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Personal and Real Estate Investments exceptions in the UAE Corporate Taxation

The Personal and Real Estate investments of Natural Persons are not subject to Corporate Tax in the UAE. However, this carve-out doesn't apply if obtaining profits from private investments constitutes commercial activity under the Commercial Transactions Law. This could present a challenge, since this Law includes investments for profits. This study aims to puzzle this out and find criteria to distinguish personal investments from business ones.

Licensing issues are crucial for both Personal and Real Estate Investments, so, they will also be covered by our research. The detrimental effect of exercising control over a company (the subject of investment) will also be addressed.

The study could be interesting for:

- natural persons (residents and non-residents),
- structures transparent by default, such as trusts, funds and partnerships without legal personality, and
- potentially transparent structures, such as mainland trusts, foundations and similar entities, and qualifying (exempt) investment funds.

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Introduction

1. In the UAE, Natural Persons are subject to the UAE Corporate Tax if they conduct Business or Business Activity in the State.¹
2. Article 1 of the Corporate Tax Law defines Business as *'any activity conducted regularly, on an ongoing and independent basis by any Person and in any location, such as industrial, commercial, agricultural, vocational, professional, service or excavation activities or any other activity related to the use of tangible or intangible properties'*.

Business Activity is defined as *'any transaction or activity, or series of transactions or series of activities conducted by a Person in the course of its Business'*. This definition aims to capture for tax purposes those transactions in the State that may not constitute Business when seen separately but fit the definition of Business when all (within and out of the State) pieces are aggregated.

3. The Cabinet is authorized to *'issue a decision specifying the categories of Business or Business Activity conducted by a resident or non-resident natural person that are subject to Corporate Tax'*. On 8 May 2023, the Cabinet exercised this authority through the Decision No. [49](#).

The Cabinet ordained that for a Natural Person Personal Investment and Real Estate Investment incomes *'shall not be considered as Businesses or Business Activities'*.²

4. Article 1 of the above Decision defines Real Estate and Personal investments as follows:

Attribute	Real Estate Investment	Personal Investments
Specifics	Any investment activity conducted by a natural person related to, directly or indirectly, the sale, leasing, sub-leasing, and renting of land or real estate property in the State	Investment activity that a natural person conducts for their personal account
Not licensable	that is not conducted, or does not require to be conducted through a Licence from a Licensing Authority	that is neither conducted through a Licence or requiring a Licence from a Licensing Authority in the State,
Not Commercial Business	-	nor considered as a commercial business in accordance with the Federal Decree-Law No. 50 of 2022.

¹ Article 11(3)(c) of the [Corporate Tax Law](#).

² Article 2(b) and 2(2)(c) of the Decision No. [49/2023](#).

5. The table illustrates that:
 - 1) The 'personal' feature is not relevant to Real Estate Investments. Therefore, the distinction between personal and non-personal investments is not crucial in case of Real Estate.
 - 2) There are three principal conditions for the Personal Investments exception and only two for Real Estate.
 - 3) Commercial Business test is not relevant to Real Estate, i.e. income gained through Real Estate Investment is out of tax scope, even if earned through commercial activity.

The non-licensable attribute is common to both exceptions.

Personal Investments vs Commercial Business

6. The Corporate Tax legislation about distinction between personal and non-personal investments. The only clue given is a reference to the Commercial Transactions Law.
7. In Section 3.8.2 of the Natural Persons Taxation Guide No. [CTGTNP1](#), the FTA clarifies that Law No. [50/2022](#) establishes various criteria for determining whether an activity is commercial. As per the FTA, *'broadly, a commercial business is defined as work practiced by a trader in relation to their trade, or speculation **works practiced by a person, whether or not a trader, for the purpose of realising a profit**, work considered by the Commercial Transactions Law as commercial business (by virtue of its nature, if carried out as an occupation, or equivalent), or work associated with or facilitating a commercial business'*.

This definition is quite broad. Article 5 of Law No. [50/2022](#) defines that: *'The following works shall be considered commercial business, by virtue of **their nature**: Purchase of tangible and intangible chattel for the **purpose of sale with profit whether sold as is**, or after transformation or manufacture'*.

