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UAE Corporate Tax

Permanent Establishment & Qualifying Free Zone Persons



Disclaimer

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LET US DISCUSS ABOUT....

▶ Determine the existence of a Permanent Establishment (PE) for a Non-Resident in UAE

▶ Impact of having a PE under UAE CT Law

▶ Qualifying Free Zone Person (QFZP) – Conditions to get the status

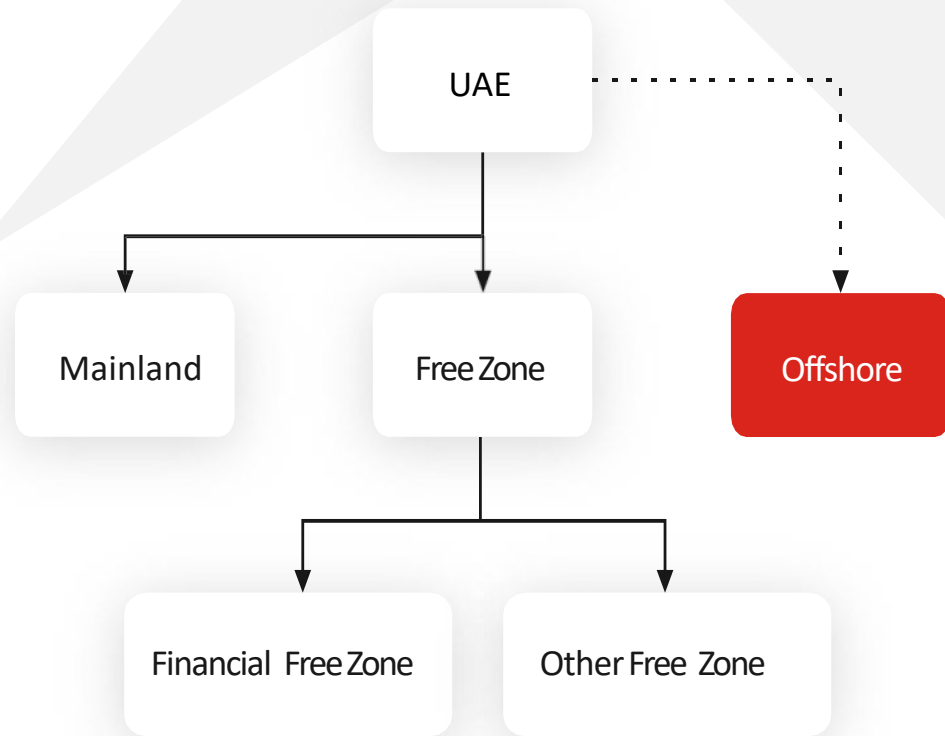
▶ When do you lose a QFZP status and impact

