clarify specific rules around the concept of tax residency in a bilateral treaty context, as well as several other strategic elements via Decision 27. Decisions 85 and 27 are effective from 1 March 2023.

The UAE has considered tax residency requirements per the global parameters and has realigned its position to provide a pragmatic approach. The revision addresses several gaps that existed under the previous regulations and practices of the Federal Tax Authority (FTA).

The UAE has double taxation treaties and bilateral agreements with 123 countries. These references the UAE's domestic laws, and are crucial in determining an individual's tax residency status.

Eligible UAE residents can apply to the FTA to obtain a TRC, enabling them to further apply for tax relief, or claim benefits in a different jurisdiction under the applicable tax treaty. A TRC is issued for a period of one [1] year for 'Domestic' or 'Specific tax treaty' purposes.

UAE Tax Residency Criteria – Individuals [Domestic Purpose] (1)

In a nutshell

- Evidence of applicant's formal status as UAE resident.
- General use [to the exclusion of 'Specific tax treaty' purposes], e.g.
  - onboarding/ongoing compliance review by banks, in/outside the UAE
  - compliance requirements from UAE authorities, foreign government
- Can be backdated till time of residence visa's issuance.

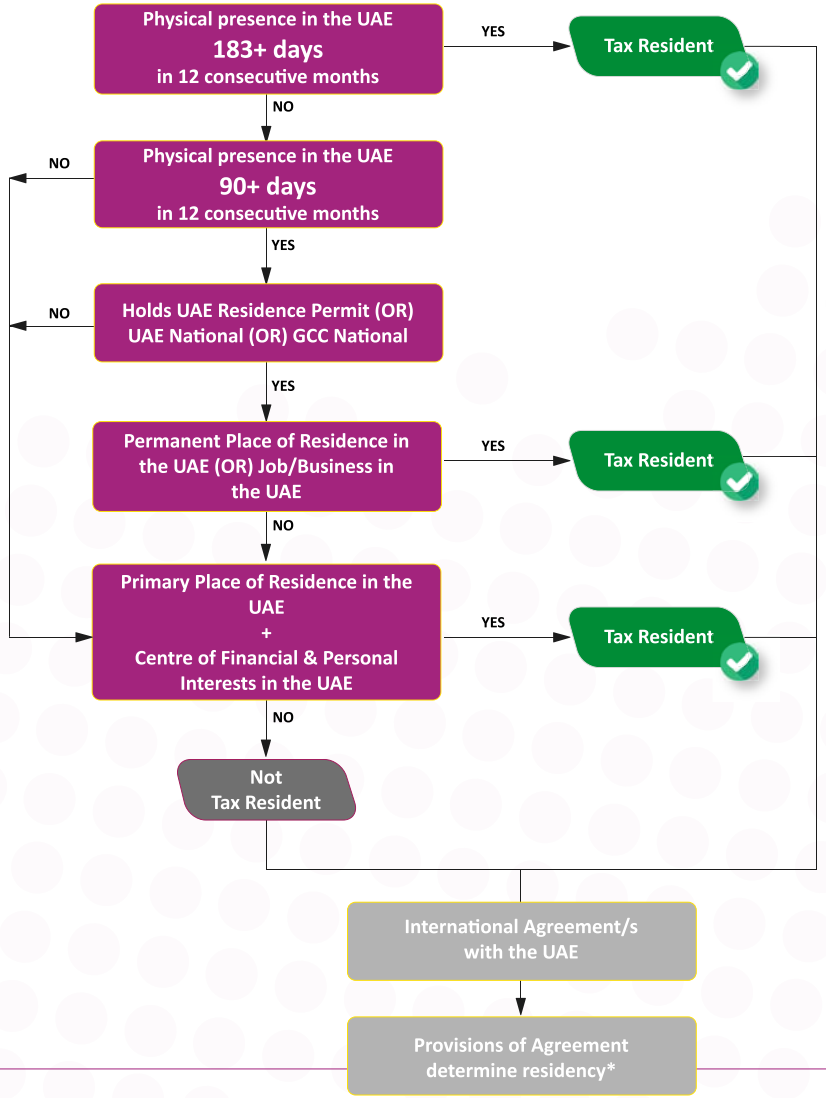
Key conditions

Individual is deemed a tax resident for 'Domestic' purpose if he/she meets **any** of the following for the relevant 12 months period:

- Has been physically present in the UAE for **183+ days** during the relevant 12-month period.
- Has been physically present in the UAE for **90+ days** during the relevant 12-month period; and has a place of residence, job/business in the UAE
- Does not meet any of the day counting tests but has his/her **i)** usual or principal place of residence and **ii)** center of his/her financial and personal interests in the country; [e.g. proof of income, bank statements, investments etc.]

For all the cases above, individual must hold UAE residence visa and Emirates ID for more than 6 months.

UAE Tax Residency Criteria – Individuals [Domestic Purpose] (2)



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UAE Tax Residency Criteria – Individuals [Tax Treaty Purpose] (1)

In a nutshell

- Evidence of applicant's formal status as UAE resident, in respect to a particular specific tax treaty (Double Tax Treaty "DTT") between the UAE and designated foreign jurisdiction.
- *Specific* use, e.g.
  - individual wishes to take advantage of specific provision of DTT
  - evidence in support of tax litigation
- Can be backdated till time of residence visa's issuance.

Key conditions

Individual is deemed a tax resident for tax treaty purpose if he/she meets **all** of the following for the relevant 12 months period:

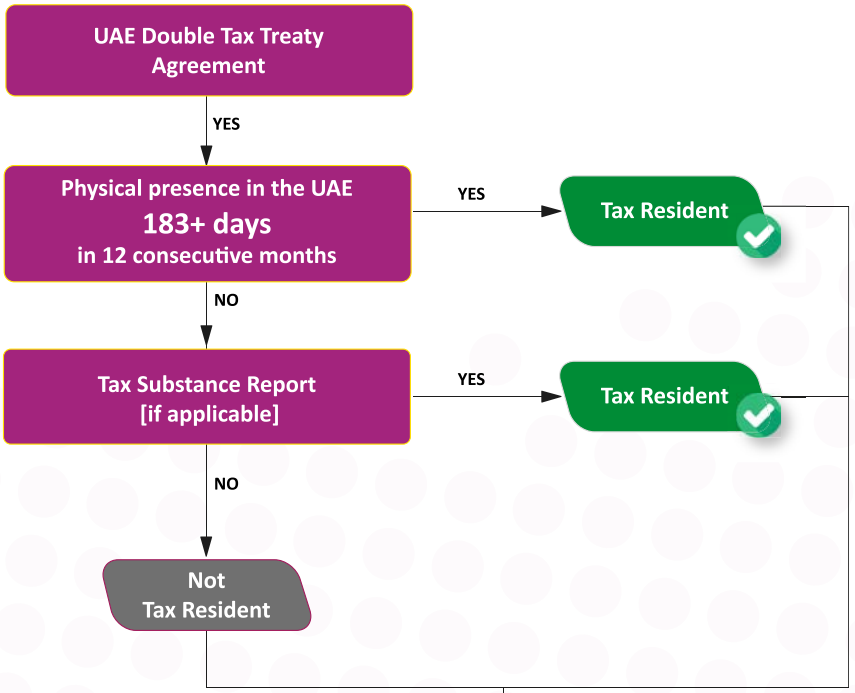
- Have spent **183+ days inside UAE** [immigration report evidencing all entry and exit out of the UAE]
- Holds UAE residence visa and Emirates ID valid for more than 6 months
- Certified tenancy contract or title deed copy; valid for at least 6 months prior to the application
- 6 months personal UAE bank statements
- Proof of income, e.g. Employment agreement, share certificate, salary certificate

Being issued a TRC for 'Domestic' or 'Specific tax treaty' purposes: does it imply the individual is subject to UAE personal income tax?