Article 472 of this Law provides that: *'The following transactions shall be **deemed of the commercial transactions** governed by the Islamic Shariah provisions, whenever conducted through an Islamic financial institution: Deposit... Investment account... **Investments**...'*. This rule regulates the issue of when Sharia rules should be applied to commercial transactions. However, it does not prevent the use of this rule in order to establish that deposits, investment accounts and investments are considered as commercial transactions under this Law. In other words, this rule does not state that deposits and investments made by the Islamic Financial Institutions are recognized as commercial transactions governed by Sharia law. Instead, it subordinates such transactions (deposits and investments), that are commercial, to Sharia's rules if they are conducted through an Islamic Financial Institution.



The literal application of the provisions of this [Law](#) makes it possible to recognize any investment as a commercial operation. This will make meaningless exception for Personal Investments granted by the Cabinet.

8. Fortunately, it seems that the FTA does not adhere to such a broad interpretation. The above Guide gives an example³ of an individual residing in the UAE and investing in listed securities. This activity is considered Personal Investment, as it was carried out with personal savings and does not require a license.

However, lack of the requirement to obtain license for this activity is a given fact for this example, rather than confirmation from the FTA any investment activity with listed securities is non-licensable. In other words, the FTA assumes for the purpose of the example that a license is not required in this particular case. This assumption may be true for one case and false for another.

9. Besides, example with listed securities is not the only example the FTA provides. In Example 3 of the Registration of Natural Persons Guide No. [CTGRNP1](#), the FTA classify investment of a natural person engaged in a bakery business in shares of the flour production company as non-personal.
10. Example 3 from the Exempt Income Guide No. [CTGEXI1](#) is worth to be cited: *'Mr A and Mrs B are both shareholders in Company A (a company incorporated and resident in the UAE). **Mr A purchased his shares as a Personal Investment, while Mrs B did it as part of her Business Activity.** Company A makes a Dividend distribution to both shareholders. The Dividend income received by Mr A is **Personal Investment income and not subject to Corporate Tax.** The Dividend income received by Mrs B is **specifically exempted** as a Dividend received from a juridical person that is a Resident Person'.*

This example illustrates that an investment in shares may be treated as Personal Investment for one individual, and part of the Business Activity of another individual. This takeaway raise concerns, giving no clarity on how to distinguish.

11. In Example 12 of the Partnerships Guide No. [CTGPTN1](#), the FTA qualified *'paintings and antiques bought as personal investments'*. However, in Example 13 of the Natural Persons Guide No. [CTGTNP1](#), the FTA elucidates that investment in artworks constitute taxable Business in case where an individual:
- *'observes that the prices of the artwork of a specific UAE artist have been increasing for more than a decade'.*

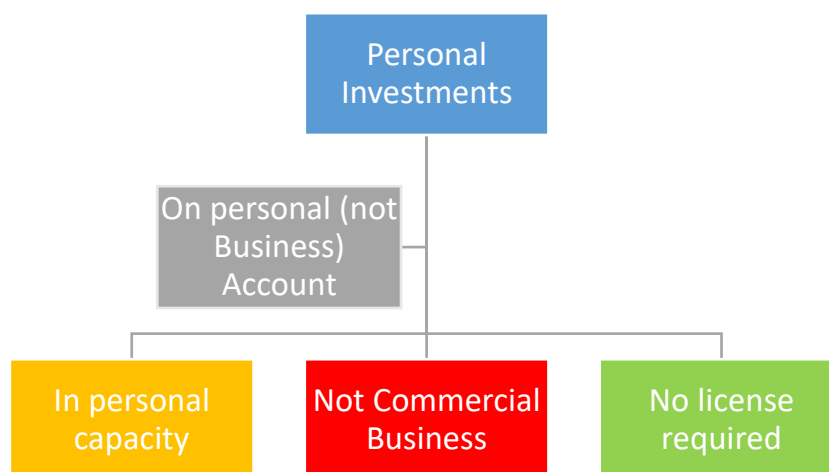
³ Example 11 in the Guide No. [CTGTNP1](#).

- *'sets up a small office at home and starts buying the artworks from the UAE in order to sell them to clients located outside of the UAE through a network of partners located in different countries'.*

The latter example raises the question of what exactly has deprived the investment of its personal status. An investment in artworks and antiques can turn into profit if they are sold at a higher price. Therefore, in both examples, the investor expected that the price would increase, allowing them to resell the items at a higher price. So, what triggered the disqualification of the personal status? The small office at home might not be the answer, since Article 1 of the [Corporate Tax Law](#) considers Business to be an activity conducted *'in any location'*.