▶ Questions & Answers

UAE-CORPORATE STRUCTURE



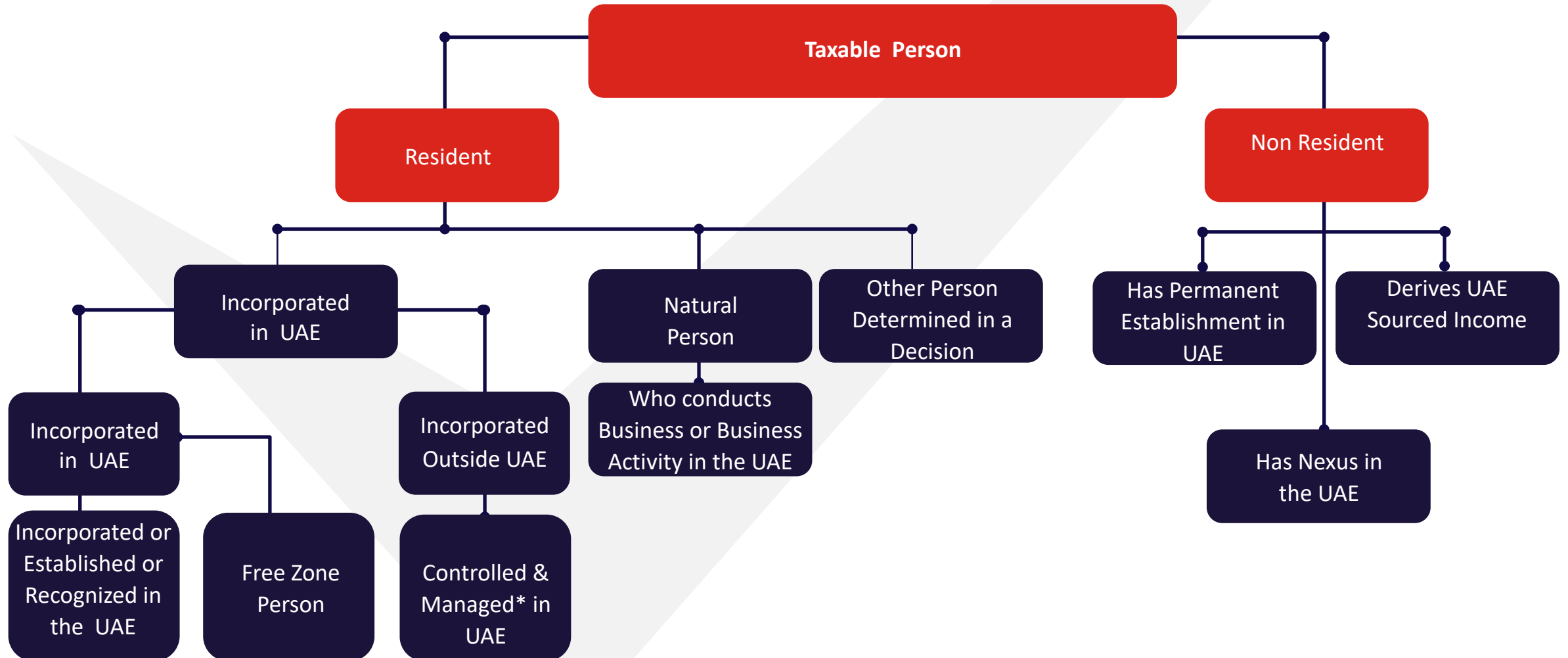
Geographic Form



Legal Form

Sole Proprietorship	Limited Liability Company
Civil Company	Public Shareholding Company
Partnership	Private Shareholding Company
Foundation/Trust	Freezone Company
Representative Office	Branch of Foreign Company
Freelancer	Branch of UAE Based Company

TAXABLE PERSON (WHO?)



A Branch will be treated as one and the same Taxable Person

*Determined based on Key management and Commercial decisions are in substance made and other specific factors

TAX BASE-NON RESIDENT (WHAT?)



UAE **sourced income**
not attributable to PE
of NR

Taxed in UAE

Income attributable
to **PE of NR** in UAE

Taxed in UAE

Income attributable
to **nexus** of NR in
UAE

Taxed in UAE

Any of the below

Derived from
Resident person

Derived From another NR &
Income (Paid/Accrued) is
attributable to PE of that another
NR in UAE

- Income from
- Activity performed in UAE
 - Asset located in UAE
 - Capital invested in UAE
 - Rights used in UAE
 - Service performed in UAE

PE DETERMINING RULES

A Non-Resident Juridical person which is effectively managed and controlled in the UAE may become a Taxable Person in the UAE – Place of Effective Management (PEM)



Non Resident Person has **Fixed or Permanent place** in the UAE (**Test-1**)

Non Resident Person has and **habitually** exercises an authority through **another person** (**Test-2**)

Non Resident Person has any other form of **nexus** in the UAE (**Test-3**)
(Immovable properties)

The definition of a PE aligns with the OECD Model Tax Convention.

Meeting **any one** of the three conditions

NR will be considered having PE in UAE

STANDARDS OF PE DETERMINATION

- ▶ Place of Effective Management (PEM): The place where key management and commercial decisions necessary for the business are made.
- ▶ Fixed place of business, address, bank account, or physical presence.
- ▶ Activity by employees directly related to revenue creation.
- ▶ Sufficient time frame as defined by local law or tax treaties.
- ▶ Actual control and direction of employees' activity by the parent company.

PEM - Actual Control and Direction

- ▶ In line with OECD guidelines, the place of effective management is where key decisions for the entity's business as a whole are made.
- ▶ The company's actual control and direction of employees' day-to-day activity, combined with other prerequisites, are crucial for assessing PE and tax residency.
- ▶ Define specific duties of employees to determine if the company would generate a PE in the UAE.

FACTORS FOR ESTABLISHING PE IN THE UAE

- ▶ Working activity of employees and the amount of time spent in the UAE (more than 183 days per year).
- ▶ Contribution to revenue creation by employees.
- ▶ Revenue creation activities such as marketing, temporary sales, and arms-length transactions may not trigger PE.
- ▶ Broader definition of employee actions increases the likelihood of PE, as virtually any activity could result in PE.

PE – FIXED PLACE OF BUSINESS

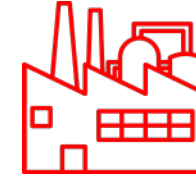
“A fixed place of business through which the business of an enterprise is wholly or partly carried on”



**Place of
Management**



Branch



Factory



**Office (including a
temporary field office or
an employee's home
office)**



Workshop



**Land, buildings & other
real properties**

PE – FIXED PLACE OF BUSINESS – PLACES COVERED



Installations and structures used in the exploration of natural resources



A mine, an oil or gas well, a quarry including any vessels and structures for extraction of them



Building/ construction site, or place of assembly (activities are carried on for over 6 months)

Including the activities conducted at the site or project of a related party of NR

PE EXCLUSION - PREPARATORY OR AUXILIARY ACTIVITIES

Preparatory Character:

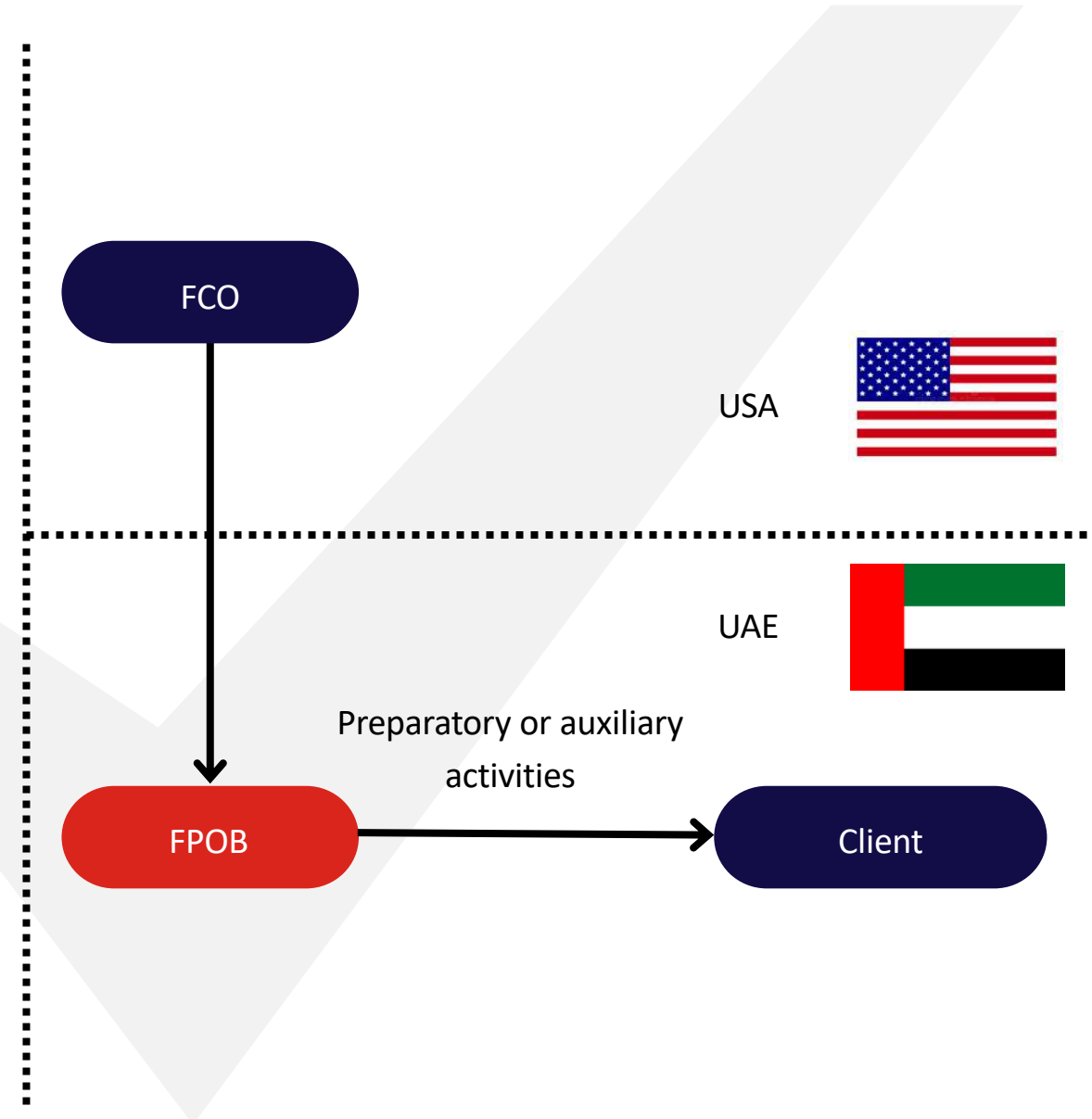
Carried on **in contemplation** of the carrying on of what constitutes **an essential and significant part of the activity of an enterprise as a whole**.

Auxiliary Character:

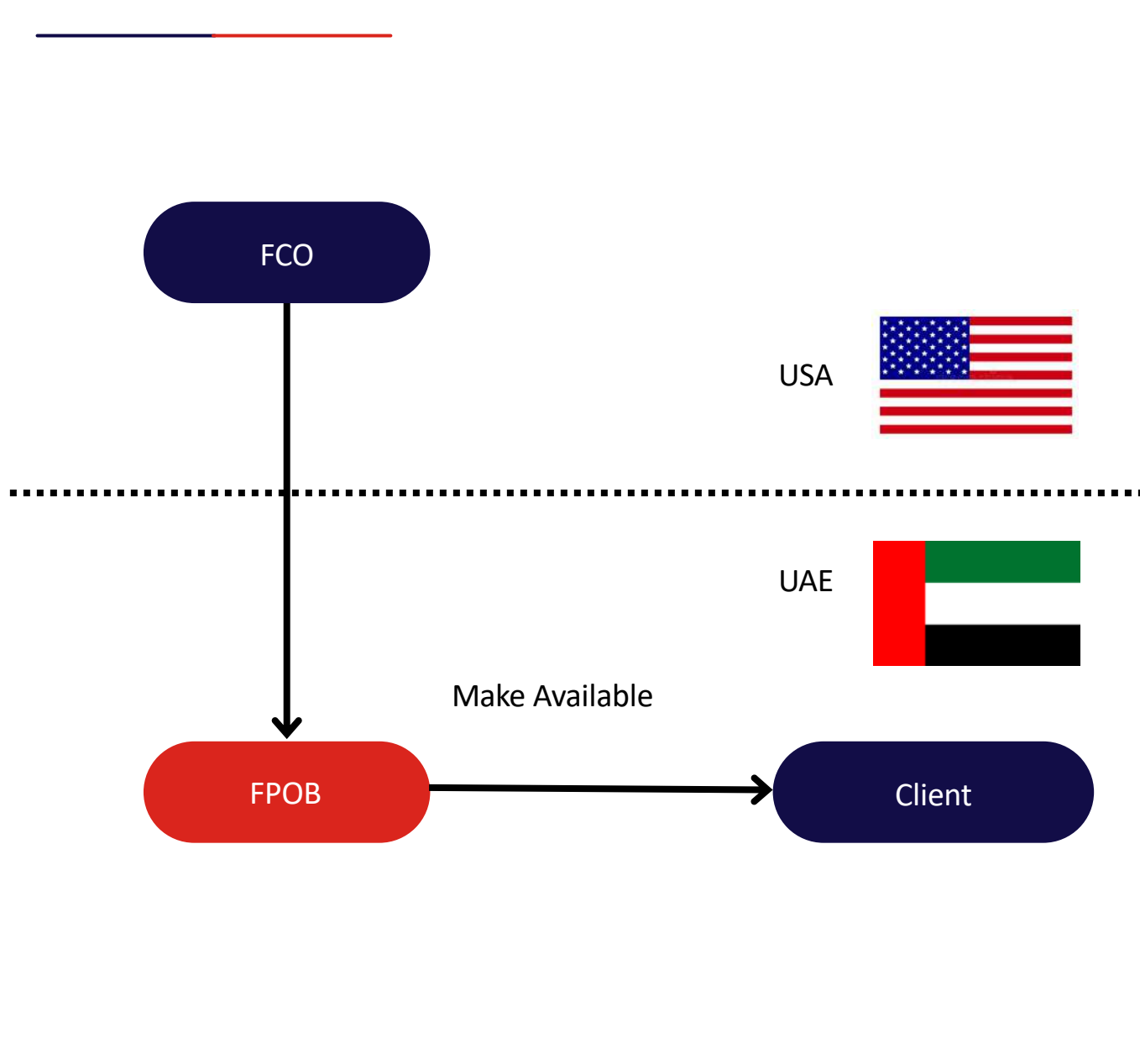
Generally **corresponds to** an activity that is carried on to support, without being part of, **the essential and significant part of the activity** of the enterprise as a whole

Preparatory and auxiliary activities include:

- Limited marketing and promotional activities
- Performing market research
- Attending seminars or conventions



PE EXCLUSION - STORAGE, DISPLAY OR DELIVER GOODS



- Permissible activities:
- Store of goods
 - Display of goods
 - Deliver the foreign company's goods
 - Keeping a stock of goods
 - Purchasing goods or merchandise for NR

FCO is considered as not having PE in UAE



Withholding Tax

A **0% withholding tax** applies to certain types of UAE sourced income derived by non-residents, excluding income attributable to a PE.



Credit of Withholding Tax Paid in UAE

If a person is having **withholding tax credit**, the same can be reduced when paying tax if he is a **Taxable person in UAE**.

The maximum of withholding tax shall be lower of:

- The amount of withholding tax deducted
- The corporate tax due

The excess withholding tax shall be refunded to the taxable person.

No registration or filing obligations are expected due to the 0% withholding tax rate.

FOREIGN TAX CREDIT

Foreign Tax Credit: Tax paid under the laws of a foreign jurisdiction on income or profits that may be deducted from the Corporate Tax due.

- Corporate Tax due can be reduced by the Foreign Tax Credit for the relevant Tax Period.
- The Foreign Tax Credit cannot exceed the amount of Corporate Tax due on the relevant income.
- Any un-utilised Foreign Tax Credit cannot be carried forward or carried back.

FOREIGN TAX CREDIT ADJUSTMENT

The UAE CT regime will become effective for financial years starting on or after 1 June 2023.

Particulars	Amount (AED)
Revenue	3,000,000
Less: Deductible expenses	(2,200,000)
Taxable Income	800,000
Tax Payable (9% of 425,000)	38,250
Less: Foreign tax paid @ 5% on a service provided to a foreign client	(10,000)
Net tax payable	28,250

QUALIFYING FREE ZONE PERSON



QUALIFYING FREEZONE PERSON – CONDITIONS

Maintains **adequate substance** in the State.

