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An overview of the UAE Corporate Tax Law and its likely impact on taxation in the EU (using Germany, Austria and Switzerland as examples)

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1. BACKGROUND

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1. BACKGROUND

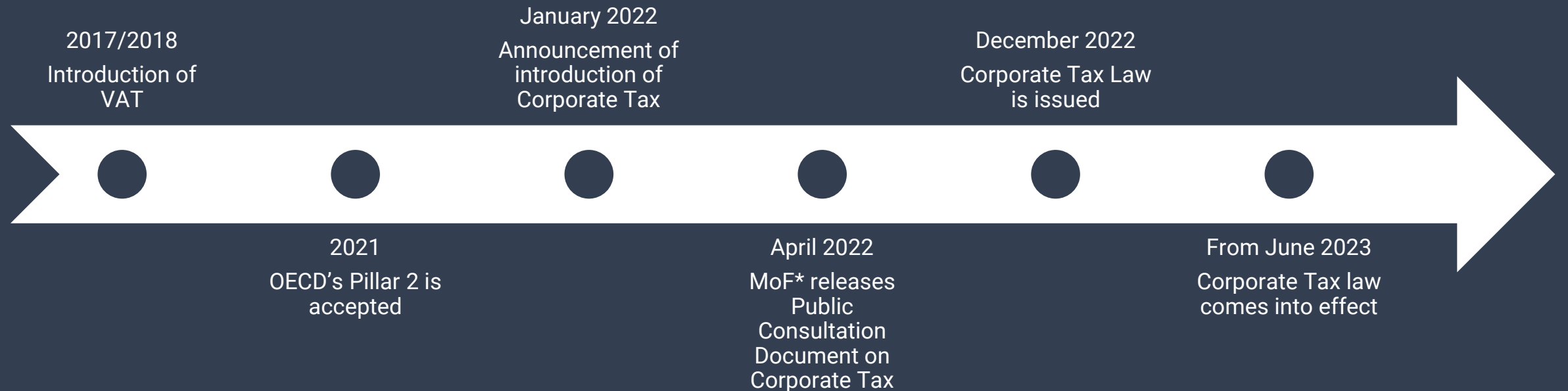
History:

- UAE's Corporate Tax Law: A response to **global tax avoidance**
- OECD's "Two Pillar Plan" trying to tackle Base Erosion and Profit Shifting (BEPS)
- Joining over 135 Countries, UAE is implementing important decisions

→**AIM:** Closing gaps of the mismatched international Tax systems in place by defining a more uniform handling of tax law

1. BACKGROUND

Process in UAE:



* Ministry of Finances

2. TAXABLE PERSONS

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2. TAXABLE PERSONS

Resident Person



JURIDICAL PERSON

- From UAE or foreign
- Effectively managed and controlled in UAE



NATURAL PERSON

- Conducting business activities in the UAE

Non-Resident Person



ANY PERSON THAT

- Has Permanent Establishment (PE) in UAE
- Derives UAE sourced income
- Has a Nexus in UAE

2. TAXABLE PERSONS

Permanent Establishment



- Fixed/Permanent place in UAE through which business is carried out



- Person who has and habitually exercises an authority to conduct business in UAE on behalf of the foreign person



- **Not PE**, if exclusively used for storage, display and delivery or any behaviour that is merely auxiliary

2. TAXABLE PERSONS

UAE Sourced Income

- Income derived from a **resident person**
- Income derived from a non-resident person in **PE**
- Income derived from **activities** performed or from **assets** located, **capital** invested and **rights** used in the UAE*

* Federal Decree-Law No. 47 of 2022, Art. 13 (1) c.

2. TAXABLE PERSONS

Exempt Persons*

- A Government Entity
- A Government controlled Entity
- A Person engaged in extractive business
- A Person engaged in Non-Extractive Natural Resource Business
- A Qualifying Public Benefit Entity
- A Qualifying Investment/ Pension / Social Security Fund
- Any other Person determined by future decisions

* Federal Decree-Law No. 47 of 2022, Art. 4 (1)

3. TAXABLE INCOME

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3. TAXABLE INCOME

Tax Rates*

- **0 %** on taxable income** **below** AED 375.000
- **9 %** on taxable income **above** AED 375.000

*Cabinet Decision no. 116 of 2022, Art. 2, clause 1

** Further Specified in Federal Decree-Law 47 of 2022, Art. 20

3. TAXABLE INCOME

Resident Person



- Worldwide income relating to the Business conducted in UAE

Non- Resident Person



- Income from the PE
- Income derived from the UAE (as above)

