

# Tax Loss Relief

## UAE Corporate Tax Law

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☎ +971 52 6559480  
✉ [hemang@fame.ae](mailto:hemang@fame.ae)  
🌐 [www.fame.ae](http://www.fame.ae)

# Table of Contents

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1. What Is Tax Loss and Tax Loss Relief Under UAE Corporate Tax Law? .....	1
2. What is Tax Loss? .....	1
3. What is Tax Loss Relief? .....	1
4. Circumstances of Non-availability of Tax Loss Relief Under UAE Corporate Tax Law .....	3
5. Limitations for Tax Loss Relief Under UAE Corporate Tax Law.....	5
6. Can Tax Loss Relief Under UAE Corporate Tax Law be Carried Forward for an Indefinite Period? .....	7
7. Transfer of Tax Loss between the Taxable Persons.....	10
9. Case Study .....	13
8. Seeking Professional Help to Manage Your Tax Loss Relief .....	15
9. Conclusion .....	17
10. About FAME Advisory FZCO.....	19

# What Is Tax Loss and Tax Loss Relief Under UAE Corporate Tax Law?

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Businesses may experience losses during the initial startup phase while it is investing in growing their Business, or sometimes mature businesses may make a loss over a period because of a temporary, adverse trading environment.

UAE Corporate tax law recognizes this very well and that's why corporate tax is calculated on a company's overall profitability throughout its existence and not just on a single year's income.

It is also in line with international practice across the world that allows the taxable person to offset its loss incurred in one period against the taxable income of future period.

## What is Tax Loss?

A tax loss refers to a loss, as per the tax laws, that a business incurs in a particular tax period. It occurs when a Taxable Person's deductible expenses under the tax law exceed its income in a particular financial period.

## What is Tax Loss Relief?

As per Article 37, Tax loss relief in the UAE's corporate tax law allows businesses to offset losses from one tax period against taxable income in subsequent tax periods to arrive at the taxable income for that subsequent tax period.

# Circumstances of Non-availability of Tax Loss Relief Under UAE Corporate Tax Law

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**Under the following circumstances, tax loss relief is not available:**

- ▶ Losses incurred before the date of commencement of UAE Corporate Tax Law
- ▶ Losses incurred by a Person before becoming a Taxable Person under the UAE Corporate Tax Law.
- ▶ Losses incurred from an asset or activity, the income of which is exempt under the UAE Corporate Tax Law.

# Limitations for Tax Loss Relief Under UAE Corporate Tax Law

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## Tax Loss Relief Maximum Amount:

A Taxable Person can carry forward Tax Losses and offset them against Taxable Income in subsequent Tax Periods, subject to meeting certain conditions.

The amount of tax loss that is allowed to offset against the taxable income of that subsequent period cannot exceed 75% of the taxable income of that subsequent period before claiming any tax loss relief against the taxable income.

## Tax Loss Relief Maximum Period:

The CT law does not provide any restriction on the number of years for which the tax relief would be set off. Accordingly, the tax loss can be carried forward for an indefinite period.

This implies that every profit-making business would be liable to pay tax on the remaining twenty-five per cent of the income after adjustment of losses or full profit if there are no previous losses, while loss-making businesses will carry forward their losses for an unlimited time.

According to Article 37 of the UAE CT Law, the tax losses can be carried forwarded to subsequent tax period for set off.

However, Article 39 imposes certain restrictions on the carry and forward of the utilization of the Tax Loss. Tax losses can be carried forward from one Tax period to a subsequent tax period only if the following conditions are satisfied:

### Continuity of Ownership Requirement:

The UAE CT Law discourages the trading of loss. Acquisition of an entity just for the purpose of utilization of its tax loss is not permissible under the Act.

The CT law allows carry forward and set off of loss only if the same person or persons continues to hold at least 50% ownership interest in the taxable person throughout from the beginning of the tax period in which the tax loss is incurred to the end of the tax period in which the tax loss or part thereof is offset against taxable income.

For example, Company ABC and Company DEF are unrelated entities. Company ABC, incorporated in the UAE, incurs a tax loss of 2 million AED in its tax period. Company DEF approaches Company ABC with the intention of acquiring it solely for the purpose of utilising Company ABC's tax loss.