- Undertake its core income-generating activities in a Free Zone
- Have adequate assets, employees, operating expenditure in free zone

Maintains **Audited Financial statements**

Complies with **Arm's Length Principals** and **TP** requirements

Derives Qualifying Income as specified in the Cabinet Decision

Has **not elected** to be subject to Corporate Tax

Satisfied **De Minimis** requirement

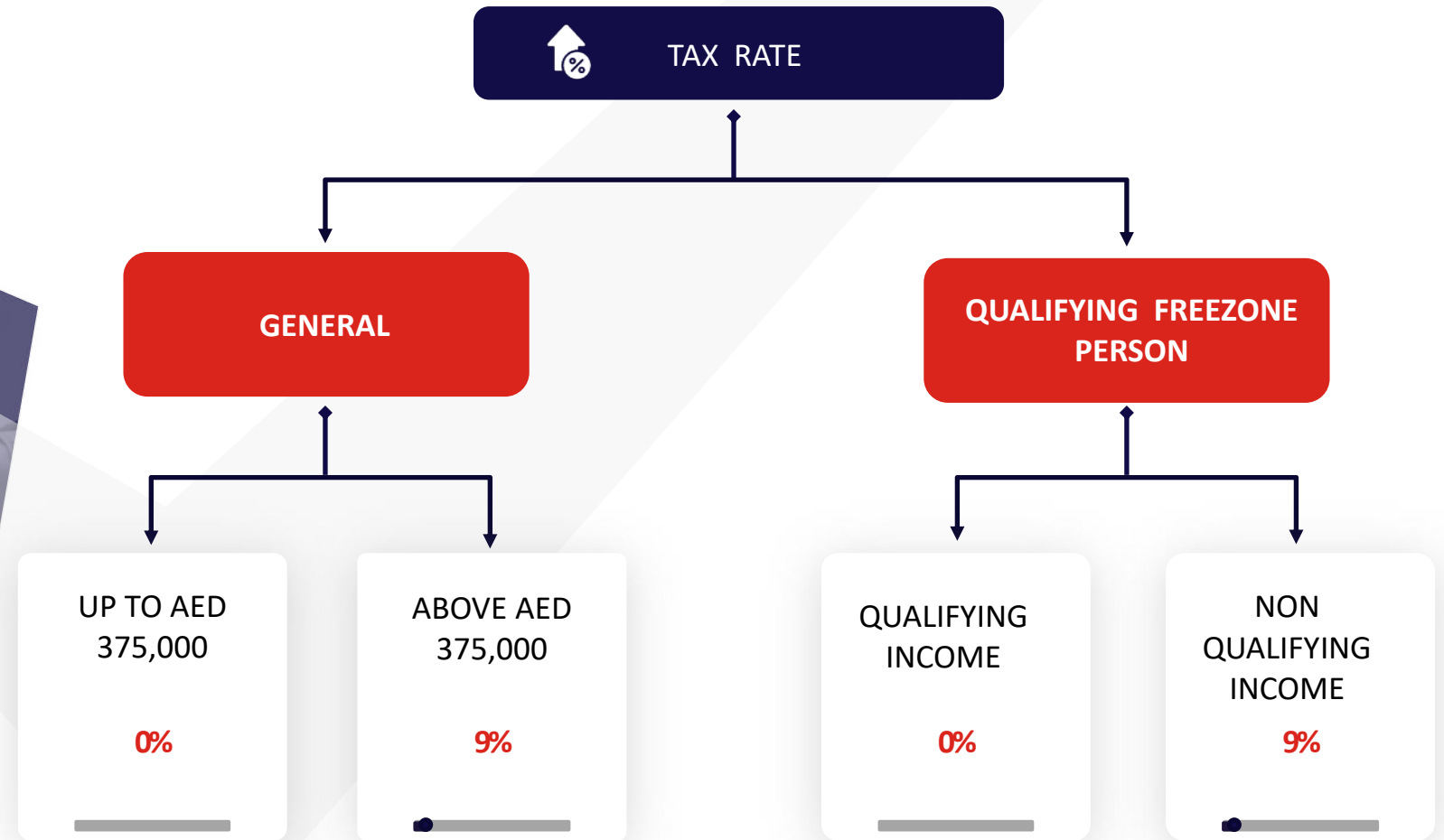


QFZP **fails to meet any of the conditions** at any particular time shall **cease the status** for that year and for next 4 years.

Activities can be even **outsourced** to **Related Party** or **third party** in a free zone. (With adequate supervision)

Qualifying Freezone entities that are part of **Large MN Group** will be **subject to GMT** once Pillar 2 is implemented in the UAE.

IMPOSITION OF TAX AND TAX RATE



Tax is levied on Taxable Income at the tax rates determined

Corporate Tax on Free zone Business- Qualifying & Non qualifying, (Cabinet Decision no. 55 & Ministerial Decision no. 139)

Qualifying Free Zone Person

Qualifying Income
0% Corporate Tax Income

Non-Qualifying Income
9% Corporate Tax Income

- ✓ Income from **another free zone person** (ultimate beneficial recipient) except excluded activities
- ✓ Income from **Qualifying activities** from mainland/ outside of UAE except excluded activities
- ✓ **Other Income** subject to **De Minimis** (non qualifying revenue does not exceed 5% of total revenue or AED 5 million, whichever is lower)

- ✓ Revenue from **immovable property in Free zone**
 - **Commercial property** transaction with **non free zone person**
 - Transaction with **any person** for **non-commercial property**
- ✓ Revenue from **Domestic Permanent Establishment** and Foreign **Permanent Establishment of QFZ**

Corporate Tax on Free zone- Qualifying & Non qualifying, (Cabinet Decision no. 55 & Ministerial Decision no. 139)

