

CHAMBERS GLOBAL PRACTICE GUIDES

Tax Controversy 2024

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**UAE: Law & Practice
and Trends & Developments**

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Law and Practice

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Contents

1. Tax Controversies p.6

- 1.1 Tax Controversies in This Jurisdiction p.6
- 1.2 Causes of Tax Controversies p.6
- 1.3 Avoidance of Tax Controversies p.7
- 1.4 Efforts to Combat Tax Avoidance p.8
- 1.5 Additional Tax Assessments p.8

2. Tax Audits p.9

- 2.1 Main Rules Determining Tax Audits p.9
- 2.2 Initiation and Duration of a Tax Audit p.9
- 2.3 Location and Procedure of Tax Audits p.10
- 2.4 Areas of Special Attention in Tax Audits p.10
- 2.5 Impact of Rules Concerning Cross-Border Exchanges of Information and Mutual Assistance Between Tax Authorities on Tax Audits p.11
- 2.6 Strategic Points for Consideration During Tax Audits p.11

3. Administrative Litigation p.11

- 3.1 Administrative Claim Phase p.11
- 3.2 Deadline for Administrative Claims p.12

4. Judicial Litigation: First Instance p.13

- 4.1 Initiation of Judicial Tax Litigation p.13
- 4.2 Procedure for Judicial Tax Litigation p.13
- 4.3 Relevance of Evidence in Judicial Tax Litigation p.14
- 4.4 Burden of Proof in Judicial Tax Litigation p.14
- 4.5 Strategic Options in Judicial Tax Litigation p.14
- 4.6 Relevance of Jurisprudence and Guidelines to Judicial Tax Litigation p.15

5. Judicial Litigation: Appeals p.16

- 5.1 System for Appealing Judicial Tax Litigation p.16
- 5.2 Stages in the Tax Appeal Procedure p.16
- 5.3 Judges and Decisions in Tax Appeals p.16

6. Alternative Dispute Resolution (ADR) Mechanisms p.17

- 6.1 Mechanisms for Tax-Related ADR in This Jurisdiction p.17
- 6.2 Settlement of Tax Disputes by Means of ADR p.17
- 6.3 Agreements to Reduce Tax Assessments, Interest or Penalties p.17
- 6.4 Avoiding Disputes by Means of Binding Advance Information and Ruling Requests p.18
- 6.5 Further Particulars Concerning Tax ADR Mechanisms p.18
- 6.6 Use of ADR in Transfer Pricing and Cases of Indirect Determination of Tax p.19

7. Administrative and Criminal Tax Offences p.19

- 7.1 Interaction of Tax Assessments With Tax Infringements p.19
- 7.2 Relationship Between Administrative and Criminal Processes p.19
- 7.3 Initiation of Administrative Processes and Criminal Cases p.20
- 7.4 Stages of Administrative Processes and Criminal Cases p.20
- 7.5 Possibility of Fine Reductions p.21
- 7.6 Possibility of Agreements to Prevent Trial p.21
- 7.7 Appeals Against Criminal Tax Decisions p.21
- 7.8 Rules Challenging Transactions and Operations in This Jurisdiction p.22

8. Cross-Border Tax Disputes p.22

- 8.1 Mechanisms to Deal With Double Taxation p.22
- 8.2 Application of GAAR/SAAR to Cross-Border Situations p.22
- 8.3 Challenges to International Transfer Pricing Adjustments p.22
- 8.4 Unilateral/Bilateral Advance Pricing Agreements p.22
- 8.5 Litigation Relating to Cross-Border Situations p.22

9. State Aid Disputes p.22

- 9.1 State Aid Disputes Involving Taxes p.22
- 9.2 Procedures Used to Recover Unlawful/Incompatible Fiscal State Aid p.22
- 9.3 Challenges by Taxpayers p.23
- 9.4 Refunds Invoking Extra-Contractual Civil Liability p.23

10. International Tax Arbitration Options and Procedures p.23

- 10.1 Application of Part VI of the Multilateral Instrument (MLI) to Covered Tax Agreements (CTAs) p.23
- 10.2 Types of Matters That Can Be Submitted to Arbitration p.23
- 10.3 Application of the Baseball Arbitration or the Independent Opinion Procedure p.23
- 10.4 Implementation of the EU Directive on Arbitration and/or the MLI p.23
- 10.5 Existing Use of Recent International and EU Legal Instruments p.23
- 10.6 New Procedures for New Developments Under Pillars One and Two p.23
- 10.7 Publication of Decisions p.23
- 10.8 Most Common Legal Instruments to Settle Tax Disputes p.23
- 10.9 Involvements of Lawyers, Barristers and Practitioners in International Tax Arbitration to Settle Tax Disputes p.24

11. Costs/Fees p.24

11.1 Costs/Fees Relating to Administrative Litigation p.24

11.2 Judicial Court Fees p.24

11.3 Indemnities p.24

11.4 Costs of ADR p.24

12. Statistics p.24

12.1 Pending Tax Court Cases p.24

12.2 Cases Relating to Different Taxes p.24

12.3 Parties Succeeding in Litigation p.24

13. Strategies p.24

13.1 Strategic Guidelines in Tax Controversies p.24

Habib Al Mulla and Partners is a leading law firm based in Dubai, UAE, specialising in domestic tax legislation, providing exemplary legal services to clients in tax matters and dispute resolution. With a dedicated team of around 40 attorneys, the firm operates not only in Dubai but also in key offices across its network, including Abu Dhabi and Istanbul. Focused on taxation, the firm's attorneys excel in VAT, excise tax, and procedural tax matters such as

penalty waivers, reconsiderations, voluntary disclosures, and administrative exceptions. In recent years, the firm has represented major UAE businesses, including prominent real estate developers, airlines, and tobacco manufacturers, in tax disputes with the Federal Tax Authority. Noteworthy is its successful representation in a dispute valued at AED2.5 billion, where liability was reduced to AED420 million.

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1. Tax Controversies

1.1 Tax Controversies in This Jurisdiction

Tax controversies in the United Arab Emirates (UAE) typically arise from any of several triggers, including:

- issuance of a public clarification or guidance by the Federal Tax Authority;
- receipt of a private clarification from the Federal Tax Authority in response to a private clarification request submitted to it by the taxable person;
- issuance of new legislation, whether tax-related or not, by the federal government or any of the local governments;
- system errors or procedural irregularities, whether on the part of the taxpayer or a governmental authority;
- issuance of a final and binding decision by the Federal Supreme Court setting out general principles applicable to tax affairs; or
- conflicting views between the taxable person and the Federal Tax Authority during or following the conclusion of a tax audit.

1.2 Causes of Tax Controversies

Tax controversies in the UAE primarily revolve around the taxation regimes established in the country. Currently, the UAE operates two indirect tax regimes, namely VAT and excise tax, along with one direct tax regime, income tax on corporations and businesses (CT).

Prior to the introduction of CT, tax controversies were predominantly associated with VAT, with excise tax controversies being relatively limited. VAT-related disputes often stemmed from misinterpretations of VAT provisions, occasionally resulting in major business groups facing tax assessments and penalties exceeding AED2 billion.

However, with the enactment of legislation governing CT, the landscape of tax controversies has shifted significantly. Several factors contribute to the emergence of CT-related controversies in the UAE:

- the absence of tax audits conducted by the Federal Tax Authority, as the first CT tax return is not due until March 2025;
- pending key legislative instruments referenced within the CT Law, including cabinet

- decisions, ministerial decisions, and Federal Tax Authority decisions;
- pending further guidance to be published by the Federal Tax Authority regarding CT regulations;
 - the contentious nature of certain CT legal provisions;
 - the interplay between domestic federal CT legislation and domestic Emirate-level CT legislation, resulting in potential double taxation on both an Emirate level and a federal level; and
 - the interplay between domestic federal CT legislation and international CT regulations, as well as bilateral investment treaties and double taxation avoidance agreements.

These factors collectively contribute to the complexity and uncertainty surrounding CT-related tax controversies in the UAE.

1.3 Avoidance of Tax Controversies

The possibility of tax controversy can be effectively mitigated through proactive measures aimed at enhancing understanding and compliance with tax laws, several of which are outlined below.

