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## **Similar Entities to gain Family Foundation Exemption**

The UAE's Corporate Tax Law has introduced beneficial provisions for Family Foundations, trusts, and similar entities, offering these structures the potential to attain tax-transparent status. However, while the law allows this benefit for entities deemed "similar," it provides little guidance on what characteristics or features qualify an entity as such. This ambiguity raises critical questions about how to define similarity in the context of family wealth management, succession planning, and tax structuring.

This research aims to address this gap by exploring the key attributes that make an entity "similar" to a foundation or trust under the UAE Corporate Tax regime. By examining global jurisdictions such as Liechtenstein and analyzing the concepts of transparency versus opacity, the article seeks to establish the essential features that should be present in any entity aiming to qualify for tax transparency. This analysis extends to various structures in free zones like ADGM, DIFC, DWTC, DMCC, and RAK ICC, as well as mainland family business entities and trust, evaluating their potential to be considered similar entities.

As families look for efficient ways to protect and manage their wealth, understanding the criteria that define similar entities is crucial for structuring personal and real estate investments in a tax-efficient manner. This article offers a review of these issues, aiming to clarify the legal and tax implications for family businesses and investment entities in the UAE.

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### **General definition**

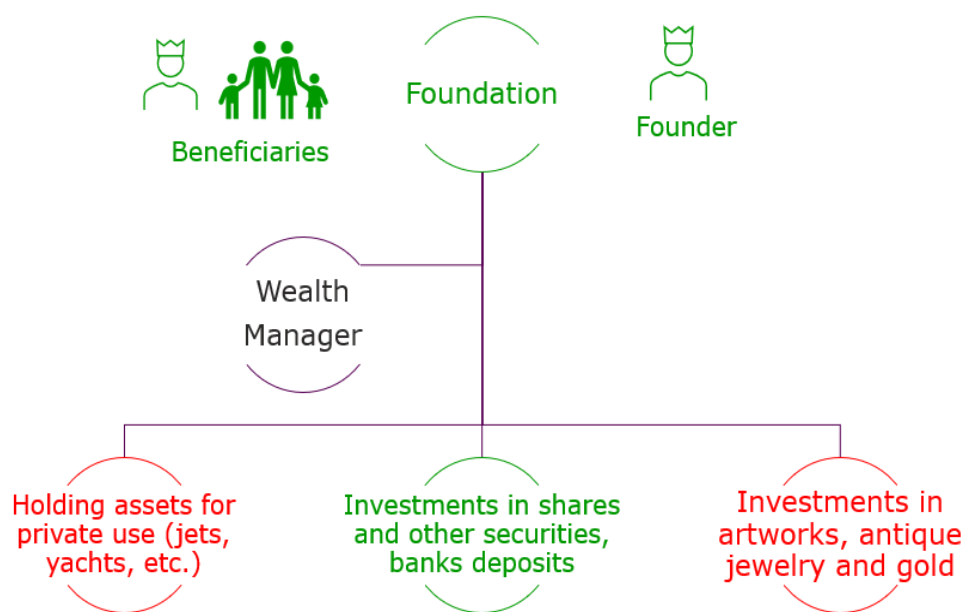
1. Article 1 of the [Corporate Tax Law](#) defines Family Foundations as '*any foundation, trust or **similar entity** that meets the conditions of Article 17 of this Decree-Law*'. The latter provides for the following conditions in Clause 1:
  - a) The Family Foundation was established for the benefit of identified or identifiable natural persons, or for the benefit of a public benefit entity, or both.
  - b) The principal activity of the Family Foundation is to receive, hold, invest, disburse, or otherwise manage assets or funds associated with savings or investment.
  - c) The Family Foundation does not conduct any activity that would have constituted a Business or Business Activity under Clause 6 of Article 11 of this Decree-Law had the activity been undertaken, or its assets been held, directly by its founder, settlor or any of its beneficiaries.
  - d) The main or principal purpose of the Family Foundation is not the avoidance of Corporate Tax.
  - e) Any other conditions as may be prescribed by the Minister.
2. It is noteworthy that neither condition explicitly requires a family relationship. Para (a) requires the identifiability of beneficiaries. The sole requirement to their identity is that



they must be either individuals or public benefit entities. A kinship is not a must.

3. A Family Foundation can apply to the FTA to be treated as an Unincorporated Partnership, thereby exempting it from being subject to Corporate Tax in its own right. If the application is approved by the Authority, the beneficiaries of the Family Foundation will be regarded as directly owning or benefiting from its activities and assets for the purposes of the Corporate Tax Law.<sup>1</sup> In this case, the Family Foundation will be treated as “tax transparent”.<sup>2</sup>
4. On October 28, the Minister issued Decision No. [261](#). Article 5(2) of this decision expands the scope of entities eligible for tax transparency, allowing any juridical person wholly owned and controlled by a Family Foundation (whether directly or indirectly through an uninterrupted chain of Unincorporated Partnerships) to apply for transparent status.

The figure below illustrates these changes:



**Green Entities** could technically benefit from a 0% rate but faced nearly impossible compliance burdens.

**Red Entities** remain outside the 0% rate scope. Real estate income often doesn't qualify, and income from investments in artwork, jewelry, or antiques is excluded.

Under the earlier rules, foundations often had to hold assets by itself to avoid tax leakage. The new decision allows all entities in the above fig-

<sup>1</sup> Ministerial Explanatory Guide, May 2023, p. 48.

<sup>2</sup> General Corporate Tax Guide No. [CTGGCT1](#), Sec. 5.6.

ure (except for the Wealth Manager) to apply for tax transparency, offering relief from compliance challenges tied to zero-rating. Even entities eligible for the 0% rate can benefit from reduced compliance burdens with transparency status.

### ***Transparent vs. Opaque***

5. The distinction between transparent and opaque entities directly affects how these entities are taxed and whether their income flows through to the beneficiaries or remains taxed at the entity level.
6. A “transparent entity” is one where the entity itself is not considered a separate taxpayer. Instead, the income earned by the entity is attributed to its beneficiaries or owners, who are taxed individually on their share of the income. In the context of Family Foundations, transparency implies that the entity's role is primarily administrative—holding or managing assets without generating a separate taxable income for the entity itself. The income or gains from the assets are treated as belonging to the beneficiaries or founders, potentially qualifying for tax exemptions, such as those for personal or real estate investments.
7. In contrast, an “opaque entity” is treated as a separate legal person for tax purposes. The entity is liable for tax on the income it generates, irrespective of how that income is distributed or retained. Family Foundations that do not meet the transparency conditions under the Corporate Tax Law fall into this category, making them subject to Corporate Tax on their earnings (unless exempted by a special rule, which is conditioned by multiple requirements). In such cases, the beneficiaries would not be directly taxed on the entity’s income but would be subject to tax on dividends or distributions when they are paid out.
8. Currently, withholding tax on such distributions is subject to a 0% rate. Furthermore, dividends received from a UAE-resident legal entity are unconditionally exempt. Individuals are also shielded from tax by the Personal Investment and Real Estate exemptions.<sup>3</sup> Therefore, Corporate Tax will not arise if these incomes are received by an individual, whether residing in the UAE or in another jurisdiction with similar tax features, directly.

The transparent status enables a similar tax treatment when investments are made through an entity that holds this status. In contrast, using an opaque entity as an investment vehicle introduces an additional level of taxation. Although some income may be exempt or taxed at a zero rate at the entity level, this is not always the case.

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<sup>3</sup> See details in our study, *“Personal and Real Estate Investments Exceptions in the UAE Corporate Taxation,”* available via this [link](#).

For example, income from investments in non-commercial real estate is excluded from Free Zone relief and does not fall under any other tax benefit. A similar limitation applies to investments in commercial real estate located in the mainland or a Free Zone that does not qualify for the zero rate.<sup>4</sup> Likewise, investments in gold, artwork, or antiques may be exempt at the personal level but become taxable when held by an opaque legal entity.

9. Therefore, the distinction between transparency and opacity is crucial, as it determines the tax treatment of income derived from various activities, including investment management, property holdings, and family wealth structuring. Understanding this distinction is key for families and their entities seeking to optimize their tax status under the UAE's evolving legal framework. The challenge lies in ensuring that entities meet the conditions for transparency, particularly when the law lacks explicit criteria for assessing the similarity of non-traditional structures to Family Foundations and trusts.

### ***Key Features of Trusts and Foundations***

10. As mentioned, the UAE Corporate Tax Law allows Family Foundations, trusts, and "similar entities" to apply for tax transparency if certain conditions are met, such as limiting their activities to holding, investing, and managing assets for savings or investment purposes. However, the lack of detailed guidelines on what constitutes a "similar entity" introduces complexities in determining whether an entity can qualify for transparency.
11. The [definition](#) of Family Foundation allows to conclude that:
  - 1) status of the foundation or trust is not required to be treated as Family Foundation. Any entity may be considered a Family Foundation if it:
    - is similar to foundation and trust, and
    - meet the conditions listed above.
  - 2) Vice-a-versa, the foundations and trusts are not considered as Family Foundation if the conditions listed above are not met.
12. Neither the Law nor by-laws specify which features an entity shall have to be similar to a trust and foundation.
13. The term "trust" refers to *'the legal relationships created – inter vivos or on death – by a person, the settlor, when assets have been placed under the control of a trustee for the benefit of a beneficiary or for a specified purpose'*. A trust has the following characteristics:

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<sup>4</sup> So far, only a few free zones have confirmed their qualification for the Free Zone Corporate Tax relief. See further details [here](#).