Individuals **will not** be subject to income tax in the UAE since the UAE does not levy any personal income tax on the employment or other personal income of individuals.

However. the UAE Corporate Tax Law will treat foreign natural persons conducting business in the UAE as Resident Persons to determine whether the business income of the person is taxable in the UAE.

UAE Tax Residency Criteria – Individuals [Tax Treaty Purpose] (2)



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CALCULATION OF DAYS

- Any day an individual physically spends inside the UAE counts for the 183/90 days threshold. This includes **entry and exit dates.**
- To calculate the threshold of 183/90 days, the **physical presence** of an individual need not be on a **consecutive basis.**
- Any day on which the presence of an individual in the UAE was due to exceptional circumstances, may be disregarded for calculating the threshold of 183/90 days spent in the UAE by an individual.
- An exceptional circumstance is an event or situation beyond the individual's control, that occurs while the individual is in the UAE, which he/she cannot reasonably predict or avoid and which prevents him/her from leaving the UAE as they originally planned.

PLACE OF RESIDENCE

- A primary place of residence is where the individual **habitually or normally resides**, i.e., where he spends most of his time when compared to any other jurisdiction as part of his settled routine in a more than transient way.
- A permenent place is residence is a furnished house, apartment, or room available via rent or owned by the individual, that is made continuously available to the individual to reside.
- An individual **must have the continuous** right of occupation therein at all times with some certain degree of permanency and stability. It is **not** mandatory to own the place of residence, it can be a rental place.
- A stay of a short or occasional duration does not qualify as the Permanent Place of Residence.

EMPLOYMENT CONDITIONS TO QUALIFY FOR THE TRC

- The individual is considered to hold employment in the UAE if he/she:
  - has an **employment contract** with a UAE-based company for a **promised remuneration** OR
  - is in a **continuing relationship** where all or **substantially all of his income for his labour is derived** from one party whereby the income serves as a payment for work performed in the State (UAE).
- The employment can be limited or unlimited, full-time or part-time basis
- A **voluntary role** for which there is no contract does **not** constitute employment.

BUSINESS

- Any activity conducted regularly, on an ongoing and independent basis, such as industrial, commercial, agricultural, professional, vocational, service or excavation activities or anything related to the use of tangible or intangible properties.

CENTRE OF FINANCIAL & PERSONAL INTERESTS

- The State (UAE) should be of the individual's **personal and economic interests are the closest** or of the greatest significance.
- Factors that determine this are the individual's occupation, familial and social relations, cultural or other activities, place of business, the place from which the property of the individual is administered, and any other relevant facts.

"Acquiring a Tax Residency Certificate in the UAE does <u>not</u> imply that the applicant is obligated to pay taxes locally. Only business income is subject to corporate tax."

UAE Tax Residency Criteria – Legal Persons [Domestic Purpose] (1)

