

# Contractor Withholding Your Tax Invoice? How UAE Courts Are Protecting Tax Refunds (Abu Dhabi Cassation Judgment No. 289 of 2026)

May 1, 2026

In the evolving legal landscape of the United Arab Emirates (UAE), the intersection between commercial construction disputes and tax compliance presents unique challenges for property owners. Often, contractors withhold essential documentation, particularly tax invoices, as leverage during payment disputes. However, these invoices are strictly required by the Federal Tax Authority (FTA) for taxpayers seeking Value Added Tax (VAT) refunds. A landmark ruling by the Abu Dhabi Court of Cassation in **Judgment No. 289 of 2026 (Commercial)**, issued on April 14, 2026, provides a masterclass on how UAE courts utilize the civil doctrine of specific performance to mandate the delivery of tax invoices, empowering taxpayers to strictly comply with FTA regulations.

## The Factual Matrix and The Court's Ruling

The dispute in Judgment No. 289 of 2026 arose from a construction contract for a residential villa. The contractor (the Respondent) initiated a lawsuit against the project owner (the First Defendant), the financing bank (the Appellant), and the consultant.

The Court summarized the facts, noting that the contractor sought the remaining value of the project works and compensation after a breakdown in the relationship:

*("By virtue of a contracting contract dated 20/07/2020 for the construction, completion, and maintenance of a residential villa... against a lump sum of 2,000,000 dirhams... however, following the connection of electricity... the first defendant, the employer, took possession of the villa and lived in it, and prevented the respondent's workers from entering the site to complete the remaining works and final finishes, in addition to retaining equipment, machinery, and cables belonging to the respondent inside the villa.")*

During the proceedings, an engineering expert was appointed. Crucially, the expert assessed not only the financial dues but also the documentation necessary for tax compliance. The Court of Cassation highlighted this vital finding:

*("The supervising judge appointed an engineering expert who deposited a report concluding that the remaining amount for the respondent is 360,577 dirhams... and that it is incumbent upon the contractor (the respondent) to deliver to the first defendant (the owner) the tax invoices in the amount of 85,577 dirhams so that he can recover the value-added tax.")*

Recognizing the statutory necessity of these documents, the Court applied the principle of specific performance, upholding the lower court's ruling which strictly ordered:

*("Compelling the respondent to deliver to the first defendant (the owner) all invoices and documents related to the project...")*

### **The FTA's Position on Holding Compliant Tax Invoices**

The project owner's demand for the tax invoices via a court order highlights the uncompromising administrative position of the Federal Tax Authority (FTA). Under UAE Federal Decree-Law No. 8 of 2017 on Value Added Tax, recovering input tax or claiming a refund, such as the special scheme for UAE Nationals building new residences under Article 61, is strictly conditional upon the taxpayer holding a valid,

compliant tax invoice.

The FTA operates on strict documentary compliance. It mandates that a tax invoice must meet all rigorous requirements set out in Article 59 of the Executive Regulations (e.g., displaying the words “Tax Invoice,” the supplier’s Tax Registration Number, a description of the goods or services, and the exact tax amount). A mere bank transfer receipt, a payment certificate, a contract, or even a court-appointed expert’s report establishing that VAT was paid is legally insufficient for the FTA.

Because the FTA acts as a strict gatekeeper, withholding refunds if compliant invoices are absent, a contractor’s refusal to issue or hand over a tax invoice causes direct, quantifiable financial harm. In this case, the owner stood to lose 85,577 AED in VAT refunds solely due to the lack of compliant invoices. Consequently, taxpayers must rely on specific performance to force counterparties to produce these mandatory documents.

### **Legal Principles Applied by the Court**

The judgment is rich in its application of procedural and substantive legal principles. Beyond specific performance, the Court of Cassation addressed **Capacity or Legal Standing**.

The financing bank appealed the judgment, arguing it lacked capacity as it was merely a funder:

*(“That its role was limited to financing the project only, without there being any direct or indirect relationship with the respondent...”)*

The Court decisively rejected this, laying out a foundational legal principle regarding capacity:

*(“A lawsuit is the right to resort to the judiciary to protect a claimed right or legal position; hence, substantive capacity*

*must exist for both parties... Capacity is met in the defendant if the right claimed in the lawsuit exists against him, considering him a concerned party and responsible for it if the plaintiff's entitlement is proven.")*

Furthermore, the bank argued it could not disburse funds without the owner's written instructions. The Court established the vital principle of **Judicial Supremacy over Contractual Restraints**, stating:

*("And that the judgment issued by the court to liquidate the account serves in place of the owner's written instructions and supersedes them, rendering unnecessary the existence of written instructions from the owner to the appellant to disburse the respondent's dues...")*

## **Conclusion**

Abu Dhabi Court of Cassation Judgment No. 289 of 2026 serves as an essential precedent for taxpayers navigating the intersection of contract law and VAT compliance. By affirming the order for specific performance to hand over tax invoices, the court recognized the functional reality of UAE tax law: without the physical tax invoice, the statutory right to a VAT refund is nullified. This judgment safeguards taxpayers, ensuring that the withholding of tax documentation cannot be weaponized in commercial disputes.

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# Navigating Downstream Corporate Tax Liability in the UAE: An Analysis of Dubai Court of First Instance Judgment No. 1188 of 2025

May 1, 2026

## Introduction

The introduction of the UAE Corporate Tax regime via Federal Decree-Law No. 47 of 2022 has fundamentally shifted the commercial landscape in the region. As businesses adapt to the new regulatory environment, a critical legal question has emerged: to what extent can a company unilaterally pass its corporate tax liabilities downstream to independent contractors, agents, or service providers? A recent judgment from the Dubai Court of First Instance (Case No. 1188 of 2025) provides vital clarity on this issue. By decisively ruling against unilateral tax deductions, the Court established clear tests and boundaries for corporate tax liability distribution, setting an essential precedent for future commercial disputes.

## Overview of the Facts

The dispute arose from a real estate brokerage relationship. The Plaintiff, an independent real estate agent, successfully brokered the sale of a property unit for a total transaction value of AED 1,638,947. According to the agreement between the Plaintiff and the Defendant, a real estate brokerage company, the total 6% sales commission was to be split, with the Plaintiff receiving an 80% share, amounting to AED 78,669.47.

