

Businesses in the UAE have by now, adapted to conducting their operations within the new VAT regime. Although the UAE VAT Law remains relatively new and contentious with many companies continuing to grapple with the emerging issues and ultimately with the Federal Tax Authority's (FTA) interpretation of the law.

There have been a few cases to date that involved successful challenges to the FTA's assessment on taxes and penalties, where the UAE courts had intervened with a literal interpretation of the provisions of the law.

UAE Federal Court reverses penalties imposed by the FTA

In a recent decision by the Abu Dhabi Court of First Instance, which was successfully obtained by Baker McKenzie Habib Al Mulla in favor of a UAE based company, the court upheld an appeal against fines and penalties of approximately AED 20 million imposed by the FTA in respect of a voluntary disclosure made by the company. The Court also ordered that the FTA repay the amount to the company.

With many companies finding themselves in similar situations, the judgement is critical and a market-first in many respects. It is one of the first few successful tax appeals against a decision by the Tax Dispute Resolution Committee (TDRC) and also one of the first few tax appeal cases to be referred to court appointed experts.

The company submitted a voluntary disclosure before the FTA in relation to certain services for which the applicable VAT rate was uncertain, and paid the tax as part of that submission. However, in addition to the fines and penalty prescribed under the Tax Procedures Law with respect to voluntary disclosures, the FTA imposed administrative penalties applicable to late payment of taxes in submitted returns or notified assessments. The FTA rejected the company's request to reconsider the imposition of additional fine and penalty for late payment of tax.

Following the laid down appeals process, the company raised an objection before the TDRC. The TDRC dismissed the objection on procedural grounds, without considering the substantive issue of whether or not the FTA was right to impose the additional fines and penalty. The company subsequently appealed to the Abu Dhabi Federal Court of First Instance.



The Court's main argument was that the Tax Procedures Law distinguishes penalties for late payment of tax as shown in submitted returns or notified assessments, from fines and penalties applicable to voluntary disclosures. Thus, the FTA was wrong to impose both sets of penalties on the company instead of only the specified penalty applicable to voluntary disclosures. The Court considered the substantive issues in full.

Following its referral of the case to an appointed expert, the Court decided on 7 April 2020 to:

- i. admit the challenge claim in form;
- ii. reverse Decision of the Tax Settlement Committee in Dubai;
- iii. obligate the FTA (the **Defendant**) to repay the penalty to the company (the **Plaintiff**) in the amount of AED 19,897,345; and
- iv. dismiss all other motions.

The Court's full reasoning is set out in the Annex hereto.

Challenge process

This case follows a successful judgement against the FTA on tax penalties amounting to AED 20.8 million levied on a Dubai based beverage distributor, on which Baker McKenzie Habib Al Mulla had acted for the company before the FTA Reconsideration Committee, the TDRC and the UAE Federal Courts. The TDRC found that the company only owed AED 8.8 million in taxes, rejecting the FTA's claim and ordering it to repay the company the extra AED 11.9 million.

These judgments demonstrate that although tax is relatively new in the UAE, there is a robust judicial system in place to safeguard the application of the tax legislation and regulations in cases where taxpayers challenge the FTA's position on tax matters. When challenging the FTA's levies, taxpayers should adhere to the specific procedures and timeline for recalculations, re-considerations and objections before the TDRC and the relevant UAE courts.

We are happy to support you throughout the challenge process in relation to your tax dispute and litigation matters. For further information, please contact **Mohamed El Baghdady** and **Reggie Mezu** of the UAE Tax team or your usual Baker McKenzie contact.

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Annex

The Court in its reasoning stated the following:

“Considering the accounting and factual issues addressed by the expert, which the court takes into account, and whereas the only remaining point of dispute is related to the validity of the penalty as per article 9 of the Cabinet Resolution No. 40 of 2017 concerning the administrative penalties to be imposed on violating the tax law applicable in the state, the expert concluded the validity of imposing penalties on the voluntary disclosure as per article 11 of the Cabinet Resolution. Whereas it is well established under article No. 1 of the Federal Decree-Law No. 13 of 2016 on the establishment of the Federal Tax Authority that the “Tax Return: is the information and data specified for taxation purposes and submitted by the taxpayer as per the form prepared by the Authority.” It also defined the “Voluntary Disclosure: is the form prepared by the Authority pursuant to which the Taxpayer notifies the Authority of an error or omission in the Tax Return, Tax Assessment or Tax Refund application in accordance with the provisions of the Tax Law”, which is the same definition in the Cabinet Resolution No. 40 of 2017 on the administrative penalties to be imposed on violating the tax law applicable in the state.”

“Whereas clause No. 9 of the table No. 1 annexed to the law deals with the violation of “the failure of the Taxable Person to settle the Payable Tax stated in the submitted Tax Return or Tax Assessment he was notified of, within the timeframe specified in the Tax Law.” While clause No. 11 of the said table refers to the violation of submitting a voluntary disclosure by the taxpayer on the errors made in the tax return, tax assessment or the tax refund application, hence, the intention of the legislator is clear in differentiating between the two cases and apply each penalty on its relative case.”

“Whereas it is well established that the Plaintiff has settled the money amount as stated in the tax return, and given that the Defendant had imposed penalties on the voluntary disclosure pursuant to article 11 of the above indicated resolution No. 40, then the later imposition of penalties on the delayed payment of the difference of the tax for the voluntary disclosure as per article 9 of the relative resolution is considered inapposite and it violates law.”



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