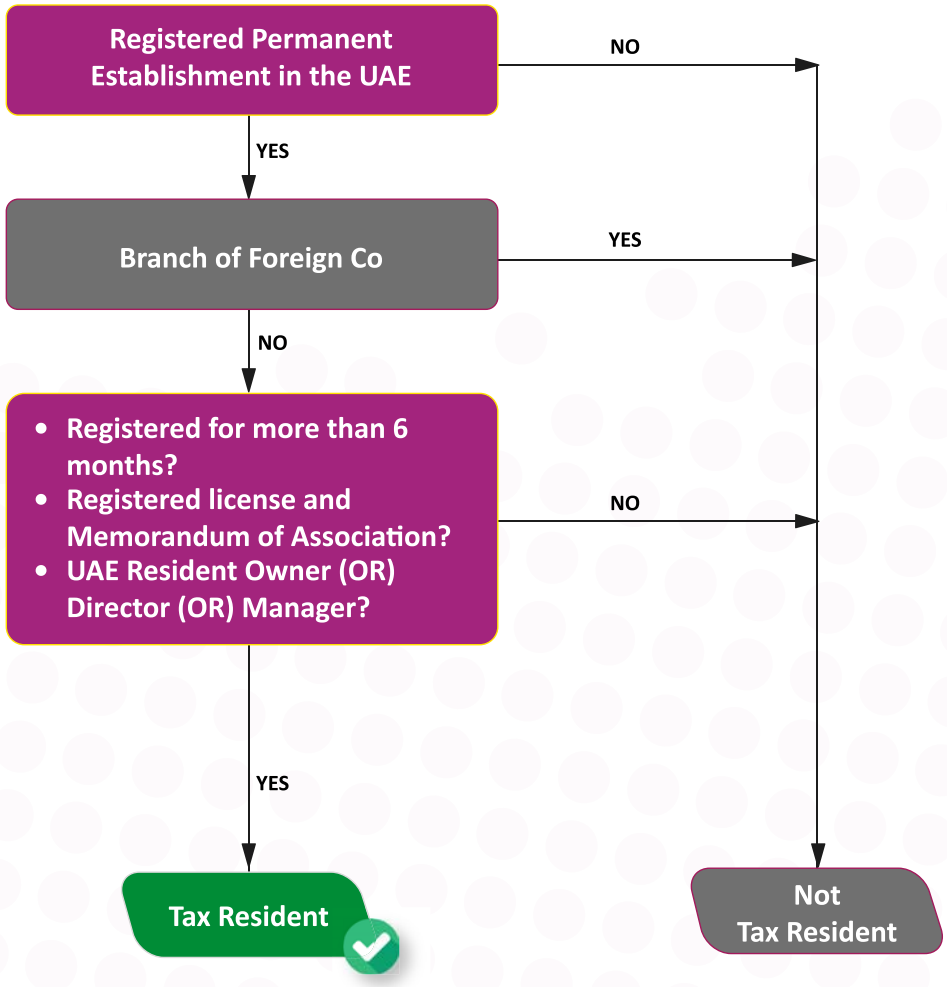
In a nutshell

- Evidence of applicant's formal status as UAE resident.
- *General* use [to the exclusion of 'Specific tax treaty' purposes], e.g.
  - onboarding/ongoing compliance review by banks, in/outside the UAE
  - compliance requirements from UAE authorities, foreign government
- Can be backdated till time of residence visa's issuance.

Key conditions

- Legal person considered a Tax Resident of the UAE for 'Domestic' purpose if:
  - incorporated or otherwise formed or recognized in the UAE; **OR**
  - otherwise considered a Tax Resident of the UAE under applicable UAE legislations
- Branches of domestic or foreign legal person are an extension of their parents or head office, and are not considered a separate legal person. Branch would therefore generally not be considered a UAE tax resident for TRC application.
- Owner, director and general manager of the entity (GM: if mentioned on license) must hold UAE residency permit
- Legal person must have registered Memorandum of Association or Articles of Association
  - must be registered for more than **6 months**
  - must hold Tax Registration Number (TRN) for VAT or Corporate Tax legislations

UAE Tax Residency Criteria – Legal Persons [Domestic Purpose] (2)



UAE Tax Residency Criteria – Legal Persons [Tax Treaty Purpose] (1)

In a nutshell

- Evidence of Entity's formal status as UAE tax resident, in respect to a particular specific DTT between the UAE and designated foreign jurisdiction
- *Specific* use, e.g.
  - entity wishes to take advantage of specific provision of DTT
  - evidence in support of tax litigation
- Can be backdated till time the entity was registered

