

Variable Capital Company – United Arab Emirates (UAE) Corporate Tax

Sujeet S. Karkala, Advocate
(Dr. Sarhan Almuaini Law Firm & Legal Consultants)

I. Introduction

The UAE's introduction of a corporate tax regime, effective from 1 June 2023, was a calculated structural reform aimed at changing the country's policy and positioning itself as a global hub. By introducing various investment structures, including the recent introduction of Variable Capital Company (VCC) by the Dubai International Financial Center (DIFC), and enacting Variable Capital Company Regulations 2026 ("VCC Regulations"), it has positioned itself as a strong investment hub globally. While the DIFC VCC structure is primarily designed to attract family offices, high-net-worth multi-asset investors, and similar participants, who intend to hold and manage pooled or proprietary assets, it does so by tailoring regulatory approval and ongoing compliance requirements to the specific nature and purpose of the activities undertaken by the structure. In simple words, it is a hybrid between a company and an investment fund. As this structure is created within DIFC, it falls under the purview of and is governed by Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Business ("Corporate Tax Law"). This applies to all Persons, including Juridical Persons and Natural Persons, subject to certain conditions being met, and is taxable only if the taxable income exceeds AED 375,000 during its financial year, while it exempts those entities that are classified as the Qualifying Investment Funds (QIF), Qualifying Free Zone Persons (QFZP), and certain government-related entities, subject to meeting their conditions and requirements. A VCC entity may be subject to 9 % tax or be classified as an exempted entity.

II. The Variable Capital Company: An Overview

A Variable Capital Company (VCC) is a specialized corporate structure used for investment purposes, where the company's share capital is flexible, as it moves based on the company's fund flow, and under this structure, a company can adjust its capital depending on the increase or decrease in its investors, i.e., subscription or redemption of its shares. Unlike a traditional structure, wherein capital is fixed. As VCC's share capital is always equal to its net asset value ("NAV"). In general terms, the NAV means the value of an entity determined by subtracting its total liabilities from its total assets.

A VCC is primarily suited to conduct commercial activities related to entities holding high-value or illiquid assets, private equity, venture capital, family offices, and other multi-investment entities that intend to segregate their assets through a ring-fenced holding structure. There are two forms of structure for a VCC entity: a standalone and an umbrella entity. A standalone is a single-structure entity for holding assets or making investments, while an umbrella is a multi-purpose entity that can be further divided into Segregated Cells ("SCs") or Incorporated Cells ("ICs"). These two kinds of cell forms cannot be combined, as each of these cell forms has its own characteristic. An SC is a subdivision within the VCC as a single legal entity, designed to hold and manage specific assets and liabilities separately from the main VCC and from other cells. While an IC is a legally distinct entity within the VCC umbrella, having its own name, articles of association, and board of directors, it is legally separate from both the VCC and other ICs.

III. UAE Corporate Tax Applicability for a VCC entity

A. VCC as the Qualifying Free Zone Person (QFZP)

UAE corporate tax applies to all entities, including DIFC, ADGM, and all free zones, except those classified as the Qualifying Free Zone Person (QFZP), provided they meet the specific conditions defined under Article 18 of the Corporate Tax Law and their income is derived from the qualifying activity. However, a VCC-incorporated entity may qualify as the QFZP if it meets this

condition as defined under the Corporate Tax Law by maintaining an adequate substance, deriving income only from qualifying activities, complying with the transfer pricing requirements, and passing a de-minimis test. A de-minimis test is a threshold that allows a QFZP to retain its 0% corporate tax status even if it earns a limited amount of revenue from its non-qualifying income. According to this test, the revenues generated must not exceed 5% of total revenue or AED 5 million, whichever is lower. Non-qualifying income is any income of a free zone entity that falls outside the prescribed qualifying activities or involves transactions with the UAE mainland, unless it is classified as an exempted activity. Therefore, in the case of VCC, structuring any free zone holding companies that derive income from holding shares in other entities may qualify for the 0% rate on such income, including dividend income or capital gains, subject to meeting the requirements specified in Article 18, as stated above. In case a VCC derives any income or profits from any immovable property wherein it is rented to a non-freezone entity for its UAE mainland property, or any profits generated through its registered branch entity in the UAE Mainland, or from transactions that do not constitute qualifying activities, the portion of that income is subject to the Corporate Tax. Also, a VCC multi-cell structure must ensure that income-generating activity within each cell lacks independent legal personality vis-à-vis the parent entity and does not adversely affect the parent entity's QFZP qualification.