Ongoing Education

Regular training and educational programmes can help businesses and professionals stay updated on changes to tax laws and regulations in the UAE. By investing in ongoing education, individuals can deepen their understanding of the legislative framework, stay ahead of recent developments, and ensure compliance with evolving tax requirements. This can help prevent misunderstandings or misinterpretations of tax provisions, reducing the likelihood of tax controversies.

Appointment of Tax and Legal Specialists

Businesses can mitigate the risk of tax controversies by appointing tax and legal specialists who are well-versed in the UAE's legislative framework. These specialists can provide expert guidance on tax compliance matters, interpret complex tax provisions accurately, and navigate potential pitfalls effectively. By having dedicated professionals with in-depth knowledge of UAE tax laws, businesses can proactively address compliance issues and minimise the likelihood of disputes with tax authorities.

Constant Reviews of Judicial Awards

Regular reviews of recent judicial awards on tax disputes by the Federal Supreme Court provide valuable insights into how tax laws are interpreted and applied in practice. By analysing judicial decisions, businesses can gain a better understanding of prevailing legal interpretations, identify potential areas of ambiguity or contention, and adjust their tax strategies accordingly. This proactive approach enables businesses to align their practices with legal precedents, reducing the risk of disputes and ensuring compliance with judicial interpretations of tax laws.

Submission of Clarification Requests

Submitting clarification requests to the Federal Tax Authority can help clarify ambiguous tax provisions, resolve uncertainties, and ensure alignment with regulatory expectations. By seeking clarification directly from the Federal Tax Authority, businesses can obtain authoritative guidance on specific tax issues, clarify regulatory requirements, and mitigate the risk of misinterpretations. This proactive engagement with tax authorities fosters transparency, reduces ambiguity, and minimises the likelihood of tax controversies arising from misunderstandings or uncertainties regarding tax laws.

In summary, ongoing education, the appointment of tax and legal specialists, constant reviews of judicial awards, and the submission of clarification requests are essential strategies for mitigating the possibility of tax controversy in the UAE. By proactively addressing compliance challenges, clarifying regulatory uncertainties, and staying informed about legal developments, businesses can effectively navigate the complexities of the tax landscape and minimise the risk of disputes with the Federal Tax Authority.

1.4 Efforts to Combat Tax Avoidance

The UAE is emerging as a key player in the realm of domestic and international taxation. Despite the relatively recent implementation of a taxation regime in the UAE, the country has already taken several proactive steps towards compliance and alignment with international taxation rules and recommendations.

For instance, despite the very recent issuance of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses, it has already undergone its first legislative amendment via the Federal Decree-Law No. 60 of 2023, in which new key terms were introduced, including the term “top-up tax” defined as “[t]he top-up tax imposed on Multinational Enterprises [...] for the purposes of the pillar two rules issued by the Organization for Economic Cooperation and Development”.

Moreover, Federal Decree-Law No. 60 of 2023 introduced a new effective tax rate of 15% in respect of multinational enterprises, a substantial jump from the standard domestic federal Corporate Tax rate of 9%.

1.5 Additional Tax Assessments

The applicable tax legislation in the UAE enables the Federal Tax Authority to conduct tax audits

on any person, irrespective of whether they have been previously audited or not. This authority extends to assessing the same tax period that was previously audited, as well as different tax periods. In essence, the Federal Tax Authority can issue multiple tax assessments to the same person, either for periods that have been previously audited or for new periods, to ensure compliance with the tax laws.

Where the additional assessment relates to a period that has been previously audited, the likely trigger for such assessment is the emergence of new information following the conclusion of the tax audit that suggests further non-compliance by a person with the tax legislation. The powers to conduct further tax audits resulting in additional tax assessments are discretionary to the Federal Tax Authority and may not be challenged. Nevertheless, the issued tax assessments following the conclusion of the tax audit are subject to the standard objections and appeals process.

Under the tax objections and appeals process applicable in the UAE, the person to whom the tax assessment or additional tax assessment is issued may proceed with the following dispute resolution forums in the order, and subject to meeting the thresholds, presented below:

- **Reconsideration and/or tax assessment review requests:** These are amicable stages involving only the Federal Tax Authority and the person to whom the tax assessment is issued. No payments of tax or administrative penalties need to be made in order to resort to these forums.
- **Objections filed to the Tax Dispute Resolution Committee:** This stage involves the filing of an objection to an independent judicial committee, namely the Tax Dispute Resolution Com-

mittee, comprising a judge and two experts. At a minimum, the disputing person must have at least settled the disputed tax liability in full, but is not required to have settled any of the imposed administrative penalties.

- Appeals filed to the competent federal courts: This stage involves the filing of an appeal to the federal courts, and follows the standard rules for appeals before the courts as prescribed in the UAE Civil Procedures Law. At a minimum, the disputing person must have at least settled the disputed tax liability in full, in addition to a minimum of 50% of the imposed administrative penalties. Alternatively, the law provides the disputing person with the option to provide a guarantee in relation to the 50% threshold for administrative penalties rather than an actual settlement.

2. Tax Audits

2.1 Main Rules Determining Tax Audits

Due to the nature of the procedures leading to a tax audit, the Federal Tax Authority maintains a high level of confidentiality in respect of the risk factors triggering a tax audit against a specific taxpayer. Nevertheless, based on practical considerations and field experience, some of the likely triggers for a tax audit by the Federal Tax Authority include but are not limited to the following:

- a whistleblowing report submitted to the Federal Tax Authority through the newly introduced “Raqeeb” whistleblowing programme; submissions of reports through the Raqeeb programme are likely to be made by ex-employees, competitors, and regular customers observing a violation of the tax legislation;
- a detected case of tax evasion or severe tax violation within a certain industry triggering a

series of tax audits on prominent businesses within the same industry;

- businesses continually reporting negative payable tax resulting in positioning them as eligible for substantial refund claims; or
- businesses refusing to follow the directions of the Federal Tax Authority following a limited review or a regular awareness-raising visit.

2.2 Initiation and Duration of a Tax Audit

Prior to the issuance of the Federal Decree-Law No. 28 of 2022 on Tax Procedures, tax audits were not subject to any strict provisions in respect of the initiation or duration of a tax audit. Practical applications triggered the legislature to incorporate state of limitation provisions in respect of tax audits within the aforementioned Decree-Law.

Under the provisions outlined in the Decree-Law, tax audits in the UAE are subject to specific timeframes and conditions. Generally, the Federal Tax Authority can initiate a tax audit within five years from the end of the relevant tax period, except in cases of tax evasion or failure to register for tax. In situations where the taxpayer has been notified of the audit before the expiration of this five-year period, the audit can continue beyond this timeframe, but it must be completed within four years from the date of notification.

Moreover, if a voluntary disclosure is submitted in the fifth year from the end of the tax period, the FTA may conduct a tax audit or issue a tax assessment after the initial five-year period. However, any such audit or assessment must be completed within one year from the date of submission of the voluntary disclosure. Additionally, the UAE Cabinet of Ministers has the authority to amend the timeframes for completing tax audits or assessments, providing flexibility in certain

circumstances. However, the Cabinet has not exercised such powers to date.

Furthermore, specific provisions allow for longer timeframes in cases of tax evasion or failure to register for tax. For instance, in cases of tax evasion, the FTA may conduct a tax audit or issue a tax assessment within fifteen years from the end of the tax period in which the evasion occurred. Similarly, in situations of tax registration failure, the FTA has fifteen years from the date on which the taxable person should have registered for tax to initiate a tax audit or issue a tax assessment.

It is important to note that the statute of limitation specified in the law may be interrupted for reasons outlined in Federal Law No. 5 of 1985 promulgating the Civil Transactions Law, or any federal law replacing it. This interruption could extend the timeframe within which the FTA can conduct a tax audit or issue a tax assessment. Overall, these provisions aim to provide clarity and structure to the tax audit process while ensuring fairness and compliance with tax regulations in the UAE.

2.3 Location and Procedure of Tax Audits

Tax audits can occur either at the Federal Tax Authority's headquarters, the taxpayer's premises, or any other location where the taxpayer conducts business, stores goods, or maintains records, per the legal provision. In practice, where there is no suspicion of tax evasion warranting surprise tax audits, tax audits involve a mixture of both, where documentation is initially requested by the Federal Tax Authority through email, followed by site visits of the Authority's auditors to the taxpayer's premises.