However, upon final settlement, the Defendant company remitted

only AED 71,589.22 to the Plaintiff, withholding a balance of AED 7,080.25. When the Plaintiff demanded the outstanding amount, the Defendant justified the withholding by claiming the deduction was necessary to cover its Corporate Tax and Value Added Tax (VAT) liabilities. Following unsuccessful attempts to resolve the matter amicably, the Plaintiff initiated legal proceedings to claim the withheld balance plus a statutory delay interest of 5%.

### **The Legal Arguments and Laws Cited**

In its defense, the Defendant company relied heavily on the nascent tax legislation, specifically citing Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses (referencing Articles 1, 2, 3, 11, and 12) and the applicable UAE Value Added Tax legislation (cited in the pleadings as Law No. 18 of 2022). The company argued that because taxes are imposed on corporate income and revenues at respective rates of 9% and 5%, the proportionate burden of these taxes should naturally be deducted from the commission paid out to the agent who generated that revenue.

The Court evaluated this premise by rooting its analysis in the UAE Civil Transactions Law. Citing the Law of Evidence (Article 1), which dictates that the burden of proof lies with the claimant, the Court examined the contractual nexus between the parties. It heavily referenced Article 243(2) of the Civil Transactions Law, which mandates that each contracting party must fulfill what the contract obliges them to do, and Article 246, which requires contracts to be executed in good faith and in accordance with their explicit terms. Furthermore, the Court invoked Article 272(1), emphasizing that if one party fails to perform their contractual obligations, the other party has the right to demand execution.

### **The Court's Tests for Downstream Tax Liability**

Upon reviewing the findings of a court-appointed accounting

expert, the Court laid down a definitive framework, effectively establishing key tests, to determine the ability or inability of a corporate entity to impose tax liabilities downstream onto service providers:

1. **The Statutory Burden Test (Who bears the legal incidence?):** The Court affirmed that the statutory burden of Corporate Tax and VAT inherently falls upon the taxable corporate entity that registers the revenue; in this case, the Defendant company. The legal framework establishes that the tax burden is placed on the company itself, rather than being an automatic obligation of the downstream service provider or commission earner. Absent any other legal or contractual mechanism, the entity legally defined as the taxable person under the prevailing tax laws must bear its own tax costs.
2. **The Express Contractual Agreement Test (Is there explicit consent?):** To shift or deduct this statutory tax burden from a downstream party's remuneration, the Court established a strict evidentiary threshold. There must be an express, written agreement between the parties authorizing such a deduction. The Court categorically stated that without a written contract explicitly permitting the company to deduct statutory taxes from the agent's commission, any such deduction is legally baseless and unsupported by documentary evidence. Because the Defendant could not produce a written agreement authorizing the tax deduction, the Court deemed the unilateral "tax sharing" an unlawful breach of contract.

## **Judgment and Strategic Implications**

Applying these tests, the Court ruled in favor of the Plaintiff, ordering the Defendant to pay the withheld AED 7,080.25. Additionally, reflecting updated judicial precedent

from a 2021 directive of the General Assembly of the Dubai Court of Cassation, the Court awarded a 5% legal interest rate on the owed amount from the date of the judicial claim until full settlement, and ordered the Defendant to bear all legal fees and expenses.

This judgment serves as a strict warning to corporations in the UAE. Companies cannot use the introduction of Corporate Tax as a unilateral excuse to reduce payouts to contractors, freelancers, or agents. If a business intends to share its tax burden or calculate commissions on a post-tax basis, this mechanism must be explicitly drafted into written agreements. Moving forward, businesses should urgently audit and revise their independent contractor and brokerage agreements to ensure tax liability allocations are clearly defined, mutually agreed upon, and fully compliant with UAE contract law.

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# **UAE Crypto Litigation: When War Doesn't Excuse Crypto Losses – A Dubai Court Judgment on Force Majeure, War, and the 2026 Iran War**

May 1, 2026

The following is an excerpted analysis of topics discussed in the book '[UAE Crypto Litigation](http://www.uaecryptolitigation.com)', a treatise on the judicial evolution of digital asset disputes in the United Arab Emirates, [available at www.uaecryptolitigation.com](http://www.uaecryptolitigation.com).

In the immediate aftermath of a geopolitical shock, such as the escalating conflict involving Iran, a frantic period of market panic and informal crisis management sometimes occurs. It is not uncommon that asset managers and OTC brokers trade WhatsApp messages with anxious clients, cite global instability, and may freeze withdrawals to avoid unforeseen losses. For the investor or legal practitioner, these crisis-driven communications present a complex contractual challenge: when does wartime market volatility excuse non-performance under the doctrine of *force majeure*, and when is it superseded by an informal guarantee?

The UAE courts have adopted a rigorous stance on this issue, prioritizing the specific substance of the parties' communications over sweeping macroeconomic excuses. While traditional commercial contracts might readily invoke wartime disruption as an act of God, the digital asset sector faces a different legal reality. A landmark judgment from the Dubai Court of Appeal (Case No. 406 of 2023) provides a definitive blueprint for how the judiciary approaches geopolitical market instability. In a dispute involving a massive informal digital currency investment, the defendant failed to return investor funds following a severe market crash. Attempting to shield himself from liability, the defendant invoked *force majeure*, attributing the impossibility of performance to the extreme market volatility precipitated by the outbreak of the Russian-Ukrainian war; a defense mirrors the potential arguments of citing the Iran conflict.

However, the courts are nuanced when a party has made absolute promises outside of a formalized risk allocation structure. The true battleground in such disputes is rarely the macroeconomic impact of the conflict, but rather the

defendant's own digital breadcrumbs. In assessing the aforementioned case, the court relied heavily on a court-appointed expert's forensic analysis of the parties' emails and messaging apps to pierce the veil of the informal arrangement. The evidentiary record revealed that the defendant had aggressively induced the claimants, affirming in writing that the investment was "100% guaranteed" and that the principal could be recovered "immediately upon request." The defendant tried to sever his liability by pointing to a global conflict, hoping the court would ignore his own unqualified assurances.

The court refused to allow this *force majeure* defense. It held that by explicitly guaranteeing the return of funds "at any time," the defendant had contractually assumed the risk of market volatility. Extreme price fluctuation, even when catalyzed by a major regional war, is an inherent and foreseeable feature of cryptocurrency markets; not an unforeseeable external event. Consequently, the burden of the market crash remained entirely on the defendant, transforming what might have been a speculative investment into an unconditional debt obligation. This serves as a stark warning to market participants and informal asset managers: you cannot weaponize the theater of war to excuse market losses if your communications vacate clear contractual exclusions have already guaranteed the preservation of your investors' principal.