B. VCCs as the Qualifying Investment Fund (QIF)

A VCC may be a qualifying investment fund and is subject to 0 % tax, if it satisfies the conditions as specified in Article 2 and Article 3 accordance with the Cabinet Decision No. 34 of 2025, wherein an investment business means any business or business Activity of issuing of investment interests to raise funds or pool investor funds or establish a joint investment fund with the aim of enabling the holder of such an investment interest to benefit from the profits or gains of the business, wherein the ownership interest with the investor, subject to the following conditions that its primary activity is investment, and investor shall not have day to day control over the management of the fund and all the information and documents for the purpose of the taxable income must be provided to the investors.

A Family office incorporated as VCC may not qualify as QIF, because it does not meet the definition of ownership, and the conditions as specified in Article 3 of the Cabinet Decision No. 34 of 2025, as a QIF having less than 10 investors, and if these investors are related parties owning 30 % or more of the ownership interest, may not qualify for exemption. This reflects that the QIF regime is meant for widely marketed funds, not private or proprietary structures, resulting in structural limitations. As such, VCCs with fewer than 10 investors or with more than 30% ownership must consider alternative tax-planning options to qualify as a Qualifying Free Zone Person (QFZP), either by applying the participation exemption or by using tax-transparent structures such as family foundations. It may operate as a regulated collective investment scheme if managed by the Dubai Financial Services Authority (DFSA) for third-party investors, provided the above conditions are met. Also, if the VCC holds immovable property in the UAE wherein more than 10% of the fund's total assets consist of UAE real estate, then 80% of the income derived from that real estate will be subject to tax, even if the QIF exemption applies. This serves as an anti-avoidance measure to prevent the exemption from being used to shield UAE real estate income. Accordingly, VCCs holding both real estate and other investments must carefully monitor this threshold.

C. VCC as QFZP in case of Segregated Cells or Incorporated Cells.

With the introduction of the VCC Regulations 2026, resulting in the formation of Segregated or Incorporated Cells within the VCC structure. In the case of Segregated Cells formation, their income is attributed to the VCC itself, as it does not have a separate legal personality from the VCC, and its QFZP status is that of the VCC, so if any excess non-qualifying income in its Cells can accept the tax treatment of the entire VCC with the de minimis test.

In the case of Incorporated Cells, they must be treated separately and independently, as each cell is a separate legal entity, and any multiple cells incorporated should, by itself, be a separate juridical person, and meet the QFZP conditions based on its business activities if its activities result in qualifying income. Moreover, any transaction between VCC and its incorporated Cells or between different incorporated cells within the same umbrella may be classified as a related party transactions subjected to an arm's length price, as this transaction as it implies an intra-group arrangement, as each cells with annual revenues exceeding AED 200 million (or members of MNE groups with global consolidated revenues exceeding EUR 3.15 billion) must maintain a Master File and Local File. Smaller VCC structures may fall below this threshold, but the arm's length principle applies regardless of documentation thresholds.

D. VCCs as Family Foundation

A VCC itself does not qualify as a foundation; however, it must be integrated into a structure. The family foundation that holds a VCC may hold income and assets, including its interest in the VCC, as they are attributed to the ultimate beneficiaries. However, the VCC can achieve tax efficiency if it satisfies the QFZP condition. A single-family or proprietary VCC cannot rely on the QIF exemption because of its ownership. While VCCs holding purely financial assets and earning passive income may qualify, provided it satisfies all the adequate substance requirements. However, if a VCC holding real estate in the UAE mainland, the resulting income will be taxed at 9 % on the non-qualifying income by ring-fencing its assets into a separate structure by way of incorporated cells

E. Domestic Minimum Top-Up Tax for VCC structures

The Domestic Minimum Top-Up Tax (DMTT), effective from 1 January 2025, applies to multinational groups and requires them to pay a minimum tax on profits. It applies to entities with consolidated revenues of at least EUR 750 million in two of the last four years. However, while VCCs may generally fall outside the scope of top-up tax on the basis that they qualify as investment entities. Where a VCC is connected to, or forms part of, a large corporate group or multinational enterprise, the analysis shifts. In such cases, the application of the 0% corporate tax rate available to Qualifying Free Zone Persons (QFZPs) may reduce the group's effective tax rate in the UAE below the 15% global minimum. This can, in turn, trigger a top-up tax liability under the DMTT rules.