- a) *the assets constitute a **separate fund and are not a part of the trustee's own estate**;*
- b) *title to the trust assets stands in the name of the trustee or in the name of another person on behalf of the trustee;*
- c) *the **trustee has the power and the duty, in respect of which he is accountable, to manage, employ or dispose of the assets in accordance with the terms of the trust** and the special duties imposed upon him by law.*

*The reservation by the settlor of certain rights and powers, and the fact that the trustee may himself have rights as a beneficiary, are not necessarily inconsistent with the existence of a trust'.<sup>5</sup>*

14. DIFCA quoted<sup>6</sup> Lord Justice Millett's discussion of the nature of the trustee's obligations to address DIFC Trust issues. In *Armitage v Nurse*, his Lordship referred to "*...an irreducible core of obligations owed by the trustees to the beneficiaries and enforceable by them which is fundamental to the concept of a trust. If the beneficiaries have no rights enforceable against the trustees there are no trusts*".<sup>7</sup>
15. As per the DIFC Court of Appeal,<sup>8</sup> the concept of the Foundation has traditionally been associated with Liechtenstein since 1926. It is a form of legal entity known in most continental European jurisdictions though in most cases limited to charitable purposes.
16. On 22 September 2016, the Minister of Finance of Qatar issued [Foundation Regulation](#) for Qatar Financial Centre (QFC). As per the QFC, '*except as provided in the QFC Foundation Regulations, a Foundation has the capacity, rights and privileges of a natural person*'.<sup>9</sup> QFC advise to use foundations for individuals looking for asset protection and confidentiality or a solution for estate and succession planning whereby the Founder can retain control of the assets.<sup>10</sup>
17. In March 2018, the DIFC followed the Qatar Financial Centre (QFC) adopting Foundation Law No. [3/2018](#). The ADGM enacted [Foundation Regulation](#) in 2017, although the models of the foundation in ADGM are not identical with DIFC.

In 2019, the Ras Al Khaimah International Commercial Centre (RAKICC) also enacted [Foundations Regulations](#) which were largely based on the

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<sup>5</sup> Article 2 of the the Convention on the Law Applicable to Trusts and on their Recognition done at The Hague on 1 July 1985.

<sup>6</sup> Judgement of the DIFC Court of Appeal N<sup>o</sup> [CA 002/2020](#) of 18 January 2021, para 101.

<sup>7</sup> *Armitage v Nurse* [1998] Ch 241, 253.

<sup>8</sup> Judgement of the DIFC Court of Appeal N<sup>o</sup> [CA 002/2020](#) of 18 January 2021, para 102.

<sup>9</sup> <https://www.qfc.qa/en/registering-a-company/products-structures/foundations>

<sup>10</sup> *Ibid.*

DIFC Foundations Law. The DIFC legislation and its RAKICC equivalent also drew upon European sources.

DIFCA drew particular attention to the number of features of the DIFC Foundations Law which have no counterparts in either the QFC or the ADGM. The provision for depositary certificates modelled on the Netherlands STAK (Stichting Administratiekantoor) is one of them.<sup>11</sup>

STAK structures are generally set up in order to separate control over certain assets from the financial interest attributable to those assets. That is done by transferring assets to the STAK in return for which the STAK issues depositary receipts in respect of those assets to the transferor. *'The STAK then becomes the legal owner of the assets but under a contractual relationship **it will hold those assets for the risk and account of the holders of the depositary receipts rather than for its own risk and account. The depositary receipt holders will have the economic benefit of the assets through the depositary receipts while, from a legal perspective, the STAK (as legal owner) will have full control over the assets***'.<sup>12</sup>

It could be hardly treated as different with RAKICC where the Regulation also contains the provisions on depositary receipts.<sup>13</sup>

18. In ADGM, foundations *'provide a mechanism to consolidate family holdings of various assets into a single top holding entity. Using a Foundation to hold family assets, whether business interests, property, financial investments or any other assets, allows very clear instructions to be legalised as to the transfer of assets upon succession*'.<sup>14</sup> One of the main declared feature of this regime is *'in-built governance controls to safeguard the wishes of the Founder*'.<sup>15</sup> The rationale for this is that *'having clear wishes and plans set out in the Foundations Charter and By-Laws makes succession arrangements far less challenging, and helps avoid many of the common issues that arise upon the death of a senior family member. Establishing a Foundation ensures a far higher degree of certainty and comfort that assets will be distributed in accordance with the Founder's wishes, with the life of the Foundation continuing perpetually after the Founder's death*'.

Besides, a Foundation in ADGM, *'operates like a common law trust yet has features more similar to a company*'.<sup>16</sup> That allows to link nature of the trust and foundation.

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<sup>11</sup> Judgement of the DIFC Court of Appeal N<sup>o</sup> [CA 002/2020](#) of 18 January 2021, para 103.

<sup>12</sup> Ibid, 104.

<sup>13</sup> [RAKICC Foundation Regulations](#), Reg. 29.

<sup>14</sup> [ADGM Foundation Regime Brochure](#), p. 2

<sup>15</sup> Ibid, p. 3

<sup>16</sup> Ibid.

19. All these allow to suggest that an entity is similar to trusts and foundations if:
- 1) it holds the property in its name, i.e. legally owns it, but on behalf of another person;
  - 2) it inherits this dual status from the law and (or) regulations, memorandum (articles) of association or other constitutional documents;
  - 3) its activity concurs to the instructions of the settlor (founder) embodied in the constitutional documents;
  - 4) the settlor (founder) doesn't have equity rights in respect of this entity.

The latter condition put substantial part of the family entities aside of the definition of Family Foundation.

Indeed, Art. 1 of the Federal Family Businesses Law No. [37/2022](#) defines "Family Business" as *'every **company incorporated in accordance with the provisions of the Companies Law, in which most of the shares or stock are owned by persons belonging to a single family...**'*. This definition may include any holding company which shares are belonged to a single family. However, such company is not similar to trust and foundation in terms of equity component because these two neither issue shares (stock) nor their equivalents.

### **"Similar" vs "Same"**

20. However, being similar is not the same as being identical. If all the attributes of a trust or foundation are present, then the structure should be recognized as a trust (or foundation) rather than as another similar entity.

This raises the question: which of the [above](#) features are necessary to establish similarity, and which can be disregarded?

21. To answer this, we can exclude:

- Attributes of trusts that are not present in foundations, and
- Attributes of foundations that are incompatible with a trust structure.

The absence of these attributes has not prevented trusts and foundations from being included in the definition of a Family Foundation. Therefore, they should not hinder other types of entities from being considered similar. This allows us to exclude the following from the comparison:

- Contractual basis. Trusts are based on a trust deed, while foundations are based on a charter and by-laws, which are constitutional documents.
- Fiduciary obligations. In a traditional trust, the trustee owns the property but has a fiduciary duty to use it in the best interest of the



beneficiaries, rather than for the trustee's or owners' interests. In ADGM, RAK ICC, DIFC foundations, and mainland trusts, trustees and councils assume a fiduciary duty toward the foundation (or mainland trust).

22. On the other hand, attributes present in mainland trusts and free zone foundations should not prevent other entities from being treated as similar to these trusts or foundations. The most important shared characteristic is legal personality. A company, for example, may be created by shareholders to generate profit for those shareholders, with the company's activities benefiting them. The corporate form separates the income generated by the company from the income of its shareholders.
23. The same applies to foundations and mainland trusts. These entities are granted corporate status, and as legal persons, they (not their beneficiaries) own the income they earn. Since this characteristic did not prevent these entities from being treated as Family Foundations, it should not preclude other entities with separate legal personality from receiving the same treatment.

### ***Liechtenstein's takeaways***

24. Since the Court [refers](#) to Liechtenstein as an origin of the foundation concept, it makes sense to examine Liechtenstein foundations and tax benefits they may enjoy.
25. Liechtenstein's [new Foundation Law](#) came into force on 1 April 2009 as an amendment to the Personal and Company Law (PGR) of 20 January 1926. As per Article 552 of the PGR:
  - 1) *'a foundation ... is a **legally and economically independent special-purpose fund** which is formed as a legal entity (juristic person) through the unilateral declaration of will of the founder. The founder allocates the specifically designated foundation assets, **stipulates the purpose of the foundation, entirely non-self-serving and specifically designated**, and also stipulates the beneficiaries'.*
  - 2) *'Insofar as the orderly investment and management of the foundation assets require, the setting-up of a commercial operation is permissible, even for private-benefit foundations'.*
  - 3) *'A private-benefit foundation' defined as 'a foundation which according to the declaration of establishment is entirely or predominantly intended to serve private or personal purposes'.* The following in particular shall be regarded as private-benefit foundations:
    - a) *pure family foundations, i.e. 'foundations whose assets exclusively serve the defrayal of costs of upbringing or education, provision for or support of members of one or more families or similar family interests';*

- b) mixed family foundations, i.e. '*foundations which predominantly pursue the purpose of a pure family foundation, but which supplementally also serve common-benefit or other private benefit purposes*'.

Here we can identify the attributes of a foundation which may help establish its similarity to other entities. These include:

- legal and economic independence from the founder and beneficiaries,
- binding with a special purpose determined by the founder,
- the foundation's designated purpose is to serve not to itself, but to the beneficiaries, and
- the private benefit of family members must prevail for the foundation to be treated as a *family* foundation.

26. Notably, the founder may designate himself as a beneficiary. Lichtenstein permits this, so as do ADGM, DIFC, and UAE (for mainland trusts).

This is important as it allows us to exclude the absence of equity rights from the similarity criteria. Indeed, since a foundation's founder can:

- 1) be the beneficiary of the foundation,
- 2) receive foundation property as the ultimate beneficiary,
- 3) receive assets upon liquidation of the foundation, and
- 4) make foundation revocable,

it makes this structure, in substance, indistinguishable from a structure established on principles of equity.

