

## Cabinet Resolution No. (100) of 2023

### Identifying the Qualified Income for the Qualifying Free Zone Person for the Purposes of Federal Decree-Law No. (47) of 2023 Concerning the Corporate Tax

#### The Cabinet,

- Having perused the Constitution; and
- Federal Decree-Law No. (47) of 2022, Concerning the Corporate Tax; and
- Cabinet Resolution No. (55) of 2023, Determining the Qualifying Income of the Free Zone Qualifying Person for the Purposes of Federal Decree-Law No. (47) of 2022 Concerning the Corporate Tax; and
- Based upon the proposal submitted by the Minister of Finance, and the Cabinet's approval,

#### Decided:

### Article (1)

#### Definitions

The definitions stipulated in Federal Decree-Law No. (47) of 2022 Concerning the Corporate Tax shall be applicable to this Resolution; otherwise, the following terms and phrases shall have the meanings assigned to each, unless the context requires otherwise:

- Permanent Domestic Establishment** : The place of business or any other form of presence of the free zone qualifying person in the State outside the Free Zone.
- Qualifying Activities** : Any activities, designated pursuant to a resolution issued by the Minister, performed by a qualifying free zone person and from which a qualifying income is realized.
- Excluded Activities** : Any activities, designated pursuant to a resolution issued by the Minister, performed by a qualifying free zone

person and from which a non-qualifying income is realized.

- Non-Free Zone Person** : Any person who is not residing in a Free Zone.
- Qualifying Intellectual Property** : Patents, copyrighted software, and any right functionally equivalent to a patent that is both legal protected and subject to a similar approval and registration process to a patent, such as utility models, intellectual property assets that grant protection to plants and genetic material, orphan drug designations, and extensions of patent protection, but not including 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 a foreign jurisdiction.
- Copyrighted Software** : Any copyright subsisting in software granted under the law governing copyrights in the State or granted under the relevant law of a foreign jurisdiction.
- Commercial Property** : Immovable property or part thereof used exclusively for a Business or Business Activity and not used as a place of residence or accommodation including hotels, motels, bed and breakfast establishments, serviced apartments, and those of similar status.
- Designated Zone** : A designated zone according to what is stated in Federal Decree-Law No. (8) of 2017 on Value Added Tax, and which has been included as a Free Zone in accordance with the Corporate Tax Law.
- Corporate Tax Law** : Federal Decree-Law No. (47) of 2022.

## **Article (2)**

### **Scope of Application**

The provisions of this Resolution shall be applicable to qualifying free zone persons.

## **Article (3)**

### **Qualifying Income**

1. For the purposes of implementing Article (18) of the Corporate Tax Law, the qualifying income of the qualifying free zone person shall include the below categories of income, provided that the said income is not accrued to a domestic or foreign permanent establishment pursuant to Article (5) of this Resolution, realized from the ownership or exploitation of properties pursuant to Article (6) of this Resolution, or considered taxable income in accordance with clause (2) of Article (7) of this Resolution:
  - a. Income realized from transactions concluded with the free zone person, except for the income realized from excluded activities.
  - b. Income realized from transactions concluded with the non-free zone person only in relation to qualifying activities which are not excluded activities.
  - c. Income realized from the ownership or exploitation of qualifying intellectual property in accordance with clause (1) of Article (7) of this Resolution.
  - d. Any other income provided that the qualifying free zone person meets the de minimis requirements pursuant to Article (4) of this Resolution.
2. For the purposes of clause (1) of this article, the income shall be considered realized from transactions concluded with the free zone person whenever the latter is the beneficiary of services or designated commodities.
3. For the purposes of this Article, the term “Beneficiary” shall mean the person who has the right to use and enjoy the service or the commodity and does not have a contractual or legal obligation to supply such service or commodity to another person; and the term “Commodity” shall mean tangible or intangible property that has economic value in dealing including movable and immovable property.

4. For the purposes of determining whether the qualifying free zone person has a domestic permanent establishment, the provisions of Article (14) of the Corporate Tax Law shall apply and the “Qualifying Free Zone Person” phrase shall be used instead of the “Non-Resident Person” phrase, and the “geographical areas outside the Free Zones in the State” phrase shall be used instead of the term “State”, wherever used in the said article.