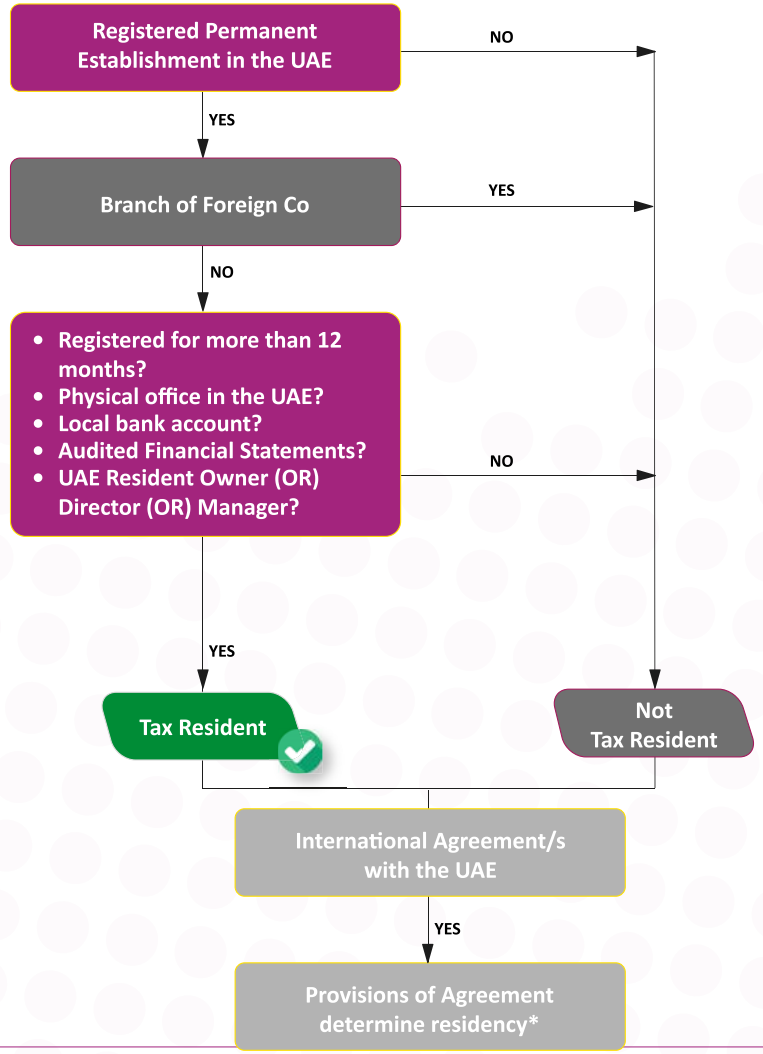
Key conditions

- Legal person considered a UAE tax resident for either 'Tax treaty' purpose if:
  - incorporated or otherwise formed or recognized in the UAE; **OR**
  - otherwise considered a Tax Resident of the UAE under applicable UAE legislations
- Branches of domestic or foreign legal person are an extension of their parents or head office, and are not considered a separate legal person. Branch would therefore generally not be considered a UAE tax resident for TRC application.
  - taxable dues must be listed within Double Tax Declaration forms
  - entity must be registered for more than **12 months;**
  - entity must hold a physical office with registered lease contract for 12 months;
- Audited Financials must be available for the financial year;
- Owner, director and general manager of the entity (GM: if mentioned on license) must hold UAE residency permit, and
- Must hold TRN for VAT or Corporate Tax

Applicability of UAE CT to legal persons under new definition of the UAE tax resident for both Domestic or Tax treaty purpose.

- Decision 85 refers to the "Tax Law in force" to determine whether the foreign jurifical person is Tax Resident. The Tax Law if in force is the UAE Corporate Tax ['CT'] Law.
- Accordingly, the legal/juridical persons who are considered UAE tax residents may potentially be liable for UAE Corporate Tax.

UAE Tax Residency Criteria – Legal Persons [Tax Treaty Purpose] (2)



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Meet the Experts

Jenitha Raghu
Team Leader - Labour & Immigration, M/HQ

jenitha@m-hq.com
+971 4 295 57 37

Core Focus
- UAE Market Entry
- Tax Residency
- Immigration

Yann Mrazek
Managing Partner

mrazek@m-hq.com
+971 50 245 9503

Core Focus
- Private Wealth
- Legacy Planning & Asset Protection
- Corporate Structuring & Re-structuring

re/think

Keerthi Voodimudi
Director - TAX, Re/think

keerthi.voodimudi@rethink-hq.com
+971 52 455 1325

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