12. Finally, apart from examples, the FTA's position on the Personal Investment carve-out is clear-cut: *'Personal Investment ... should not be an activity that is "considered as a commercial business" in accordance with the Commercial Transactions Law... However, where an activity is not considered a commercial business as per the Commercial Transactions Law, it will not automatically be considered a Personal Investment activity, unless it is conducted on the person's personal account and is neither conducted through a Licence or required to be conducted through a Licence'*.⁴

This can be illustrated by the following figure:



If any condition in the boxes fails, an income is not considered as Personal Investment. And here we face the above issue again: No investment, aimed at profit, is able to meet "not commercial business" condition. This reduces the scope of the investments, which may pass the Personal Investment Test, to zero. Therefore, in our view, the literal interpretation should not apply. Instead:

⁴ Taxation of natural persons Corporate Tax Guide No. [CTGTNP1](#), Sec. 3.8.2.

- 1) The features of “commercial business”, which compromise an investment nature (to gain a profit), must not apply since they disqualify any investment.
 - 2) Only certain specifics of the investment, which are not inherent to investment nature itself, matters. The Commercial Transactions Law must be used to determine such specifics.
13. From this prospect, the following provisions of the [Commercial Transaction Law](#) should be excluded from the ‘*not commercial business*’ test:
- ‘*the purchase of tangible and intangible movables with the intention of selling them at a profit...*’ ‘*shall, by virtue of their nature, be considered as commercial activity*’, but, shouldn’t be deemed as such for the purpose of Personal Investment exception.
 - Article 472(5) of the Law No. [50/2022](#) considers any investment as commercial business, but this treatment definitely does not apply to Personal Investment excuse granted by the Cabinet Decision No. [49/2023](#).
14. To illustrate the specifics of the Commercial Code, which may exclude some investments from the Personal Investment carve-out scope, the following examples can be used:
- ‘*Activities carried out by a merchant in relation to his trade affairs; however, any activity carried out by a merchant is considered to be related to his trade unless otherwise proved*’. This rule could serve as a legal rationale for Example 3 of the Guide No. [CTGRNP1](#), where the FTA classifies an investment by a natural person, engaged in a bakery business, in shares of a flour production company ‘*as part of the Business from the bakery’s Business account, not the natural person’s personal account, i.e. not as a Personal Investment*’.
 - ‘**Speculative** activities carried out by a person, even if he is not a merchant, with the intent of realizing profit’. The intent to realize profit is an integral attribute of any investment; so, this feature of the description of commercial activity is irrelevant to Personal Investment exemption. However, the speculative nature should be additionally addressed.

For example, Art. 693 of the [Civil Transaction Law](#) defines ‘*the **speculative** partnership is a contract whereby the capital owner agrees to provide the capital and the other party to endeavor and work aiming at realizing a profit*’. The specific of such a partnerships is that the speculator does not share the losses but may share in the profits,

while in a partnership, in general, the partner share in both the profits and losses.⁵ Hence, an activity of the speculator must be treated as commercial business under the Article 4(2) of the Law No. [50/2022](#), but the activity of the other partner isn't compromised by this Article.

Another example stems from the Dubai Court of Appeal's Judgement No. 514 of 2014, dated 10 January 2015.⁶ Here, an expert was assigned to determine whether the assets (shares, stocks) had been traded between the parties or whether it was only a matter of betting, prediction, and **speculation without the transfer of any assets**. Since there was no actual transfer of assets, the court recognized these transactions as speculative.

Noteworthy, that Article 2(3)(c) of the Ministerial Decision No. [265/2023](#) distinguishes between *'the physical trading activities of Qualifying Commodities and associated derivative trading used to hedge against risks involved in such activities*. The "hedging" is defined as *'to invest in a manner that **reduces the risks** related to underlying assets or liabilities'*.⁷ Derivatives defined as *'a financial asset or liability whose value is derived from an underlying asset, liability or related index. Common forms of derivative instruments include forwards, futures, options, swaps, credit derivatives or combinations thereof (as applicable)'*.⁸ Therefore, hedging does not aim to gain profit. Rather, it's goal is to reduce the risk inherent in underlying assets. This activity can be described as "investment". Thus, it may qualify for Personal Investment exception.

