

Determining a Non-Resident Person's Nexus in UAE for Corporate Tax Purposes



Table of Contents

Introduction to Non-Resident Person's Nexus in UAE	01
Who is considered a Non-Resident Person?	02
When shall a Non-Resident Person be said to have a Nexus in the UAE?	03
Income Attributable to Immovable Property	03
What shall be the Taxable Income if there is a Nexus in the UAE?	04
Income attributable to a Permanent Establishment or nexus	05
Business or Business Activities of a non-resident natural person that are subject to Corporate Tax	05
State Sourced Income	05
How to determine the Permanent Establishment in UAE?	06
The definition of 'Fixed Place PE' refers to the following essential criteria:	07
Places that constitute Fixed Place PE	08
Place of Effective Management (PoEM)	09
Business Premises	09
Installation or Construction PE	10
Preparatory or Auxiliary Activities do not constitute PE	11
Use of Place for Job Work	12
Use of Place for Procurement	12
Any Other Place Used for Similar Purposes	12

Comprehensive Examples of Permanent Establishment	13
Fixed Place Permanent Establishment	14
Dependent Agent Permanent Establishment	14
Exemptions for preparatory or auxiliary activities	15
Exceptions to Exemption for Preparatory or Auxiliary Activities	15
Other UAE Corporate Tax Requirements for a Non-resident person	16
Record Keeping And Preparation of Financial Statements	17
Tax Return Submission	17
Application of General Anti Avoidance Rules (GAAR) Provisions	18
Example	19
Conclusion	20
FAQs on Non-Resident Person's Nexus in UAE for CT Purposes	23
About FAME Advisory	25



Introduction to Non-Resident Person's Nexus in UAE



The Corporate Tax Law has been introduced in the UAE and provides special treatment for the non-resident person's taxation. This ebook deals with determining a non-resident person's nexus in UAE and provide you with its complete details.

Who is considered a Non-Resident Person?

As per the UAE CT Law, a Non-Resident Person is:

1

○ Natural Person who is not a Resident but:

- Has a permanent establishment (PE) in the United Arab Emirates
- Derives state-sourced income

An individual who is not a resident but has a Permanent Establishment (PE) in UAE and an annual turnover of AED 1 million or more attributable to PE is considered a Non-Resident Person.

2

○ A Juridical Person incorporated outside of UAE and not effectively managed and controlled in the UAE will be regarded as a Non-Resident Taxable Person to the extent:

- It has a Permanent establishment in the UAE
- It derives income from the UAE

It has a nexus in the United Arab Emirates by way of earning income from immovable property in the United Arab Emirates

When shall a Non-Resident Person be said to have a Nexus in the UAE?

Any non-resident juridical person would be treated as having a UAE nexus if he earns income from "immovable property" in the UAE.

A non-resident juridical person with a UAE nexus must register with the Federal Tax Authority ("FTA") and obtain a Tax Registration Number.

Income Attributable to Immovable Property:

Taxable income attributable to Immovable Property includes "income derived from the right in rem, sale, disposal, assignment, direct use, letting, including subletting and any other form of exploitation" of Immovable Property located in the UAE.

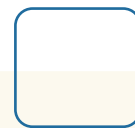


What shall be the Taxable Income if there is a Nexus in the UAE?



Income attributable to a Permanent Establishment or nexus

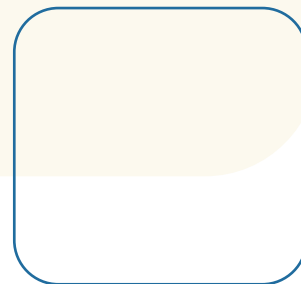
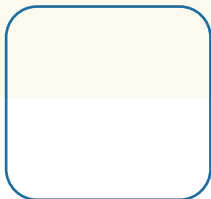
- Taxable Income derived from inside and outside the UAE by a Non-Resident Person from the Permanent Establishment or nexus in the UAE is subject to Corporate Tax.
- Taxable Income is calculated for a Tax Period from the adequate standalone Financial Statements prepared by accounting standards accepted in the UAE.