IV. Double Taxation Treaty Analysis: UAE-India

A. Overview of the India-UAE Double Taxation Avoidance Agreement (DTAA)(1969) 74 ITR 11 (St), (1994) 205 ITR 40 (St), (2007) 295 ITR 40 (St)

The Double Taxation Avoidance Agreement between the United Arab Emirates and India (the "DTAA") plays a critical role in structuring cross-border investments between the two countries, both inbound and outbound, and in the introduction of this new form of investment vehicle. As an investment structure, DIFC Variable Capital Companies remain subject to taxation under UAE Corporate law. However, a nexus may arise from its investment in India, in case it is used to abuse the benefit under the treaty.

1. Article 5 Permanent Establishment ("PE") & Article 7 - Business Profits

Under Article 5 of the DTAA, a PE is defined as a fixed place of business through which an enterprise carries on its activities, either wholly or partly. Article 7 provides that profits of an enterprise of one Contracting State are taxable only in that State, unless the enterprise carries on business in the other State through a PE. In addition to this, the Indian domestic tax law as per Section 6(3), needs to be considered, as per this if a DIFC VCC is considered as a resident in India if its Place of Effective Management (POEM) is in India, i.e., where the key management and commercial decisions necessary for the conduct of business are in substance made. If Indian-based promoters or directors are making investment decisions for the DIFC-VCC, the DIFC-VCC is subject to tax in India.

Therefore, if DIFC VCC invests in or promotes in India, it is subject to PE exposure, with reference to the fixed place of business, dependent personnel, any branch office, if any, and the place of management. Unless the DIFC VCC promotes or invests through independent third parties acting in their own capacity, as this may allow the VCC to be resident in the UAE and subject to tax in the UAE. Where a PE exists, taxation extends only to the profits attributable to such PE. For a DIFC VCC, this is foundational, as long as no PE is triggered in India, its investment income and business profits remain taxable exclusively in the UAE

2. Article 10 - Dividends

Article 10 of the DTAA governs the taxation of dividends arising in India and paid to a UAE resident. Under the treaty, such dividends may be taxed in India (as the source state), but at a reduced withholding tax rate, i.e., 10% to 15%. If the VCC entity is holding equity interests in Indian companies, dividend income will generally be subject to withholding tax in India; however, if this VCC entity is a QFZP, then it is subject to a 0% tax rate in the UAE, only if it is the beneficial owner and not a pass-through entity.

3. Article 11 - Interest

Article 11 deals with interest on income; any interest arising in India and paid to a UAE resident may be taxed at a reduced rate if VCC is used as a financing vehicle, whether for intra-group lending or external debt investments into Indian entities. From a UAE perspective, such income may qualify as qualifying income under the QFZP regime, provided it meets the relevant conditions.

4. Article 13 – Capital Gains

Article 13 may apply in case of an investment in India: under the DTAA, any gain arising from the transfer of shares in Indian companies is now taxable in India. Accordingly, a VCC disposing of equity interests of the Indian entity is subject to capital gains tax, thereby limiting the benefit under the DTAA. However, if any gains derived from the disposal of non-Indian assets remain taxable in the UAE, provided the VCC is qualified as a QFZP, they may be taxed at 0%.

V. India-UAE DTAA: Key Case Law on Treaty Residence, PE and the "Liable to Tax".

The jurisprudence on the India-UAE DTAA has evolved in a fairly consistent direction over the past two decades, and the thread running through most of the significant decisions is the same question: does "liable to tax" mean you actually have to pay something, or is it enough that the taxing state has the legal right to tax you? Courts and Income tax Tribunals have, by and large, answered that question the same way each time and the answer matters enormously for UAE-based structures investing into India. The case laws may be a useful reference while structuring the investments.

Resident of Contracting state - Article 4 – India- UAE DTAA

ADIT v. Green Emirate Shipping & Travels (2006) 100 ITD 203 (Mum)(Trib).

The foundation was laid in this matter, where the Mumbai ITAT was asked to decide whether a UAE shipping company could claim Article 8 exemption even though it paid no actual tax in the UAE. The Revenue's argument was intuitive enough – treaty benefits should flow to people who actually bear a tax cost in their home state. The Tribunal didn't buy it. It held that Article 4(1) requires only that the person fall within the fiscal jurisdiction of the UAE and be capable of being taxed there. Whether the UAE actually exercises that right is beside the point. And crucially, the Tribunal noted that any double non-taxation that results is a policy outcome the two contracting states agreed to – courts have no business rewriting that bargain through purposive interpretation.