The distinction between speculative and non-speculative trading will be further addressed [below](#).

Insights from Europe

15. The Europe Union uses the term "economic activity" to address tax issues, including tax competition and state aid.

The term "economic activity", in the European context, has a similar meaning to the term "Business" in the UAE:

⁵ UAE 683/2008 dated 30/06/2008, FSC civil judgments 2008, Sader Legal Publications, p.349.

⁶ Sherif Hikal & Zane Anani, "Spread Betting: Debts Arising from Gambling Contracts are Uncollectable in the UAE", Al Tamaimi & Co [web site](#), February 2016.

⁷ Financial Regulations for Insurance Companies, adopted by the UAE Insurance Authority Decision Number No. 25 of 2014.

⁸ Ibid.

Europe Economic Area	UAE
<p>'any activity consisting in offering goods or services on a given market is an 'economic activity...'⁹</p> <p>'Taxable person' shall mean any person who, independently, carries out in any place any economic activity, whatever the purpose or results of that activity. Any activity of producers, traders or persons supplying services, including mining and agricultural activities and activities of the professions, shall be regarded as 'economic activity'. The exploitation of tangible or intangible property for the purposes of obtaining income therefrom on a continuing basis shall in particular be regarded as an economic activity.¹⁰</p>	<p>'Any activity conducted regularly, on an ongoing and independent basis by any Person and in any location, such as industrial, commercial, agricultural, vocational, professional, service or excavation activities or any other activity related to the use of tangible or intangible properties'.</p>

These definitions are close, so it makes sense to look at how the EU practically distinguishes economic activity related to private investment from that which is not economic.

16. The insights on “economic activity” are also relevant to the UAE’s rules on Private Investments due to the Licensing Test. Investments activities that require a license do not qualify for Personal Investment exception. The Emirates only require the obtaining of a license for Economic Activity. For example, in Dubai ‘a natural or legal person may conduct an **Economic Activity** in the Emirate only through a Business licensed by the DED [Dubai Economy Department]’.¹¹ Abu Dhabi defines the licence as a ‘certificate ... according to which a physical or legal person is allowed to practice a specific **Economic Activity** ...’.¹² Ras al Khaimah prohibits to ‘carry on the economic activity in the Emirate before obtaining license ...’.¹³

Personal Investment and Controlled Shareholding

17. In the EU, state aid (including tax benefits) is permitted for a person who is not “undertaking”.¹⁴ The Court of Justice of the European Union (CJEU) has consistently defined undertakings as entities engaged in an *economic*

⁹ Definition compiled from the CJEU judgements in the

¹⁰ EU Council Directive [2006/112/EC](#) of 28 November 2006 on the common system of value added tax, Art. 9.

¹¹ Dubai Law No. [13/2011](#) Regulating the Conduct of Economic Activities in the Emirate of Dubai, Art. 6.

¹² Abu Dhabi DED Chairman Decision No. [145/2020](#) On the Regulation of Practice of Economic Activities in the Emirate of Abu Dhabi, Art. 1

¹³ Law No. [8/ 2016](#) On Regulating Practicing Economic Activities in Ras Al Khaimah, Art. 6.

¹⁴ Article 107(1) of the [Treaty on the Functioning of the European Union](#).

activity, regardless of their legal status and the way in which they are financed.¹⁵

18. In the *Cassa di Risparmio*, the CJEU held that *'the mere fact of holding shares, **even controlling shareholdings**, is insufficient to characterise as economic an activity of the entity holding those shares, when it gives rise only to the exercise of the rights attached to the status of shareholder or member, as well as, if appropriate, the receipt of dividends, which are merely the fruits of the ownership of an asset'*.¹⁶

The mere acquisition and sale of shares do not amount to economic activity, as well. To substantiate that, EFTA¹⁷ Surveillance Authority (ESA) refers to the BBL case¹⁸ where the CJEU considered whether the activities of investment companies under Belgian law constitute economic activity within the meaning of Article 4(2) of the Sixth VAT Directive.¹⁹ The Court held that *'the mere acquisition and holding of shares in a company is not to be regarded as an economic activity within the meaning of the Sixth Directive, conferring on the holder the status of a taxable person. The mere acquisition of financial holdings in other undertakings **does not amount to the exploitation of property for the purpose of obtaining income therefrom on a continuing basis because any dividend yielded by that holding is merely the result of ownership of the property and is not the product of any economic activity within the meaning of that directive'***.