During these audits, the Federal Tax Authority is empowered to inspect various elements,

including premises, documents, assets, data, records stored electronically, and accounting systems used by the taxpayer. This means that tax audits can be conducted based on both printed documents and data made available electronically, depending on the nature of the taxpayer's records and the methods used for record-keeping.

2.4 Areas of Special Attention in Tax Audits

In general, a notification of a tax audit is followed by an email from the Federal Tax Authority requesting the following documentation:

- disclosure of standard-rated sales for the specific period of each return;
- disclosure of supplies subject to the reverse charge mechanism for the specific period of each tax return (imported services);
- disclosure of zero-rated sales for the specific period of each return;
- disclosure of tax-exempt sales for the specific period of each return;
- disclosure of imports for the specific period of each return;
- reasons for adjustments on goods imported to the UAE for the specific period of each return;
- disclosure of standard-rated expenses for the specific period of each return;
- audited financial statements;
- audit balance sheet;
- reconciliation of the audit balance sheet with tax returns;
- movement records of excise goods;
- stockpiling documentation and calculation; and
- types and categories of excise goods dealt in.

Nevertheless, it is noted that in practice, as the tax audit progresses, further documentation is

often requested by the Federal Tax Authority to substantiate the validity of the tax treatment adopted by the taxpayer subject to the tax audit.

In particular, it appears that the Federal Tax Authority targets common errors in the application of the tax legislation relevant to the specific industry within which the audited taxpayer operates. For example, nearly all tax audits recently initiated by the Federal Tax Authority on businesses operating within the export industry focused on potential erroneous treatment of direct and indirect exports of goods, in which the taxpayer zero-rates the export based on a wrong assumption that they retained sufficient evidence to substantiate the export.

2.5 Impact of Rules Concerning Cross-Border Exchanges of Information and Mutual Assistance Between Tax Authorities on Tax Audits

Due to the fact that the implemented taxes in the UAE up until June 2023 were limited to VAT and excise tax, the increasing prevalence of rules concerning cross-border exchanges of information and mutual assistance between tax authorities did not have any material impact on the rate or frequency of tax audits conducted in the UAE. To the best of our knowledge, to date, there have not been any tax audits conducted with the tax authorities of different states.

2.6 Strategic Points for Consideration During Tax Audits

Upon receiving notification of a tax audit from the Federal Tax Authority, it is critical for businesses to promptly engage experienced tax consultants and legal counsel. These professionals play a crucial role in guiding the taxpayer through the audit process, offering strategic advice, and minimising potential tax and penalty liabilities.

Moreover, it is essential for taxpayers undergoing a tax audit to refrain from making any premature admissions of error, regardless of the Authority's initial assertions. Such admissions could weaken the taxpayer's position in potential dispute resolution proceedings down the line. Instead, the focus should be on providing accurate information and maintaining a co-operative stance throughout the audit and avoiding misleading the tax auditors.

While it remains imperative to comply with the Federal Tax Authority's requests for information and documentation during a tax audit, taxpayers should seek advice from their consultants on the specific information and documentation requested by the Authority's auditors. It is further advisable to provide the specific information requested by the Authority's auditors, rather than any non-requested information and documents.

3. Administrative Litigation

3.1 Administrative Claim Phase

Upon receiving a tax assessment or an additional tax assessment from the Federal Tax Authority, taxpayers have the option to pursue legally prescribed forums for dispute resolution. In the UAE, these forums are structured into three main segments, as outlined below.

Reconsideration and/or Tax Assessment Review Requests

This initial stage involves amicable proceedings between the taxpayer and the Federal Tax Authority. Taxpayers can choose between two options: tax assessment review requests and reconsideration requests. The former involves a review by the department within the Federal Tax Authority that issued the initial assessment, while the latter is decided by a semi-independ-

ent committee comprising members from different departments within the Authority. Taxpayers may opt for either option or choose to file a tax assessment review request followed by a reconsideration request to dispute the Authority's decision. The reconsideration stage is mandatory before proceeding to subsequent stages of dispute resolution.

Objections to the Tax Dispute Resolution Committee

At this stage, taxpayers file objections to an independent judicial committee, known as the Tax Dispute Resolution Committee, which consists of a judge and two experts. This step is compulsory before moving on to further stages of dispute resolution.

Appeals to Competent Federal Courts

The final stage involves filing appeals with the federal courts, following the standard rules outlined in the UAE Civil Procedures Law. The appeals process begins by lodging an appeal with the Court of First Instance. If the outcome is unfavourable, taxpayers can then appeal to the Court of Appeal. Finally, if necessary, they can appeal to the Federal Supreme Court. Each stage provides an opportunity for taxpayers to address grievances and seek a fair resolution through the judicial system.

3.2 Deadline for Administrative Claims Tax Assessment Review Requests and Reconsideration Requests

In accordance with the governing legal provisions, precise deadlines and procedures are established for the handling of administrative claims by the Federal Tax Authority. Additionally, the legislation provides remedies for situations where the Authority fails to adhere to the prescribed timelines. The key deadlines and rem-

edies for both tax assessment review requests and reconsideration requests are as follows.

Tax assessment review requests

The Federal Tax Authority is obligated to render a decision on tax assessment review requests within a maximum period of 40 business days, extendable by a further 20 business days if necessary, from the date of receipt. Furthermore, the Authority must communicate its decision within five business days from the date of issuing it.

Failure by the Federal Tax Authority to issue and communicate its decision within the legally prescribed timeframe permits the applicant to submit a reconsideration request within 40 business days from the expiration of the period available to the Authority.

Reconsideration requests

The Federal Tax Authority must adjudicate on reconsideration requests within a maximum of 40 business days, extendable by a further 20 business days if deemed necessary, from the date of receipt. Subsequently, the Authority must communicate its decision within five business days from the issuance date.

Should the Federal Tax Authority neglect to issue and communicate its decision regarding reconsideration requests within the legally prescribed timeframe, the applicant retains the right to submit an objection to the Tax Dispute Resolution Committee after the expiration of the allotted time period.

Practical Challenges

Despite the outlined legal provisions, the following practical challenges persist, contributing to ambiguity and uncertainty:

- In numerous instances, the Federal Tax Authority issues a decision after the prescribed deadline, often after the taxpayer has progressed to the subsequent stage. The legal implications and weight of the Authority's decision under these circumstances remain unclear.
- The explicitness and communication of deadline extensions by the Authority to the taxpayer for effectiveness are ambiguous. It remains uncertain whether extensions may be implicit or necessitate explicit communication.
- Regarding the absence of a timely response at the reconsideration stage, it remains unclear whether the timeline to escalate to the Tax Dispute Resolution Committee commences from the anticipated date of notification of the reconsideration decision or remains indefinitely open.

4. Judicial Litigation: First Instance

4.1 Initiation of Judicial Tax Litigation

Judicial tax litigation is initiated through a structured process outlined in the Tax Procedures Law. When a party, either the taxpayer or the Federal Tax Authority, is dissatisfied with the decision rendered by the Tax Dispute Resolution Committee, they have the right to appeal to the competent court. This appeal must be lodged within 40 business days from the date the party receives notification of the Committee's decision. The appeal can be based on objections to the Committee's decision in its entirety or in part, or if there has been a failure by the Committee to issue a decision regarding an objection submitted to it.

However, there are specific circumstances under which the competent court may rule an appeal against the Authority as inadmissible. These

instances include cases where a reconsideration request or an objection to the Tax Dispute Resolution Committee has not been filed, as well as instances where the disputed amounts do not exceed AED100,000. Additionally, if the taxpayer fails to provide proof of settlement of the full tax amount to the Authority, or if they cannot demonstrate settlement of at least 50% of the Administrative Penalties determined by the Committee's decision or the court's ruling, the appeal may also be deemed inadmissible.

4.2 Procedure for Judicial Tax Litigation

In judicial tax litigation, the process unfolds with the taxpayer and/or the Federal Tax Authority initiating an appeal against the decision handed down by the Tax Dispute Resolution Committee, either in full or in part. This initiation typically takes the form of filing a comprehensive statement of claim, detailing the grounds for the appeal. Subsequently, the opposing party is duly notified of the statement of claim, affording them the opportunity to prepare a detailed response.

Following this exchange, which may involve additional rounds of memorandums or submissions, the court assumes the responsibility of adjudicating the appeal. At this point, the court holds the discretion to generally proceed in one of two ways: either rendering a decision promptly based on the available evidence and arguments presented, or appointing a tax or accounting expert to delve into the tax and accounting technicalities underpinning the appeal.