Business or Business Activities of a non-resident natural person that are subject to Corporate Tax

Non-resident individuals deriving income from the UAE are subject to Corporate Tax if annual turnover attributable to their Permanent Establishment in the UAE exceeds AED 1,000,000.

However, the corporate tax does not apply to income earned by salary, wages, income from personal investment, real estate investments without a license, etc.



State Sourced Income

Article 13(1) of the Corporate Tax Law defines instances under which an income is considered State Sourced Income. Such State-Sourced Income earned by a Non-Resident Person is subject to Corporate Tax.

How to determine the Permanent Establishment in UAE?



The concept of a Permanent Establishment is used in tax regimes worldwide to determine if and when a foreign juridical person has established sufficient presence in a country to warrant the direct taxation of their profits in that country.

Mainly, the term 'Permanent Establishment' is defined under the OECD and UN model convention and the international agreements entered between two contracting states to avoid double taxation.

Generally, a country only has the right to tax the profits of a foreign business if that business has a Permanent Establishment in that country.

The definition of 'Fixed Place PE' refers to the following essential criteria:

- Existence of a 'place of business', i.e. a facility such as premises or, in certain instances, machinery or equipment;
- The place of business must be 'fixed', i.e. it must be established at a distinct place with a certain degree of permanence;
- The enterprise carries on the business through such a fixed place of business

Places that constitute Fixed Place PE:

List of permanent establishments where business operations occur. These include:

01

Place of effective management,' where critical decisions are made.

02

A branch, office, factory, or workshop.

03

Real property like land and buildings.

04

Installations for natural resource exploration.

05

Mines, oil or gas wells, quarries, or extraction sites, including related vessels and structures.

06

Building sites, construction projects, or assembly/installation places lasting over six months, including activities by the non-resident person's related parties.

Let's explore places that constitute fixed-place permanent establishment in detail:

Place of Effective Management (PoEM)

Place of Effective Management is an internationally recognized test for determining the residential status of a company incorporated in a foreign jurisdiction. A Fixed Place PE is where essential day-to-day business decisions are made. While international terms use "Place of Management," UAE CT refers to "Place of effective management," defined in the explanatory guide as daily operational decisions, not just strategic or board meeting decisions.

Business Premises

Branches, offices, factories, workshops, land, buildings and other real estate property are also examples of fixed-place permanent establishments



Installation or Construction PE

Any installation for natural resource exploration, including mines, oil or gas wells, and quarries, creates a PE. A PE is also formed if a building site, construction project, or related activity lasts over six months. This includes not only construction but also infrastructure projects and equipment installation. The 'six-month' duration considers all sites, projects, and activities, including time spent by related parties. This threshold is sometimes exploited for tax avoidance, with work distributed among related entities to stay within the limit.

Dependent Agent Permanent Establishment Multinational companies often appoint dependent agents in the UAE to conduct business and avoid creating a Fixed Place Permanent Establishment.

As per Article 14(1)(b), Where a Person has and habitually exercises the authority to conduct a Business or Business Activity in the State on behalf of the Non-Resident Person, such non-resident person is said to have a nexus in UAE.

'Habitually exercising authority' means consistently finalising or negotiating contracts leading to non-resident approval without significant changes. If an agent in the UAE routinely handles orders approved by the non-resident, they are deemed a dependent agent PE. Independent agents, promoting goods without contract conclusions, are not considered dependent agents.



Preparatory or Auxiliary Activities do not constitute PE:

If a fixed place of business in the UAE is used only for the following specific purposes, it does not create a permanent establishment, including:

Storing, displaying, or delivering goods for the non-resident.

Keeping goods for processing by another party.

Purchasing goods or collecting information for the non-resident.

Engaging in preparatory or auxiliary activities for the non-resident.

Combination of all the above activities, as long as the overall activity is preparatory or auxiliary.

For instance, if an Indian company sells goods directly from India but maintains a warehouse in the UAE for quick deliveries, the warehouse does not create a permanent establishment in the UAE under these rules.