- ▶ In the above situation, Company DEF's acquisition of Company ABC solely for the purpose of utilizing its tax loss would not be permissible under the UAE CT Law.

### Continuity of Business Requirements:

In case of a change in ownership interest, the taxable person shall be allowed to carry forward and set off the losses only if the taxable person continues to conduct the same or similar business or business activity in which the loss was incurred. The following factors would be relevant to determine the continuity of the same or similar business or business activity.

- ▶ The taxable person utilises some or all the assets as before the change in ownership
- ▶ The taxable person has not made any significant changes to the core operations or identity of the business

The loss can be allowed to be carried forward and set off in case of change in the core identity or operations of the business, if the changes are resulting from of the exploitation or development of services, assets, resources etc. that existed before the change in ownership.

### **Special Conditions for Listed Companies:**

The limitation on tax losses carried forward as per Article 39 will not apply where the shares of the Taxable Person are listed on the Recognised Stock Exchange.

# Transfer of Tax Loss between the Taxable Persons

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As per Article 38 of the UAE CT Law, The Tax Loss may be transferred between the two Taxable persons where all of the following conditions are satisfied:

### 1. Both the taxable persons, transferor and transferee, should be juridical persons

Transferor	Transferee	Is transfer allowed?
Company	Company	Yes
Company	Shareholder	No
Shareholder	Company	No
Mother	Son	No

### 2. Both the taxable persons should be tax residents of the UAE.

Transferor	Transferee	Is transfer allowed?
Resident	Resident	Yes
Resident	Non-Resident	No
Non-Resident	Non-Resident	No
Non-Resident	Resident	No

### 3. Common Ownership Interest:

The taxable person should have an ownership interest of at least 75% in another taxable person directly or indirectly. Thus, a subsidiary can also transfer the tax loss to a parent company or vice versa, subject to the fulfilment of 75% ownership criteria. Further, the transfer of loss is allowed to a sister concern, commonly controlled by a third person directly or indirectly.

**For example,** X Ltd., an Indian company, holds 80% of two UAE-based companies, Y Ltd. and Z Ltd. Y Ltd. and Z Ltd. can transfer the tax loss internally as both the companies are controlled by a common ownership interest to the extent of 75% or more by a common company X Ltd.

## 4. Continuous Ownership Interest:

The 'common ownership' of 75% in both taxable persons should exist from the start of the tax period in which the tax loss is incurred to the end of the tax period in which the loss is transferred.

## 5. Both Taxable Persons are not Exempt Persons

- ▶ Both the Taxable person's financial year should end on the same date
- ▶ Both Taxable Persons prepare their Financial Statements using the same
- ▶ accounting standards

# Case Study

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Here is the case study which calculates the maximum amount of loss which can be transferred and utilised as per the facts provided:

AXE Ltd. holds 77% shares of WYE Ltd.

- ▶ In tax period 1, AXE Ltd. suffered a tax loss of 200,000 AED.
- ▶ In tax period 2, AXE Ltd. generated a taxable income of AED 60,000.
- ▶ In tax period 2, WYE Ltd. earned a taxable income of AED 75,000.

Tax Period	AXE Ltd. Tax Loss	AXE Ltd. Taxable income	Loss Set-off	WYE Ltd. Taxable Income	Max. loss transferrable to WYE Ltd.	Loss Carried Forward
1	200,000	-	-	-	-	200,000
2	-	60,000	45,000 (60,000 x 75%)	75,000	56,250 (75,000 x 75%)	98,750 (200,000 - 45,000 - 56,250)

In the above scenario, AXE Ltd. has brought forward a loss of AED 200,000 in tax period 1, which shall be carried forward to tax period 2. As per Article 37(4), the brought forward loss shall be utilised first against the taxable income of AXE Ltd. Accordingly, the maximum loss which can be offset against the taxable income of tax period 2 is 45,000 AED (75% of 60,000 AED).

Since AXE Ltd. owns more than 75% of shares of WYE Ltd., a resident taxable person, the tax loss of AXE Ltd. can be transferred and utilised to offset the taxable income of WYE Ltd. However, the quantum of loss cannot be more than 75% of the taxable income of WYE Ltd. Hence, AXE Ltd. can transfer a tax loss of up to 56,250 AED. (75% of 75,000 AED).