Qualifying Activities

Goods:

- ✓ Manufacturing of Goods or materials
- ✓ Processing of Goods or materials
- ✓ Distribution of imported goods or materials in or from a Designated Zone to reseller

Services & Others:

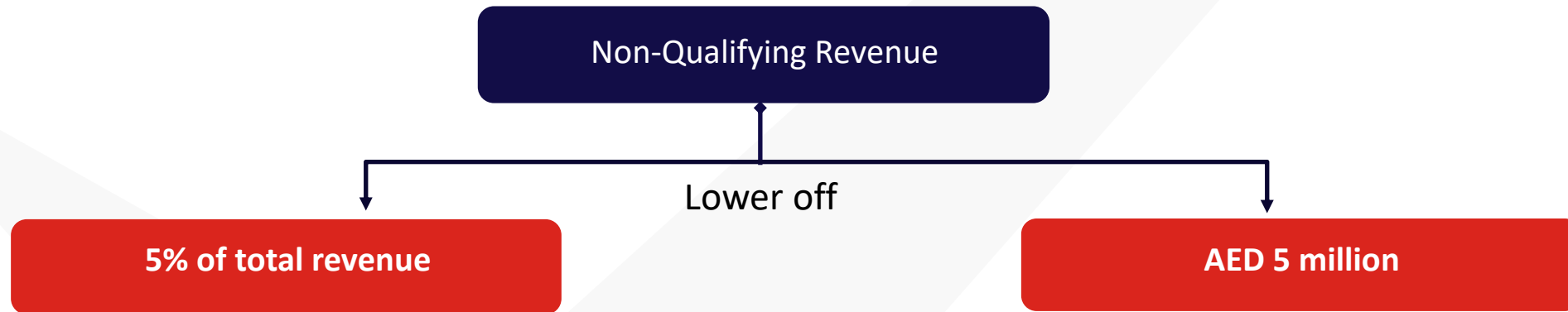
- ✓ Holding of shares and other securities
- ✓ Ownership, management and operation of Ships
- ✓ Reinsurance services (subject to regulatory oversight)
- ✓ Fund management services (subject to regulatory oversight)
- ✓ Wealth and investment management services (subject to regulatory oversight)
- ✓ Headquarter services to Related Parties
- ✓ Treasury and financing services to Related Parties
- ✓ Financing and leasing of Aircraft, including engines and rotatable components
- ✓ Logistics services
- ✓ Ancillary activities to above

Excluded Activities (Non-qualifying revenue)

- ✓ Transaction with Natural Person
(except to Ownership or management of ship/
Fund management services/ Wealth &
investment management/ Financing & leasing of
aircraft)
- ✓ Banking activities
- ✓ Insurance activities (other than reinsurance)
- ✓ Financing and leasing activities, except
 - Financing to related parties
 - Related to aircraft
- ✓ Transaction with another free zone person
related to immovable commercial property
other than located in free zone
- ✓ Intellectual property assets income
- ✓ Ancillary activities to above

Corporate Tax on Free Zone Business- Qualifying & Non Qualifying – De Minimis Requirement

One of the condition for Qualifying Free Zone Persons (QFZP) is to satisfy De Minimis Requirement, for which Non-Qualifying Revenue should not exceed below limits.



Note: For the purpose of **total revenue**, below are **not included**:

- ✓ Revenue from immovable property in Free zone
 - Commercial property transaction with non free zone person
 - Transaction with any person for non- commercial property
- ✓ Revenue from Domestic Permanent Establishment and Foreign Permanent Establishment of QFZ