Splitting Holding and Active Management

19. In the *Wellcome Trust* case²⁰, the Court considered whether the purchase and sale of shares and other securities by a trust fund constitute an economic activity for the purpose of Sixth VAT Directive.



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The Court held that the *'mere exercise of the right of ownership by its holder cannot, in itself, be regarded as constituting an economic activity'* and *'the same must be true of activities consisting in the sale of such holdings'*.

¹⁵ European Commission Notice on the notion of State aid ([2016/C 262/01](#)), para 2.1, CJEC Judgment of 12 September 2000, *Pavlov and Others*, Joined Cases C-180/98 to C-184/98, [ECLI:EU:C:2000:428](#), paragraph 74; Judgment of the Court of Justice of 10 January 2006, *Cassa di Risparmio di Firenze SpA and Others*, C-222/04, [ECLI:EU:C:2006:8](#), para 107.

¹⁶ CJEU, [Case C-222/04](#) *Cassa di Risparmio*, para 111.

¹⁷ European Free Trade Association.

¹⁸ CJEU, [Case C-8/03](#) *Banque Bruxelles Lambert SA v Belgium* [2004] ECR I-10157, para 39.

¹⁹ ESA Decision of 15 February 2011 on Private Asset Structures No [44/11/COL](#).

²⁰ Case [C-155/94](#) *Wellcome Trust Ltd v Commissioners of Customs and Excise* [1996] ECR I-3013, paragraphs 32 and 33.

In this Case, the Court directly addressed distinction between private and non-private investments:

- *'... transactions in shares, interests in companies or associations, debentures and other securities may fall within the scope of VAT. This will be the case, in particular, where such transactions are effected as part of a commercial share-dealing activity or **in order to secure a direct or indirect involvement in the management of the companies in which the holding has been acquired**... However, as is clear from the order for reference, **the Trust is forbidden to engage in precisely such activities, being required to make all reasonable efforts to avoid engaging in trade when exercising its powers and being precluded from taking majority holdings in other companies.***
- *Consequently, and **irrespective whether the activities in question are similar to those of an investment trust or a pension fund**, the conclusion must be that a trust which is in a position such as that described by the referring tribunal must... be regarded as **confining its activities to managing an investment portfolio in the same way as a private investor.**'*

Thus, *'direct or indirect involvement in the management of the companies in which the holding has been acquired'* may serve as a demarcation line to distinguish private from non-private investments. However, not all the management compromises private investor status. In this case, private status is upheld for the trust which *'**manages the assets it holds, consisting in part of its shareholding in the Foundation and of other financial instruments. Its investment activities... consist essentially in the acquisition and sale of shares and other securities with a view to maximizing the dividends and capital yields which are destined for the promotion of medical research***'. Therefore, where this type of management is involved, the private status is not jeopardized unless the entity *'secure a direct or indirect involvement in the management of the companies in which the holding has been acquired'*.

Real Estate Investment (REI) examples

20. Here is how FTA demonstrated this approach in Real Estate Corporate Tax workshop.²¹

One example involves the owner of a real estate property and an independent agent licensed to manage it:

²¹ You can find a record of the session by clicking the [link](#).

Natural Person

Example: 1 Agent managing residential apartments

A natural person, Mr. T, based in the UAE, owns residential apartments with an annual rental income of AED 1,300,000.

Mr. T hires a Company C (that is unrelated to Mr. T), a real estate management company, to source tenants, register tenancy contracts, advertise properties and collect the rent from tenants all for a certain fee.

Given that Company C only manages the properties and collects the rent for Mr. T who does not have, or is not required to have a Licence, the income received via Company C by Mr. T is REI income.

The next example illustrates a natural person who invested in real estate and established a company to manage that investment on his behalf:

Natural Person

Example: 4 Property owner using own property management company

A natural person, Mr. X, based in the UAE, owns residential properties with an annual rental income of AED 2,000,000.