*For a detailed guide on managing force majeure claims, implementing objective "Market Disruption Event" clauses, and navigating VARA's strict prohibitions on guaranteed returns, [see more in the contractual risk analysis in 'UAE Crypto Litigation'](#).*

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# The 2026 Iran War, Tax Audits, and Force Majeure: The UAE Supreme Court's Standard for Force Majeure in Tax Audits and Liabilities

May 1, 2026

The outbreak of the Iran War on 28 February 2026 has abruptly plunged the Middle East into profound operational disruption. Consequently, corporate boards operating within the United Arab Emirates are instinctively looking to the doctrine of *force majeure* and emergency circumstances (*thuroof tari'a*) as legal shields. Having acted in over 300 UAE tax dispute procedures, one of the most pressing questions we are now receiving is whether the friction of Iran War legally diminish underlying tax liabilities, excuse administrative penalties, or suspend Federal Tax Authority (FTA) audit procedures.

To answer this purely as a matter of law, we must detach from the immediate fog of conflict and examine the definitive jurisprudence of the UAE Federal Supreme Court. The seminal

judgment in Cassation No. 958 of 2025 (Administrative) provides the exact legal architecture. In that dispute, the systemic crisis in question was the COVID-19 pandemic. By transposing the Court's rationale regarding the pandemic onto the 2026 conflict, we find a resolute and unyielding framework of administrative tax law.

### **The Statutory Accrual of Tax Liability**

A question taxpayers make during wartime is whether the disruption of their administrative capabilities lawfully postpones their underlying tax liabilities. The Supreme Court systematically dismantled this assumption, establishing that the legal character of a tax debt operates entirely independently of the operational environment.

The Court ruled that tax obligations are rigidly attached to the statutory transaction date, irrespective of the taxpayer's ability to seamlessly file declarations during a crisis:

*"The legislator did not make the acquisition of the status of 'payable tax' contingent upon the tax return, but rather bestowed this status upon the tax whose payment date has arrived."*

Therefore, as far as matters stand, the geopolitical landscape does not alter the realization of a statutory tax point. Even if the Iran War prevents the timely filing of an administrative return, the underlying liability is not practically paused or legally dissolved. The war does not suspend statutory accrual.

### **Force Majeure: Transposing Covid-19 to the 2026 Conflict**

During the COVID-19 pandemic, taxpayers attempted to utilize the global emergency as a *force majeure* event to excuse administrative delays, avoid late penalties, and invalidate tax assessments. In the petition for Cassation No. 958 of 2025, the UAE Federal Supreme Court considered *force majeure*

in regard to tax audits. They highlighted a three-year audit delay, noting that the FTA itself admitted its operations were hindered by COVID-19.

In light of the legal maxim that “a party cannot benefit from its own mistake” the Supreme Court considered whether the FTA could not lawfully impose incremental “time-based penalties” while the government’s own pandemic-related disruptions stalled the audit process. Furthermore, the Supreme Court considered whether the FTA’s crisis-induced delay caused a compensable “loss of opportunity” to mitigate penalties under favorable Cabinet Decisions issued to provide relief during the pandemic.

Today, businesses are considering whether this exact legal theory would apply to the 2026 Iran War, and whether regional hostilities inherently frustrate audit procedures, trigger mutual *force majeure* exemptions, and legally dissolve the imposition of administrative fines.

The Federal Supreme Court, however, addressed the premise that a systemic crisis suspends tax obligations or shifts the legal burden. Addressing the attempt to use the pandemic to excuse compliance failures, the Supreme Court laid down a formidable standard that directly governs our current wartime reality:

*“...its admission of its ...-month delay places the burden of proof upon it despite the Corona pandemic that passed over everyone (the Appellant and the Administrative Authority).”*

### **The Rationale: Crises That “Pass Over Everyone”**

The jurisprudential rationale here is profound. Because a systemic crisis, whether a global health emergency like COVID-19 or the 2026 Iran War, impacts both the private sector and the state apparatus equally, its mere existence does not grant the taxpayer blanket legal immunity.

The fact that the crisis “passed over everyone” means the

foundational rules of administrative litigation remain intact. The Court made it clear that a shared macroeconomic shock does not reverse the burden of proof:

*“The burden of proof in an administrative dispute does not deviate in its origin, and as a general rule, from others, as the principle is that the creditor must prove the obligation and the debtor must prove getting rid of it...”*

Taxpayers cannot use general claims of *force majeure* as a shield against statutory tax audits or potential government disruptions. To successfully challenge an FTA assessment during this conflict, general appeals to wartime hardship are legally insufficient; taxpayers must rely on pristine documentary evidence demonstrating exactly how the war rendered specific compliance materially impossible.

## **Conclusion**

Does the 2026 Iran War diminish or dissolve UAE tax liabilities or audit procedures? The unequivocal legal answer from the UAE Supreme Court is not in a blanket manner. Guided by the rationale in Cassation No. 958 of 2025, the judiciary does not recognize systemic, shared crises as a *force majeure* that extinguishes tax debts or shifts the burden of proof. The machinery of UAE tax law does not halt for war. Taxpayers whose tax audits or liabilities are affected by the war must provide direct evidence, grounds, and standing to causation and nexus in approaching the FTA, the tax disputes resolution committees, or the courts.

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# UAE Crypto Litigation: The “Man in the Middle” and the Duty of Delivery

May 1, 2026

*The following is an excerpted analysis of topics discussed in the book [UAE Crypto Litigation](http://www.uaecryptolitigation.com), a treatise on the judicial evolution of digital asset disputes in the United Arab Emirates, [available at www.uaecryptolitigation.com](http://www.uaecryptolitigation.com).*

A defining feature of blockchain transactions is their irreversibility. If an asset is sent to the wrong address, there is no central authority to reverse the transaction. This technical reality creates complex legal questions when a transaction is intercepted or misdirected by a malicious third party; a “Man in the Middle” attack. In China, the US, and the UK, courts have often placed strict liability on OTC desks to verify the identity of the recipient. The UAE courts, applying general principles of contract law, have allocated this risk strictly against the seller in the context of delivery obligations.