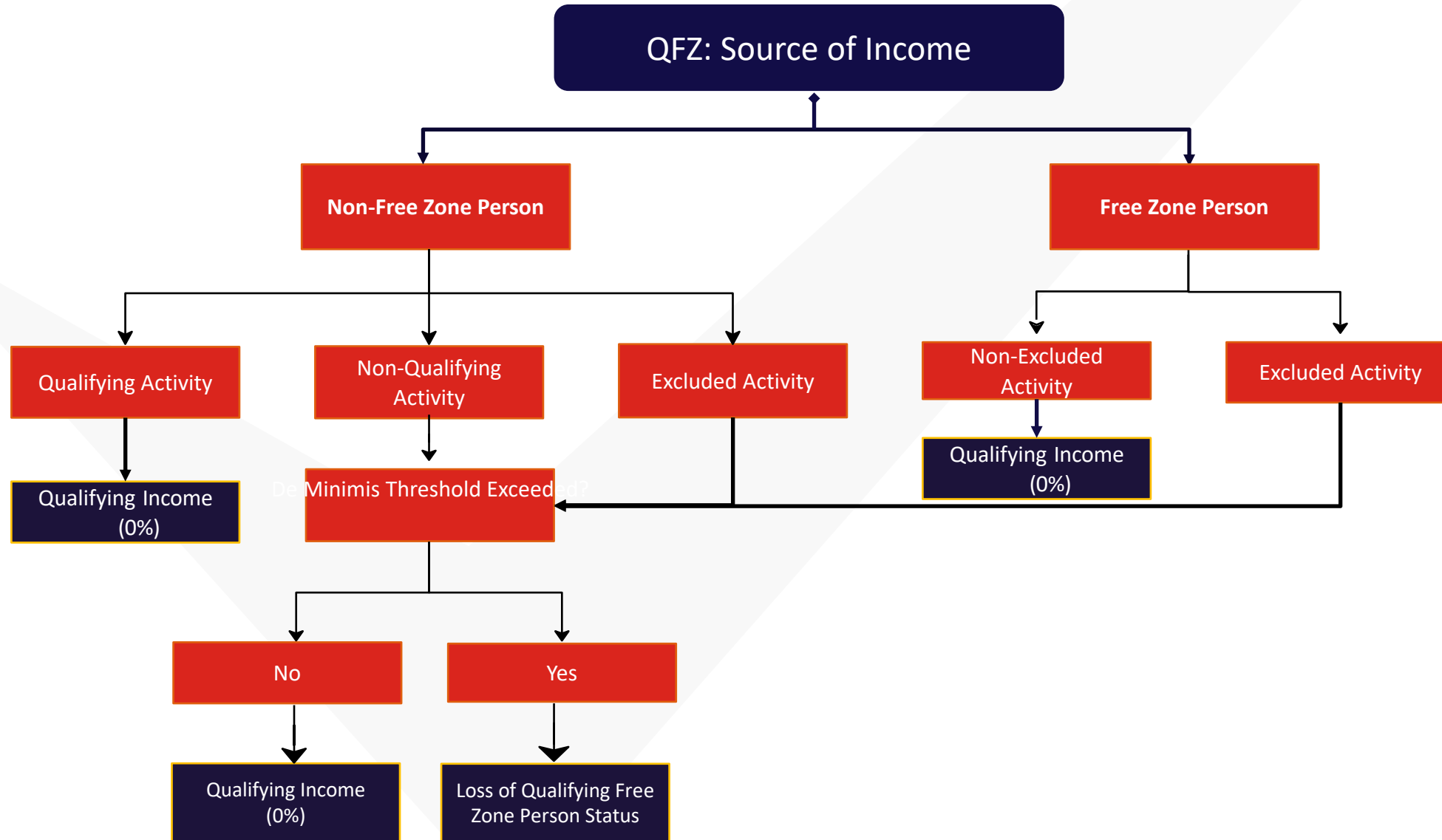
Corporate Tax on Free Zone Business- Qualifying & Non Qualifying – De Minimis Requirement



