

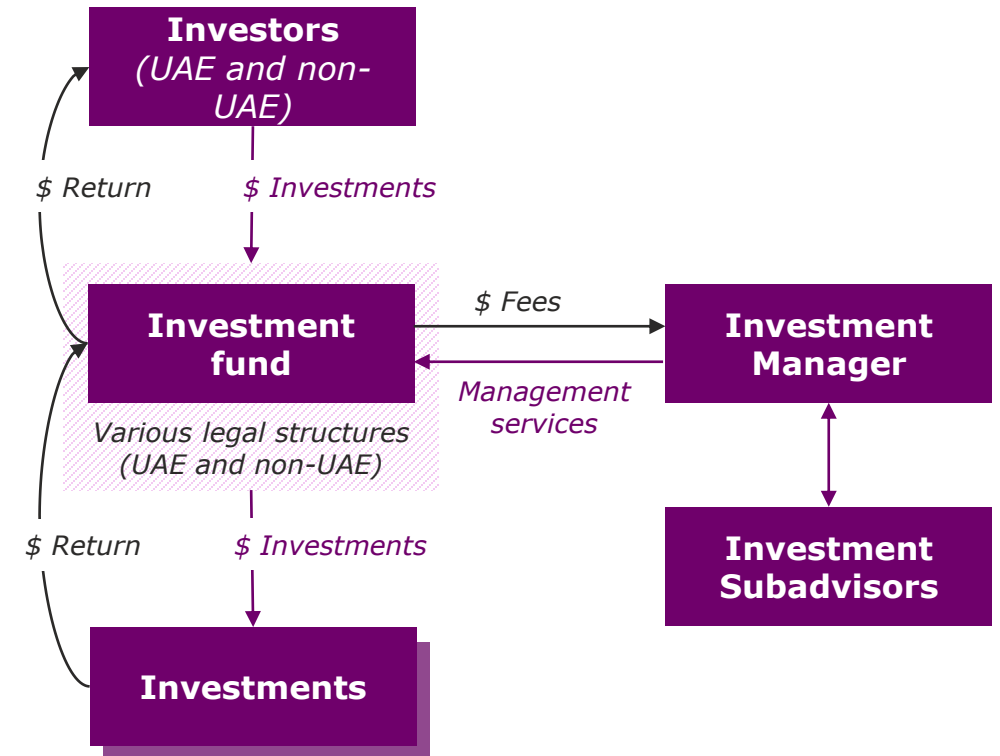
Overview of the Corporate Tax Guide CTGIFM1: **Investment Funds and Managers**



What are Investments Funds?

The investment funds:

- Invest funds received from investors on a collective basis in accordance with a defined investment policy, and, in return, investors share in the profits of the fund.
- Can consist of one or more entities (a group of entities can be referred to as an 'investment fund').
- Can include various legal structures (e.g. LLCs, PJSC, LPCs, unincorporated partnerships, investment trusts, etc., established both in the UAE and the UAE).
- May have an investment manager/investment advisor, investment subadvisors.
- May have a sponsor, custodian, general partner or trustee.



The Corporate Tax Guide CTGIFM1 on Investment Funds and Managers can be accessed [here](#)

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The fund (an entity which is a part of a fund structure) is subject to the UAE Corporate Tax as a Resident Person if:

- 1) it is a Juridical person, and
- 2) it is incorporated in the UAE or incorporated outside the UAE, but effectively managed and controlled in the UAE.

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A foreign fund, which is not managed and controlled in the UAE, may be subject to the UAE Corporate Tax if:

- 1) It has a Permanent Establishment (PE) in the UAE (if the Investment Manager exemption applies – no PE); or
- 2) It has UAE-sourced income (no taxation since current WHT rate is 0%); or
- 3) It has a nexus in the UAE (income from Immovable Property in the UAE).

03

If the fund is an Unincorporated Partnership – the fund is not a Taxable person, income of the fund is taxed at the level of the investors/partners. It may elect to be treated as a Taxable person.



An exemption from Corporate Tax is available for Qualifying Investment Funds

Who is eligible for the exemption?

- ✓ Subject to meeting Qualifying Investment Fund Conditions:
 - UAE-incorporated investment funds (incl. Free Zones),
 - Non-UAE investment funds,
 - UAE and non-UAE investment funds in the form the Unincorporated partnership, which applied to be treated a Taxable Person.
- ✓ Natural persons are not eligible persons.

What does the exemption entail?