27. Liechtenstein foundations are not transparent by default, similar to foundations in ADGM, DIFC, and mainland trusts in the UAE. However, they can be exempted as Private Asset Structures (Privatvermögensstrukturen or P.I.S.).

The provisions governing P.I.S. are outlined in Article 64 of the Law of 23 September 2010 on State and Local Taxes, and Articles 37 and 38 of the Ordinance of 21 December 2010 on Land and Local Taxes.

An entity that qualifies for P.I.S. tax status is no longer subject to corporate income tax but is instead only required to pay a fixed tax of 1,800 Swiss Francs. This replaces the general regime, which imposes a 12.5% tax on actual taxable income.

28. The Liechtenstein foundations are not exclusive users of the P.I.S. scheme. All legal persons can apply for this tax status, provided their

shares are not offered or traded publicly on a stock exchange.<sup>17</sup> This resembles the UAE Family Foundation regime which is also not restricted to traditional foundation but could be extended to similar entities. However, Liechtenstein provides clear criteria for determining similarity, and while the DIFC court did not outline these features directly, it [acknowledged](#) that the concept of local foundations in the UAE is derived from the Liechtenstein model. This could be viewed as the possibility of borrowing those established features to define similarity on UAE grounds.

In our view, such an extrapolation should not be mistaken for an inappropriate importation of foreign rules into the UAE. Rather, these findings can help clarify the meaning of terms that lack specific definitions in the UAE Corporate Tax legislation.

Besides, the FTA mentioned that in addition to the legislation, *'the scope should also take into account how the relevant term is understood in **conventional Business practice** and encompasses all processes that form a natural and integral part of a coherent Business that a Free Zone Person is conducting in relation to that Qualifying Activity'*.<sup>18</sup> The law and the Minister provide no explicit criteria for establishing similar features, making conventional business practice relevant in this context

The DIFC court identified that the foundation concept in the UAE has its origins in Liechtenstein, where foundations involved in holding assets and investments receive special tax treatment, just as similar entities do in the UAE. This raises the question: why not establish which features distinguish foundations and other entities for special tax treatment in the UAE? Moreover, the compliance of Liechtenstein's P.I.S. regime has been reviewed and confirmed by the EFTA<sup>19</sup> Surveillance Authority (ESA), which ensures that EFTA countries within the European Economic Area (EEA) adhere to the EEA Agreement. As such, the Liechtenstein P.I.S. can be regarded as compliant with international standards and represents a best conventional practice worth following.

29. Investors in legal persons with P.I.S. tax status are limited to:
- (i) natural persons, acting in the capacity of managing his/her private wealth;
  - (ii) an entity which itself has P.I.S. tax status and acting in the capacity of managing the private wealth of one or more natural persons; and
  - (iii) an intermediary acting on account of one of the former, i.e. a trustee.

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<sup>17</sup> EFTA Surveillance Authority Decision of 15 February 2011 on Private Asset Structures No [44/11/COL](#).

<sup>18</sup> Free Zone Persons Corporate Tax Guide No. [CTGFZP1](#), p. 80.

<sup>19</sup> European Free Trade Association.

“Beneficiaries” may be either of the first two. Consequently, commercial undertakings are barred from holding any shares, directly or indirectly, in a legal person with P.I.S. tax status.<sup>20</sup> This condition also aligns with the requirements of the UAE tax regime for Family Foundations. As per Art. 17(1)(a) of the [Corporate Tax Law](#), a Family Foundation must ‘be established for the benefit of identified or identifiable natural persons, or for the benefit of a public benefit entity, or both’.

30. An entity with P.I.S. status is prohibited from engaging in any form of economic activity other than the acquisition, holding, administration, and sale of assets. Even within this scope, activities are limited to the passive receipt of income from these assets and exclude any form of commercial (active) trading.

Receiving fund management fees or similar fees is not permitted. As a result, P.I.S. status is not available for family offices, investment managers, or fund managers that provide such services to families in exchange for fees.

The term "administration" restricts the activities of entities with P.I.S. status to accounting processes and other tasks necessary for the preservation of assets. Therefore, entities with P.I.S. status cannot engage in the types of activities typical of wealth management companies that seek to commercially exploit assets.

Additionally, the limitation on the acquisition, holding, administration, and sale of assets means that activities like commercial rental or leasing of assets, such as cars, paintings, furs, etc., are not permitted.

Any economic activity involving the assets while they are held runs counter to the aim of the general prohibition against engaging in economic activities.<sup>21</sup>

This practice could be relevant for Article 17(1) of the UAE [Corporate Tax Law](#) because:

- 1) The term “economic activity”, in the European context, has a similar meaning to the term “Business” in the UAE.
- 2) If the activity of a candidate for Emirati Family Foundation status involves actions that would be considered Business (economic activity in European terminology) for the beneficiary or founder, the Family Foundation status does not apply in the UAE.

Thus, passive engagement is a key takeaway from Liechtenstein's P.I.S. rules. However, in the UAE context, this rule should be adjusted to account for the private investment and real estate exemptions. Regardless of how such activity is treated in Liechtenstein (whether as business or

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<sup>20</sup> EFTA Surveillance Authority Decision of 15 February 2011 on Private Asset Structures No [44/11 /COL](#).

<sup>21</sup> Ibid.

economic activity), the UAE has specific rules that take precedence over conventional business or tax policy practices.

These rules have been separately addressed and compared with Liechtenstein's in our study "*Personal and Real Estate Investments Exceptions in the UAE Corporate Taxation*".<sup>22</sup>

31. In summary, Liechtenstein's P.I.S. regime offers a framework for entities that the FTA may admit into the Family Foundation regime as "similar entities." These entities could be considered similar if:
  - 1) **Prohibition on Commercial Activities:** Liechtenstein's P.I.S. entities are restricted to acquiring, holding, managing, and disposing of assets. This means they cannot engage in active business activities, including commercial renting, leasing, or any form of commercial trading. However, this prohibition can be lifted in the UAE due to the special exception granted by the Cabinet for Personal and Real Estate Investments.
  - 2) **Passive rather than Active nature of Activities:** The focus of the in-scope entities should remain on passive holdings and the conservation of assets, without commercial exploitation. This approach can be translated into the UAE context by applying similar limitations to "similar entities" to ensure they do not engage in activities that would classify as Business under the UAE Corporate Tax Law.
  - 3) **Fees prohibition:** The prohibition on receiving fund management or similar fees under Liechtenstein's P.I.S. regime could be applied to UAE Family Foundations to prevent them from being used as vehicles for conducting business-related services. This reinforces the passive nature of these entities and ensures that they are not misused for purposes beyond personal or family wealth management.

By borrowing these established features and adjusting them for the UAE's legal and tax framework, the Family Foundation regime can offer a robust structure for managing family wealth while maintaining compliance with the UAE Corporate Tax Law.

### ***Passive Management in ADGM, DIFC, and RAK ICC Foundations and Mainland Trusts***

32. When evaluating the tax transparency of Family Foundations and similar entities in the UAE, it is essential to assess whether their activities align with the passive management requirements. In this regard, foundations in ADGM, DIFC, and RAK ICC provide valuable frameworks for understanding how such entities may qualify for tax-transparent status. Each of these foundations operates under common principle: they are established for asset preservation, succession planning, and income protection,

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<sup>22</sup> Available via this [link](#).

while being explicitly prohibited from engaging in active commercial activities.

The specific rules governing these foundations demonstrate a shared focus on passive asset management. For example, ADGM<sup>23</sup>, RAK ICC<sup>24</sup> and DIFC<sup>25</sup> foundations are subject to core restrictions that prevent them from conducting business activities beyond those necessary for managing their assets. This reinforces the passive nature of these entities, ensuring they are not treated as economic actors under UAE Corporate Tax Law.

33. Effectively, trusts serve a similar role to foundations at the federal level in the UAE, as they also hold the status of separate legal entities.<sup>26</sup> However, federal trusts align perfectly with passive holding structures since all economic activity on their behalf is carried out by a separate person (the trustee). As such, the trust's activities should be classified as private or commercial in nature, but the trust itself, which benefits from this activity, should not be regarded as conducting business activities. The trust merely recognizes income generated from the economic activities of another party.
34. Therefore, whether we examine foundations in ADGM, DIFC, or RAK ICC, or consider federal trusts, the conclusion remains consistent: these entities function in accordance with passive wealth management principles, and their activities should not be classified as "business" under UAE Corporate Tax Law. This focus on passive asset management is critical when applying the Participation and Real Estate Investment Tests, as required by Article 17(1) of the Corporate Tax Law.

### ***The Alliance Between a Foundation's Passive Asset Holding and Active Business conducted by a Third Party***

35. The Ministerial Explanatory Guide further clarifies the distinction between passive and active roles within foundations, emphasizing that the foundation must not be established for conducting business. Rather, it must focus solely on managing assets on behalf of its beneficiaries: *'The foundation must not be established for the purposes of conducting Business and must solely conduct the management of cash, publicly traded securities, private stock, real estate and other assets held or investments made by the Family Foundation'*.

The MoF further explains that the involvement of fiduciaries, such as trustees, underscores that the foundation or trust itself does not engage in business activities: *'A **separate Person may act as the fiduciary, agent or trustee** on behalf of the Family Foundation for the purpose of*

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<sup>23</sup> Article 2(2) of the [ADGM Foundation Regulations 2017](#).

<sup>24</sup> Regulations 5(3) and 5(5) of [RAK ICC Foundations Regulations 2019](#).

<sup>25</sup> [DIFC Foundations Law No. 3/2018](#), Art. 12(5).