4. QUALIFYING FREE ZONE PERSON

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4. QUALIFYING FREE ZONE PERSON

Following conditions must be met:

- Maintaining **ADEQUATE SUBSTANCE** in UAE
- Deriving **QUALIFYING INCOME** (not yet defined)
 - 0% for qualifying and 9% for non-qualifying income
- **NO ELECTION** to be subject to tax rate of 9%
- Must meet regulations regarding transfer pricing

5. TAX LOSSES

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5. TAX LOSSES

Carry Forward:

- Losses can be carried forward for indefinite Period if:
 - Same Shareholders hold at least 50% of the share capital
 - Same Business is carried out by new Shareholders

Set Off:

- Up to 75% of losses can be set off
- Balance can be carried forward to subsequent periods (given the conditions of change in control)

5. TAX LOSSES

Unavailable for Tax Loss Relief:

- Losses incurred before the effective Date of Corporate Tax
- Losses incurred before Person becomes tax payer
- Losses incurred from activities/assets which generate exempt income

6. CORPORATE TAX FOR FOREIGN ENTITIES

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6. CT FOR FOREIGN ENTITIES

Not Qualified for CT if:



- Merely earning UAE sourced income



- Merely investing in mobile and immobile goods in UAE (if not core business)

6. CT FOR FOREIGN ENTITIES

Special Regulations:

- Large **multinational Groups** (presence in more than one country and revenue of more than 750 million Euro) likely to have a CT rate of **15%** on taxable income
- CT can be reduced by the amount of **Foreign Tax Credit** (if proof is attached)
- **Double Taxation** is to be dealt with
 - UAE's large network of double tax treaties...

7. DOUBLE TAXATION - GERMANY

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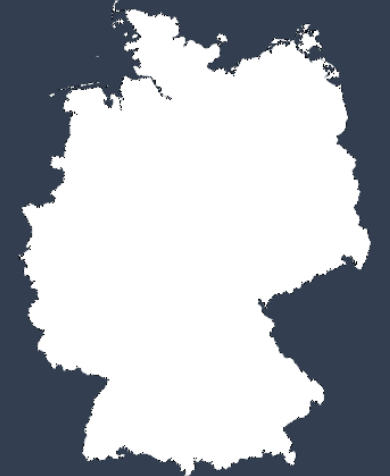
Current Situation:

- **NO** double Taxation agreement between UAE and Germany
→ No longer in place since 01.01.2022



Current Situation:

→ **Unlimited Tax Liability according to German tax law**



NATURAL PERSON

- Residence (§ 8 fiscal code),
or
- Habitual abode in Germany
(§ 9 fiscal code)



JURIDICAL PERSON

- Management (§ 10 fiscal code),
or
- Registered office in Germany
(§ 11 fiscal code)

Current Situation:

→ **Limited Tax Liability according to German tax law**



NATURAL PERSON

- Neither residence, nor
- Habitual abode in Germany



JURIDICAL PERSON

- Neither Management, nor
- Registered office in Germany

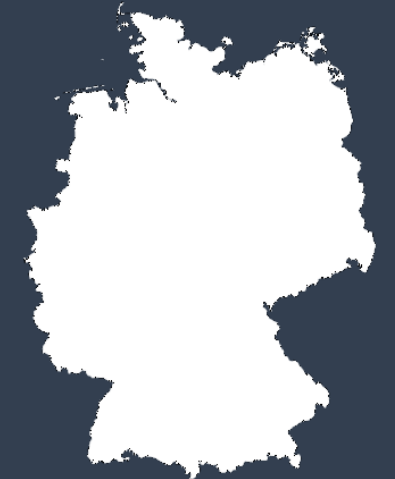


Current Situation:

DEFINITION OF RESIDENCY

- Maintaining a dwelling
- Probability of maintaining and using such dwelling

→ **Seen objectively, subjective circumstances are irrelevant!**



7. DOUBLE TAXATION - GERMANY

Current Situation:

DEFINITION OF RESIDENCY

1. Requirement: Residence (a room suitable for permanent living)



RESIDENCY

- Furnished room
- Permanent fixed canvas of construction trailer
- Long term use of hotel room
- Weekend/Hunting lodge

NO RESIDENCY

- Overnight stay at a friend's/relative's house
- Construction trailer
- Short term use of hotel room
- Overnight stay on company premises or offices

Current Situation:

DEFINITION OF RESIDENCY

2. Requirement: Possession of such Residence

- Authority to dispose
- Mere possession is not enough, actual use is needed
- Spouse's Family Home is considered a residence