The Dubai Court of Appeal recently analysed a dispute arising from a Peer-to-Peer (P2P) sale of USDT. The buyer had paid for the assets, and the seller transferred the USDT to a wallet address provided by a third-party intermediary who was facilitating the deal. The intermediary, upon verifying the transfer, vanished with access to that wallet, leaving the buyer empty-handed.

The court held the seller liable for the buyer’s loss. It established a high standard for the duty of delivery, ruling that the obligation to deliver sold goods is not met by merely dispatching them to a provided address. The seller must ensure

the successful *receipt* of the assets into the buyer's effective control. By relying on an untrusted intermediary's instructions without verifying the wallet's ownership with the buyer directly, the seller assumed the risk of fraud.

This judgment reinforces the "perfect tender" rule in the context of digital assets. It serves as a caution to OTC traders who rely on brokers on platforms like Telegram. The legal duty is result-oriented: the contract is only performed when the buyer has the tokens, not when the seller has sent them. If the intermediary provides a fraudulent address, the party sending the funds bears the loss.

*To navigate the risks of P2P transactions and intermediary liability, see more in [‘UAE Crypto Litigation’ book publication available at www.uaecryptolitigation.com](http://www.uaecryptolitigation.com).*

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# UAE Crypto Litigation: Specific Performance and the Return of the Asset In Specie

May 1, 2026

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When a debtor defaults on a loan of 10 Bitcoin, or an employer fails to pay a salary denominated in tokens, what is the appropriate remedy? In the United States, the bankruptcy proceedings of entities like *Celsius* and *FTX* have famously “dollarized” claims as of the petition date, often locking creditors into losses at the bottom of the market. The UAE courts, however, are increasingly adopting a property-law approach that favors *specific performance*, ordering the return of the asset itself, rather than its fiat equivalent.

This shift is evident in a landmark decision by the Dubai Court of First Instance regarding a private loan of 16 Bitcoin. When the borrower defaulted, the court did not engage in a complex valuation exercise to convert the Bitcoin to Dirhams; a process fraught with difficulty given the asset’s intraday volatility. Instead, it ordered the defendant to return 16 Bitcoin *in specie* to the claimant. This implicitly recognizes the digital asset not merely as a value-reference, but as a distinct class of property capable of direct restitution, akin to the specific delivery of chattels in English law.

This principle has even extended to employment disputes. In a novel judgment, a Dubai court ordered an employer to pay outstanding wages in “Ecowatt tokens,” as strictly stipulated in the employment contract. By enforcing the delivery of the specific token, the court upheld the sanctity of the contract’s currency clause.

However, judicial pragmatism dictates a fallback position. Where the specific asset cannot be returned, such as in cases of fraud where the tokens have been dissipated, the Dubai Court of Cassation has established a critical valuation rule. Monetary compensation must be calculated based on the market value at the time of the *judgment*, not the time of the breach. This forward-looking valuation ensures that a fraudster cannot profit from the market’s appreciation during the delays of litigation, ensuring the victim is made economically whole in

current terms.

*To understand the strategic implications of seeking specific performance versus monetary damages, see more in [‘UAE Crypto Litigation’ book publication available at www.uaecryptolitigation.com](http://www.uaecryptolitigation.com).*

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# UAE Crypto Litigation: WhatsApp and the Unsigned Contract

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In the fast-paced environment of crypto-trading, formal contracts are frequently neglected in favor of instant messaging. Deals worth millions are struck via WhatsApp, Telegram, or WeChat, often with little more than a “thumbs up” emoji to signify assent. When these informal arrangements collapse, the UAE courts are tasked with a forensic inquiry: can a string of text messages constitute a binding commercial contract? The answer, as revealed by recent appellate judgments, depends entirely on the content of the messages and

the value of the claim.

The UAE approach offers an interesting parallel to the “parol evidence rule” in US contract law or the statutory requirements for writing in the UK’s Law of Property (Miscellaneous Provisions) Act. Generally, the UAE Law of Evidence requires written proof for obligations exceeding a certain value. However, the courts have adapted to the digital age by accepting electronic correspondence as a “commencement of proof in writing,” provided it is sufficiently clear.

In a striking example of this flexibility, the Dubai Court of First Instance enforced a multi-million dollar liability based almost exclusively on WhatsApp messages. While the initial oral agreement was unprovable, the defendant’s subsequent messages, in which he explicitly acknowledged the debt and promised repayment, were treated as a binding extra-judicial admission. Here, the informality of the medium did not negate the clarity of the confession.

However, there is a limit to this indulgence. The Abu Dhabi Court of Appeal recently drew a hard line in a case involving an alleged five-million-dollar investment. The claimant attempted to reconstruct complex contractual terms from a series of WhatsApp exchanges. The court dismissed the claim, finding that while messages can prove a debt, they are often too fragmented and ambiguous to establish the nuanced terms of a partnership or a high-value investment mandate. Unlike the Chinese courts, which have developed specific protocols for verifying blockchain and WeChat evidence, the UAE courts apply a traditional lens to new media: if the messages do not clearly define the “meeting of minds” on all essential terms, they cannot substitute for a formal contract.

Furthermore, the courts are wary of “unsigned contracts” circulated via email. In another Dubai case, a claimant relied on an unsigned draft contract and screenshots. The court dismissed the claim, reinforcing that an unexecuted document

has no evidentiary value unless corroborated by decisive conduct or admissions. The message to the market is clear: while digital chat logs can save a claim by proving an admission of debt, they are a poor substitute for a signed agreement when trying to prove the complex terms of a venture.

*For a practical guide on preserving digital evidence and understanding its weight in court, see more in the evidentiary chapters of [‘UAE Crypto Litigation’ book publication available at www.uaecryptolitigation.com](http://www.uaecryptolitigation.com).*

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# The Cost of Clarity: Inside Binance’s 2026 Terms and the New Dispute Resolution Regime

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Effective January 5, 2026, the global cryptocurrency landscape has shifted with Binance’s transition to a fully regulated structure within the Abu Dhabi Global Market (ADGM), in the United Arab Emirates. In this article we analyze the legal implications of this restructuring for investors. We examine the transition from the ambiguous “Binance Operators” to the specific “Nest” entities, and the material shift from Hong Kong arbitration to a rigorous International Chamber of Commerce (ICC) framework seated in the ADGM.

## **Part I: The Structural Shift – From “Operators” to “Nest”**

To understand the current legal standing of an investor, one must distinguish the new structure from the old.