<sup>26</sup> Federal Law on Trusts No. [31/2023](#), Art. 3(1).

the administration, management and the eventual transfer of assets and income to the beneficiaries of the Family Foundation. Where a Person (typically referred to as the 'trustee') **would hold the legal title**, but not the beneficial ownership, of the assets of the Family Foundation for the use of, or transfer to, the beneficiary or beneficiaries of the Family Foundation, any Taxable Income of such Person **would not include the income derived from the assets they hold in their capacity as fiduciary owner**'.

In the case of a UAE federal trust, the trustee does not hold the legal title; the trust itself holds the title to the assets. The trust holds this title on behalf of the natural persons (the beneficiaries). Condition (c) of Article 17(1) stipulates that '**the Family Foundation [federal trust] does not conduct any activity that would have constituted a Business or Business Activity ...had the activity been undertaken, or its assets been held, directly by its founder, settlor or any of its beneficiaries**'. Therefore, in this chain of arrangements:



the activity of the foundation shall be tested with Personal and Real Estate Investments test rather than activity of the trustee.<sup>27</sup>

### ***Beyond the letter of law***

36. A literal interpretation, as discussed above, does not provide certainty in determining what qualifies as a similar entity. Any entity may possess features that resemble a mainland trust or foundation, as well as features that do not. Should partial similarity suffice to qualify an entity as "similar"? Conversely, does a specific difference automatically negate similarity? Since literal interpretation offers no clear answers to these questions, other interpretative tools must be applied to uncover the intent of the legislator.
37. The **Mischief Interpretation Rule** (Purposive Approach) focuses on the intent behind the law. This method requires identifying the problem ("mischief") the statute was designed to address and interpreting the law in a way that resolves that issue.

<sup>27</sup> This is illustrated in the FTA's examples of the Real Estate Exception, as discussed in our [earlier research](#) on Personal and Real Estate Exceptions (see para. 20, pp. 10-12).

General Corporate Tax Guide No. [CTGGCT1](#) explains the specifics of Family Foundations in Section 5.6:

- *‘There are a number of different structures that are **used to manage personal wealth and investments** for **asset protection, succession, philanthropic and other reasons**. These include, for example, a contractual trust, a private trust company or a foundation to **hold and manage personal assets and investments**.*
- *Whilst some of these structures and arrangements are by default treated as fiscally transparent for Corporate Tax purposes, **some types of trusts and foundations have a separate legal personality**, such as foundations established in ADGM or DIFC. These types of entities **are treated the same as any other juridical person**, with their income being within the scope of Corporate Tax. Where these types of entities are **merely used to hold and manage personal assets and wealth on behalf and for the benefit of beneficiaries who are natural persons, this will result in an inconsistent treatment** compared with if instead the natural persons were to hold and manage the assets directly.*
- *Therefore, entities that are considered as “Family Foundations” for Corporate Tax purposes can, subject to meeting certain conditions, apply to the FTA to be treated as an Unincorporated Partnership... If the application is approved, the Family Foundation will be treated as tax transparent and the beneficiaries would be seen as directly owning or benefiting from the activities and assets of the Family Foundation’.*

Consequently, the Family Foundation Clause is designed to eliminate discrepancies in tax treatment between operations conducted by an individual (settlor or beneficiary) and those conducted through a corporate entity. The entities involved are those that are *‘merely used to **hold and manage personal assets [, investment] and wealth on behalf and for the benefit of beneficiaries** who are natural persons’*.

38. The recent replacement of Decision No. 127/2023 with Decision No. [261/2024](#), as explained [above](#), works in favor of the purposive approach to the similarity.

Article 5(2) of Decision No. 261 specifies that *‘a juridical **person, that is wholly owned and controlled by a Family Foundation** that is treated as an Unincorporated Partnership, can make an application to the Authority to be treated as an Unincorporated Partnership pursuant to Article (17) of the Corporate Tax Law where all of the following conditions are met:*



- a. *The juridical person is wholly **owned and controlled by the Family Foundation** either directly or indirectly through an uninterrupted chain of other entities which are treated as Unincorporated Partnerships in accordance with the Corporate Tax Law.*
- b. *The **juridical person meets** the conditions of Clause (1) of Article (17) of the Corporate Tax Law', i.e. it itself meets **the definition of the Family Foundation.***

This rule indirectly acknowledges that the form of an entity is irrelevant for attaining Family Foundation status. Any entity meeting the Family Foundation criteria can qualify if it is directly or indirectly owned by the Family Foundation. The Ministerial rule implies that it does not matter whether the structure involves a foundation or a regular company, as long as the Family Foundation conditions are satisfied.

Moreover, neither the substance nor the legislative objectives would be compromised if, in the scenario illustrated [above](#), the foundation interposed between the founder and regular companies were replaced with a structure where the founder directly participates in regular companies that comply with Family Foundation conditions.

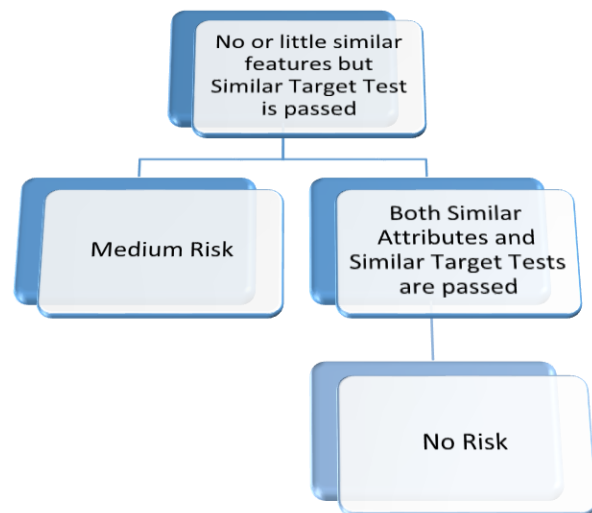
In our view, the Ministerial approach should serve as the standard for establishing similarity for the purposes of Family Foundation status. This approach prioritizes substance over form, eliminating discrimination between different legal structures. Such discrimination is unnecessary and adds no value in cases where legislative objectives can be achieved without restrictive limitations on legal forms.

39. However, the above conclusions can be argued with a question: why does the Minister require the interposition of a Family Foundation in the formula for status extension? Why not qualify any entity that meets the Family Foundation conditions and is owned by an individual? This requirement likely ensures that certain foundational features necessary for the initial qualification are preserved and indirectly extended to the subsequent structure. Thus, the element of similarity with these features remains relevant.
40. On balance, Decision No. [261/2024](#) can be used to support both the Purpose (Similar Legislative Target) Approach and the Similar Attribute Approach.

### ***Two Approaches to Similarity***

41. The above analysis suggests that there are two approaches to defining similarity:

- **Similar Attributes Approach:** This approach stems from a literal interpretation. The more features an entity shares with trusts and foundations, the stronger the case for considering it similar.
- **Similar Target Approach:** This approach focuses on the problem that the Family Foundation is designed to solve, assessing whether the entity serves a similar purpose.



There is medium risk associated with uncertainty regarding whether the FTA, Tax Dispute Resolution Committee, or Federal Court would accept the rationale for a broader interpretation of the term "similar entity" and shift from a focus on similar features to a focus on the purpose of the regulation.

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In the following sections, we will apply these similarity tests to various types of entities and arrangements across the UAE at the federal, emirate, and free zone levels.

### **Mainland Family Business**

42. Federal Family Businesses Law No. [37/2022](#) defines "Family Business" as *'every company established in accordance with the provisions of the Companies Law', in which most of the 'shares or stakes are owned by people belonging to a single family. It shall be registered in the register as a Family Business in accordance with the provisions of this Decree by Law'.*

Thus, federal Family Business possesses the following attributes:

- 1) It is controlled by a single family through a majority of shares or stock, and
- 2) It is registered as a Family Business.

Joint Stock Companies and Partnership Companies may not be treated as Family Business under this Law.<sup>28</sup> Shareholders who own the majority of its shares shall decide to register it in the Register as a Family Business

<sup>28</sup> Federal Family Business Law, Article 3(2).

in any other *'form of companies stipulated in the Companies Law, including the One-Person Company, or the legislation in force in the Free Zones, as the case may be'*.<sup>29</sup>

Furthermore, the provisions of the Federal Family Law *'shall apply to Family Businesses established in the Free Zones to the extent that they do not conflict with the laws, regulations and legislation of the relevant Free Zone that are applicable in relation to their organisation, incorporation or registration therein, and all matters related thereto'*. Therefore, federal qualification as a Family Business is also applicable to entities established in free zones.

43. The federal family legislation aims to align regular business operations with the interests and values of a particular family and facilitate their transfer between generations. Besides, the law provides mechanisms to:
- Preserve the business within the family (e.g., no shareholder may transfer their share to a non-family member without approval from shareholders holding at least three-quarters of the capital, unless a different percentage is specified in the Memorandum of Association).
  - Reconcile the interests of diverse family members. For instance, a Family Business may establish a special body (Board) for internal dispute resolution among family members and partners.<sup>30</sup> Additionally, each Emirate may have a Family Dispute Resolution Committee as an external body that family members can approach after internal resolution attempts by the Board, or directly if agreed upon by the parties. The director of a Family Business is tasked to run the company *'free from whims and personal interests'* of a particular Family member.<sup>31</sup>

Family Business is also adopt a Family Charter, in addition to the Articles of Association. This Charter *'includes rules for family ownership, goals and values, mechanisms for evaluating shares, methods of profit distribution, educating and qualifying family members to work in the Family Business and its subsidiaries, considering family disputes related to the Family Business, and other rules and provisions'*.