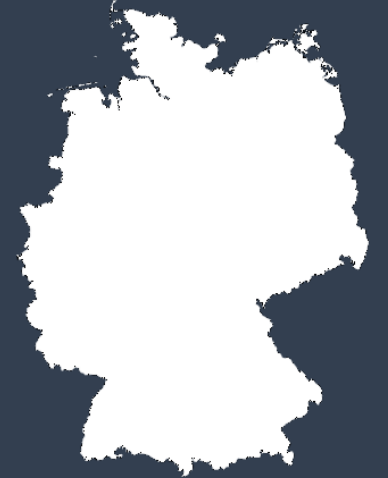
→ Tax authority will look at the big picture, including all circumstances



Current Situation:

DEFINITION OF HABITUAL ABODE

If someone is present at a place and there are circumstances indicating such presence is not merely temporary (§ 9 Fiscal Code)

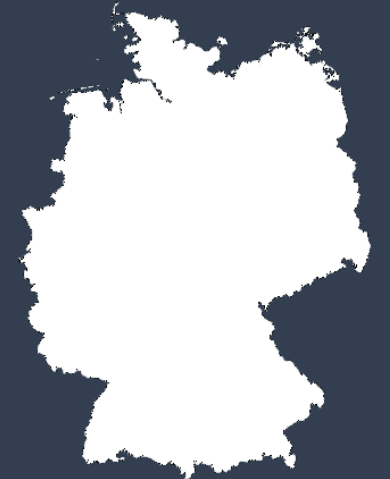


→ A continuous stay for more than 6 months is always considered a habitual abode

Current Situation:

CRITERIA OF HABITUAL ABODE

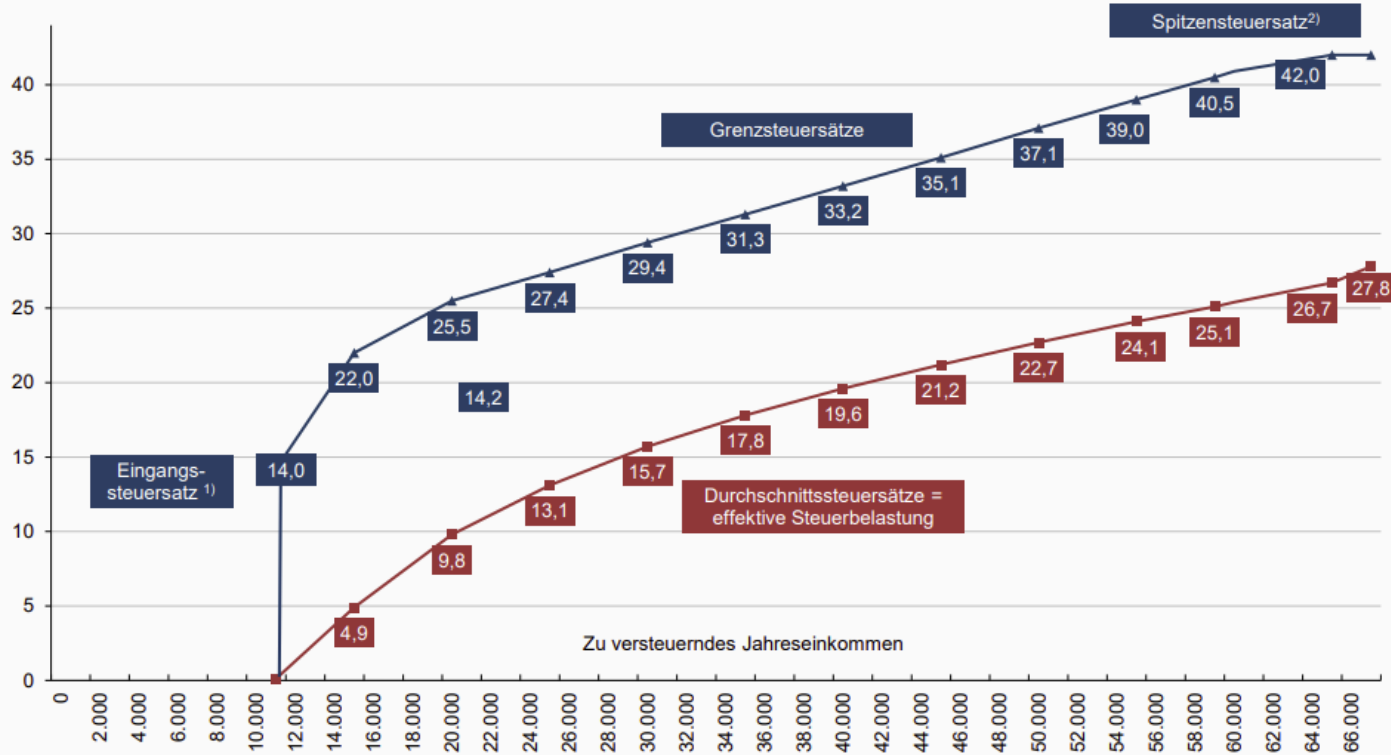
- Actual physical presence
- Not only temporary
- Six month time period