Now, let's explore the fixed places which don't constitute a permanent establishment

Use of Place for Job Work

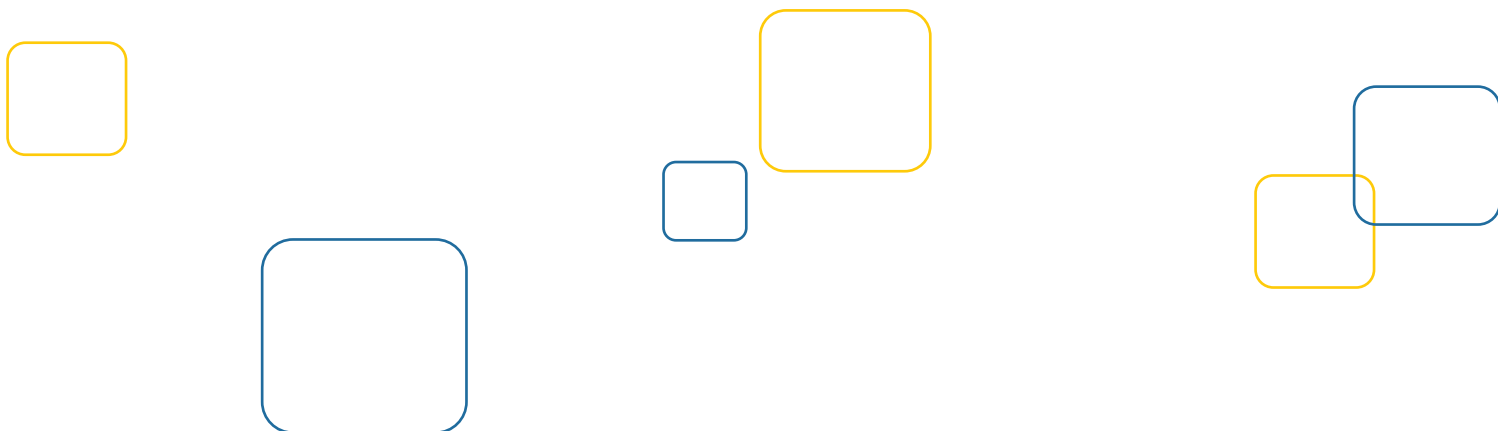
Sometimes, a non-resident utilises job work services from providers in a different country. The non-resident sends and stores goods in the job work service provider's location. This storage, specifically for processing by another party, does not create a permanent establishment.

Use of Place for Procurement

If a non-resident uses a fixed place of business only for buying goods and does not conduct sales operations there, it doesn't create a permanent establishment.

Any Other Place Used for Similar Purposes

If a place of business in the UAE is used for preparatory or auxiliary activities or a combination of such activities, it won't create a permanent establishment. The place of business should not provide services to any other entity. Also, if someone outside the area uses the location for their specific activities, it doesn't count as a permanent establishment.



Comprehensive Examples of Permanent Establishment



Fixed Place Permanent Establishment

XYZ Engineering Inc., an international firm, forms a subsidiary, XYZ Engineering Middle East LLC, in Sharjah, UAE, for a significant infrastructure project, which is responsible for making critical managerial and commercial decisions necessary for the successful execution of the project. The Sharjah branch is a fixed place Permanent Establishment (PE) per Article 14(1)(a) of the UAE Corporate Tax Law.



Dependent Agent Permanent Establishment

ABC Tech Innovations, a foreign IT company, hires Mr. Khalid in the UAE as a consultant. Mr. Khalid, with the authority to negotiate and close deals, consistently secures new tech projects for the company. This makes him a dependent agent PE under Article 14(1)(b) of the UAE CT Law.

Exemptions for preparatory or auxiliary activities

ABC Tech Solutions, a tech company in Dubai, leases a warehouse in the city to store its IT equipment. An external logistics provider manages the warehouse. This storage arrangement is considered a preparatory or auxiliary activity, per Article 14(3)(a) of the UAE Corporate Tax Law. Consequently, the warehouse does not qualify as a permanent establishment.



Exceptions to Exemption for Preparatory or Auxiliary Activities

XYZ Tech Solutions has two offices:

- 1) in Dubai, UAE
- 2) has its principal office and research facility in Abu Dhabi.