The role of the expert is critical in demystifying the complexities of the case, offering valuable insights that aid the court in arriving at an informed decision. However, it is important to note that the court retains discretionary powers regarding the adoption of the expert's findings concluded in their report. While the report serves

as a valuable resource, ultimately, the court exercises its judgment in determining the outcome of the appeal, drawing upon a comprehensive understanding of the legal and factual arguments at play.

4.3 Relevance of Evidence in Judicial Tax Litigation

For the purposes of judicial proceedings in the UAE, evidence plays an important role, typically falling into two categories: documentary proofs and witness testimony. However, to date and based on available information, witness summonses in tax-related proceedings have not been a common occurrence.

Despite the limited use of witness testimony, documentary evidence holds significant weight in determining the outcome of tax litigation cases. It serves as a cornerstone, providing tangible support for legal arguments and factual assertions. As such, careful preparation and procurement of relevant documents are critical, often necessitating careful consideration well in advance of the litigation phase. Moreover, as proceedings progress, the demand for additional documents may arise, underlining the ongoing importance of thorough documentation.

Outlined below are key documents essential for effective presentation and defense during tax litigation:

- tax registration certificate and trade license of the disputing taxpayer;
- tax audit notification issued by the Federal Tax Authority;
- notification of the results of a tax audit issued by the Federal Tax Authority;
- tax assessment decision issued by the Federal Tax Authority;

- administrative penalties assessment decision issued by the Federal Tax Authority; and
- key correspondence exchanged with the Federal Tax Authority.

4.4 Burden of Proof in Judicial Tax Litigation

Under tax litigation in the UAE, the burden of proof is distributed based on the nature of the dispute. In administrative proceedings, such as disputes concerning tax assessments and administrative penalties, the burden of proving the accuracy of the tax return rests squarely upon the taxable person. This means that the taxable person is responsible for substantiating the correctness and completeness of the information provided in their tax return.

Conversely, in criminal tax litigation, particularly cases involving allegations of tax evasion, the burden of proof shifts to the Federal Tax Authority. In line with the fundamental principle of presumed innocence inherent in criminal law, the burden lies with the prosecuting authority to demonstrate the guilt of the accused beyond a reasonable doubt.

4.5 Strategic Options in Judicial Tax Litigation

Navigating judicial tax litigation requires careful strategic planning to optimise outcomes while mitigating risks. In doing so, taxpayers and legal representatives must weigh various strategic options to effectively navigate the judicial process. From the choice of dispute forum to exploring settlement opportunities, each decision can significantly impact the trajectory of the case. Below, we outline some key strategic options to consider during judicial tax litigation, offering insights into maximising favourable outcomes and minimising potential liabilities:

- Immediate settlement of due tax: Immediate settlement of due taxes can mitigate the accrual of late payment penalties, potentially reducing overall liabilities. Additionally, such settlement ensures a paved way through the dispute resolution process, which requires full settlement of tax even before resorting to the competent courts.
- Applying for the optional tax assessment review route: This route allows taxpayers to challenge the accuracy of the tax assessment through an internal review process within the Federal Tax Authority, potentially resolving disputes at an early stage. It offers an opportunity to rectify errors or discrepancies in the tax assessment before escalating the matter to subsequent dispute resolution stages.
- Differing approach depending on dispute stage: Tailoring the litigation strategy based on the stage of the dispute allows for a more targeted and effective approach. Early-stage disputes may warrant attempts at amicable resolution or procedural challenges, while advanced stages may require robust legal arguments and evidence presentation. Factors such as new evidence, procedural developments, and changes in the legal landscape may necessitate adaptations to the approach.
- Exploring reconciliation options in cases of tax evasion: In cases of alleged tax evasion, exploring reconciliation options prescribed within the law can potentially mitigate criminal liability and reputational damage. Negotiating a settlement with the Federal Tax Authority or the Public Prosecution may lead to reduced liabilities and safeguard against potential imprisonment. Taxpayers must carefully weigh the potential benefits of settlement against the risks and implications of admitting wrongdoing.

4.6 Relevance of Jurisprudence and Guidelines to Judicial Tax Litigation

While international guidelines such as the OECD Model Convention and BEPS reports may have limited applicability in the UAE due to the country's tax framework primarily focusing on VAT and excise tax until June 2023, the courts of the UAE still consider various sources of authority and guidance.

Firstly, the GCC Common VAT and Excise Tax Framework Agreements play a crucial role in shaping tax jurisprudence within the region. As these agreements harmonise tax policies among GCC member states, they provide a foundation for interpreting and applying tax laws in the UAE.

Furthermore, the courts often draw insights from tax jurisprudence in long-established jurisdictions, particularly within the Arab region like Egypt. While each jurisdiction may have unique legal principles, precedents from these countries can offer valuable perspectives on interpreting complex tax issues and guiding judicial decisions.

In addition to jurisprudence, legal doctrine, including scholarly opinions and guidance documents published by authorities like the Federal Tax Authority, serve as essential references for the courts. These materials provide interpretative insights, clarifications, and practical guidance on tax laws, helping to ensure consistency and coherence in judicial decisions.

Although the UAE's tax landscape may differ from that of more established tax jurisdictions, the courts demonstrate a commitment to considering relevant international frameworks, regional agreements, and authoritative guidance to inform their decisions and uphold the integrity of the tax system.

5. Judicial Litigation: Appeals

5.1 System for Appealing Judicial Tax Litigation

Typically, judgments and awards issued by the Court of First Instance serve as the initial stage of adjudication and are subject to appeal by the dissatisfied party before the Court of Appeal.

The right to submit a tax appeal generally rests with the aggrieved party, which may include the taxable person or Federal Tax Authority disputing an administrative decision by the Authority or the Public Prosecution in cases involving tax crimes, such as tax evasion. This reflects the dual nature of tax disputes, encompassing both administrative and criminal matters, each subject to distinct legal proceedings.

The submission of a tax appeal is not likely to vary depending on the nature of the controversy, the value of the disputed tax amount, or the presence of previous contradictory decisions. However, in cases involving complex legal issues or substantial tax liabilities, parties may have a heightened incentive to pursue multiple avenues of appeal to exhaust all available remedies and ensure a fair resolution. Where the aggrieved party is the Federal Tax Authority or the Public Prosecution, the chances of such parties appealing to the judgment of the Court of First Instance are extremely high.

5.2 Stages in the Tax Appeal Procedure

Tax appeal procedures represent a structured legal framework through which disputes regarding tax matters are adjudicated in the UAE. From the initial stages of filing appeals to the highest courts of appeal, each phase presents unique challenges and opportunities for litigants to present their cases effectively.

The different stages for tax appeals are described below.

Court of First Instance

The Court of First Instance marks the commencement of tax appeal proceedings, serving as the primary forum for litigants to present their cases and evidence. Here, both factual evidence and legal arguments are scrutinised to determine the merits of the dispute. It offers parties an opportunity for comprehensive examination and presentation of their respective positions.

Court of Appeal (Court of Second Instance)

Following appeals against decisions rendered by the Court of First Instance, the matter proceeds to the Court of Appeal. At this stage, the Court of Appeal assumes jurisdiction over the dispute, conducting a thorough review of the factual evidence and legal contentions presented by the parties. Similar to the preceding stage, it provides a platform for further deliberation and reconsideration of contested issues.

Federal Supreme Court

As the highest judicial authority in the country, the Federal Supreme Court undertakes the review of appeals challenging rulings issued by the Court of Appeal. Distinguished by its focus on legal arguments, this stage emphasises the interpretation and application of relevant laws and regulations. Unlike lower instances, the Federal Supreme Court's scrutiny primarily revolves around assessing the legality and procedural correctness of the appellate decision, ensuring adherence to legal principles and consistency in judicial interpretation.

5.3 Judges and Decisions in Tax Appeals

In the UAE, judges responsible for adjudicating tax appeals across all three instances are appointed by the UAE Ministry of Justice, fol-

lowing well-defined legal procedures. These appointments adhere to stringent criteria, emphasising judicial qualifications, extensive experience, and unwavering impartiality to ensure the highest standards of justice.

As tax appeal cases progress through the judicial hierarchy, the composition of the adjudicating panels evolves to include more senior judges. This evolution reflects a commitment to uphold the integrity and sophistication required for the resolution of complex tax disputes.

