

# DEALS UNDER THE TAX LENS





## UAE Qualifying Free Zone Targets: Does the 0% Position Survive Post-Acquisition?

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A historic 0% tax position may seem attractive in a UAE Qualifying Free Zone Person (QFZP) transaction – however, the key question for buyers is whether that position remains sustainable post acquisition and operational realignment.

### 1. TRANSACTION SCENARIOS & ETR CONSIDERATIONS

The impact on the QFZP Target's effective tax rate (ETR) will depend on the buyer profile and the changes arising from post transaction integration.

KEY CONSIDERATIONS	 <b>Transfer Pricing (TP) &amp; Revenue Streams</b>	<ul style="list-style-type: none"><li>– <b>TP being one of the key conditions to claim a QFZP relief</b>, buyers should <b>independently assess historical TP positions</b> rather than relying solely on seller comfort</li><li>– Post-acquisition synergies may significantly <b>alter related party transactions / result in new related party transactions</b> – <b>revised intercompany arrangements</b> should be carefully assessed to avoid impacting QFZP TP compliance</li></ul>
	 <b>Headquarter (HQ) / Financing / Operational Footprint</b>	<ul style="list-style-type: none"><li>– A QFZP relief requires substance to be located in a Free Zone. If adequate substance exists in free zone pre-acquisition – whether post acquisition integration results in <b>substance being commercially moved to mainland</b> depending on change in control?</li><li>– <b>Shift in headquarter arrangements</b> considering the Buyers existing footprint - given that HQ activities to related parties are qualifying activities subject to 0% reliefs</li><li>– Similarly, related party treasury activities are qualifying activities – explore potential <b>cash pool and treasury function centralisation</b> for 0% reliefs</li></ul>
	 <b>Structuring Flexibility</b>	<ul style="list-style-type: none"><li>– Considerations on whether the FZ Target can be used as either an <b>acquisition vehicle or regional hold co</b> for future acquisitions – potential 0% tax rate on dividends, interest and exit</li><li>– Evaluate whether <b>additional restructuring</b> required post transaction</li></ul>
	 <b>Expansion &amp; Qualifying Income</b>	<ul style="list-style-type: none"><li>– <b>Planned expansions (activities/ geographies)</b> may lead to an increase in non-qualifying income impacting 0% rate and FZ status for up to 5 years</li><li>– Business teams to <b>carefully plan out expansions</b> keeping in mind FZ benefit – consider <b>discussions with tax teams / consultants</b> up front in the process</li></ul>
PILLAR TWO <sup>1</sup> CONSIDERATIONS	<b>Considerations when a Pillar 2 Buyer acquires a FZ Target</b>	<ul style="list-style-type: none"><li>– If Target is not subject to Pillar 2 (ie the minimum 15% rate is not applicable): 0% FZ benefit may become commercially redundant if post transaction, Pillar 2 top-up tax is applicable indicatively increasing the ETR up to 15%</li><li>– If Target is already subject to Pillar 2 rules: 0% FZ benefit may in either case be redundant – analysis on the Pillar 2 profile of the Target and whether any additional incentives/ reliefs available</li><li>– In both the above scenarios, buyers should assess whether the Target's assets and employee base could contribute towards substance-based carve-outs and help reduce the Buyer Group's ETR following integration</li><li>– Recommended to carry out an analysis to determine whether the Target should give up the FZ 0% CT Rate post transaction if there's no tangible benefit from an ETR or administrative standpoint; it could also possibly be grouped with the Buyer Group from a CT perspective and avail Tax Group benefits</li></ul>

<sup>1</sup> Pillar Two Rules applies to multinational groups with annual consolidated revenues of at least EUR 750m in at least two of the four preceding financial years. If a group meets this threshold, it must pay an effective minimum CT rate of 15% in every jurisdiction where it operates. Pillar Two provisions also provide for substance-based carve-outs which may reduce the Group's 15% Tax Rate; these carve-outs are linked to employee and tangible asset thresholds. Further, Pillar 2 compliance requires filings in multiple countries and filings/ calculations are based at a jurisdictional level.

## 2. SPA & TRANSACTION PROTECTION

Given the potential for future challenges resulting in possible revocation of a) past year FZ benefits and b) fall out effect of non-applicability of FZ benefits in the future, robust contractual protections are critical.



### HISTORICAL POSITION PROTECTION

- Representations & warranties regarding the Targets fulfilment of all FZ conditions and eligibility as a Qualifying FZ Person in past years.
- Specific indemnities / net debt adjustments on known vulnerabilities.



### FUTURE YEAR EXPOSURE

- Protection to be added in for possible challenges in the FZ benefit in future tax periods as a result of historical discrepancies (eg FZ benefit denied under tax audits)



### INDEMNITIES & INSURANCE

- Buyers should assess who ultimately stands behind the tax indemnities (whether insurer, individual sellers, corporate sellers etc.), particularly where potential exposure relates to historic Free Zone benefit positions.
- Discussions may also be required with insurers to assess whether historic Free Zone positions and related risks fall within the scope of W&I coverage.

### KEY TAKEAWAYS

In UAE transactions, diligence on a FZ Target should extend beyond validating historical eligibility – buyers should carefully assess whether the structure remains **commercially and financially sustainable** post-acquisition.

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