The research facility has been actively involved in significant activities related to the main office for more than six months. This collaboration goes beyond just supporting activities and forms a united business operation. According to Article 14(4)(b) of the UAE Corporate Tax Law, both places could be considered permanent establishments, meaning both the Dubai office and the Abu Dhabi facility may be liable to pay corporate taxes.

Other UAE Corporate Tax Requirements for a Non-resident person



Record Keeping And Preparation of Financial Statements

- If the non-resident person has a business presence in the UAE, they have to calculate their taxable income. Non-residents must keep their tax records for seven years after the tax period ends.
- Moreover, if a non-resident person registers for corporate tax, they need to follow the same rules as a Resident person.

Tax Return Submission

Both Resident and Non-Resident individuals must submit a Tax Return to the FTA and settle Corporate Tax within nine months after the relevant Tax Period ends.



Application of General Anti Avoidance Rules (GAAR) Provisions



The Corporate Tax Law’s Permanent Establishment rules have an anti-fragmentation provision to prevent abuse.

While there is an exemption from PE for activities of a preparatory and auxiliary nature, the CT law takes into account Action Plan 7 of the OECD’s BEPS Project on anti-fragmentation where a non-resident or its related party carries out activity in the UAE through another PE in the UAE and on the combined basis the otherwise auxiliary activities form a cohesive business operation of non-resident in the UAE.

This rule is a measure to prevent abuse where a unified business activity is intentionally broken into smaller parts. This rule ensures that businesses cannot claim each fragment as having only preparatory or auxiliary significance. Factors like geographical coherence, the nature of the activity, and the commercial reasoning behind outsourcing or fragmenting determine if the combined activities qualify as preparatory or auxiliary.



Example

For instance, if Company ABC from Country X expands to UAE and splits its operations into manufacturing, sales, and customer service in Country Y, the anti-fragmentation rule would assess the geographical connection, nature of activities, and reasons for division. If these fragmented operations still form a substantial business presence, they could be treated as a Permanent Establishment, subject to tax.

In summary, this law prevents businesses from exploiting tax loopholes by artificially fragmenting their operations, ensuring the genuineness and coherence of business activities.



Conclusion



In simple terms, understanding the relationship between Non-Resident Persons and the UAE is critical to making sense of Corporate Tax. These individuals, who could be natural or legal entities, have tax responsibilities based on their Permanent Establishment or connection in the country. For individuals, the main concern is if their business turnover goes beyond AED 1,000,000. For legal entities, the focus is on having a permanent establishment, earning state-sourced income, and creating a connection.

The idea of Nexus in the UAE, especially for non-resident legal entities, is mainly about income from Immovable Property. This covers a wide range, from land and buildings to fixtures and equipment. The tax rates on such income are set, with no tax on the first AED 375,000 and a nine per cent rate after that. Those who qualify as Free Zone Persons have specific rules under the Free Zone Corporate Tax system.

Taxable Income, whether from a Permanent Establishment or connection, is determined based on Financial Statements that follow UAE accounting standards. Resident and Non-Resident Persons must submit Tax Returns within nine months of the relevant Tax Period and keep records for seven years.

Deciding if a Permanent Establishment exists in the UAE involves various factors, including the type of business premises, installations, and dependent agents. The idea goes beyond physical locations to include effective control, like in a 'Fixed Place PE.' For a 'Dependent Agent PE,' regular contract finalisation and consistent authority in conducting business activities for the non-resident entity are essential.

To stop misuse and fragmentation, the UAE Corporate Tax Law includes measures against avoidance. The case of Company ABC shows how anti-fragmentation rules work, highlighting the need for genuine and coherent business activities. The goal is to ensure businesses can't exploit tax loopholes by artificially splitting their operations.

The idea of Nexus in the UAE, especially for non-resident legal entities, is mainly about income from Immovable Property. This covers a wide range, from land and buildings to fixtures and equipment. The tax rates on such income are set, with no tax on the first AED 375,000 and a nine per cent rate after that. Those who qualify as Free Zone Persons have specific rules under the Free Zone Corporate Tax system.