Mr. X sets up a Company H (owning 100% of the shares) with a Licence to manage the properties and collect the rent from tenants for a fee.

Given that Company H just manages the properties and collects the rent on behalf of Mr. X, and Company H is a separate legal entity (i.e. separate Taxable Person), the money received from Company H by Mr. X is Real Estate Investment income.

NOTE: As Mr. X owns Company H, the management fees charged by Company H to Mr. X must be at arm's length.

And, one more example, now with hotel owner:

Natural Person

Example: 7 Income from leasing out a hotel building

Mr. Q owns a hotel building. He entered into a contract with a licensed hotel management company who will operate a hotel establishment.

Mr. Q leases the hotel building to the hotel management company and in return receives an annual lump-sum amount (not related to the performance of the hotel Business). Mr. Q is not involved in the operation of the hotel.

In this case, the lump sum amount received by Mr. Q will be considered as REI income and therefore not subject to Corporate Tax.

All these examples show that for the purpose of the Real Estate Investment exemption, involvement of licensed intermediary excuses investor from obtaining the license and allows him to retain exemption. Therefore, the Real Estate Investment regime will not be failed if a natural person (or his/her trust or another transparent structure) retains a trustee or another licensed agent to manage Real Estate Investments.

Applicability to Personal Investments

21. The above examples are given for Real Estate Investments (REI). Personal Investments are less clear in this regard. Compared to REI, their Personal Investment satellite is additionally conditioned by Commercial Business testing, as demonstrated in the [above](#) table.

So, REI can be applied where an investment constitutes a commercial business even if a license is not required for such investments (or their exploitation). Investments in securities and other (movable) assets that do not require license don't qualify for Personal Investment status if they have features of a commercial business. Therefore, the examples given to illustrate the REI may not always be suitable for Personal Investment.

22. However, it is not clear how an operation with Real Estate may be treated as Commercial Business without requiring a license. As mentioned [earlier](#), in Dubai, a license is needed for Economic Activity. The latter is defined as '**any commercial, industrial, artisan, occupational, agricultural, service, or other for-profit activity** authorised in the Emirate in accordance with the legislation in force'. So, whether it is commercial or not, any for-profit activity requires license.

As per Art. 6 of the [Commercial Transactions Law](#), '*purchase and sale of land or real property with the intent of realizing profit by selling such land or real property as is or after being developed or partitioned*' '*shall be deemed commercial activities **if practiced as a profession***'. This definition is narrower than the general definition applicable to other investments (securities, artwork, antiques, etc.). Non-real estate investments should be treated as a commercial activity even then they are not '*practiced as a profession*'. However, this doesn't make the Real Estate exemption burden easier since in Dubai '*other for-profit activity*' is subject to licensing, as well.

A rescue should come from the interpretation of 'activity'. Where a person invests in a real property to make profit but doesn't conduct activity on his own and instead uses a licensed manager or agent to act on his behalf, then the activity for investor's profit is carried out by the agent. This concept is illustrated in the [above](#) examples of FTA's with regard to real estate. There is no reason to apply different logic to Personal Investments. This logic is based on the concept of determining subject of activity, and, thus, it may be equally used to contend that the activity of a

licensed manager/agent doesn't create neither licensable activity, nor commercial activity in the hands of a private investor.

On balance, above arguments should help to substantiate applicability of the Real Estate Investments examples to Investments.

When the split doesn't help?

23. In the [Cassa di Risparmio](#), the CJEU also stated that *'an entity which, owning controlling shareholdings in a company, **actually exercises that control by involving itself directly or indirectly in the management thereof**, must be regarded as taking part in the economic activity...'*.

In this case, the court found that one, in substance, undertaking had been simply separated in two different entities. The first (banking company) had pursued above economic activity and the second (banking foundation) controlled the first. So, the split is similar to the examples from the FTA's workshop. The foundation had been fully involved in managing subsidiaries. While the foundation cannot engage directly in the banking activity, it must ensure the 'operational continuity' between itself and the controlled bank. These arrangements require the members of the management committee or the banking foundation's equivalent body to be appointed to the board of directors and members of the controlling body to the supervisory committee of the banking company.