### **1.1 The Legacy Issue: “Binance Operators”**

Under previous Terms of Use (2017-2025), users contracted with “Binance Operators,” defined broadly as “all parties that run Binance.” This structure presented significant challenges regarding transparency and jurisdiction.

In *Lochan v. Binance Holdings Limited*, 2023 ONSC 6714, the Ontario Superior Court found this definition problematic, noting it obscured the identity of the true counterparty. This opacity was not merely a matter of private contract interpretation but was judicially recognized as a defining feature of the platform’s operations. In the United States, the ‘Court Findings of Fact’ consented to by the defendants in *Commodity Futures Trading Commission v. Zhao et al.* explicitly characterized the model as “Binance’s reliance on a maze of corporate entities to operate the Binance platform...designed to obscure the ownership, control, and location of the Binance platform” (2023 WL 10448932 (N.D. Ill. 2023)).

For the investor, this “maze” created a significant informational deficit, contributing to judicial findings of unconscionability by making it difficult to identify the proper defendant or the location of assets. Justice Morgan of the Ontario Superior Court summarized this as follows: “Binance, as the party that designed and whose professionals drafted the contract, engineered the arrangement to take advantage of the complexity that was hidden behind the superficially benign appearance of an arbitration clause. The inequality of information... resulted from this informational deficit was at a maximum.”

### **1.2 The New Regime: The “Nest” Ecosystem**

The 2026 Terms of Use replace this obscurity with three distinct ADGM-licensed entities (in Abu Dhabi, the United Arab Emirates). Identifying the correct defendant is now a prerequisite for any valid legal claim.

- Nest Exchange Limited (Recognized Investment Exchange): Operates the matching engine. Crucially, it generally does not hold client assets. Claims regarding system outages or matching errors should fall here.
- Nest Clearing and Custody Limited (Recognized Clearing House): This is the custodian of digital assets and the central counterparty for derivatives. It is subject to strict requirements under ADGM Rules. Claims regarding frozen assets, withdrawals, or insolvency are expected to be directed here.
- Nest Trading Limited (Broker-Dealer): This entity is the principal counterparty for “off-exchange” services. When users utilize swaps or OTC trading, they should be trading against Nest Trading Limited’s proprietary inventory, not against other users on the exchange. Claims regarding pricing fairness in these specific products should be directed here.

Investors can no longer sue a generic brand. Liability is segregated. For example, a claim for lost assets filed against the Exchange entity, rather than the Custody entity, risks dismissal for lack of standing.

## **Part II: The New Dispute Resolution Mechanism (Clause 37)**

The most critical update for investors is Clause 37 of the 2026 Terms, which mandates arbitration under the ICC Rules seated in the ADGM. The text imposes strict procedural parameters that fundamentally alter the economics of dispute resolution.

### **2.1 Analysis of the Arbitration Agreement**

- Mandatory Three-Member Tribunal (Clause 37.2): “The

*tribunal shall consist of three (3) arbitrators to be appointed in accordance with the ICC Rules.”*

- **Exclusion of Expedited Rules (Clause 37.5):** *“The parties expressly agree that the Expedited Procedure Rules shall not apply.”*
- **Seat of Arbitration:** The ADGM.
- **Exclusive Jurisdiction:** The parties irrevocably waive the jurisdiction of all other courts, including the UAE onshore courts.

## 2.2 Comparative Analysis: HKIAC vs. ICC Rules

The shift from the previous regime (often HKIAC default rules) to this specific ICC framework creates a sophisticated, higher cost environment.

| <b>Feature</b>               | <b>HKIAC Administered Rules (Typical Previous Mechanism)</b>                                           | <b>ICC Rules (2026 Terms, Clause 37)</b>                                      | <b>Legal Implication for the Investor</b>                                                                                               |
|------------------------------|--------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------|
| <b>Number of Arbitrators</b> | Defaults to one or three. For smaller claims, a sole arbitrator is standard practice to control costs. | Clause 37.2 mandates a tribunal of three arbitrators for <i>all</i> disputes. | The claimant must advance fees for three arbitrators. This creates a higher financial floor that may exceed the value of retail claims. |

|                            |                                                                                                            |                                                                 |                                                                                                                                 |
|----------------------------|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|
| <b>Expedited Procedure</b> | Accelerated procedures available for amounts under ~USD 3M, resulting in faster resolution and lower fees. | Clause 37.5 expressly disapplies the Expedited Procedure Rules. | Even low-value disputes must undergo the full, standard ICC arbitration process, extending timelines and increasing legal fees. |
|----------------------------|------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------|

2.3 Assessing Access to Justice In Lochan, the court found the cost of arbitration prohibitive for average consumers. The new Clause 37 arguably exacerbates this barrier by mandating three arbitrators and excluding expedited options. While the “Nest” entities provide a clear legal nexus to the ADGM (curing the “no connection” defect of Hong Kong), the procedural costs may render low-value claims economically irrational to pursue individually.

### **Part III: Regulatory Protections & Governing Law**

#### **3.1 Governing Law: English Common Law**

The Terms are governed by ADGM Law, which directly incorporates English Common Law. This offers investors certainty regarding property rights; citing precedents like *AA v Persons Unknown & Ors, Re Bitcoin* [2019] EWHC 3556 (Comm), where Bryan J concluded “I consider that cryptoassets such as Bitcoin are property”, and contract interpretation, removing the unpredictability of offshore jurisdictions. Being constituted as property under English law applied in the ADGM, cryptoassets held by Binance may be subject to proprietary injunctions.

#### **3.2 Consumer Protection Regulations 2025**

Investors have a new layer of defense outside of arbitration. The ADGM’s Consumer Protection Regulations prohibit “unfair

terms” and allow users to file complaints directly with the ADGM Regulator (FSRA). This public enforcement mechanism provides a potentially cost-free avenue for grievance resolution that was absent in the “Binance Operators” era.

## **Part IV: Cross-Border Enforcement**

For an investor, a legal victory is only as good as the ability to collect assets. The ADGM structure provides two distinct pathways for enforcement.

### **4.1 The New York Convention (International Enforcement)**

An award issued under Clause 37 is an ADGM arbitral award. Because the UAE is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”), this award is recognized and enforceable in over 170 countries (including the US, UK, Australia, and Canada). A prevailing investor takes the award to a local court in the defendant’s jurisdiction. The court enforces it as a local judgment, subject only to narrow procedural defenses.

### **4.2 Recognition by ADGM Courts (Asset Seizure)**

Since the assets may be held by Nest Clearing within the ADGM, the most direct route is expected to be local enforcement in the ADGM. An investor cannot simply “execute” the arbitral award. They must apply to the ADGM Court of First Instance for ratification. Once the Court recognizes the award as a judgment, the investor can utilize ADGM enforcement mechanisms (e.g., attachment of bank accounts) to seize assets from the Custodian.

### **4.3 The Defensive Shield**

Investors should be wary of ignoring Clause 37 to sue in their home jurisdiction. If a default judgment is obtained abroad in breach of the arbitration agreement, the ADGM Court, applying

English private international law, will likely refuse to recognize that foreign judgment. This effectively insulates the assets held in the ADGM from rogue foreign litigation.

## **Conclusion**

Binance's transition to the ADGM represents the regulatory certainty of the "Nest" ecosystem, but at the cost of a potentially more expensive dispute resolution process. For the investor, the path to recovery is now clearer, yet it requires correctly identifying the liable "Nest" entity and navigating a mandatory three-arbitrator tribunal. To succeed in this environment, investors must possess both subject matter command and local proficiency. The author, Mahmoud Abuwasel, is a Harvard graduate, solicitor, and qualified arbitrator who has litigated in the ADGM and is routinely instructed in high-stakes crypto-asset mandates. He combines deep technical expertise in liquidation and custody disputes with the procedural rigor required for success in arbitration and ADGM matters, and is the author of the upcoming book 'UAE Crypto Litigation'. In this sophisticated regulatory environment, retaining services with dual fluency in blockchain mechanics, arbitration, and litigation is the decisive factor in converting a valid claim into a realized recovery.

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# **October 2025 Amendments to**

# the UAE Tax Procedures Law and Relevant Federal Supreme Court Case Law

May 1, 2026

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The legislative framework governing taxation in the United Arab Emirates is subject to periodic revision to address evolving administrative requirements and ensure legal clarity. The foundational statute, Federal Decree-Law No. 28 of 2022 concerning Tax Procedures (published in Official Gazette Issue 737 on 10-10-2022, effective 01-03-2023), has been subsequently amended. The first amendment occurred via Federal Decree-Law No. 17 of 2024 (published in Issue 784 on 30-09-2024, effective 30-10-2024). Most recently, the statute was amended by Federal Decree-Law No. 17 of 2025 (published in Issue 809 on 14-10-2025). This analysis examines the substantive changes introduced by Federal Decree-Law No. 17 of 2025, which enters into force on 01-01-2026, in the context of established principles derived from the jurisprudence of the UAE Federal Supreme Court.

## **1. Temporal Application of the Amendments (Effective Date and Retroactivity)**

The application of these legislative amendments is governed by established principles regarding the temporal effect of legislation. The amendments introduced by Federal Decree-Law No. 17 of 2025 are effective from 01-01-2026.

The Federal Supreme Court adheres strictly to the principle of the non-retroactivity of laws (مبدأ عدم رجعية القوانين). It is settled jurisprudence that a law applies only to situations arising after its publication and enforcement, and does not

extend to legal positions established and finalized before its issuance (*Federal Supreme Court No. 627/2023, Administrative-Tax*).

Concurrently, the Court recognizes the principle of the immediate and direct effect (الأثر الفوري المباشر) of new legislation. This principle dictates that new legislation governs all facts and effects occurring subsequent to its effective date. Furthermore, the immediate effect may extend to the ongoing consequences of situations that originated before the new law, in order to unify the legal treatment of similar positions. This is construed as an immediate application, not a retroactive one (*Federal Supreme Court Nos. 1480/2022 and 1/2023, Administrative-Tax*).

Consequently, the amendments, being primarily procedural, will apply with immediate effect to procedures initiated on or after 01-01-2026. This includes the mechanisms for error correction (Article 10(5)) and the issuance of Guiding Decisions (Article 54 repeated).

The application of the newly introduced statutes of limitation, particularly the definitive time bar for refund applications under Article (38), requires precise application of these principles. While procedural timelines generally apply immediately, the explicit extinguishment of the right to a refund (Article 38(6)) impacts substantive rights. The application of these new limitations to credit balances that arose prior to the effective date will be determined by the principles of non-retroactivity and immediate effect, particularly concerning rights pertaining to tax periods that concluded prior to 01-01-2026.

Furthermore, jurisprudence distinguishes between administrative and criminal law concerning retroactivity. The Federal Supreme Court has held that administrative penalties are governed by administrative rules which apply with direct effect. They differ from criminal rules, which may apply

retroactively if they are more favorable to the accused. Consequently, amendments to administrative penalties generally do not apply retroactively to violations that occurred prior to the amendment (*Federal Supreme Court No. 1108/2021, Administrative-Tax; Federal Supreme Court No. 578/2022, Administrative-Tax*).

## **2. The Formalization of Guidance and the Definition of Administrative Decisions**

A pivotal legislative development is the introduction of Article (54) repeated. This provision empowers the Federal Tax Authority (FTA) to issue “Guiding Decisions” (القرارات التوجيهية) concerning the application of the Tax Procedures Law and substantive Tax Laws to specific transactions. Crucially, the article stipulates that these decisions are binding on both the FTA and the taxpayer.

This amendment must be analyzed against the backdrop of established administrative law principles regarding the justiciability of administrative acts. The Federal Supreme Court has consistently defined an administrative decision as an expression of the administration’s binding will, pursuant to its public authority, intended to create, modify, or abolish a legal position (*Federal Supreme Court No. 25/2021, Administrative-Tax; Federal Supreme Court No. 772/2021, Administrative-Tax*).

Historically, jurisprudence has held that mere clarifications (التوضيحات), explanations, or interpretations issued by the FTA, including private clarifications issued to individual taxpayers, do not constitute administrative decisions capable of appeal. The rationale has been that such communications serve an interpretive (revealing) rather than a creative (constitutive) function regarding the law, and thus do not inherently alter a taxpayer’s legal status (*Federal Supreme Court No. 206/2022, Administrative-Tax*). The courts characterized these clarifications as preparatory procedures

(*Federal Supreme Court Nos. 79/2021 and 95/2021, Administrative-Tax*). Consequently, taxpayers generally could not directly challenge an unfavorable clarification; they were required to proceed, potentially incur a liability (e.g., via an assessment or Voluntary Disclosure), and then dispute the resulting administrative decision.