Typically, disputes brought before the Court of First Instance are deliberated upon by a single judge, tasked with examining the evidence and legal arguments presented by both parties. As cases ascend to the Court of Appeal and ultimately to the Federal Supreme Court, the complexity and significance of the matters at hand necessitate broader expertise and perspective. Consequently, adjudication before these higher instances involves panels comprising three judges. This collective approach not only ensures comprehensive scrutiny of legal issues but also promotes consistency and fairness in the interpretation and application of tax laws.

6. Alternative Dispute Resolution (ADR) Mechanisms

6.1 Mechanisms for Tax-Related ADR in This Jurisdiction

In addition to the traditional tax dispute resolution pathway, taxpayers may opt for alternative mechanisms aimed at resolving disputes more swiftly and amicably. These alternative dispute resolution options offer viable alternatives to the regular litigation processes and include:

- applications for administrative penalties waiver;
- applications for settling administrative penalties in instalments; and
- applications for reconciliation in criminal tax-related accusations.

It is important to recognise that these alternative dispute resolution mechanisms exclusively pertain to administrative penalties, monetary fines, and imprisonment sentences. They do not extend to addressing the underlying tax liabilities assessed by the Federal Tax Authority. In other words, tax liabilities are not subject to waiver (neither in full nor in part), settling in instalments, or reconciliation.

6.2 Settlement of Tax Disputes by Means of ADR

The law offers the possibility of reconciliation in tax-related crimes, offering pathways for alternative dispute resolution in criminal tax matters both before and after the initiation of a criminal case. Depending on the nature of the tax offence and the progression of the dispute, the scope of reconciliation, and the financial considerations involved can vary significantly. This spans from addressing tax liabilities and administrative penalties and a payment of AED50,000 to more comprehensive settlements encompassing the settlement of tax liabilities and administrative penalties and up to 75% of the evaded taxes and substantial monetary amounts, up to AED200,000.

6.3 Agreements to Reduce Tax Assessments, Interest or Penalties

Applications for administrative penalty waivers are electronically submitted to the Federal Tax Authority to be decided on by a committee chaired by the Authority's chairman or his deputy, and the membership of two board mem-

bers. The committee may also issue blanket penalty waiver decisions in response to certain unspecified triggers (such as a health pandemic). The waiver of administrative penalties under this mechanism may be full or partial, and is assumed to only apply to unsettled administrative penalties.

As is the case with administrative penalty waiver applications, applications for settling administrative penalties in instalments are electronically submitted to the Federal Tax Authority to be decided on by a committee chaired by the Authority's chairman or his deputy, and the membership of two board members, which is the same committee as that deciding on administrative penalty waiver requests. Applications for settling administrative penalties may only be accepted in respect of unsettled administrative penalties exceeding AED50,000. In addition, such unsettled administrative penalties must not be disputed any further than the reconsideration stage.

6.4 Avoiding Disputes by Means of Binding Advance Information and Ruling Requests

The current tax framework in the UAE does not grant the Federal Tax Authority the mandate to issue legally binding advance information and rulings. However, it does empower the Authority to provide clarifications and directives regarding taxpayers' obligations. While the UAE tax system lacks a formal mechanism for advance rulings, taxpayers can seek private clarifications from the Federal Tax Authority for a nominal fee.

In this process, taxpayers present their specific circumstances and perspectives to the Federal Tax Authority, which then offers its views on the matter. These private clarification documents carry official stamps from the Federal Tax

Authority and bear the signature of its Director General. Notably, each private clarification document concludes with a disclaimer indicating that the Authority will consider itself administratively bound to adhere to the position outlined therein, provided that the facts and circumstances align materially.

6.5 Further Particulars Concerning Tax ADR Mechanisms

Due to the nature of the available alternative dispute resolution mechanisms, they do not involve any controversies and the final outcome may not be disputed, as decisions under such mechanisms are entirely discretionary to the competent authority.

Nevertheless, the following points are noteworthy in respect of each of the available mechanisms.

Applications for Administrative Penalties Waiver

- Value threshold: Not applicable.
- Deadline to receive a decision: 110 Business days.
- Number of adjudicators involved: three members comprising the chairman of the Federal Tax Authority's board of directors (or his deputy) and two board members.

Applications for Settling Administrative Penalties in Instalments

- Value threshold: minimum of AED50,000 in unsettled administrative penalties.
- Deadline to receive a decision: 110 Business days.
- Number of adjudicators involved: three members comprising the chairman of the Federal Tax Authority's board of directors (or his deputy) and two board members.

Applications for Reconciliation in Criminal Tax-Related Accusations

- Value threshold: not applicable.
- Deadline to receive a decision: not specified.
- Number of adjudicators involved: not applicable as the adjudicator is a government entity rather than a panel or individual.

6.6 Use of ADR in Transfer Pricing and Cases of Indirect Determination of Tax

Due to the infancy of the implementation of an income tax regime in the UAE, the use of ADR in transfer pricing and cases of indirect determination of tax has not yet been materialised in practice.

7. Administrative and Criminal Tax Offences

7.1 Interaction of Tax Assessments With Tax Infringements

Aligned with global standards, the legislation of the UAE distinguishes between two key concepts concerning tax infringements:

- Tax violations: These encompass actions that violate tax laws, leading to the imposition of administrative penalties.
- Tax crimes: These relate to activities that amount to criminal offences, potentially resulting in monetary fines or imprisonment for taxpayers.

Tax assessments exclusively address tax violations and may or may not explicitly reference the commission of a tax crime by the assessed person. However, these assessments often serve as foundational evidence for certain tax crimes, such as tax evasion, wherein they are utilised as supporting documentation by the Public Prosecution.

7.2 Relationship Between Administrative and Criminal Processes

The interplay between tax violations and tax crimes presents a unique landscape within the legal framework, often characterised by shades of ambiguity. While these two categories are typically separated and operate independently, their connection can run deep, warranting a closer examination.

To delve into this complexity, we begin by acknowledging that tax violations and tax crimes are exhaustively outlined in legislation. Common tax violations include instances such as late registration or deregistration for tax purposes, late submission of tax returns, and failure to promptly settle payable taxes. Conversely, typical tax crimes include acts of tax evasion, non-settlement of administrative penalties, and obstructing the duties of Federal Tax Authority employees.

Despite their distinctiveness, tax violations do not invariably lead to accusations of tax crimes, such as tax evasion, even in cases of tax underpayment. Criminal charges necessitate the establishment of both the physical act and the requisite intent (*mens rea*), both of which are imperative for the commission of a crime. Conversely, it is possible for a person to commit a tax crime – like obstructing Federal Tax Authority employees – without necessarily committing a tax violation. Similarly, it is possible for a person to misinterpret the tax laws, resulting in genuine error causing an underpayment of tax without having the requisite intent to evade taxes.

Regarding penalties, administrative penalties for unpaid taxes are generally capped at 200% of the due tax, while monetary fines for criminal cases may reach up to 300% of such unpaid tax or entail imprisonment, or both. Consequently,

in cases of tax evasion, the evader could face cumulative administrative penalties and monetary fines amounting to 500% of the evaded tax. Other tax crimes incur varying penalties, ranging from fines up to AED1,000,000 to fines of up to 300% of imposed administrative penalties.

Due to the disparate nature of tax violations and tax crimes, a taxpayer may find themselves involved in parallel court proceedings:

- challenges against imposed taxes and administrative penalties with the Federal Tax Authority; and
- disputes over tax crime allegations, such as tax evasion, with the Public Prosecution.

In practice, one set of proceedings may precede the other, with criminal or administrative proceedings taking precedence interchangeably. Concurrent proceedings may also occur, resulting in apparently conflicting judgments. However, such conflict is superficial, as criminal and administrative proceedings maintain distinct autonomy.

7.3 Initiation of Administrative Processes and Criminal Cases

The initiation of an administrative infringement process (through the issuance of administrative penalties assessment) or a criminal tax case by the Federal Tax Authority often depends on the nature and severity of the alleged violation or offence. Typically, the Federal Tax Authority initiates an administrative infringement process when it identifies instances of non-compliance with tax laws or regulations. In contrast, the Federal Tax Authority may commence a criminal tax case when there is evidence of deliberate tax evasion, such as willful concealment of income or fraudulent misrepresentation of financial information.