The Court ruled that such *'rules reveal a function of banking foundations going beyond the simple placing of capital by an investor. They **make possible the exercise of functions relating to control, but also to direction and financial support**. They illustrate the **existence of organic and functional links between the banking foundations and the banking companies ...'***.

The Court emphasized that *'it is for the national court to determine whether it [banking foundation] not only held controlling shareholdings in a banking company, but, in addition, actually exercised that control by involving itself directly or indirectly in the management of the latter'*.

Liechtenstein Personal Investments Structures takeaways

24. The Liechtenstein Personal Investment Structures (P.I.S.) had been specifically examined with these rules in the ESA Decision of 15 February 2011 No. [44/11/COL](#).



In essence, the Commission confirmed that where an entity is managed to pass the P.I.S. qualification sieves of the Liechtenstein controls, then the lack of economic activity features is confirmed. Therefore, it is worth considering how a person with the control or non-control shareholding can confirm that he/she doesn't exercise such control.

25. An entity with P.I.S. status may hold shares in other companies, but it (or its shareholders or beneficiaries) is prohibited from actually exercising control by involving itself directly or indirectly in the management of the companies in which the shares are held.

The Liechtenstein tax authorities carefully verify on a case-by-case basis by taking all concrete circumstances into account whether indirect or direct control may be exercised. To this end, the tax authorities verify, amongst others, whether the companies (in which the shares are held) are listed at the stock exchange, what the voting rights are, the type of stock held, the voting quorum of the Board of Directors, whether it changes depending on the business issue discussed and which business decisions the management is required to submit to the Board of Directors for prior approval.

After that, the tax authorities verify whether the control has been actually exercised. The P.I.S. must submit a written declaration stating that neither the applicant nor its shareholders or beneficiaries exercise control by influencing directly or indirectly the management of the company in question. In the absence of the Declaration, P.I.S. tax status shall be rejected.

If the P.I.S. owns between 20 and 50 percent of shares in a company, the tax authority:

- 1) inspects the minutes of the Board of Directors, Board of Trustees or other administrative body of the P.I.S. to verify whether control is exercised by influence on the management of the company in question.
- 2) verifies whether the applicant (or its shareholders or beneficiaries) has members on the Board of Directors of the company in question.

If P.I.S. share in a company exceeds 50%, the tax authority requests to submit written confirmation that the Board of Directors of the company in question decides independently of the P.I.S. (its shareholders or beneficiaries) and that the P.I.S. limits itself to exercising its shareholder rights in the General Assembly.

Obviously, this practice doesn't bind the FTA in any way. Moreover, the FTA can proceed from its own vision of how to distinguish between Personal and Commercial Business Investments. However, the FTA absorbs

best practices all around the world. Therefore, it makes sense to structure personal investment management in such a way which is not recognized as economic activity in other jurisdictions. It would not be prudent to rely on simple solutions, such as disqualified in the [Cassa di Risparmio](#). Aligning of the structure, designed for the personal investment in the UAE, with severe but favorable structures in Liechtenstein may seem excessively cautious but should be considered by those who prefer playing it safe.

Speculative Trading vs Personal Investment

26. As discussed [above](#), the speculative features may bring the activity under commercial business scope and compromise Personal Investment status. The speculative features can be additionally illustrated by European case law.

For example, the ESA avails²² the CJEU judgement in Wellcome Trust case²³ to address *'the distinction between the exercise of ownership on the one hand and **speculative trading** on the other hand'*. The Court held that *'transactions in shares, interests in companies or associations, debentures and other securities'* which, when *'effected as part of a commercial share dealing activity'* constitute economic activity and should be distinguished from the situation in which an entity *'is forbidden to engage in precisely such activities, being required to make all reasonable efforts to avoid engaging in trade...'*

This could be relevant for the Personal Investment exemption in the UAE, since this exemption does not apply within the scope of Commercial Business, and the latter [includes](#) *'speculation works practiced by a person, whether or not a trader, for the purpose of realising a profit'*.

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](#).

²² ESA Decision of 15 February 2011 on Private Asset Structures No [44/11 /COL](#), p. 8.

²³ Case [C-155/94](#) Wellcome Trust Ltd v Commissioners of Customs and Excise [1996] ECR I-3013, paragraphs 32 and 33.

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