## **Article (4)**

### **De Minimis Requirements**

1. The de minimis requirements shall be considered achieved if the non-qualifying revenues realized by the qualifying free zone person within the tax period did not exceed the percentage – determined by the Minister – of the gross revenue qualifying free zone person for the said tax period, or the amount the Minister determines, whichever is lower.
2. Subject to clause (3) of this Article, the following provisions shall apply:
  - a. Non-qualifying revenues are revenues realized, within a tax period, of any of the following:
    1. Excluded activities.
    2. Activities that are not considered qualifying activities whenever the other contracting party is a non-free zone person.
    3. Transactions concluded with a free zone person whenever the latter is not the beneficiary of the service or designated commodity.
  - b. The gross revenue is the total of revenues realized by the qualifying free zone person within a tax period.
3. The following revenues shall not be included in the calculation of non-qualifying revenues and the gross revenue:
  - a. Revenues realized from the following transactions related to property located in the free zone:
    1. Transactions concluded with a non-free zone person in relation to commercial properties.

2. Transactions concluded with any person in relation to properties that are not considered commercial properties.
  - b. Revenues accrued by a domestic or foreign permanent establishment of the qualifying free zone person.
  - c. Revenues realized from the ownership or exploitation of intellectual property, except for revenues related to the qualifying income referred to in clause (1) of Article (7) of this Resolution.
4. For the purposes of this Article, the qualifying free zone person and his domestic or foreign permanent establishment shall be treated as if the establishment is a separate and independent person and as a party affiliated with the qualifying free zone person.

## **Article (5)**

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

1. The income accrued to a domestic or foreign permanent establishment of the qualifying free zone person shall be considered taxable income and shall be subject to tax in accordance with item (b) of clause (2) of Article (3) of the Corporate Tax Law.
2. The income of a domestic or foreign permanent establishment of the qualifying free zone person, accrued within the tax period, is the taxable income accrued to any of the said establishments within the said period calculated as if the establishment is a separate and independent person and as a party affiliated with the qualifying free zone person.

## **Article (6)**

### **Income Realized from Immovable Property Located in Free Zones**

1. The income, from the following transactions, realized from immovable property located in free zones shall be considered taxable income and shall be subject to tax in accordance with item (b) of clause (2) of Article (3) of the Corporate Tax Law:
  - a. Transactions concluded with a non-free zone person in relation to commercial properties.

- b. Transactions concluded with any person in relation to properties that are not considered commercial properties.
2. For the purposes of clause (1) of this article, the taxable income for the tax period shall be the income realized from the immovable property referred to in items (a) and (b) of clause (1) of this Article, and which is calculated in accordance with the relevant provisions of the Corporate Tax Law.

## **Article (7)**

### **Income Realized from Qualifying Intellectual Property**

1. The qualifying income realized from the ownership or exploitation of qualifying intellectual property shall be calculated in accordance with the manner determined by a Minister's resolution.
2. The income realized from the ownership or exploitation of the non-qualifying intellectual property, as well as the excess in the qualifying income calculated in accordance with clause (1) of this Article, shall be considered a taxable income, and shall be subject to tax in accordance with item (b) of clause (2) of Article (3) of the Corporate Tax Law.

## **Article (8)**

### **Retaining Adequate Substance and Outsourcing in the Free Zone**

1. A qualifying free zone person shall undertake its core income-generating activities within the Free Zone or a designated zone, depending on where such activities are required to be conducted, and having regard to the level of the activities carried out, have adequate assets, an adequate number of qualified full-time employees within the Free Zone or a designated zone depending on where such activities are required to be conducted, and incur an adequate amount of operating expenditures, in relation to each activity.
2. Core income-generating activities may be outsourced to another person within the Free Zone or a designated zone depending on where such activities are required to be conducted,

provided the qualifying free zone person has 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 and to any other person who is not a related party outside the State, provided the qualifying free zone person has adequate supervision over the outsourced activity.
4. For the purposes of this Article, core income-generating activities may vary according to the specific activity but mainly consist of those significant functions that drive the business value for each activity carried out by a qualifying free zone person and are not exclusively or mostly support activities.

## **Article (9)**

### **Executive Resolutions**

The Minister shall issue the resolutions necessary to execute the provisions of this Resolution.

## **Article (10)**

### **Repeals**

Cabinet Resolution No. (55) of 2023, Determining the Qualifying Income of the Free Zone Qualifying Person for the Purposes of Federal Decree-Law No. (47) of 2022 Concerning the Corporate Tax, shall be repealed.

## **Article (11)**

### **Resolution Publication and Enforcement**

This Resolution shall be published in the Official Gazette and shall come into effect as of 01 June 2023.

**Mohammed bin Rashid Al Maktoum**

**Prime Minister**

**Issued by Us,**

**On: 10 / Rabi II / 1445 A.H.**

**Corresponding: 25 / October / 2023 AD**