The transition from an administrative infringement process to a criminal tax case can occur if the Federal Tax Authority uncovers evidence indicating intentional criminal conduct during the course of their investigation. For instance, if an administrative inquiry reveals patterns of deliberate tax evasion, the Authority may escalate the matter to a criminal investigation.

While the evolution of an administrative infringement process into a criminal tax case is possible, it is not common. Such transitions typically occur in cases where there is substantial evidence of deliberate wrongdoing or fraudulent behaviour (for example, in the instance of attempted smuggling of excise goods for which excise tax has not been paid). The Federal Tax Authority exercises discretion in determining whether to escalate a matter to criminal prosecution based on the severity of the offence and the available evidence. However, taxpayers should be aware that inadvertent errors or misunderstandings of tax laws, which may initially trigger an administrative process, can escalate into a criminal case if evidence of intentional misconduct emerges during the investigation. Therefore, maintaining accurate and transparent tax compliance practices is crucial to mitigating the risk of facing criminal tax charges.

7.4 Stages of Administrative Processes and Criminal Cases

Tax violations and tax crimes follow distinct and separate pathways, each governed by their own set of procedures and legal considerations.

In the case of tax violations, the process typically initiates with the assessment of administrative penalties issued by the Federal Tax Authority. Taxpayers facing such penalties have several avenues for resolution, including:

- engaging in dispute resolution mechanisms, ranging from formal application to the Federal Tax Authority to formal administrative cases brought before competent courts;
- seeking an administrative penalty waiver; and
- requesting to settle administrative penalties through instalment plans.

Conversely, tax crimes prompt a different trajectory, typically beginning with the initiation of a criminal case by the Director General of the Federal Tax Authority. This process entails the following stages:

- preliminary investigations conducted by the Public Prosecution, with the assistance of the Federal Tax Authority, to gather evidence and build a case; and
- formal trials conducted in criminal courts to adjudicate accusations of tax crimes and determine culpability.

It is important to recognise that while tax violations and tax crimes may sometimes involve similar factual circumstances, they are subject to distinct legal frameworks and procedural requirements. As such, each pathway operates independently, with its own mechanisms for resolution and adjudication.

7.5 Possibility of Fine Reductions

While the tax legislation in the UAE allows for a designated committee to exercise discretion in waiving administrative penalties imposed by the Federal Tax Authority under specific conditions, there is no provision within the law for reducing administrative penalties when upfront payment of taxes assessed is made. However, settling the taxes outlined in the tax assessment does prevent the accumulation of additional administrative penalties, such as late payment penalties, which are automatically imposed if the tax

remains unpaid beyond 20 working days from the date of the assessment issuance.

In addition, the UAE has implemented an amnesty scheme via Cabinet Decision No. 49 of 2021, resulting in a 70% reduction in administrative penalties if certain conditions are met, in efforts to mitigate the negative impact of the COVID-19 pandemic.

7.6 Possibility of Agreements to Prevent Trial

In the UAE, reconciliation provisions introduced in the Tax Procedures Law since 2022 offer taxpayers an avenue to potentially prevent or halt a criminal tax trial in respect of all tax crimes listed within the Tax Procedures Law. Reconciliation can occur either before the commencement of a criminal case through the Federal Tax Authority or after the initiation of proceedings via the Public Prosecution. It is contingent upon the full settlement of taxes and administrative penalties, with further considerations arising post-initiation of the criminal case and throughout its progression.

7.7 Appeals Against Criminal Tax Decisions

Appeals against decisions made by the Court of First Instance in criminal tax offence cases typically follow a structured process within the legal framework of the UAE. The subsequent stages are discussed below :

- **Appeal to the Court of Appeal:** If the taxpayer is dissatisfied with the judgment rendered by the Court of First Instance, they have the right to appeal to the Court of Appeal. This appeal must be lodged within 15 days from the date of notification of the decision. The Court of Appeal will review the case, including both legal and factual aspects, and may either

affirm, amend, or overturn the decision of the lower court.

- **Appeal to the Federal Supreme Court:** If the taxpayer remains dissatisfied with the decision of the Court of Appeal, they may further appeal to the Federal Supreme Court, which serves as the highest judicial authority in the country. Appeals filed to the Federal Supreme Court must be made within 30 days from the date of notification of the decision. The Federal Supreme Court will review the case based on purely legal grounds and may affirm, modify, or overturn the decisions made by lower courts.

7.8 Rules Challenging Transactions and Operations in This Jurisdiction

There is no applicable information in this regard as the income tax regime in the UAE is still in its nascent stages. However, to date, the tax controversy procedures, whether for administrative or criminal tax cases, remain the same across all forms of federal taxes.

8. Cross-Border Tax Disputes

8.1 Mechanisms to Deal With Double Taxation

There is no applicable information in this regard as the income tax regime in the UAE is still in its nascent stages. However, to date, the tax controversy procedures, whether for administrative or criminal tax cases, remain the same across all forms of federal taxes.

8.2 Application of GAAR/SAAR to Cross-Border Situations

There is no applicable information in this regard as the income tax regime in the UAE is still in its nascent stages. However, to date, the tax controversy procedures, whether for administrative

or criminal tax cases, remain the same across all forms of federal taxes.

8.3 Challenges to International Transfer Pricing Adjustments

There is no applicable information in this regard as the income tax regime in the UAE is still in its nascent stages. However, to date, the tax controversy procedures, whether for administrative or criminal tax cases, remain the same across all forms of federal taxes.

8.4 Unilateral/Bilateral Advance Pricing Agreements

There is no applicable information in this regard as the income tax regime in the UAE is still in its nascent stages. However, to date, the tax controversy procedures, whether for administrative or criminal tax cases, remain the same across all forms of federal taxes.

8.5 Litigation Relating to Cross-Border Situations

There is no applicable information in this regard as the income tax regime in the UAE is still in its nascent stages. However, to date, the tax controversy procedures, whether for administrative or criminal tax cases, remain the same across all forms of federal taxes.

9. State Aid Disputes

9.1 State Aid Disputes Involving Taxes

There is no applicable information in this jurisdiction.

9.2 Procedures Used to Recover Unlawful/Incompatible Fiscal State Aid

There is no applicable information in this jurisdiction.

9.3 Challenges by Taxpayers

There is no applicable information in this jurisdiction.

9.4 Refunds Invoking Extra-Contractual Civil Liability

There is no applicable information in this jurisdiction.

10. International Tax Arbitration Options and Procedures

10.1 Application of Part VI of the Multilateral Instrument (MLI) to Covered Tax Agreements (CTAs)

There is no applicable information in this jurisdiction.

10.2 Types of Matters That Can Be Submitted to Arbitration

There is no applicable information in this jurisdiction.

10.3 Application of the Baseball Arbitration or the Independent Opinion Procedure

There is no applicable information in this jurisdiction.

10.4 Implementation of the EU Directive on Arbitration and/or the MLI

There is no applicable information in this jurisdiction.

10.5 Existing Use of Recent International and EU Legal Instruments

There is no applicable information in this jurisdiction.

10.6 New Procedures for New Developments Under Pillars One and Two

The UAE is emerging as a key player in the realm of domestic and international taxation. Despite the relatively recent implementation of a taxation regime in the United Arab Emirates, the country has already taken several proactive steps towards compliance and alignment with international taxation rules and recommendations.

For instance, despite the very recent issuance of Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses, it has already undergone its first legislative amendment via the Federal Decree-Law No. 60 of 2023, in which new key terms were introduced, including the term “top-up tax” defined as “[t]he top-up tax imposed on Multinational Enterprises [...] for the purposes of the pillar two rules issued by the Organization for Economic Cooperation and Development”.

Moreover, Federal Decree-Law No. 60 of 2023 introduced a new effective tax rate of 15% in respect of multinational enterprises, a substantial jump from the standard domestic federal Corporate Tax rate of 9%.

In practice, the implementation of Global Anti-Base Erosion (Pillar Two) has not yet been actioned.

10.7 Publication of Decisions

There is no applicable information in this jurisdiction.

10.8 Most Common Legal Instruments to Settle Tax Disputes

There is no applicable information in this jurisdiction.

10.9 Involvements of Lawyers, Barristers and Practitioners in International Tax Arbitration to Settle Tax Disputes

There is no applicable information in this jurisdiction.