FAQs on Non-Resident Person's Nexus in UAE for CT Purposes



Ques: **Do NRIs pay double Tax?****Ans:**

No, NRIs don't pay double tax as Article 25 of the DTAA between India and UAE provides for the measures that can help eliminate double taxation on the same income for citizens of both countries:

An Indian resident who has capital or earns income as per the convention may have to pay taxes in the UAE. However, they can get a deduction of the income tax paid in the UAE, but the deduction can't be more than what they would owe in India before the deduction.

Similarly, if a UAE resident has to pay taxes in India under the agreement, they can get a credit for the income tax paid in India from their UAE tax obligation.

Ques: **Is there a Double Taxation Avoidance Agreement (DTAA) between India and UAE?****Ans:**

Yes, a Double Taxation Avoidance Agreement (DTAA) exists between India and UAE. The India-UAE Double Taxation Avoidance Agreement (DTAA), formed in 1993, has been crucial in preventing double taxation and fostering economic collaboration. This pact addresses different taxes like income, wealth, and capital gains, offering clarity and relief to taxpayers in both countries. The agreement has enhanced the strategic and economic ties between India and the UAE by easing investment, technology transfer, and job creation.

About FAME Advisory



Fame Advisory DMCC is a leading corporate tax service provider specializing in the dynamic United Arab Emirates market.

Founded and directed by our visionary leader, CA Nirav Shah, FAME is dedicated to enhancing the overall tax compliance landscape of the UAE through widespread awareness and promoting a culture of tax adherence. With three decades of experience and Mr. Nirav Shah at its steering wheel, FAME stands as UAE's most trusted tax advisory firm.

Our relentless efforts are dedicated to shielding businesses from non-compliance and penalties, irrespective of their scale. We achieve this by crafting operational methodologies rooted in UAE's tax rules and regulations.



Driven by a highly motivated team of taxperts with extensive knowledge of the UAE's tax regime, we adopt a client-oriented approach to deliver tailored tax solutions.

We can also assist our clients with several other services, such as VAT compliance, family succession planning, business setup in the UAE, corporate group structure and governance.

When you choose FAME Advisory DMCC, you're not just partnering with a tax service provider – you're aligning with a team committed to delivering unparalleled expertise and personalised solutions to meet all your corporate tax and business needs in the UAE.

we provide a wide range of corporate tax services such as:

Corporate tax impact assessment

Corporate tax advisory

Transfer Pricing

International Taxation

Corporate tax registration

Corporate tax return filing

Tax residency certificate

Tax clearance certificate

Corporate tax representation and litigation support

ESR notification and report filing

VAT health checkup

VAT registration and filing

Accounting and bookkeeping

Company formation services

Branch registration of foreign corporations

Establishment of trusts and foundations

Corporate group structure and governance

Meet Our Team



Mr. Nirav Shah

Director at FAME Advisory

With over two decades of experience in corporate advisory, consultancy, and compliance, CA Nirav Shah is a qualified Chartered Accountant and a stalwart in the industry, being recognized as amongst the top corporate structuring, international tax, and compliance experts in the UAE, India, and other countries. For more than 15 years, Mr Nirav has had a distinguished journey consulting global clients on Corporate Structures and Governance and family asset holding structures and has served as a specialist in providing strategic inputs to organizations.



Hemang Agravat

Manager - Business Development

As a Business Development Manager at FAME, Hemang has had a long professional career with a focus on growing the company's client base. He holds a successful track record of nurturing clients & has been instrumental in building high-performing teams. He specializes in building programs that add value to the clients relationship. Hemang brings in a wealth of experience bridging the gap between Sales & Advisory teams.



Udit Chokshi

Senior Corporate Trainer - Accounting, Tax & Accounting Software

Udit has been working with FAME Advisory since 2014 & has been entrusted with the responsibility of the Corporate Training division for the company. He supervises a team of 6 & has a proven track record of managing 40 plus VAT Returns monthly with his team. During his career, Udit has held a pivotal role in executing training projects for the company with a result-oriented approach while building high-performance teams & collaborating across departments.

FAME

ADVISORY

+971 52 6559480

hemang@fame.ae

www.fame.ae



Follow on us:

