38 Tax Disputes Filed in Dubai in 2019: Lessons Learned

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The tax dispute resolution committees began operation in 2019. There are three tax dispute resolution committees in the United Arab Emirates:

- one in Abu Dhabi dedicated to taxpayers with a registered address in Abu Dhabi;
- one in Dubai dedicated to taxpayers with a registered address in Dubai; and
- one in Sharjah dedicated to taxpayers with a registered address in the other five emirates – namely, Ajman, Fujairah, Sharjah, Ras Al Khaimah and Fujairah.

The tax dispute resolution committees are the second step in a grievance process that a taxpayer takes. The first step being submission of a reconsideration request to the Federal Tax Authority, subsequent to which, if the taxpayer disagrees with the FTA's decision to the reconsideration request, they may object to the tax dispute resolution committee competent to their registered tax address.

The tax dispute resolution committees were formed by law in 2017, and although the first objections were submitted in 2018 to the Dubai tax dispute resolution committee, the committee came into formation and operation in March 2019, with its first rulings being issued in April 2019.

All objections registered in 2018 and early 2019 before the Dubai tax dispute resolution committee commenced operation were docketed in March 2019.

In 2019, there have been 38 registered objections with the Dubai tax dispute resolution committee, and in this article, we look at developments and lessons learned.

Nature of the Tax Dispute Resolution Committees

So far, the tax dispute resolution committees are considered to be administrative bodies with the authority to issue judicial decisions. Each is comprised of a judge and two technical experts. Memorandums of objection submitted by taxpayers should not only argue the technicality of their position but should also provide for the legal arguments and references to the appropriate case precedents to advocate their position and provide the legal grounds for the judge to fully rationalize his decision. The tax dispute resolution committees have ruled on matters which are more legally intricate than they are technical; such as UAE precedent on acting in good faith, perfection of notification and summons, or the Legislator's intent in the drafting of certain provisions in the tax law. Lack of legally apt arguments would deter the issuance of a ruling favorable to the taxpayer – particularly as various objections before the tax dispute resolution committees have been due to different interpretations of the law by the taxpayer and the FTA.

Official Form Issued

In mid-2019, the Ministry of Justice which oversees all tax dispute resolution committees issued an official form to be used when submitting an objection against a decision by the FTA. The form requires the inclusion of the value of taxes and penalties objected to, dates of the underlying reconsideration request, shareholders and branches, etc., and importantly, the following information necessary to protect procedural sanctity of the dispute:

- The capacity of the person submitting the challenge.
- Evidence of empowerment (POA) of the legal

representative.

- Memorandum explaining the reasoning of the objection.
- The decision of the FTA being objected to.
- Proof of payment of the tax and penalties, as applicable.

Notification

Once the ruling of a tax dispute resolution committee is communicated to the taxpayer, the taxpayer has twenty working days to challenge the ruling before the tax disputes circuit of the federal primary court. The ruling of a tax disputes resolution committee will be communicated via the email address provided in the official objection form submitted to the tax disputes resolution committee. Albeit overseen by the Ministry of Justice, notification of rulings of the Dubai tax disputes resolution committee is conducted via the Dubai Courts automated smart notification system. Taxpayers should ensure the email address submitted is diligently reviewed and managed to avoid the ruling being diverted to junk or spam, etc. Article 8 of Civil Procedures Law Regulations states that a notification of a judgement/ruling by email is considered perfected on date of being sent – not on the date/proof of receipt. As far as current judgements have established, if a taxpayer falls outside the time limitation to challenge a ruling before the federal courts due to the email containing the ruling being unseen by the taxpayer, the federal courts would reject such challenge. For the Dubai tax dispute resolution committee, taxpayers can continuously check the public online case inquiry service for an update on their dispute.

‘Pay Now, Argue Later‘

UAE laws and by-laws making up the tax legislation have an explicit requirement for the taxpayer to pay all taxes and penalties due before being able to resort to a tax dispute resolution committee, and subsequently, the federal courts.

The rule is generally known as ‘pay now, argue later’. This rule has been respected by the tax dispute resolution committees and the higher levels of the federal courts to be a mandatory requirement, not subject to any leeway.

Incorporation of Civil Procedural Law Provisions

The Tax Procedures Law does not reference other legislation to fill vacuums. This raised a question as to whether litigants or the tax dispute resolution committees (or federal courts) could refer to other laws such as the Civil Procedures Law to answer procedural questions not addressed in the Tax Procedures Law. For example, the Tax Procedures Law does not explicitly state the consequence of the FTA not responding to a request for reconsideration with twenty working days of receiving such request from a taxpayer. However, the Civil Procedures Law states that any grievance request to an administrative body is considered rejected if no response is provided within the time limit. Whether the two laws could be read in conjunction was unclear.

Usually, a subject matter law would have a complementary relationship with similar laws and legislations respective of its subject matter, so that some of the provisions of the similar law can be borrowed to supplement a vacuum in the subject matter law. For example, Article 4 of the Personal Status Law states that: *“In the absence of any text in this Law regulating the procedures of any matter, the provisions of the Civil Procedures Law and the Law of Evidence in Civil and Commercial Transactions shall apply.”*

Article 4 of the Law on International Judicial Cooperation in Criminal Matters states that: *“The provisions of the Criminal Procedures Law and any relevant laws shall apply to any matter not governed by a text in this law.”*

Article 67 of the Law for the Regulation and Protection of Industrial Property states that: “*The decisions of the*

committee may be appealed before the competent court in accordance with the Civil Procedures Law…"

However, the Dubai tax dispute resolution committee relied on provisions of the Civil Procedures Law in its ruling. Unless otherwise ruled inapplicable by the Federal Supreme Court, this provides litigants; taxpayers and the FTA, an avenue to incorporate provisions of the Civil Procedures Law, and the Civil Procedures Law Regulations into their arguments in case a matter is not explicitly addressed in the Tax Procedures Law.

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