

\_\_\_\_.\_\_\_\_.2023

**The Federal Tax Authority**

**Re: TRC for Company established less than 1 year ago**

Dear Sir/Madam,

We kindly ask you to issue a Tax Residency Certificate which confirms that \_\_\_\_\_ L.L.C.<sup>1</sup> is a tax resident of the UAE for the purpose of the Agreement Between the Government of the Republic of Poland and the Government of the United Arab Emirates for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion With Respect to Taxes on Income and Capital (referred below as the "**DTT**").

We do not attach our audited financial statements as the Company was set up (registered) on \_\_\_ March 2023 and its first financial year ends on 31 December 2023<sup>2</sup>. We enclose the Memorandum of Association and Commercial License to prove these facts.

According to Art. 87 of the Commercial Company Law<sup>3</sup> *'the manager of the Company shall prepare the annual balance sheet and the profit and loss account, and he shall also prepare an annual report on the activity and financial position of the Company ... within (3) three months from the end of the fiscal year'*. As the 1<sup>st</sup> fiscal year hasn't yet expired, the financial statements may be not prepared and submitted.

Indeed, para 3.2 of the FTA's [Taxation Residency Certificate \(TRC\) User Guide](#) sets out that *'in order to be eligible to apply for a TRC, the legal person must have been established for a period of at least one year. Financial accounts must be audited or prepared by an accredited audit firm and attached with other required documents to the application. The report must be certified and stamped by the audit firm. The audited financial report to be attached to the application must cover the year for which the certificate is requested. If the certificate is requested for the present year, the audit report must be covering the past year'*.

---

<sup>1</sup> Referred below as the Company

<sup>2</sup> Art. (11) of the enclosed Memorandum of the Association.

<sup>3</sup> Federal Decree-Law No. 32/2021

However, this Guide was issued in 2021, i.e. long before:

- 1) Corporate Tax was introduced in the UAE by Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses. This Law recognizes a legal entity as a tax resident in the UAE regardless of the time period that has expired since this entity was incorporated. Paragraph (a) of Cl. (3) of Art. 11 of this Law determines 'a Resident Person' as 'a juridical person that is incorporated or otherwise established or recognized under the applicable legislation of the State, including a Free Zone Person'.
- 2) Cabinet Decision No. 85 of 2 Sept 2022 became effective (1 Mar 2023). Article 2 of this Decision specifies the 'Objectives of the Decision' as 'to determine the requirements and conditions for identifying a Person as a Tax Resident in the State'.

As per Art. 3, 'a juridical person shall be considered a Tax Resident in the State in either of the following cases: 1. It was incorporated, formed or recognised in accordance with the legislation in force in the State, and that does not include the branch that is registered by a foreign juridical person in the State. 2. It is considered a Tax Resident in accordance with the Tax Law in force in the State'. Both of these conditions are met as:

- a) the Company is incorporated in the State,
- b) It is considered a Tax Resident in accordance with the Corporate 'Tax Law in force in the State' cited above.

Meanwhile, Art. 6 (1) of Cabinet Decision No. 85 (2022) sets forth that 'if any International Agreement sets out certain conditions for determining the tax residency, the provisions of that International Agreement on determining the tax residency shall apply for the purposes of this International Agreement'.

According to the Art. 4(1) of the UAE-Poland DTT 'for the purposes of this Agreement, the term "resident of a Contracting State" means a person **who is under the laws of that State, is liable to tax** therein by reason of his **domicile, residence, place of management or any other criterion of a similar nature**'. Liability to UAE Corporate Tax is confirmed in the attached Certificate of Registration for Corporate Tax in the United Arab Emirates issued by the FTA on 31 May 2023. It sets the effective date as 1 June 2023, and the Corporate Tax Period as January-December.

As per Art. 93(2)(d) of the UAE Civil Code<sup>4</sup> "the domicile of a juristic person is the place where its administration set-up is situated". The enclosed Commercial License and the Tenancy Contract substantiate that 'administration set-up is situated' in the UAE.

---

<sup>4</sup> Federal Law No. 5/1985 "On the Civil Transactions Law of the United Arab Emirates State"

Therefore, *'under the laws of that State'*, the Company *'is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature'*. Hence the Company meets the definition of the resident of the UAE given by Article 4(1) of the DTT.

Article 5(1) of Cabinet Decision No. 85 (2022) stipulates that a *'Person who is considered a Tax Resident in the State in accordance with the provisions of Articles 3 ... of this Decision, may make an application to the Authority for the purpose of issuing a Tax Residency Certificate to that Person'*. Compliance with these conditions is substantiated by the enclosed documents. Financial statements not being attached and a lack of evidence to prove that at least one year has expired from the date of establishment:

- neither affect the terms specified in Art. 3 of Decision No. 85,
- nor obstruct the Company from applying the UAE-Poland DTT.

Both of the above do not make tax residency benefits and obligations conditional on the expiration of a one-year term. There is no potential data in the financial statements, which may terminate the Company's status as a person liable to Corporate Tax in the UAE. Therefore, the Company has this status even if it fails to prepare the financial statements and (or) have it audited. Hence, an information in the financial statements has no relevance for certifying the legal fact of residency determined by Art. 4(1) of the DTT.

Article 5(2) of the of Cabinet Decision No. 85 (2022) requires that an application for tax residency be submitted *'in accordance with the form and manner specified by the Authority'*. The FTA's Guide mentioned above determines that an application should be submitted electronically *'through the Federal Tax Authority (FTA) Taxation Residency Certificate website'* where an applicant is to *'complete ... [the] registration form'*. This letter is attached to the form duly completed and submitted through the website specified by the FTA. Thus, the Company fulfilled its obligations under Art. 5(2) of Decision No. 85.

Art. 5(3) of same Decision allows the FTA to *'approve the application and issue the Tax Residency Certificate'* *'if the Authority is satisfied that the applicant meets the requirements set out in Articles 3 ... of this Decision and that the application was submitted in accordance with Clause 2 of this Article'*. As substantiated above, all rules mentioned in this Clause are duly fulfilled as neither of them refers to the expiry of a period from the date of establishment.

All that is described above doesn't hinder the FTA from exercising its right to request any documents from a person. However, Art. 8(2) circumscribes the Authority's *'jurisdiction'* as *'to issue clarifications and directives for **implementing** any of the provisions of this Decision'*. Therefore, rules of the above-mentioned Guide may not be construed in a way that prevents the Cabinet Decision and International Agreement from being implemented.

The same conclusion ensues from Article (4) of [Federal Decree-Law No. 13/2016](#) "On the Establishment of the Federal Tax Authority". It stipulates that *'the Authority shall have jurisdiction ... **to apply** the Tax Procedures applicable in the State. For this purpose, it shall have the following Jurisdictions: 1. **Implement applicable laws and regulations related to Federal Taxes ... 3. **Implement Double Taxation treaties** ratified by the State... 17. Issue certificates related to Federal Taxes'***. Therefore, the issuance of the certificates shall be governed by applicable legislation. Hence, the general rule from the Guide is not to be applied in a way that is not in line with particular facts, a specific International Agreement or amendments to legislation that appeared after the Guide was issued.

We kindly ask you to factor in the regulations and facts given above and approve the issuance of the tax residency certificate. The Company is set up in the UAE and operates here. We are all set to contribute value in the Emirates and ask for the State's protection secured by the UAE government through the International Agreement (DTT).

Kind regards,

---

Manager