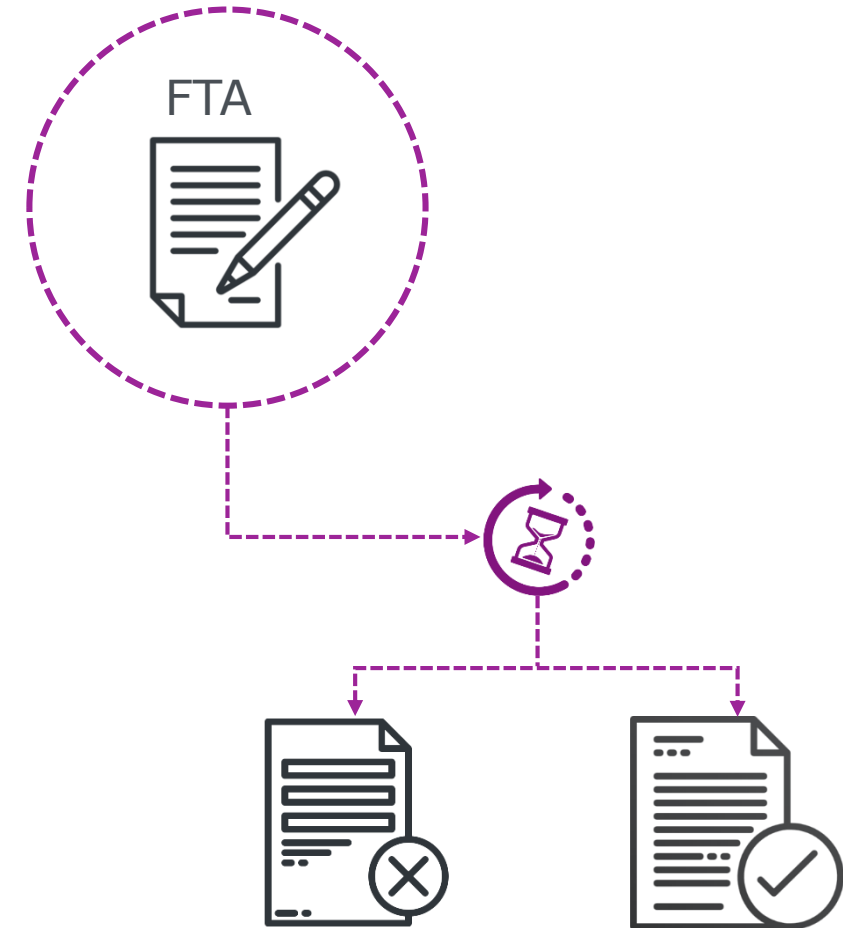
- ✓ The fund is exempt from the UAE Corporate tax.
- ✓ UAE entities (incl. Free Zones) owned and controlled by the fund – may be exempt from the UAE Corporate tax subject to conditions.
- ✓ The fund cannot enjoy benefits from a Tax Group, Qualifying Group Relief, Business Restructuring Relief, transfer of Tax Losses, benefits UAE-incorporated investment funds (including Free Zone funds).



If any of the conditions are not met by the fund at any time during the tax period – **the fund loses the exempt status from the period during which the condition is not met** (there are exceptions for liquidations/terminations and for failures of temporary nature). The same applies to exempted UAE entities.

How to apply?

- ✓ Application for the exemption can be submitted only after the registration of the fund with the FTA. The fund should specify for which Tax period the exemption should be applied.
- ✓ The FTA will either reject (with the reason) or accept the application and state the Tax period for the exemption.



Conditions for Qualifying Investment Funds

The following conditions should be met by the fund (other than REIT) to be considered a Qualifying Investment Fund*:

1) <i>Regulatory oversight condition</i>	the fund/the fund's manager is subject to the regulatory oversight of a competent authority in the UAE (the SCA, the DFSA, the FSRA), or a foreign competent authority
2) <i>Fund ownership condition</i>	interests in the fund are traded on a Recognised Stock Exchange (ADX, DFM, Nasdaq Dubai) or are marketed and made available sufficiently widely to investors
3) <i>Main purpose condition</i>	the main or principal purpose is not to avoid the UAE Corporate Tax
4) <i>Investment Business condition</i>	the main Business or Business Activities conducted by the fund are Investment Business activities (other Business activities are ancillary or incidental)
5) <i>Diversity of ownership condition</i>	a single investor and its Related Parties do not own more than 30% of the ownership interests in the fund (if less than 10 investors) and more than 50% of the ownership interests in the fund (if 10 or more investors)
6) <i>Investment Manager condition</i>	the fund is managed or advised by an Investment Manager that has a minimum of 3 investment professionals
7) <i>Independence condition</i>	the investors do not have control over the day-to-day management of the fund

*Article 10 (1) of the Corporate Tax Law, Article 2 (1) (b) of Cabinet Decision No. 81 of 2023