11. Costs/Fees

11.1 Costs/Fees Relating to Administrative Litigation

There are no fees payable by the taxpayer for dispute resolution purposes at the administrative level prior to resorting to the judiciary. Nevertheless, the taxpayer is expected to settle due taxes and administrative penalties.

11.2 Judicial Court Fees

Taxable persons disputing decisions of the Federal Tax Authority before the competent courts must expect to pay the following fees:

- an estimated AED1,000 in lawyer fees payable to the Federal Tax Authority if the case is lost;
- before the Court of First Instance:
 - (a) fees equalling 5% of the total value of the claim capped at AED40,000; and
 - (b) AED350 in administrative fees;
- before the Court of Appeal:
 - (a) fees equalling 5% of the total value of the claim capped at AED10,000; and
 - (b) AED350 in administrative fees;
- before the Federal Supreme Court:
 - (a) fees equalling AED2,000;
 - (b) an AED3,000 insurance deposit;
 - (c) AED350 in administrative fees; and
 - (d) AED1,000 if filing a request to stay execution.

11.3 Indemnities

The applicable tax legislation in the UAE does not provide for any indemnities for instances where the court decides that the relevant tax assessment is void and null.

11.4 Costs of ADR

There are no costs in the form of administrative fees associated with the alternative tax dispute resolution mechanisms provided for in the law. However, for the purposes of reconciliation in tax crimes, depending on the nature of the tax offence and the progression of the dispute, the scope of reconciliation, and the financial considerations involved can vary significantly. This spans from addressing tax liabilities and administrative penalties and payment of AED50,000 to more comprehensive settlements encompassing the settlement of tax liabilities and administrative penalties and up to 75% of the evaded taxes and substantial monetary amounts, up to AED200,000.

12. Statistics

12.1 Pending Tax Court Cases

The relevant statistics are not publicly available.

12.2 Cases Relating to Different Taxes

The relevant statistics are not publicly available.

12.3 Parties Succeeding in Litigation

The relevant statistics are not publicly available.

13. Strategies

13.1 Strategic Guidelines in Tax Controversies

The possibility of tax controversy can be effectively mitigated through proactive measures

aimed at enhancing understanding and compliance with tax laws. This includes the measures described below.

Ongoing Education

Regular training and educational programmes can help businesses and professionals stay updated on changes to tax laws and regulations in the UAE. By investing in ongoing education, individuals can deepen their understanding of the legislative framework, stay ahead of recent developments, and ensure compliance with evolving tax requirements. This can help prevent misunderstandings or misinterpretations of tax provisions, reducing the likelihood of tax controversies.

Appointment of Tax and Legal Specialists

Businesses can mitigate the risk of tax controversies by appointing tax and legal specialists who are well-versed in the UAE's legislative framework. These specialists can provide expert guidance on tax compliance matters, interpret complex tax provisions accurately, and navigate potential pitfalls effectively. By having dedicated professionals with in-depth knowledge of UAE tax laws, businesses can proactively address compliance issues and minimise the likelihood of disputes with tax authorities.

Constant Reviews of Judicial Awards

Regular reviews of recent judicial awards on tax disputes by the Federal Supreme Court provide valuable insights into how tax laws are interpreted and applied in practice. By analysing judicial

decisions, businesses can gain a better understanding of prevailing legal interpretations, identify potential areas of ambiguity or contention, and adjust their tax strategies accordingly. This proactive approach enables businesses to align their practices with legal precedents, reducing the risk of disputes and ensuring compliance with judicial interpretations of tax laws.

Submission of Clarification Requests

Submitting clarification requests to the Federal Tax Authority can help clarify ambiguous tax provisions, resolve uncertainties, and ensure alignment with regulatory expectations. By seeking clarification directly from the Federal Tax Authority, businesses can obtain authoritative guidance on specific tax issues, clarify regulatory requirements, and mitigate the risk of misinterpretations. This proactive engagement with tax authorities fosters transparency, reduces ambiguity, and minimises the likelihood of tax controversies arising from misunderstandings or uncertainties regarding tax laws.

In summary, ongoing education, the appointment of tax and legal specialists, constant reviews of judicial awards, and the submission of clarification requests are essential strategies for mitigating the possibility of tax controversy in the UAE. By proactively addressing compliance challenges, clarifying regulatory uncertainties, and staying informed about legal developments, businesses can effectively navigate the complexities of the tax landscape and minimise the risk of disputes with the Federal Tax Authority.

Trends and Developments

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Habib Al Mulla and Partners is a leading law firm based in Dubai, UAE, specialising in domestic tax legislation, providing exemplary legal services to clients in tax matters and dispute resolution. With a dedicated team of around 40 attorneys, the firm operates not only in Dubai but also in key offices across its network, including Abu Dhabi and Istanbul. Focused on taxation, the firm's attorneys excel in VAT, excise tax, and procedural tax matters such as

penalty waivers, reconsiderations, voluntary disclosures, and administrative exceptions. In recent years, the firm has represented major UAE businesses, including prominent real estate developers, airlines, and tobacco manufacturers, in tax disputes with the Federal Tax Authority. Noteworthy is its successful representation in a dispute valued at AED2.5 billion, where liability was reduced to AED420 million.

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Introduction

The United Arab Emirates (UAE), a federation of seven Emirates, has swiftly emerged as a significant player in the realm of taxation. Since the implementation of an Excise Tax regime in October 2017, followed by the introduction of VAT in January 2018 and income tax on corporations and businesses in June 2023, the country's tax landscape has undergone a remarkable transformation.

This rapid evolution extends to the legislative framework, with the UAE's Federal Tax Authority publishing new legislation and guidance almost on a weekly basis. While this dynamic regulatory environment signifies progress, it also presents challenges for businesses operating or planning to operate within the UAE.

Given the relative infancy of the UAE's tax system and its fast-paced development, businesses encounter various hurdles, including interpretation of tax laws, awareness challenges, conflicting guidance, training requirements, system errors, and delays in processing applications with the Federal Tax Authority. In this article, we delve deeper into each of these challenges, highlighting available solutions to mitigate potential harm.

Interpretation of Tax Laws

Misinterpretations of tax laws can have serious implications, as demonstrated by a recent case involving a prominent real estate developer in the UAE. In this instance, the developer encountered tax and administrative penalties totalling more than AED1 billion due to differences in interpretation of tax provisions between the taxpayer and the Federal Tax Authority. The discrepancy stemmed from the developer's belief that certain property supplies were zero-rated for VAT purposes, resulting in zero output VAT reported in tax returns. However, the Federal Tax Authority interpreted the relevant legal provisions differently, suggesting that these properties should have been subject to the standard VAT rate of 5%.

Cause 1: complex legislative structure

One factor contributing to misinterpretation is the complexity of the legislative structure, which encompasses various types of tax legislation such as laws, cabinet decisions, ministerial decisions, and Federal Tax Authority decisions. For example, the newly introduced Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses makes numerous references to external legislative instruments, including cabinet decisions, ministerial decisions, and Federal Tax Authority decisions. This complexity can overwhelm businesses trying

to interpret provisions without a comprehensive understanding of all relevant legislation. To address this challenge, ongoing education and the appointment of tax specialists well-versed in the UAE's legislative framework are essential.

Cause 2: linguistic nature of UAE tax legislation

Another factor contributing to potential misinterpretation is the linguistic nature of UAE tax legislation. As an Arab country, the UAE publishes its official legislation in Arabic through the Official Gazette. While translations are typically available from both official and unofficial sources, the original Arabic version holds precedence, which can be challenging for businesses that primarily rely on English. Inconsistencies in translations of Arabic legal versions of the law adopted by taxpayers persist, despite best efforts. For instance, terms like “recoverable tax” and “refundable tax” in some English versions of the VAT and Excise Tax Laws adopted by taxpayers correspond to a single term in the Arabic versions of such legislation. This could prove challenging for non-Arabic speakers, who may assume the differing terms reflect different concepts.

Addressing this challenge can be partially achieved by recruiting bilingual talent and seeking translations only from official sources.

Cause 3: subjective nature and wording of tax-related legal provisions

Yet another factor contributing to potential misinterpretations is the subjective nature and wording of tax-related legal provisions, and whether such provisions should be considered independently or in the context of the broader objectives of tax imposition.