Permanent Establishment – Article 5

The Supreme Court's 2025 decision in Hyatt International (Southwest Asia) Ltd. v. ADIT (2025) 306 Taxman 241/478 ITR 238 (SC)

The Supreme Court upheld the High Court's finding that the UAE assessee had a fixed place permanent establishment in India, as the hotel premises were effectively at its disposal and it exercised continuous operational control, oversight and compliance powers under the strategic oversight services agreement, coupled with profit-linked remuneration. The clear and enduring commercial nexus with the hotel's core functions satisfied the disposal test under Article 5(1), and income attributable to such PE was taxable in India, irrespective of the assessee's overall losses.

Capital Gain – Article 13

The following important decisions support the proposition that capital gains arising to a UAE resident from the sale/redemption of mutual fund units may not be taxable in India under Article 13(5) of the India-UAE DTAA, on the ground that mutual fund units are not "shares":

1. *DCIT v. K.E. Faizal [2019] 178 ITD 383 (Cochin)(Trib.)* The Tribunal held that units of equity-oriented mutual funds do not constitute "shares" of an Indian company. Accordingly, Article 13(4) of the India-UAE DTAA was held inapplicable, and the gains fell within the residuary provision under Article 13(5), rendering them taxable exclusively in the UAE.
2. *Saket Kanoi v. DCIT (Intl.) [2024] 168 taxmann.com 418 (Delhi)(Trib.)* The ITAT held that capital gains arising to a UAE resident from the sale of debt mutual fund units were eligible for exemption under Article 13(5) of the India-UAE DTAA. The Tribunal further observed that actual payment of tax in the UAE is not a prerequisite for availing treaty benefits.
3. *ADIT v. Green Emirate Shipping & Travels (2006) 100 ITD 203 (Mum.)(Trib.)* Although not directly concerned with mutual funds, this landmark Special Bench judgment is a foundational authority on the India-UAE DTAA. The Tribunal held that

a UAE resident may claim treaty benefits even in the absence of actual tax liability in the UAE. It further clarified that the expression "liable to tax" in a Contracting State does not require that an actual tax liability exist under the domestic law of that State; it suffices that the other Contracting State retains the right to tax such persons, irrespective of whether that right is in fact exercised. This principle has been consistently relied upon in subsequent mutual fund cases.

4. *ITO v. Rameshkumar Goenka [2010] 39 SOT 132 (Mum.)(Trib.)* The ITAT affirmed treaty protection under the India-UAE DTAA for UAE-resident taxpayers and reiterated the principle that actual taxability in the UAE is not a condition precedent to entitlement of treaty benefits.
5. *Anushka Sanjay Shah v. ITO [2025] 173 taxmann.com 570 (Mum.)(Trib.)* Though decided under the India-Singapore DTAA, the Tribunal held that mutual fund units are legally and structurally distinct from shares, and that gains on their transfer therefore fall under the residuary clause in Article 13(5) rather than the shares-specific provision. Given the substantial similarity in treaty language between the India-Singapore and India-UAE DTAAs, this reasoning is equally persuasive in the context of the latter and lends strong interpretive support to the position that such gains are taxable only in the State of residence of the transferor.

Fees for Technical Service

DCIT v. Kalpataru Power Transmission Ltd. (2003) 200 ITD 420 (Ahd)(Trib)

This decision illustrates an important structural feature of the India-UAE DTAA that practitioners occasionally overlook, as, unlike the India-UK or India-US treaties, the India-UAE DTAA contains no independent article on fees for technical services. So if any FTS paid to a UAE entity can be taxed in India only if that entity maintains a permanent establishment there. In KPTL, payments for tower design and engineering work to a UAE entity were characterized by the Revenue as royalty; the ITAT disagreed, holding that creating new outputs for a specific project is not the same as licensing pre-existing IP. And since the UAE entity had no PE in India and the services were used for an overseas project, no withholding obligation arose.