The remaining tax loss of 98,750 AED (200,000 AED – 45,000 AED – 56,250 AED) can be carried forward by AXE Ltd. to the tax period 3.

# Seeking Professional Help to Manage Your Tax Loss Relief



The UAE Corporate Tax Law provides various tax loss relief provisions that can be strategically utilised to minimize a company's tax burden. However, understanding these regulations can be complex, especially for businesses which are unfamiliar with UAE tax law.

However, a tax consultant can help in the following manner:

### **Maximizing Tax Loss Relief:**

A consultant can make sure that the business claims all eligible tax losses and understands the rules of carry-forward of losses and their limitations.

### **Compliance with Ownership and Business Continuity Rules:**

Tax consultants can advise on maintaining the required ownership structure and business continuity to qualify for tax loss relief.

### **Optimizing Loss Transfer Between Group Companies:**

Consultants can guide businesses on fulfilling the conditions for transferring tax losses between group companies under the 75% ownership rule.

### **Mitigating Tax Risks:**

Tax Consultants can help in identifying potential issues and ensure that tax loss claims made by the company is as per the UAE Corporate tax law's regulations and provisions.

# Conclusion



Tax loss relief provisions under Articles 37, 38, and 39 of the UAE Corporate Tax Law serve as vital tools for businesses to manage their tax liabilities effectively. By allowing the offsetting of losses against future taxable income, UAE CT Law promotes investment, entrepreneurship, and economic growth.

However, it's crucial to understand the conditions and limitations drafted in these provisions. The requirement for continuity of ownership and business activities ensures that tax relief is granted within a legitimate business context, and it strongly prevents the abuse of this mechanism to gain any kind of false advantage by way of availing of the wrong tax loss relief.

Also, the ability to transfer tax losses between related entities under certain conditions helps the business in strategic tax planning within the corporate groups. Compliance with these regulations demands a deep understanding of UAE tax law and due to such complexities taking professional assistance from tax consultants is very much required. FAME being a leading Tax consultant in UAE, offers expertise in maximizing tax loss relief, ensuring compliance with ownership and business continuity rules, optimizing loss transfers between group companies, and also mitigating tax risks.

# About FAME Advisory FZCO

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**FAME**  
ADVISORY

With three decades of market presence, FAME Advisory has remained the UAE's most trusted and leading tax advisory and management firm.

Along with that, FAME excels in various domains, such as corporate services, succession planning, and corporate structuring. Our primary aim is to align our solutions with the client's problems, educate them, and empower them to take informed decisions.



### Vision

To be the region's first choice for tax compliance and advisory in various aspects of the business.



### Mission

We at FAME Advisory aim to solve businesses' tax compliance issues and provide advisory services that help them achieve the milestones they dreamt of.

# 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.



## Udit Chokshi

Senior Manager VAT and Compliance Services

Udit Chokshi is a Taxpert, helping businesses all across the UAE in getting tax audit-ready, streamlining their VAT and accounting processes, and shield them against tax evasion. Being an active listener, Udit absorbs and understands the client's problem and situation and communicates the facts and solutions honestly.

As a customer service-oriented person, he believes in providing utmost dedication and availability to customers.

# Our Team



## CA Juned Halai

Manager Corporate Tax Services



With enriched experience in Corporate Tax at FAME, CA Juned Halai, provides strategic tax advisory services to a diverse portfolio of domestic and international clients. Specializing in tax planning, he has a proven track record of optimizing tax liabilities and enhancing client profitability. Skilled in navigating complex regulatory frameworks, he offers expert tax guidance to multinational corporations and local businesses across the UAE and GCC region, ensuring compliance while maximizing tax efficiency.

He is actively engaged with international clients to provide expert advice on various international tax issues.



## Hemang Agravat

Senior Manager Corporate Services



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 client relationships. Hemang brings in a wealth of experience bridging the gap between Sales & Advisory teams.



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ADVISORY

☎ +971 52 6559480

✉ [hemang@fame.ae](mailto:hemang@fame.ae)

🌐 [www.fame.ae](http://www.fame.ae)

📍 Suite 405, Office Court Building,  
Oud Metha Road Bur Dubai,  
P.O. Box 103904, Dubai, UAE.