7. DOUBLE TAXATION - GERMANY

■ Einkommensteuertarif, Grenz- und Durchschnittssteuersätze 2023
in % des zu versteuernden Jahreseinkommens, ohne Solidaritätszuschlag

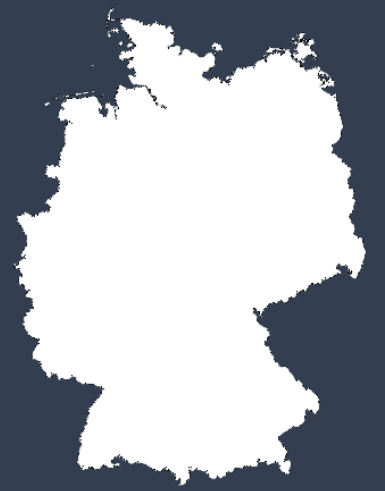
IAQ



1) Der Eingangsteuersatz von 14% greift ab einem Jahreseinkommen von 10.347 Euro

2) Der Spitzensteuersatz von 42% beginnt ab einem (zu versteuernden) Jahreseinkommen 58.597 Euro.

Quelle: Eigene Darstellung nach: Bundesfinanzministerium (2023): Grenz- und Durchschnittsbelastung nach Tarif 2023



Is double taxation avoidable?

TWO APPROACHES:

- The imputation system: foreign tax can be credited against German tax
(§ 34 c section 1 Income Tax Law, § 26 section 1 Corporation Tax Act)
- The deduction of the foreign tax from the domestic tax base
(§ 34 c section 2 & 3 Income Tax Law)

→ **BUT: No actual tax relief as there is no tax collection in the UAE until June**

→ **Waiver / Flat rate is possible (§ 34 c section 5 Income Tax Law)**



What could happen after June 2023?

- Corporate tax is payable in the UAE
- German Taxable Persons (limited & unlimited) pay taxes according to the German tax rate
- UAE Taxable Persons, who are also German Taxable Persons will most likely be taxable in both countries without any methods of relief in regards to taxes paid in the other country and vice versa

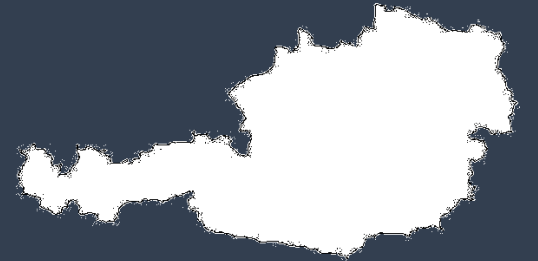


8. DOUBLE TAXATION - AUSTRIA

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Current Situation:

- Double Taxation Agreement between UAE and Austria ✓
 - In place since 23.09.2003
 - Amended 01.07.2021



Current Situation:

Income

0 - 11.000 Euro

11.000 - 18.000 Euro

18.000 - 31.000 Euro

31.000 - 60.000 Euro

60.000 - 90.000 Euro

90.000 - 1 Million Euro

Over 1 Million Euro

Tax from 2020

0 %

20 %

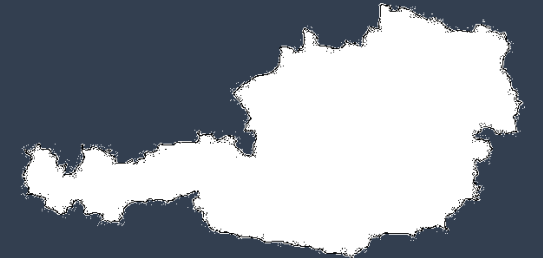
35 %

42 %

48 %

50 %

55 %

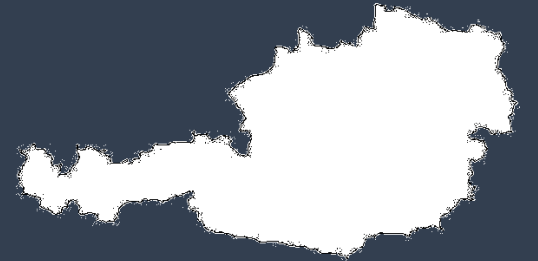


What could happen after June 2023?