In an early tax dispute regarding excise tax, differing interpretations arose between a taxable

person and the Federal Tax Authority concerning the classification of “energy drinks” for excise tax purposes. Article 7(1) of Cabinet Decision No. 52 of 2019 defined an energy drink for excise tax purposes as “[a]ny beverages marketed or sold as an energy drink that ‘may’ contain stimulant substances...”.

Interpreting the term “may” used by the legislator, the Federal Tax Authority argued that regardless of the absence of stimulant substances, categorising the drink as an energy drink was appropriate if it was marketed as such. Conversely, the disputing taxpayer asserted that the provision should be interpreted considering the overarching objectives of implementing excise tax. Specifically, they argued that the absence of stimulant substances should exclude the drink from the scope of taxation as energy drinks. Ultimately, the Federal Supreme Court ruled in favour of the taxpayer's interpretation.

This risk can be mitigated by regularly reviewing recent judicial rulings on tax disputes and submitting clarification requests to the Federal Tax Authority to ensure alignment and prevent potential misinterpretations.

Awareness Challenges

As previously highlighted, the tax environment in the UAE undergoes frequent updates, often occurring weekly. Many businesses operating in the UAE may not fully grasp the evolving intricacies of the tax system, leading to a lack of awareness regarding their tax responsibilities and entitlements. This lack of awareness can inadvertently result in non-compliance and missed opportunities for tax optimisation.

Given the dynamic and rapidly evolving regulatory landscape, it is important for professionals and businesses to remain vigilant, staying ahead

of all legislative changes and guidance issued by the Federal Tax Authority. Additionally, staying informed about other relevant tax-related updates, such as system enhancements and legal precedents, is equally vital.

There have been instances where the Federal Tax Authority revised its issued guidance, typically replacing outdated guidance with new directives in swift response to the dynamic nature of the regulatory regime. For example, in response to changes in the domestic legislation of the Emirate of Dubai through the issuance of Dubai Law No. 6 of 2019 Concerning Ownership of Jointly Owned Real Property, the Federal Tax Authority issued VAT Public Clarification No. VATP022 on the VAT implications arising from these provisions, thereby clarifying the tax effects and requirements stemming from the newly issued law. This underscores the importance of remaining up to date with all legislative developments, whether on a federal level or an Emirate level.

Educational initiatives such as awareness campaigns, workshops, and accessible online resources play a critical role in addressing this knowledge gap, empowering businesses and professionals to navigate the tax landscape effectively and make well-informed decisions. Notably, the online portal of the Federal Tax Authority offers a wealth of educational materials and regular updates, making it an invaluable resource for staying informed.

Conflicting Guidance

The influx of new legislation and guidance from the Federal Tax Authority can sometimes create confusion for professionals and taxable persons who may not be very well-versed in this regard, particularly when different directives appear to such persons to contradict each other or even the provisions of the law itself. This inconsis-

ency in the understanding of guidance leaves businesses uncertain about the correct course of action, potentially leading to compliance errors.

Additionally, tax consultants and lawyers may offer conflicting guidance in the form of legal or tax technical advice. This often arises due to the subjective nature of tax legislation or disagreement with guidance provided by official authorities.

To address this challenge, it is advisable to engage reputable consultancy and law firms with extensive expertise in domestic taxation. These firms can offer reliable guidance and insights tailored to specific business needs. Furthermore, maintaining direct and frequent communication with the Federal Tax Authority through designated channels can help clarify uncertainties and ensure compliance with clear, coherent guidance.

Training Requirements

The demand for tax professionals with specialised knowledge and expertise appears to exceed the available supply in the UAE. This shortage is largely due to the insufficient investment by individuals in the industry in personal and professional development. This lack of investment poses a significant challenge for businesses seeking to navigate complex tax regulations effectively.

Moreover, with the UAE's introduction and implementation of new types of taxes at the federal level, there is a heightened demand for a specialised and qualified workforce to navigate these evolving tax landscapes.

For instance, before the introduction of Income Tax on Corporations and Businesses, the Federal Tax Authority registered "tax agents" for both

VAT and excise tax based on a single qualification, aimed at assisting businesses in complying with their tax obligations.

However, following the introduction of income tax on corporations and businesses, the Federal Tax Authority clarified that a tax agent registered for VAT and excise tax purposes may not handle taxation affairs related to the newly introduced income tax on corporations and businesses unless they meet different qualification requirements unique to that tax.

Investing in training and development programmes to enhance the skills of existing staff or collaborating with external tax advisory firms can address this shortage. This ensures that businesses have access to the expertise needed to manage their tax affairs efficiently. A similar approach is also followed by the Federal Tax Authority itself, as indicated in the Authority's annual report for the year 2020:

- 15 training courses and job shadowing activities focused on knowledge transfer were implemented, with an average of 1,076 training hours.
- 26 specialised training programmes were introduced to enhance future skills and competencies.
- 105 employees were assigned to various training programmes, including the VAT diploma.

System Errors

Technological glitches and errors within tax and accounting systems can disrupt operations and compromise data integrity, potentially leading to inaccuracies in tax filings and reporting, or even the imposition of administrative penalties. Similarly, glitches, errors, and delays in other electronic systems can have similar consequences.

These errors can result in compliance issues and financial losses for businesses. For instance, in a recent case, a taxpayer instructed their corresponding bank to transfer due tax funds to the Federal Tax Authority on the last date of the legally prescribed deadline. However, due to a delay caused by a system error, the payment did not reach the FTA's accounts in a timely manner, resulting in the automatic imposition of late payment administrative penalties on the taxpayer the following day.

Interestingly, the UAE tax legislation provides for a penalty waiver scheme, in which administrative penalties imposed by the Federal Tax Authority may be waived where they were imposed as a result of system errors or technical glitches.

To address the risks associated with system glitches and errors, businesses can consider implementing the following measures:

- manually capturing system details, such as taking screenshots and downloading downloadable files, to ensure accurate record-keeping;
- taking proactive action well ahead of deadlines, allowing ample time for any potential system issues to be resolved;
- maintaining proactive communication with relevant personnel to promptly address errors or glitches, and securely storing records of such communication for future reference; and
- appointing dedicated IT specialists readily available to address any technical or IT-related issues on the spot or in a timely manner.

Delays in Processing Applications

Due to the dynamic and rapidly evolving nature of the UAE's tax regime, businesses may occasionally face delays in the processing of applications and requests submitted to the Federal Tax

Authority, especially where the applications are not filed appropriately as instructed by the Federal Tax Authority. Such applications may relate to tax registrations, refund claims, clarifications, and reconsideration requests. These delays can hinder business operations, cash flow, and overall efficiency.

In a recent case currently being presented before the UAE federal courts, delays in the registration of a taxable person for almost a year partly due to the person's potential non-compliance with the application requirements resulted in the taxable person's inability to fulfil their tax obligations in a timely manner. Such inability resulted in the automatic imposition of administrative penalties in the hundreds of thousands of dirhams upon successful registration.

To mitigate risks associated with delays in processing applications made to the Federal Tax Authority, businesses can consider the following remedies:

- submit applications well in advance of deadlines to allow ample time for processing;
- respond to correspondence initiated by the Federal Tax Authority in a timely manner;
- maintain regular follow-ups with the Federal Tax Authority and competent committees to inquire about the status of submitted applications or requests;
- double-check all submitted applications or requests to ensure they are complete and accurate; and
- consider guidance documents published by the Federal Tax Authority in respect of the service you wish to apply for.

Conclusion

In respect of managing their tax affairs in the UAE, businesses encounter multifaceted challenges ranging from misinterpretation of laws to system errors and delays in processing applications. Despite these hurdles, proactive measures can be undertaken to mitigate potential harm and ensure smooth compliance with tax regulations.

Firstly, businesses must prioritise continuous education and awareness to stay up to date with legislative updates and interpretations. Engaging bilingual talent and seeking guidance from reputable consultancy and law firms can aid in understanding complex tax laws accurately.

Moreover, clear communication channels with the Federal Tax Authority and proactive engagement in resolving discrepancies can streamline processes and mitigate the risks of compliance errors. Additionally, investing in training programmes and leveraging external expertise can alleviate the shortage of qualified resources, ensuring efficient tax management.

Furthermore, proactive measures such as manually capturing system details and maintaining thorough records can mitigate the risks associated with system errors and processing delays. By adopting a proactive and informed approach, businesses can navigate the UAE's dynamic tax landscape with confidence, ensuring compliance and minimising potential disruptions to operations.

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