DCIT v. M. Mahadevan (Chennai)(Trib) www.itatonline.org. ((ITA Nos 1824 /1825 /1826 /Chy/2024 dt. 30-5-2025) (AY. 2013-14, 2014-15, 2019-20)

The assessee is a well-known restaurateur with business interests in India and abroad. AO held that, based on data from the Foreigners Regional Registration Office (FRRO), the assessee was staying for more than 182 days and thus was a resident of India u/s 6. It was also accepted that the nature of his overseas travel, which was mostly on tourist or social visas, was not for employment purposes. As a result, the lower threshold of 60 days for determining residency applied instead of the 182-day rule. The ITAT held that merely having business interests or frequently traveling abroad does not confer non-resident status if the travel is not for employment, and the India-UAE DTAA would not be applicable if the requirements of section 6 are fulfilled. Therefore, the assessee's global income was liable to be taxed in India, though he was allowed foreign tax credit for taxes paid abroad.

Valid registration certificate-Interest income earned from Indian companies -Denial of exemption under Article 24 is not justified

Abu Dhabi Investment Authority v. DCIT (IT) (2024) 160 taxmann. com 104 /228 TT] 721 /236 DTR 1 (Mum)(Trib)

The appellant was a FPI and a tax resident of the UAE. It had claimed exemption from tax in India on interest income earned from debt securities by virtue of the benefit provided under Article 24 of the India-UAE DTAA. The CIT(A) denied the benefit of Article 24 on the ground that the mobile number entered '9999999999', being a fraud number, the company was a fraud company and did not belong to the Abu Dhabi Government. The Hon'ble tribunal held that when the appellant has provided all other details to the Ld. AO, then he should have verified the PAN and the address provided in the return to see whether the appellant is an Abu Dhabi Government owned company i. e., Abu Dhabi Investment Authority. The appellant had shown its valid registration as a category of foreign portfolio investor obtained with SEBI and holds a valid residency certificate, and given the particulars of income, therefore, there is no reason to doubt that it is not the authority as mentioned in the Article. 24. Accordingly, the appellant is entitled to benefit, and the denial of the exemption is not valid.

X. Conclusion

The DIFC Variable Capital Company (VCC) Regulations 2026 establish a flexible and sophisticated investment vehicle that further strengthens the UAE as an investment hub. From a tax perspective, however, a VCC is inherently subject to UAE corporate tax, i.e., 9 %, unless it is classified as a Qualifying Free Zone Person (QFZP) status, the Qualifying Investment Fund (QIF) exemption, the participation exemption, or a family foundation arrangement. In a cross-border context, the attractiveness of VCC structures lies in reducing withholding taxes and preserving residence-based taxation; however, these benefits are subject to the terms of the various tax treaties, as it remains a compelling vehicle for global investment structuring. Furthermore, in a cross-border context, and particularly in relation to India, the VCC has genuine appeal. The India-UAE DTAA offers meaningful protections for residence, capital gains, withholding taxes, and business profits, and the body of case law built around the treaty over the past two decades provides practitioners with a reasonably reliable framework. The DIFC Variable Capital Company is not merely a new corporate form; its introduction signals that the UAE is no longer content to compete on tax neutrality alone; it wants to offer the kind of bespoke investment architecture that sophisticated investors have historically sought in jurisdictions like Singapore, Luxembourg, or the Cayman Islands. For investors and advisers willing to do that work, it offers a combination of structural sophistication, regulatory credibility, and tax efficiency that few comparable vehicles can match

Key Legislative References

- Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses (“Corporate Tax Law”), as amended
- Federal Decree-Law No. 60 of 2023 on Domestic Minimum Top-Up Tax
- Cabinet Decision No. 34 of 2025 on Qualifying Investment Funds and Qualifying Limited Partnerships (replacing Cabinet Decision No. 81 of 2023)
- Cabinet Decision No. 35 of 2025 on Determination of a Non-Resident Person’s Nexus in the UAE
- Cabinet Decision No. 142 of 2024 on the UAE DMTT (detailed legislation)
- Ministerial Decision No. 229 of 2025 on Qualifying Activities and Excluded Activities (replacing Ministerial Decision No. 139 of 2023)
- Ministerial Decision No. 261 of 2024 on Unincorporated Partnerships, Foreign Partnerships, and Family Foundations
- DIFC Variable Capital Company Regulations 2026 (enacted 9 February 2026)
- FTA Corporate Tax Guide: Taxation of Family Foundations (CTGFF1, May 2025)
- FTA Corporate Tax Guide: Investment Funds and Investment Managers (2024)
- FTA Public Clarification CTP008: Corporate Tax Treatment of Family Wealth Management Structures (September 2025)
- FTA Corporate Tax Guide: Determination of Taxable Income (CTGDTI1, July 2024)



[Source : AIFTP Journal, June 2026]