

VSTN CONSULTANCY

UAE – FTA Clarification on Director & Officer

*Understanding Connected Persons under Article
36 of the Corporate Tax Law*

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Background & Trigger

The UAE Federal Tax Authority ('FTA') had issued a clarification on the terms "Director" and "Officer" for the purpose of the payment made to the Connected Persons under Article 36 of the Corporate Tax Law.

This clarification seems to stem from the FTA audit outcomes of the first year, as UAE entities move into their second year of tax filing.

As per the law, connected persons include:

- a) Owner of a taxpayer
- b) Director or Officer of a taxpayer
- c) Related party of the above persons

The recent clarification offers greater clarity on who should be regarded as a "Director" or "Officer" as these terms were not defined earlier and was subject to inconsistent interpretation.



Director & Officer – Clarification

DIRECTOR

- Director pursuant to a Contractual agreement – any person who holds a position in the Company’s Board/governing body including – Executive, non-executive, temporary, permanent, alternate director or committee member of the board
- Mere job title containing the word ‘Director’ does not automatically qualify the person as connected person, if such person does not undertake any strategic decision-making activities by virtue of conduct

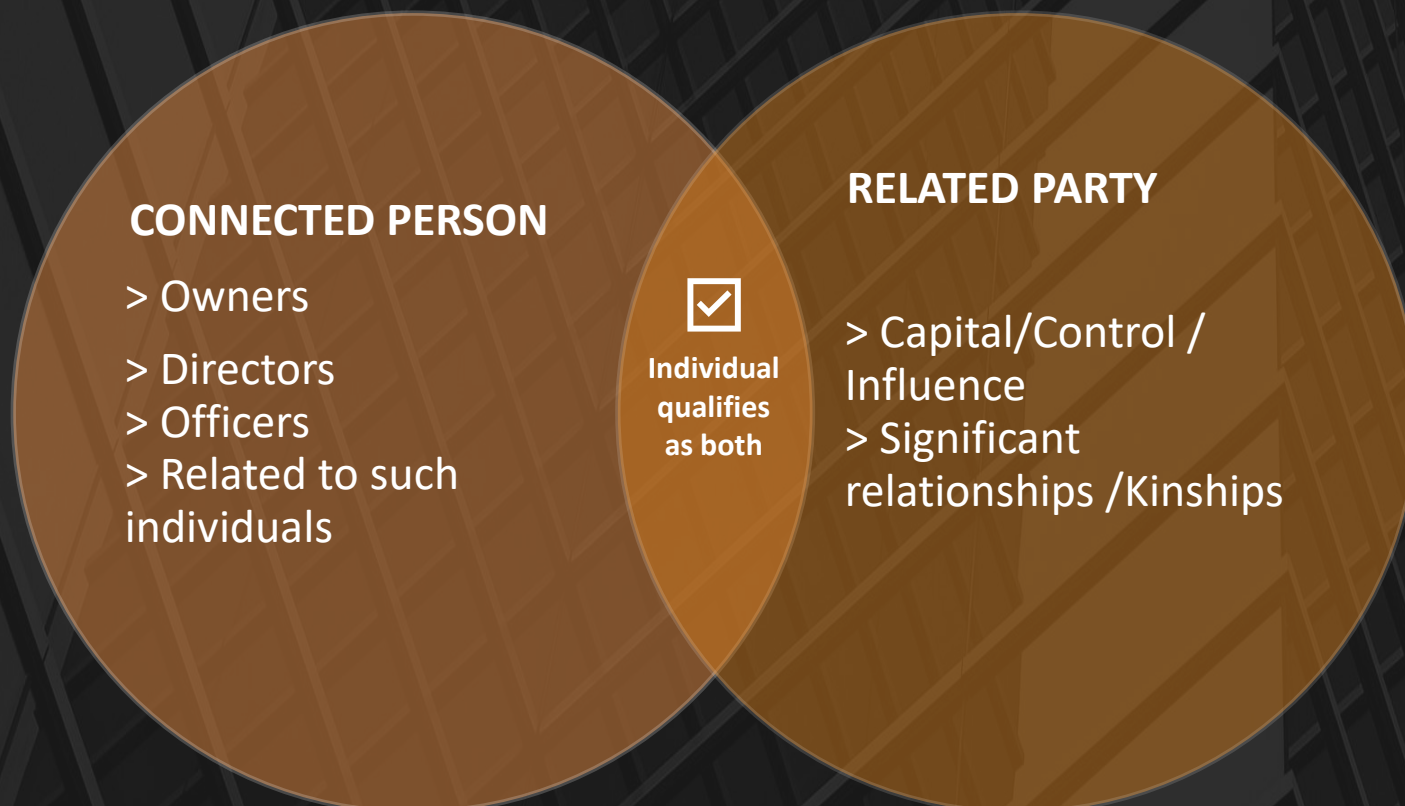
OFFICER

- The definition of ‘Officer’ focuses on an individual who has the authority to plan, direct, and control the business activities of an entity—an interpretation that closely aligns with the concept of “Key Management Personnel” under IAS 24
- Typically covers the ‘C-suite’ but actual conduct takes precedence over the formal title
- An individual may be considered an Officer based on their functional role and conduct, particularly if they are involved in strategic decision-making even without holding such job title. On the other hand, individuals holding the title as an ‘Officer’ but do not exercise this level of discretionary authority would generally fall outside the scope of this definition
- In practice, ‘Officer’ can also include a General Manager, Divisional Head, head of Human Resources department, an employee or manager named in the Trade License of the company

This clarification reinforces the core transfer pricing principle of assessing “actual conduct,” whereby an individual may be regarded as an “Officer” or “Director” based on the functions they perform, rather than their formal title.

Related Party Vs Connected Person

The Public Clarification provides that where a person qualifies as both a Related Party and a Connected Person, such person shall be regarded only as a Related Party for Corporate Tax purposes. However, as the said public clarification is intended only to guide implementation rather than amend Federal Decree-Law No. 47 of 2022, this interpretation may give rise to an inconsistency, particularly in Article 36 which explicitly includes an “Owner of the Taxable Person” - which is defined as any natural person who directly or indirectly owns an ownership interest in the Taxable Person or Controls such Taxable Person. Consequently, if a person is treated only as Related Party pursuant to the Public Clarification, the latter limb of the definition becomes redundant. Accordingly, the application of the clarification warrants cautious, fact-specific evaluation to ensure alignment with the intent and operative provisions of Federal Decree-Law No. 47 of 2022