44. The inclusion of the word "Business" in the term "Family Business" may raise the question of whether any Family Business is compliant with condition (c): *'The Family Foundation does not conduct any activity that would have constituted a Business or Business Activity under Clause 6 of Article 11 of this Decree-Law had the activity been undertaken, or its assets been held, directly by its founder, settlor, or any of its beneficiaries'*. We do not believe this is a fair question when addressing the "similar

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<sup>29</sup> Ibid, Art. 3(1).

<sup>30</sup> Ibid, Art. 19(1).

<sup>31</sup> Ibid, Art. 16(2)(b)

entity” issue. Indeed, even trusts and foundations may not obtain transparent status for operations that would be treated as business if conducted directly by an individual. This condition does not require a Family Foundation candidate to abstain from all operations that fall under the general definition of “Business” in Article 1 of the [Corporate Tax Law](#). Instead, it requires:

- 1) Imagining that these operations are conducted not through the entity (for which any return on investment would be considered business income) but by the pertinent beneficiary (or founder) directly.
- 2) Applying the definition of "Business" as it relates to the beneficiary (or founder). If the beneficiary is an individual, exceptions such as the Personal Investments and Real Estate Investments exemptions may apply.<sup>32</sup>

Therefore, classifying an activity as Business in the hands of a Family Business entity does not necessarily preclude it from obtaining Family Foundation status.

45. Meanwhile, Article 18(1) of the [Federal Family Law](#) stipulates that *'family affairs may be regulated in relation to its relationship with the Family Business, through the establishment and organisation of the work of Councils and committees, such as the Family Association, the Family Council and the Family Office... they shall be concerned **with separating the ownership and governance of the Family's assets from the ownership and governance of the Family Business, supervising the Family's investments**, organizing charitable works and its community contribution initiatives..'*

This rule clearly distinguishes between the Family Business and the management of family assets and investments. This distinction may conflict with condition (b) for Family Foundation treatment, which states that *'the principal activity of the Family Foundation is to receive, hold, invest, disburse, or otherwise **manage assets** or funds associated with **savings or investment**'*.

46. Therefore, in our view the federal Family Business framework doesn't help a company registered as part of a Family Business to prove its status as a 'similar entity' for the purposes of qualifying as a Family Foundation under the UAE Corporate Tax Law.

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<sup>32</sup> Para (c) of Art. 17(1) of the [Corporate Tax Law](#) refers to Clause 6 of Article 11, which direct to the Cabinet Decision No. 49 of 8 May 2023. The later determines that *'activities ... shall not be considered as Businesses or Business Activities conducted by a resident or non-resident natural person subject to Corporate Tax, regardless of the amount of Turnover derived from such activities: a. Wage. b. Personal Investment income. c. Real Estate Investment income'*.

## ***Mainland Company as a Vehicle for Personal and Real Estate Investment***

47. An individual may establish a mainland company and vest it with personal funds or family assets. Two or more family members may do the same. Generally, they will hold the shares of the company and will benefit from its activity. This could be done to hire a team to develop and implement the best strategy for personal investments or to pool funds from several family members for collective investment purposes.

Such a company is not a trust unless a trust deed is issued, nor is it a foundation, as federal legislation does not provide for this corporate form. The question arises: could such a company be treated as a similar entity and apply for the transparent Family Foundation status?

48. As [previously](#) discussed, there are limited similarities between a regular company and trusts/foundations, making it unlikely that such a company would pass the [Similar Attributes Test](#). However, there is potential for it to pass the [Similar Target Test](#):

- 1) The activities of the company must be considered under the legal fiction that they are conducted by the shareholders themselves.
- 2) Business Sub-Test follows this fiction:
  - a) If the scale and manner of the company activities would qualify as Business when conducted by individual shareholders, either alone or in partnership with other family members, the Similar Target Test would not be passed.
  - b) If the activities fall within the [boundaries](#) of Personal and Real Estate Investments exceptions, the Similar Target Test could be passed.

We may see here that [Similar Target concept](#) makes the examination of attribute-based similarity irrelevant. Indeed, the Similar Target Test is already embedded within the [conditions](#) required for a Family Foundation to achieve transparent status:

- Condition (c) prohibits a Family Foundation from engaging in any activity that would have been considered a Business or Business Activity had it been conducted directly by the
- Condition (b) restricts the Family Foundation's activities to receiving, holding, investing, disbursing, or otherwise managing assets associated with savings or investments.

49. In summary, while a mainland company may not pass the [Similar Attributes Test](#) due to its lack of inherent similarities with trusts or foundations, it can potentially qualify under the [Similar Target Test](#) if its activities align with personal or real estate investments exceptions and do not rise to the

level of a Business. This distinction allows flexibility for family entities structured as mainland companies to qualify for tax transparency, provided they adhere to the principles of passive asset management and investment.

### ***Mainland Family Fund***

50. Family Fund is defined as *'a Local Fund with the ownership of its Investment Units restricted to one or more persons of the family, to which the provisions of the Private Fund are applicable pursuant to the provisions of this Resolution'*.<sup>33</sup>

A mainland Local Fund *'shall have full corporate identity'*. Therefore, Family Fund is not an Unincorporated Partnership (transparent) by default.

51. A mainland Family Fund is unlikely to be exempt as a Qualifying Investment Fund under Article 10 of the [Corporate Tax Law](#). Condition (b) of Clause 1 of this Article requires *'interests in the investment fund'* to be *'traded on a Recognised Stock Exchange, or are marketed and made available **sufficiently widely to investors**'* ("fund ownership condition"<sup>34</sup>). However, the units of the mainland Family Fund:

- *'shall not be listed in the market'*,<sup>35</sup>
- *'shall be (100%) owned by one or more members of the family, whether such member is a natural person and / or corporate person which is wholly owned 100% by them, and provided that the unit holder shall be the beneficial owner'*.<sup>36</sup>
- shall not be sold or pledged to any third party who is not a family member or to a corporate person (100%) owned by any such party.<sup>37</sup>

Natural and corporate persons who subscribed in the Family Fund must all be *'family members and ... (100%) beneficial owners'*.<sup>38</sup>

The Cabinet conditioned the qualification of an investment fund for exemption by diversity of ownership: *'A single investor and its Related Parties do not own the following:*

- 1) *More than 30% (thirty percent) of the ownership interests in the investment fund, where the investment fund has less than ten investors.*

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<sup>33</sup> Chairman of the Securities & Commodities Authority's Board of Directors' [Resolution No. \(01/Chairman\) of 2023](#) Concerning the Regulation of Investment Funds, Art. 1

<sup>34</sup> Sec. 5.3 of the Investment Funds Corporate Tax Guide No. [CTGIFM1](#).

<sup>35</sup> Ibid, Art. 20(3).

<sup>36</sup> Ibid, Art. 4(2).

<sup>37</sup> Ibid, Art. 32(2).

<sup>38</sup> Ibid, Art. 12(1)(B).

- 2) *More than 50% (fifty percent) of the ownership interests in the investment fund, where the investment fund has ten or more investors.*

The FTA has explained<sup>39</sup> that compliance with these conditions requires simultaneous compliance with condition (b) in Article 10(1) of the [Corporate Tax Law](#), cited above. Given that the Family Fund is entirely owned by related parties (family members), it fails to meet the requirements for fund ownership and diversity of ownership.

52. In our view, such a Family Fund exhibits some of the similarity features [listed](#) above:

- 1) It holds and invests property in its own name but on behalf of the Family members. The Fund acts as *'a financial pool for collecting the investors' money for the purpose of investment against issuance of investment units having equal value'*.<sup>40</sup> These units represent rights that are inseparable from the assets of the fund, *'representing the share of its holder in the net asset value of the investment fund or in the assets thereof as per its nature'*.<sup>41</sup>
- 2) This status is granted to the Fund by the Authority's regulations;
- 3) The equity rights in respect of this entity are circumscribed by the family status of its members.
- 4) The Fund's activities align with the instructions of the settlor embodied in the constitutional documents.
- 5) Except for self-managed funds, the investment activity of other funds is not conducted directly by the fund itself but by Service providers, such as Fund Managers and Custodians, whose obligations are fiduciary in nature. This structure has common features with trusts.

Therefore, in our view, a mainland Family Fund may pass the [Similar Attributes Test](#) and could potentially be granted Family Foundation status, provided that [conditions](#) set out in Article 17(1) are satisfied.

53. The members of the board of directors of the Family Fund must be family members or a company that is 100% owned by one of them. Any of the members may be represented by a non-family member in the case of a custodian, attorney, or trustee acting on behalf of a family member.<sup>42</sup>

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<sup>39</sup> As per Sec. 5.6.1. of the Investment Funds Corporate Tax Guide No. [CTGIFM1](#) *'... if the diversity of ownership condition is met, the investment fund should also typically be regarded to have been marketed and made available sufficiently widely and, as a result, it would also meet the fund ownership condition'*.

<sup>40</sup> Regulation of Investment Funds No. [1/2023](#), Art. 1

<sup>41</sup> Ibid.

<sup>42</sup> Ibid, Art. 13(Sixth).

This attribute does not closely resemble the structure of trusts or foundations. However, it could strengthen the argument for the FTA to approve transparency status for such a Fund, as it demonstrates that the fund's activities can be "looked through" in nature. The involvement of the board (founders and beneficiaries) in the fund's activities leads directly to the income received by the fund.

54. In our earlier study<sup>43</sup>, we established that an inclusion of an individual shareholder on the board could be interpreted as active management of the investment, potentially jeopardizing Personal Investments exception. However, we do not believe this would hinder a Family Fund from appealing to this exception. The inclusion of a family member on the board of a Fund Manager would not compromise the Personal Investment exception, as the active business is conducted by the Manager, not by the Fund itself.
55. Additionally, the Fund is clearly capable of passing the [Similar Target Test](#), provided that the investments of the Fund wouldn't have been taxable if they had been made directly by the family members (investors) with assistance of the wealth management service providers.
56. In summary, the mainland Family Fund is well-positioned to apply for transparent status under the Family Foundation Clause, with a low risk of unfavorable interpretations. This risk assessment aligns with the general evaluation outlined [above](#).

### **ADGM Entities**

57. As per ADGM website<sup>44</sup>, ADGM Holding Companies and Special Purpose Vehicles (SPVs) can be used to structure family interests effectively, ensuring that assets are protected and managed in the most tax-efficient manner. Foundations and trusts are also available options. However, this research focuses on "similar entities". As such, ADGM Holding Companies and SPVs will be further addressed in the following sections.

### **ADGM Special Purpose Vehicles**

58. SPVs are passive holding companies established for the purpose of isolating financial and legal risk by ring-fencing certain assets and liabilities.<sup>45</sup>

The key feature of an SPV is its separate legal personality, enabling the isolation of financial and legal risk from the assets and liabilities of the SPV's shareholders or any of its sister companies.<sup>46</sup> They may be established as:

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<sup>43</sup> [Personal and Real Estate Investments exceptions](#), p. 14, sec. 25.

<sup>44</sup> <https://www.adgm.com/setting-up/family-offices-and-foundations>

<sup>45</sup> <https://www.adgm.com/setting-up/special-purpose-vehicles/overview>

<sup>46</sup> [ADGM Guidance Note for Special Purpose Vehicles](#).



- Private Companies Limited by Shares and licensed to conduct SPV activities or
- “Restricted Scope Companies (RSCs)” for more limited disclosure on the public register.<sup>47</sup>

RSCs are often recommended as an appropriate choice for establishing entities where confidentiality is of utmost importance, such as holding and management of family assets.

An RSC can only be registered as a subsidiary company either of an existing entity that publishes consolidated accounts or of a company established by law of the UAE or an Emirate. In addition, an RSC may be established by one or more persons *‘who are members of the same family’*.<sup>48</sup>

59. A company could be established to investment its own funds without permission to offer this service to any third party, under the code 7014 “Proprietary investment company”. With the same restriction, a company can be established under code 7015 “Proprietary asset management company” to manage its own assets.

The codes 7015 “Special Purpose Vehicle” and 7016 “Special Purpose Company”<sup>49</sup> are available for the registration of a body corporate whose sole purpose, either generally or when acting in a particular capacity, is:

- either to carry out such functions as *‘entering into transactions or terminating transactions involving Investments in connection with the issue, redemption, termination or re purchase of Investments’*, or
- *‘investing in Real Property’*.<sup>50</sup>

60. Rule 2(c) of the [ADGM Licensing Conditions](#)<sup>51</sup>, requires from SPVs engaged in Controlled Activities *‘to provide information showing... the controlled activity ... which the applicant proposes to carry on in or from the Abu Dhabi Global Market’*. The [ADGM’s Commercial Licensing Regulations 2015](#) set out that *‘no person may carry on a **controlled activity** in or from the ADGM, or purport to do so, unless he is - (a) a licensed person; or (b) an exempt person’* (Art. 1). Therefore, non-exempt SPVs, licensed in ADGM fall within Rule 2(c) of [ADGM Licensing Conditions](#).

As per [ADGM SPVs Guidance Note](#), to satisfy the Registrar of this requirement, applicants must be able to demonstrate that the SPV will have an appropriate connection or ‘nexus’ to the ADGM, the UAE and/or to the

<sup>47</sup> Ibid. Based on multiple exceptions granted by the [ADGM Companies Regulations 2020](#).

<sup>48</sup> [ADGM Companies Regulations 2020](#), Section 3.4(c).

<sup>49</sup> Codes 7016 and 7017 differ only in name convention.

<sup>50</sup> ADGM [Checklist](#) for Incorporation of Private Restricted Scope Company as an SPV

<sup>51</sup> ADGM Commercial Licensing Regulations 2015 (Conditions Of Licence And Branch Registration) Rules 2019.

GCC Region (the Nexus Requirement). A connection or 'nexus' may be demonstrated in a number of ways. One of them includes documentary evidence that *'the SPV is owned or controlled by a UAE or GCC based private company, family/family office or individual'*.

This illustrates that certain economic substance requirements, [recently cancelled](#) at the federal level, survived within ADGM's regulations of the zone, and, therefore, must be met even if the SPV doesn't apply the 0% Corporate Tax rate.

61. Family businesses can benefit from Special Purpose Vehicles (SPVs) when they have a complex family holding structure. For example, the founder may personally hold shares in certain family companies, while siblings or offspring hold shares in other family companies, all operating under the family company umbrella.

SPVs can be used to streamline ownership at the family level, allowing the family to allocate different companies to specific SPVs based on geography (e.g., UAE entities, Abu Dhabi entities, Bahrain, etc.) or sector (e.g., hotel company shares, retail company shares, etc.).

Besides, the family may establish one SPV for assets fully owned by the family and another for assets in which the family has co-shareholders.<sup>52</sup>

62. The above attributes of SPVs show several similarities with the [features](#) of trusts and foundations:
- 1) The holding and passive management of properties is a restricted scope vested in these companies by the beneficiaries.
  - 2) SPVs, like trustees in free zone trusts and foundations, serve as vehicles for holding assets.
  - 3) This status is designated to SPVs by regulations and can be further supported by bespoke articles of association.
  - 4) The activities of the SPV align with the instructions of the settlor, as outlined in the constitutional documents.
63. Therefore, an SPV engaged in the passive holding of assets and/or investments is likely to pass the **Similar Target Test**, as passive investments would fall within the Personal and Real Estate Investments exceptions. If both tests are passed, the SPV would be eligible for Family Foundation transparency status, provided the conditions outlined in Article 17(1) of the [Corporate Tax Law](#) are met.

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<sup>52</sup> Nasouh Raslan, "[Using an SPV as a holding company](#)".

## **ADGM assets management companies**

64. The codes 7014 “Proprietary investment company” and 7015 “Proprietary asset management company” are available for both SPVs and regular companies.

An SPV licensed as a Proprietary Investment Company is typically established for the specific purpose of holding investments, often related to a particular project, transaction, or asset class. Its activities are generally limited to managing and holding these investments, and it is restricted to investing in assets directly related to its stated purpose. It is not designed to engage in broader investment activities beyond this defined scope.

A regular company with a 7014 license, however, has a broader investment mandate. It can participate in a wider range of investment activities, potentially holding and managing a diverse portfolio across different asset classes. Such a company can also adapt its investment strategy over time, including engaging in activities like active portfolio management or strategic investments in various industries.

The same applies to companies with a 7015 license.

65. There are fewer common features between regular companies and trusts/foundations compared to SPVs. The broader mandate of regular companies creates a wider gap in similarity. Removing the word “vehicle” from the company’s name may raise the argument that the substance of a “vehicle” is absent in a regular company, making it more than just a *‘entities ... merely used to hold and manage personal assets and wealth on behalf and for the benefit of beneficiaries who are natural persons’*, as described by the FTA in Sec. 5.6 of the [General Corporate Tax Guide](#).

Besides, the broader scope of regular companies may complicate their ability to pass the Similar Target Test and meet the [transparency condition](#) (c), especially if their activities involve active self-management of investments and assets. Being extrapolated on the individual shareholder(s), this may create a case where exceptions for Personal and Real estate Investments do not apply.<sup>53</sup>

## **DIFC Family Entity**

66. The DIFC also pursues the goal to offer a framework and hub for global and regional family-owned businesses, ultra-high net worth individuals and private wealth, and further differentiate DIFC as a global hub for leading financial institutions and businesses. For this purpose, the DIFC renewed its Family Arrangements Regulations in 2023. The replacement of the prior Regulations intends to *‘provide comprehensive guidelines for family businesses holding assets and operating in or from DIFC, in support of their succession and legacy planning for future generations. The*

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<sup>53</sup> [Personal and Real Estate Investments exceptions](#), p. 13, sec. 23

regulations were drafted to take advantage of the recognition of family business structures in free zones, such as DIFC, and the authority provided in the newly enacted UAE Decree-Law No. 37 of 2022 (UAE Family Business Law) to keep a special family business register to opt into the requirements and benefits that will be provided for family businesses under the UAE Family Business Law'.<sup>54</sup>

67. In addition to Family Business, the DIFC has introduced the concept of the Family Entity. Its definition is given in Article 2.3.1 of the [DIFC Family Arrangement Regulations 2023](#). Since Article 1 of the [Corporate Tax Law](#) utilizes the term 'similar entity' in the context of the defining a "Family Foundation", it makes sense to explore this definition to better understand the capacity of a 'similar entity' in this relevant context.
68. DIFC defines "Family Entity" as **'any entity including a body corporate, a partnership, a foundation or any other entity or body which has a legal existence separate and distinct from the persons (legal or natural) comprising that entity or body, but excluding NPIOs (or similar not for profit organisations), and that is established for the sole purpose of:**
- (a) **holding, investing, operating or utilising assets of a Family, a Family Structure or the proceeds thereof; or**
  - (b) **the succession or legacy planning of Family assets, or the benefits or proceeds derived therefrom, which entity, whether in its own right or in the capacity of trustee, is controlled by a Family'.**

Article 2.4.1 recognizes control if Family Members or their Family Entities of that Family or 'the board, trustee or council members of one (1) or more other Family Structures of that Family, acting alone or together, could exercise more than **50% of the voting rights of the Family Entity**, or are otherwise able to exercise direct or indirect control over the affairs of the Family Entity in a manner accepted by the Registrar as constituting direct or indirect control'. Consequently, regular company limited by stocks or shares may fit the definition of similar entity in DIFC terms.

Furthermore, it's worth noting the interplay between the [conditions](#) for a tax-transparent Family Foundation and the DIFC's definition of a Family Entity. Two tax-related conditions are essentially embedded into the definition of the DIFC Family Entity:

Art. 17(1) of the <a href="#">Corporate Tax Law</a>	Article 2.3.1 of the <a href="#">DIFC Family Arrangement Regulations 2023</a>
The Family Foundation was established for the benefit	There is no such wording in the definition of the Family Entity. However, who else

<sup>54</sup> <https://www.difc.ae/whats-on/news/difc-announces-enactment-new-difc-family-arrangements-regulations-1>

of identified or identifiable natural persons, or for the benefit of a public benefit entity, or both.	may benefit from the proceeds received <i>'from holding, investing, operating or utilising assets of a Family'</i> gained by a body corporate controlled by the Family? The one designated by the Family.
<i>'The principal activity of the Family Foundation is to receive, hold, invest, disburse, or otherwise manage assets or funds associated with savings or investment'</i>	<i>'the sole purpose of: (a) holding, investing, operating or utilising assets of a Family, a Family Structure or the proceeds thereof; or (b) the succession or legacy planning of Family assets, or the benefits or proceeds derived therefrom...'</i>

Hence, DIFC Family Entity a strong chance of passing the [Similar Target Test](#) as a vehicle for personal investments and investments in real estate. It serves as a good example to illustrate the [FTA's explanation](#) of the purpose behind the Family Foundation relief: *'Where these types of entities are merely used to hold and manage personal assets and wealth on behalf and for the benefit of beneficiaries who are natural persons, this [opaque status] will result in an inconsistent treatment compared with if instead the natural persons were to hold and manage the assets directly'*.

Furthermore, since the DIFC [includes](#) foundations in the same group as regular companies owned or controlled by a single family, it may be interpreted that such regular companies share certain common features with a foundation.

On balance, a DIFC family Entity is likely to pass both [Similar Target](#) and [Similar Attributes](#) tests.

69. Noteworthy, that a DIFC Family Entity *'may, but need not, be a Registered Person [in DIFC] but shall only have a presence or operate in or from the DIFC if it complies with Applicable Law in the DIFC'*.<sup>55</sup> If a Family Entity is registered in DIFC, it may take any form provided by the definition of a Registered Person, including:
- (a) Public or Private Company;
  - (b) Recognised Company;
  - (c) General Partnership and Recognised General Partnership;
  - (d) Limited and Recognised Limited Partnership;
  - (e) Limited Liability and Recognised Limited Liability Partnership;
  - (f) Incorporated Organisation;

<sup>55</sup> Art. 2.3.2 of the DIFC Family Arrangement Regulations.

- (g) Foundation and Recognised Foundation; or
- (h) any other legal body or structure created by Legislation administered by the DIFC Registrar.

70. The special registration in the Family Business Register is required to be treated as Family Business but not required to be recognized as DIFC Family Entity.<sup>56</sup>

### **DIFC Prescribed Companies**

71. The [list of activities in the DIFC](#) includes Intermediate Holding Company. This entity is classified as an Intermediate Special Purpose Vehicle and is described as **'firms holding or investing into assets as an intermediate vehicle for any one of the following: a DIFC Incorporated Fund; any entity holding assets for a foreign fund managed by a regulated DFSA fund manager; a DIFC holding company, proprietary investment company or a Single Family Office'**.

72. Since 2019 intermediary and other SPVs in DIFC operates under the framework of the Prescribed Companies Regulations.<sup>57</sup> On July 15, 2024, the DIFC substantially expanded the utility of these prescribed companies (PC).

Previously, establishing PC within the DIFC was limited to Qualifying Applicants—primarily those with an existing connection to the DIFC or other low-risk applicants—or for a specific Qualifying Purpose, such as Structured Financing. The 2024 updates to the PC Regulations have broadened this scope significantly. Now, the regulations include entities *'established or continued in the DIFC for the purpose of holding legal title to, or Controlling, one ... or more GCC Registrable Assets'*.<sup>58</sup> The latter comprise *'an asset or property interest that must be registered with a GCC Authority to establish legal ownership, secure rights, or encumbrances against it, and to provide public notice of such interests, including:*

- (a) **land and real property;**
- (b) **shares in companies;**
- (c) **partnership interests;**
- (d) *intellectual property; and*
- (e) *aircraft and Maritime Vessels'*.<sup>59</sup>

Furthermore, the scope for establishing a Prescribed Company (PC) within the Dubai International Financial Centre (DIFC) has been significantly extended. New qualifying limb added this year permits establishing

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<sup>56</sup> Ibid, Article 3.1.

<sup>57</sup> [DIFC Prescribed Company Regulations 2019](#), Reg. 1.1.4.

<sup>58</sup> Ibid, Reg. 3(1)(1)(b).

<sup>59</sup> Ibid, Reg. 1.1.7

PC to any person (natural or corporate), that is resident anywhere in the world, provided that the PC appoints as a director an employee of a DFSA registered Corporate Service Provider (CSP) and that CSP has an arrangement with the DIFC Registrar of Companies to carry out certain compliance and AML functions on behalf of the PC.<sup>60</sup>

73. Regulation 4.3 specifically prohibits a Prescribed Company from employing any Employees. This requirement ensures that *'Prescribed Companies are used as **true holding company vehicles, rather than operational entities**'*.<sup>61</sup>
74. Akin to [ADGM's SPVs](#), a DIFC Prescribed Company is likely to pass the [Similar Attributes Test](#). The common approach is pertinent because:
- 1) Both ADGM SPVs and DIFC PCs are used for asset holding, risk isolation, and financial structuring. These functions align closely with the characteristics of trusts and foundations, which are typically designed to manage, preserve, and control assets across generations or among various beneficiaries.
  - 2) The holding of properties is a restricted scope vested in these companies by the beneficiaries.
  - 3) SPVs and PCs operate with a significant degree of operational isolation. Their activities are typically limited to passive holding, which means they do not engage in day-to-day operational management. This characteristic is crucial for entities that aim to separate legal and financial risks from operational activities, similar to how trusts are structured to protect assets from external liabilities.
  - 4) Like trusts and foundations, which can be tailored to specific family or business needs, SPVs and PCs can be designed to meet the particular requirements of asset holders, offering a versatile tool for managing diverse asset types and holding structures.
  - 5) This status is designated to SPVs and PCs by regulations.
  - 6) The activities of the SPVs and PCs align with the instructions of the settlor, as outlined in the constitutional documents.

### **Dubai World Trade Center (DWTC)**

75. The Dubai World Trade Center (DWTC) defines "Family" and "Single Family" broadly, encompassing *'any family member(s), family business, **family entity, family trust or foundation**'*.<sup>62</sup> This classification aligns family entities with trusts and foundations, supporting the applicability of the

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<sup>60</sup> Ibid, Reg. 3.1.1(d), [DIFC Press Release](#) on updated Prescribed Company Regulations. July 15, 2024.

<sup>61</sup> [DIFC Press Release](#) of 15 July 2024.

<sup>62</sup> DWTC Circular No. [12](#) dated 12 September 2021, Rule 1.1(ii).

[above](#) DIFC-based arguments regarding similarity for DWTC family entities as well.

Moreover, by considering a family entity as part of a “Family”, the DWTC amplifies grounds for the “similar entity” treatment:

- 1) The categorization of a family entity as part of a “Family” itself strengthens the case for treating it as a similar entity under Article 17 of the Corporate Tax Law. This approach demonstrates a closer connection between the family entity and its beneficiaries, reducing the “tax distance” and aligning its legal status more closely with its economic (substance) position, akin to the dynamics between private trusts and foundations.
- 2) By equating family entities with the family itself, the definition effectively overlooks the traditional corporate structure, which supports the transition to a tax transparency status as provided under Article 17 of the Corporate Tax Law. This alignment may qualify family entities registered at DWTC for tax transparency, much like trusts and foundations.

Consequently, family-owned companies registered in DWTC have a robust potential to be recognized as similar entities, qualifying them for transparency testing under applicable tax regulations.

### ***Family Offices (DIFC vs DWTC vs DMCC)***

76. A family office is a specialized entity that focuses on meeting the needs of one or multiple families. It can be structured as a single-family office (SFO), dedicated solely to managing the affairs of a single affluent family, or as a multi-family office (MFO), which supports the needs of several families. Typically, an MFO is run by a management team that might not have personal connections to the families it serves. In contrast, an SFO is specifically customized to suit the unique preferences of its single-family client, while an MFO is designed around the collective expertise of its management team to address the varied needs of its clients.
77. As per the FTA, a Single-Family Office *‘is not appropriately regulated by a relevant Competent Authority’* and thus ineligible for the 0% Corporate Tax rate on wealth and investment management income. In contrast, MFO can qualify if it *‘is appropriately regulated by a relevant Competent Authority’*.<sup>63</sup>
78. Family offices provide two main service categories: financial services (such as investment management, asset monitoring, and tax support) and family-focused services (like concierge and travel planning, personal assets management). The structure of an SFO varies widely, from simple

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<sup>63</sup> FTA’s Free Zone Persons Guide No. [CTGFZP1](#), examples 72 and 73.



investment management entities to comprehensive organizations offering a broad range of services.