- ✓ **Investment Business Condition** should be met if the fund:
 - Carries on Investment Business activities;
 - Carries other Business activities, that are ancillary or incidental (the combined Revenue of such other activities does not exceed 5% of the total Revenue of the fund in the same financial year).
- ✓ If the Revenue from ancillary or incidental activities exceed the 5% threshold, this condition is not met.
- ✓ There is no requirement to hold investments for a minimum period to be considered Investment Business.
- ✓ Holding cash in the bank account may be considered Investment Business if the cash is held as a result or for the purpose of Investment Business activities.
- ✓ **Diversity of Ownership Condition** should be met if no single investor (together with its Related Parties) owns:
 - 30% or more of the ownership interests, if there are 10 or fewer investors in the fund; or
 - 50% or more of the ownership interests, if there are more than 10 investors in the fund.
- ✓ For the first 2 financial years the fund is deemed to meet this condition, if the fund can show that it intends to meet the condition subsequently.
- ✓ The number of investors is calculated by looking through Qualifying Investment Funds and tax transparent structures.

- ✓ **Investment Manager Condition** should be met if the Investment Manager of the fund has at least 3 investment professionals:
 - They do not need to be full-time employees;
 - They can be engaged as independent contractors;
 - There is no need for them to work exclusively for the fund;
 - They can be of different backgrounds (e.g. legal specialist assisting on the contract negotiation), the key criteria is whether they carry out an activity that forms part of the Investment Manager's core activities
- ✓ **Independence Condition** should be met if the fund's investors do not have control over the day-to-day management of the fund.
 - ✓ Day-to-day management - routine decisions implemented within the ordinary course of Business, day-to-day supervision and operational decisions.
 - ✓ If an Investment Manager holds an ownership interest in the investment fund – this condition is not met.
 - ✓ The right to a vote at annual general meetings does not amount to day-to-day control.
 - ✓ The presence of the advisory committee/ investment committee may undermine meeting this condition if the committee exercises day-to-day management.

Conditions for Qualifying Investment Funds - REITs

✓ The following conditions should be met by the REIT to be considered a Qualifying Investment Fund*:

1) <i>Regulatory oversight condition</i>	the fund/the fund's manager is subject to the regulatory oversight of a competent authority in the UAE (the SCA, the DFSA, the FSRA), or a foreign competent authority
2) <i>Fund ownership condition</i>	interests in the fund are traded on a Recognised Stock Exchange (ADX, DFM, Nasdaq Dubai) or are marketed and made available sufficiently widely to investors
3) <i>Main purpose condition</i>	the main or principal purpose is not to avoid the UAE Corporate Tax
4) <i>REIT minimum real estate asset value condition</i>	the value of real estate assets (except land) under the management/ownership of the REIT exceeds AED 100 million (the value of is determined based on the carrying value in the financial statements of the REIT)
5) <i>REIT ownership condition</i>	at least 20% of the REIT share capital is floated on a Recognised Stock Exchange, or it is directly wholly owned by two or more institutional investors specified in <u>Article 5 of Cabinet Decision No. 81 of 2023</u> , provided that at least two of those institutional investors are not Related Parties
6) <i>REIT real estate percentage condition</i>	the REIT has an average Real Estate Asset Percentage of at least 70% during the relevant Gregorian calendar year or the relevant 12-month period for which the financial statements are prepared

*Article 10 (1) of the Corporate Tax Law, Article 3 of Cabinet Decision No. 81 of 2023

01

Aim - to prevent regulated UAE-based investment managers and brokers triggering a liability to the UAE Corporate Tax for foreign investors by creating a PE in the UAE.

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If the Investment Manager conditions are met, the foreign investor has no PE in the UAE and, thus, is not subject to the UAE Corporate Tax.

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The exemption applies automatically if the Investment Manager conditions are met (no election or application is required).

Conditions for the Investment Manager Exemption

The following conditions should be met by the Investment Manager*:

1) <i>Investment manager or brokerage services condition</i>	the manager is engaged in the business of providing investment management or brokerage services
2) <i>Regulatory oversight condition</i>	the manager is subject to the regulatory oversight of the competent authority in the UAE (the SCA, the DFSA and the FSRA)
3) <i>Ordinary course of Business condition</i>	the transactions are carried out in the ordinary course of the Investment Manager's Business
4) <i>Independent capacity condition</i>	the manager acts in relation to the transactions in an independent capacity (not bound by detailed instructions or comprehensive control on its performance, economically independent)
5) <i>Arm's length condition</i>	the manager transacts on an arm's length basis with the Non-Resident Person and receives due compensation for the provision of services
6) <i>No other representation relation condition</i>	the manager is not the Non-Resident Person's representative in the UAE in relation to any other income or transaction that is subject to the Corporate Tax for the same Tax Period

*Article 15 (1) of the Corporate Tax Law



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