- The amendment of the agreement changed the method of tax payment from the “Release method” to the “Credit method” (Art. 5 of Protocol; Art. 24 of Agreement)

→ Tax paid on taxable income in the UAE is accredited to the taxable person for Austrian Tax by the Double Taxation

Agreement



9. DOUBLE TAXATION - SWITZERLAND

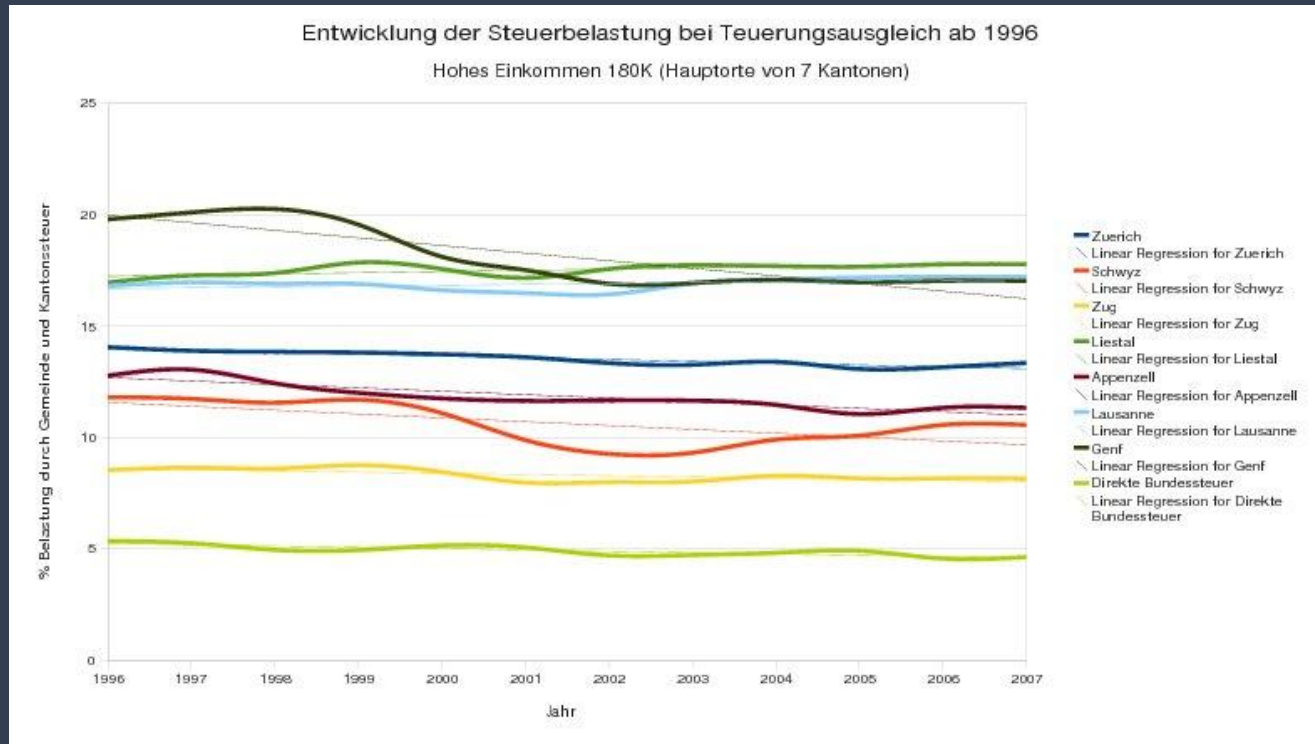
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Current Situation:

- Double Taxation agreement between UAE and Switzerland ✓
 - In place since 21.10.2012
 - Amended 05.11.2022



Current Situation:



→ Different tax rates
depending on the Canton

What could happen after June 2023?

- The Agreement applies the “Exclusivity Method”
(Art. 22 of Agreement)

→ Tax paid on taxable income in the UAE is exempt from tax payment on certain income in Switzerland according to the Double Tax Agreement



10. SUMMARY

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10. SUMMARY

- UAEs Corporate Tax Law is a necessary step into a more uniform, global system of Tax Legislation
- The effects on Double Tax Agreements and other international conventions is soon to be experienced.
→ Connecting the UAE to this kind of global tax-network may be beneficial for future international agreements



THANK YOU!

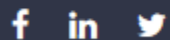
Q&A?

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