Regardless of its structure, a family office should be separate from any asset-holding vehicles within the family's wealth structure for risk management purposes, though it can be owned by another entity within the same structure. Specifically, if investment management is handled internally, the family office typically does not hold the family's investments directly. Instead, it provides investment management services to separate investment-holding entities within the family structure under arm's-length service agreements. This separation ensures that there is a clear delineation of roles and responsibilities, which helps in mitigating risks and maintaining professional governance standards.<sup>64</sup>

79. Various jurisdictions in the UAE, including DIFC, DMCC, IFZA, DWTC, and RAKEZ, offer specialized licenses for family offices.
  - 79.1. In DIFC, Family Office acts as a vendor for the Family (Family Entities, Family Structures and Family Businesses)<sup>65</sup>, but does not qualify as a family entity itself. Instead, it serves as a service provider for family trusts, foundations, or similar entities. Consequently, a DIFC Family Office does not meet the definition of a Family Foundation as outlined in Article 1 of the [Corporate Tax Law](#).
80. The Dubai World Trade Center (DWTC) assigns to the term "family office" a different meaning. As per DWTC Circular No. [12/2021](#), a Single Family Office '*must be set-up as an independent **parent entity***'.<sup>66</sup> All shareholders of the SFO '*must be members of the family where: 1.100% of the SFO shareholding must be held by lineal descendants of the family; and 2.Consequently 100% Ultimate Beneficial Ownership [UBO] must vest with the family*'.<sup>67</sup>
81. Therefore, a DWTC Single Family Office serves not only as a provider of services to the family but also stands as a family owned entity itself and part of the Family. This is because DWTC's definition of a "Family" includes '*any family member(s), family business, **family entity**, family trust or foundation*'.<sup>68</sup>

The differences can be illustrated with charts as follows:

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<sup>64</sup> Alison Carton, LexisNexis Practical Guidance, 5 October 2022.

<sup>65</sup> Article 4.3.1 of the [DIFC Family Arrangement Regulations](#).

<sup>66</sup> DWTC Circular No. [12/2021](#), Rule 1.3.1.

<sup>67</sup> Ibid, Rule 1.3.2.

<sup>68</sup> Ibid, Rule 1.3(ii).

## DIFC



## DWTC



As you may see, in DIFC, a family office acts as a service provider and is not necessarily owned by the family it serves. In contrast, DWTC mandates that a single-family office (SFO) must be a family-owned entity. Moreover, in the DWTC, the SFO is a part of family, its arm. This integration makes the SFO in DWTC more akin to a trust or foundation, as it operates as an extension of the family itself, thus resembling trust and foundation structures much more closely than its DIFC counterpart.

82. Finally, Rules 1.3.2 and 2.3.2 of the Circular No. [12/2021](#) allow SFO and even MFO to 'act **as a conduit** for mainland and/or offshore [geography agnostic - UAE or overseas] licensed structures **such as Trusts operated by Trustees, or Foundations**; and in such instances, can supervise and coordinate all such activities'. This also adds arguments for the transparency of the DWTC family offices.
83. DMCC Single Family Office can be owned either by individual family member(s) or a registered trust owned by the same members. It is restricted from selling shares of the company to anyone except in cases of transfers among family members.<sup>69</sup>

An SFO 'may invest in businesses and corporate vehicles that are wholly owned by a member of that same family (directly or indirectly). An entity holding an MFO license may also invest in such wholly owned businesses and corporate vehicles, provided that these are wholly owned by member of a family that has been approved by the DMCCA'.<sup>70</sup> According to the recently updated requirements, an applicant for an SFO license must hold a minimum of USD 1 million in investible or liquid assets.<sup>71</sup>

<sup>69</sup> [License Requirements for DMCC Single Family Office](#).

<sup>70</sup> Description of Updates to DMCC Regulations and Rules Issue Date, [issued](#) October 10, 2024, Sec. 4(p).

<sup>71</sup> Ibid, Sec. 4(j).

84. DMCC's Single Family Offices license has a mixed status. The requirements to these licensees include:

- Permitting DMCC SFO *'to hold shares in family business, assets, trusts and foundations'*, similar to the status of DIFC Family Entity and DWTC SFO.
- Prohibiting a DMCC's SFO from acting *'as trustee but [it] **might act solely** as protector or **as conduit with offshore regulated trustees** operating the trusts or foundations'*. Hence, a DMCC SFO may not automatically carry the transparency status typically granted to trustees.<sup>72</sup> Recent rules reiterate that *'an entity holding an SFO or MFO license is not permitted to act as a trustee'*, and furthermore is not allowed to *'use a third party to provide the SFO or MFO services'*.

On the other hand, the scope of a DMCC CFO's activity is described more as that of a service provider rather than a holding company. The license covers *'offices founded by family members **for the provision of services** to the same single family; such **services** include **wealth management**, asset management, concierge work, day to day accounting and management of legal affairs, corporate governance issues and all the administrative and office affairs...'*.

This situation raises questions about how a DIFC CFO can *'hold shares in family business, assets, trusts, and foundations'* as a service while also complying with the prohibition against acting as a trustee. It appears that DMCC may consider the "conduit" status as an alternative to a traditional trust. If this is the case, a DMCC CFO acting as a conduit, while prohibited from trustee status, effectively fulfills the role of a trust without being named as such.

Abstracting from this legal puzzle, if a DMCC SFO's activity is limited to holding *'shares in family business, assets, trusts and foundations'* without charging a commission for this activity, then the *'similar entity'* assessment will align with that previously made for DWTC SFO. Otherwise (if it charges commission for its service), above contradiction may prevent a DMCC SFO from achieving transparency status. Being effectively the trust, but prohibiting from naming so, and with status of incorporated entity, such an SFO will hardly persuade the FTA to grant him transparency status. The FTA has compelling arguments to classify such an SFO's conduct as service provision rather than investment earnings. The exceptions for Personal and Real Estate Investments do not cover service provision, which may be seen as non-compliance with condition (c) for transparent Family Foundation status.

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<sup>72</sup> [DMCC CFO Guidelines](#), Section "Restrictions".

85. The findings concerning DMCC’s CFO raise question about why the same risk is not applicable to DWTC? Indeed, DWTC:

- mentions conduit status,
- treats an SFO as a parent entity;
- doesn’t prevent an SFO from acting as a trustee;
- considers SFO as part of a Single Family.

These features enhance the position of a DWTC CFO relative to DMCC’s, especially in terms of similarity to trusts and foundations. However, like DMCC, DWTC also categorizes the full spectrum of an SFO's activities as "services," which brings up the same concerns previously expressed regarding the DMCC SFO.

We believe both jurisdictions should modify their regulations to distinguish between two scenarios within the scope of Family Office activities:

- first is existing model of the service, and
- the second model is holding.

Additionally, the DMCC should reconcile the permission for holding assets on behalf of the family with the prohibition against acting as a trustee.

### *Trusts in two definitions*

86. As previously mentioned, trusts are included in the definition of a Family Foundation. This classification allows a trust to apply for transparency (Unincorporated Partnership) status with the FTA, which may be granted if the FTA says so. However, trusts are also included in the definition of “Unincorporated Partnership” as follows:

Family Foundation	Unincorporated Partnership
Family Foundations - Any foundation, <b>trust</b> or similar entity that meets the conditions of Article 17 of this Decree-Law.	A relationship established by contract between two Persons or more, such as a partnership or <b>trust</b> or any other similar association of Persons, in accordance with the applicable legislation of the State.

Unlike Family Foundation, Unincorporated Partnerships automatically obtain transparency by default;<sup>73</sup> neither application nor FTA’s approval is needed. Conversely, an application to the FTA and its approval are required to revoke transparency and become opaque.<sup>74</sup>

<sup>73</sup> [Corporate Tax Law](#), Article 16, Clause 1.

<sup>74</sup> *Ibid*, Clauses 8 to 10.

87. So, how do we distinguish a trust that is a Family Foundation from one that is an Unincorporated Partnership?

The clue is incorporation. Trusts in ADGM and DIFC do not have legal personality; they are covered by the legal personality of the trustees, and hence, they automatically qualify as Unincorporated Partnerships. Mainland trusts, however, *'shall acquire the legal personality as of the initial registration date and shall have financial and administrative independence and the right to litigation, and shall be represented by the Trustee'*.<sup>75</sup> Therefore, these trusts may only obtain transparency status upon special approval from the FTA and only if they meet the conditions set for a Family Foundation.

88. It is not only mainland trusts that should have legal personality; any UAE trust should have it, except those established under the regulations of financial free zones. According to Article 2(1) of the [Federal Trust Law](#) *'the provisions of this Law ... shall apply to every trust created in accordance with its provisions, except for the Financial Free Zones that have legislation to regulate the Trust created therein'*. Therefore, any local trusts not governed by DIFC or ADGM regulations are not transparent by default. Consequently, such trusts may claim Family Foundation (transparency) status.

### Disclaimer

Pursuant to the [MoF's press-release](#) issued on 19 May 2023 *"a number of posts circulating on social media and other platforms that are issued by private parties, contain inaccurate and unreliable interpretations and analyses of Corporate Tax"*.

The Ministry issued a reminder that official sources of information on Federal Taxes in the UAE are the MoF and FTA only. Therefore, analyses that are not based on official publications by the MoF and FTA, or have not been commissioned by them, are unreliable and may contain misleading interpretations of the law.

See the full press release [here](#).

You should factor this in when dealing with this article as well. It is not commissioned by the MoF or FTA. The interpretation, conclusions, proposals, surmises, guesswork, etc., it comprises have status of the author's opinion only. Like any [human](#) job, it may contain inaccuracies and mistakes that I have tried my best to avoid. If you find any inaccuracies or errors, please let me know so that I can make corrections.

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<sup>75</sup> Article 3(1) of the [Federal Trust Law](#).