The introduction of Article (54) repeated legislatively alters this landscape by creating a specific category of formalized, binding guidance. By explicitly rendering “Guiding Decisions” binding *ex lege* (by operation of law), the legislature has conferred upon them the essential characteristic of an administrative act: the capacity to immediately affect the legal position of the addressed taxpayer.

A communication formally issued as a “Guiding Decision” under Article (54) repeated, due to its statutorily mandated binding nature, may meet the criteria for an appealable administrative decision as defined by the Federal Supreme Court. This suggests that taxpayers may challenge such decisions directly, without awaiting a subsequent tax assessment, as the binding guidance itself establishes the requisite legal effect. It remains necessary, however, to distinguish between formalized “Guiding Decisions” and other, less formal clarifications which may continue to be governed by historical jurisprudence.

### **3. Statutes of Limitation: Refunds and Assessments**

The amendments introduce greater specificity to the temporal limitations governing both the taxpayer’s right to claim refunds and the FTA’s authority to audit, primarily through modifications to Article (38) and Article (46).

#### **A. Limitation Period for Tax Refunds (Article 38)**

Article (38) has been substantially revised to introduce explicit statutes of limitation for refund applications. The amended Article (38)(2) mandates that a request to recover any credit balance must be submitted within five years from the

end of the relevant tax period. Article (38)(6) explicitly states that the right to claim the refund or credit balance is extinguished if the application is not submitted within these statutory timelines, subject to limited exceptions in Articles (38)(3) and (38)(4) for credits arising near or after the end of the five-year period.

## **B. Limitation Period for FTA Audits and Assessments (Article 46)**

Article (46) maintains the general five-year limitation period for audits and assessments, subject to existing exceptions (e.g., timely audit notification, tax evasion). The amendments introduce Article (46)(4), which coordinates the audit window with the new refund limitations. It permits the FTA to conduct an audit or issue an assessment beyond the five-year period if it relates to a refund claim submitted during the fifth year (or during the exceptional periods under Article 38). In such cases, the audit or assessment must be completed within two years from the date of the refund application.

Furthermore, Article (46)(6) clarifies the general prohibition on submitting Voluntary Disclosures after five years, adding an exception for Voluntary Disclosures related to a pending refund request.

These modifications ensure symmetry between the taxpayer's timeframe for claiming refunds and the FTA's timeframe for verifying those claims. The jurisprudence emphasizes the strict application of statutory timelines in tax matters, recognizing them as matters of public order (*Federal Supreme Court No. 760/2021, Administrative-Tax*; *Federal Supreme Court No. 853/2020, Administrative-Tax*).

## **4. Procedural Refinements and Technological Modernization**

### **A. Allocation of Payments and Credit Balances (Article 9)**

The amendment to Article (9)(3) introduces a temporal

constraint on the FTA's authority to allocate overpayments or credit balances against other outstanding liabilities. The allocation must occur within five years from the end of the relevant tax period, aligning this power with the limitation periods under Article (38). The courts have held that while the taxpayer has the primary option to specify the allocation of a payment, if they fail to do so, the right transfers to the FTA (*Federal Supreme Court No. 354/2024, Administrative-Tax*; *Federal Supreme Court No. 477/2024, Administrative-Tax*).

## **B. Correction of Errors (Article 10)**

Article (10)(5) addresses the correction of errors or omissions in a tax return where there is no difference in the amount of tax due. The amended text provides flexibility, requiring a Voluntary Disclosure only in cases specified by the FTA, while allowing correction through a subsequent tax return in other instances. This adjustment aligns with the judicial principle that tax procedures are a means to achieve the legislative intent of collecting the tax legally due, not an end in themselves (*Federal Supreme Court No. 151/2022, Administrative-Tax*).

## **C. Technological Modernization**

The amendments (Articles 1 and 4 repeated) introduce the "Electronic Invoicing System," establishing the legislative foundation for mandatory electronic fiscalization. This is consistent with judicial recognition of electronic methods in tax procedures, including the validity of electronic notifications (*Federal Supreme Court No. 1034/2021, Administrative-Tax*) and the probative value of electronic evidence (*Federal Supreme Court No. 212/2023, Administrative-Tax*).

## **Conclusion**

The amendments introduced by Federal Decree-Law No. 17 of 2025, effective 01-01-2026, provide greater clarity on

limitation periods, formalize the status of certain FTA guidance, and advance the digitization of the tax system. The application of these amendments will be governed by the principles of non-retroactivity and immediate effect. The establishment of definitive time limits for refund claims enhances legal certainty, while the introduction of binding “Guiding Decisions” marks a significant procedural shift, potentially allowing for direct challenges to formalized FTA interpretations. These changes must be interpreted in conjunction with established judicial principles, which emphasize that the source of tax liability is the law itself (*Federal Supreme Court No. 277/2022, Administrative-Tax*), and that the relationship between the FTA and the taxpayer is regulatory, governed by mandatory legal rules (*Federal Supreme Court No. 319/2023, Administrative-Tax*).

**Comparative Table of Amendments and Applicable Case Law**

| Article / Subject | Provision Before Amendment<br>(Summary) | Amended Provision<br>(Current Text Summary) | Applicable Legal Principles and Case Law |
|-------------------|-----------------------------------------|---------------------------------------------|------------------------------------------|
|-------------------|-----------------------------------------|---------------------------------------------|------------------------------------------|