Way Forward

Companies should assess the below pointers to identify key individuals who are involved in strategic decision-making activities or has the authority to plan, direct and control the business or a division of business should be considered as a connected person

- Organisational chart
- Managers on Trade license
- MOA/POA and other key documents
- List of contractors/consultants

Identify various categories of roles

Interim Role- A consultant engaged on an intermittent basis may also be treated as a Connected Person if they effectively perform management/strategic functions or exercise control over the business.

External outsourced roles - Where a third-party consultant acts strictly under the direction of the Board and does not possess decision-making authority, they would generally not be construed as a Connected Person

Documentation and testing - After identification of the connected persons, it is required to document the roles and responsibilities which are being carried out by the KMP and map it to the remuneration being paid including the components and documenting that it is incurred wholly or exclusive for the purpose of business of this tax payer. E.g if a director in multiple companies but drawing salary from 1 company in lieu of his efforts towards all the companies may not be considered as wholly incurred for this taxpayer.

Market value of such payments using the arm's length principle has to be arrived at irrespective of any thresholds as per the UAE Law.

The Bottom Line

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Businesses must look beyond formal titles and assess the 'substance of authority' of their leadership teams to review whether they fall within the ambit of the definition of 'Director' or 'Officer' as clarified by the FTA.



ABOUT US

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- » Our offering spans the end-to-end Transfer Pricing value chain, including design of intercompany policy, drafting of Interco agreement, ensuring effective implementation of the Transfer Pricing policy, year-end documentation and certification, Global Transfer Pricing Documentation, BEPS related compliances (including advisory, Masterfile, Country by Country report), safe harbor filing, audit defense before all forums and dispute prevention mechanisms such as Advance Pricing agreement.
- » We are structured as an inverse pyramid where leadership get involved in all client matters, enabling clients to receive the highest quality of service.
- » Being a specialized firm, we offer advice that is independent of an audit practice and deliver it with an uncompromising integrity.
- » Our expert team brings in cumulative experience of over several decades in the transfer pricing space having worked with multiple Multinational Companies across sectors/industries and have cutting edge knowledge and capabilities in handling complex TP engagements.





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