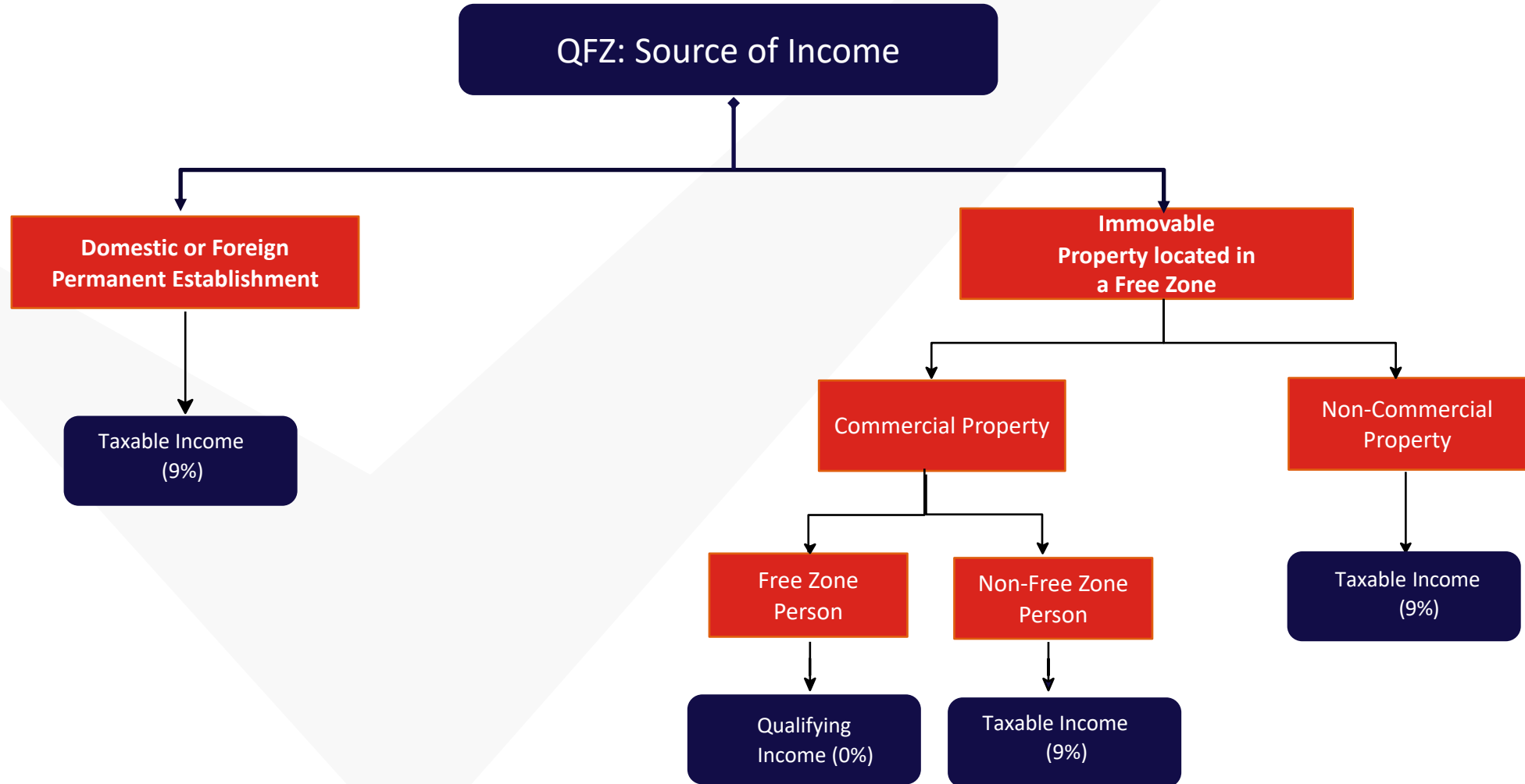
Qualifying income



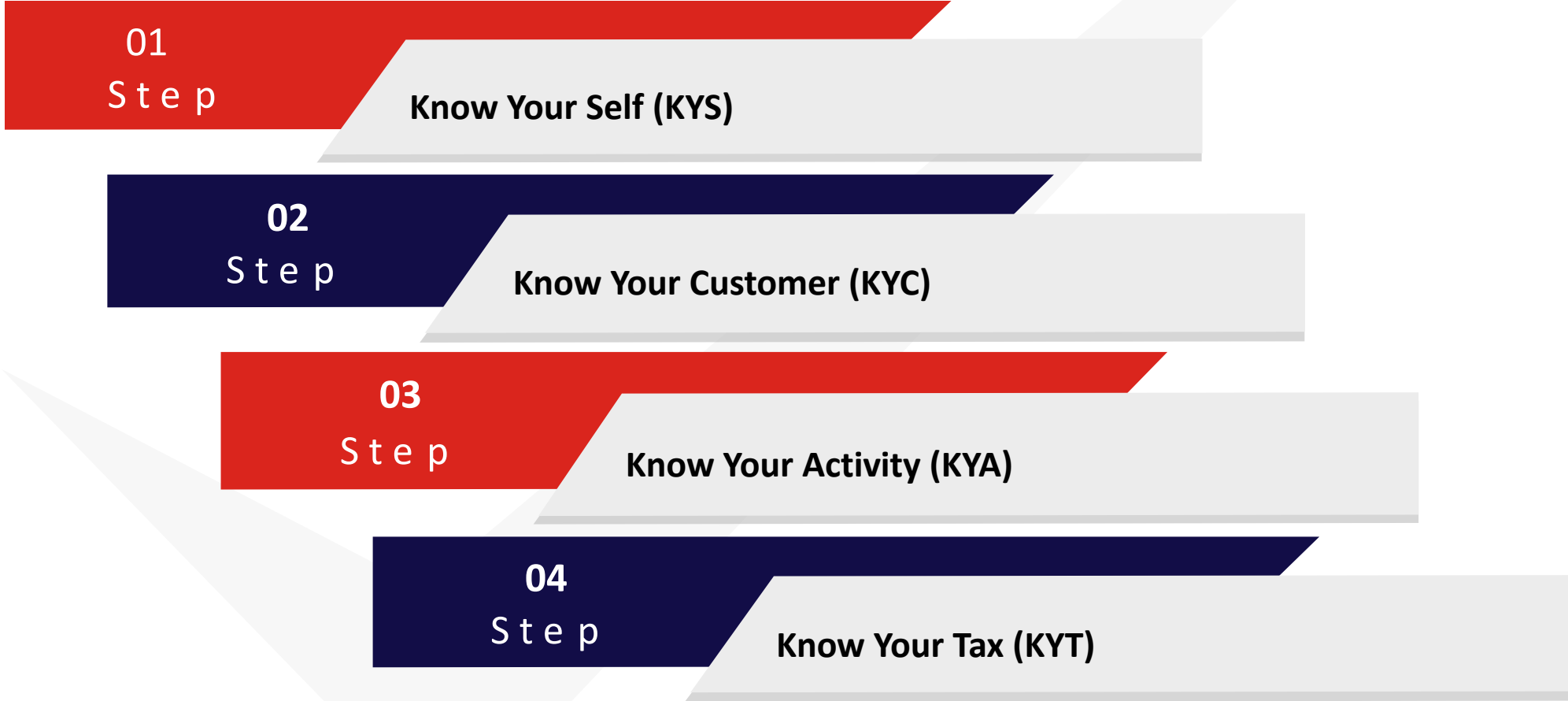
**Non-qualifying income
(within De-minimis)**



Qualifying Free Zone (QFZ) Taxability



Steps for determination of Qualifying Free Zone Person Status





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