|                                                                                    |                                                                                                     |                                                                                                                                      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Temporal Application of Law<br/>(Retroactivity and Immediate Effect)</b></p> | <p>Governed by general principles of non-retroactivity and immediate effect of procedural laws.</p> | <p>Amendments (Federal Decree-Law No. 17 of 2025) are effective from 01-01-2026. Application governed by established principles.</p> | <p>Laws apply prospectively and do not affect stabilized legal positions.<br/> <b>Federal Supreme Court No. 627/2023 (Administrative-Tax).</b><br/> New legislation applies with immediate effect to facts occurring after its effective date and to ongoing effects of prior situations. <b>Federal Supreme Court Nos. 1480/2022 and 1/2023 (Administrative-Tax).</b><br/> Administrative penalties generally do not apply retroactively, even if more favorable.<br/> <b>Federal Supreme Court No. 1108/2021 (Administrative-Tax); Federal Supreme Court No. 578/2022 (Administrative-Tax).</b></p> |
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|------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Articles 1 and 4 repeated: Electronic Invoicing System</b></p>   | <p>No definition or specific provision for an Electronic Invoicing System.</p>                                                                                      | <p>Introduces the definition of “Electronic Invoicing System” (Article 1).<br/>Authorizes the Minister to issue decisions for the implementation of the system and to specify the persons subject to it (Article 4 repeated).</p> | <p>The courts recognize the validity of electronic communications and evidence in tax procedures.<br/><b>Federal Supreme Court No. 1034/2021 (Administrative-Tax):</b> Notification via electronic means is valid once transmission is proven.<br/><b>Federal Supreme Court No. 212/2023 (Administrative-Tax):</b> Electronic evidence has probative value if it meets legal authentication requirements.</p>                  |
| <p><b>Article 9(3): Allocation of Overpayments/Credit Balances</b></p> | <p>The FTA had the right to allocate overpayments or credit balances to settle any outstanding tax or amounts due, in accordance with the Executive Regulation.</p> | <p>The FTA retains the right to allocate overpayments or credit balances, but this allocation must occur <b>within 5 years</b> from the end of the relevant tax period (as referenced in Article 38(2)).</p>                      | <p>The taxpayer has the primary option to allocate payments. If unspecified by the taxpayer, the FTA has the authority to allocate the payment against outstanding liabilities.<br/><b>Federal Supreme Court Nos. 354/2024 and 477/2024 (Administrative-Tax):</b> Affirmed the FTA’s right to allocate payments if the taxpayer does not specify the allocation. The amendment imposes a temporal limit on this authority.</p> |

|                                                                                          |                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                                                                                                                                                                                                                             |
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| <p><b>Article 10(5):<br/>Voluntary Disclosure<br/>(Error with No Tax<br/>Impact)</b></p> | <p>If a taxpayer discovered an error or omission with no difference in the amount of tax due, they were required to correct it by submitting a Voluntary Disclosure.</p>               | <p>Correction of errors with no tax impact requires a Voluntary Disclosure only <b>in cases specified by the FTA</b>; otherwise, it can be corrected <b>through a subsequent tax return</b>.</p>                                                                                                                                                                              | <p>Tax procedures are a means to achieve the legislative intent of collecting the tax due, not an end in themselves.<br/><b>Federal Supreme Court No. 151/2022 (Administrative-Tax):</b> If the state receives the full tax on time, even under an incorrect procedure that is later corrected, grounds for imposing late payment penalties on that tax may not exist.</p>                  |
| <p><b>Article 38: Request for Refund of Credit Balance (Statute of Limitations)</b></p>  | <p>Taxpayers had the right to request a refund of overpaid tax or credit balances. No explicit statutory limitation period for submitting the request was defined in this article.</p> | <p>Introduces a strict time bar: Refund requests must be submitted <b>within 5 years</b> from the end of the relevant tax period (Article 38(2)). Exceptions exist if the credit arises after the 5-year period or within the last 90 days (Articles 38(3) and 38(4)). Failure to apply within the timelines <b>extinguishes the right</b> to the refund (Article 38(6)).</p> | <p>Statutory timelines in tax procedures are strictly applied and relate to public order.<br/><b>Federal Supreme Court No. 760/2021 (Administrative-Tax):</b> Procedures and timelines for appeals are matters of public order.<br/><b>Federal Supreme Court No. 853/2020 (Administrative-Tax):</b> Emphasizes strict adherence to statutory timelines for initiating procedural steps.</p> |

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| <p><b>Article 46: Statute of Limitations (Audits/Assessments)</b></p> | <p>The FTA generally could not audit or assess after 5 years. Specific extensions applied (e.g., ongoing audits notified timely, VDs submitted in the 5th year). VDs were prohibited after 5 years.</p> | <p>Retains the 5-year general limitation and existing extensions.<br/> <b>New additions:</b><br/> <b>1. (Art. 46(4)):</b><br/> Allows audit/assessment after 5 years if related to a refund request submitted in the 5th year (or Art. 38 extension periods). The audit must be completed within <b>(2) two years</b> of the refund application.<br/> <b>2. (Art. 46(6)):</b><br/> Allows VDs after 5 years only if related to a pending refund request for which the FTA has not issued a decision.</p> | <p>The source of tax liability is the law; assessments are declaratory. Procedural delays do not alter the effective date of liability.<br/> <b>Federal Supreme Court No. 277/2022 (Administrative-Tax).</b></p> |
|-----------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

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|----------------------------------------------------------|-----------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>Article 54 repeated:<br/>Guiding Decisions</b></p> | <p>(New Article – No previous provision).</p> | <p>Authorizes the FTA to issue “Guiding Decisions” regarding the application of tax laws. These decisions are explicitly stated to be <b>binding on both the FTA and the taxpayer.</b></p> | <p>Historically, FTA clarifications were not appealable administrative decisions because they lacked binding legal effect. Taxpayers often had to incur liability (e.g., via VD or assessment) before initiating a dispute.</p> <p><b><i>Federal Supreme Court No. 25/2021 (Administrative-Tax):</i></b></p> <p>Defines an administrative decision as requiring an intent to effect a specific legal position.</p> <p><b><i>Federal Supreme Court Nos. 79/2021 and 95/2021 (Administrative-Tax):</i></b></p> <p>Clarifications are preliminary procedures, not appealable decisions.</p> <p><b><i>Federal Supreme Court No. 206/2022 (Administrative-Tax):</i></b></p> <p>Clarifications are revealing (interpretive), not creating (constitutive).</p> <p>The binding nature conferred by Art. 54 repeated may render “Guiding Decisions” appealable administrative acts.</p> |
|----------------------------------------------------------|-----------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

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# **Employee Liability for Corporate Tax Penalties: A Judicial Analysis of Dubai Court of First Instance Case No. 309 of 2025**

May 1, 2026

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The introduction of the UAE Corporate Tax regime, effective from June 2023, has established a new and complex compliance landscape for businesses. With this landscape come novel legal questions regarding accountability. A critical issue is the extent to which an employer, having incurred penalties from the Federal Tax Authority (FTA), may successfully recover such losses from an employee whose duties included tax compliance.

The Dubai Court of First Instance, in its judgment for Labour Case No. 309 of 2025, issued on 9 July 2025, provides significant judicial insight into this question. While the primary claim was a standard labour dispute, it was the employer's counterclaim that raised this novel point of law. This article will provide a dispassionate analysis of the court's findings on the counterclaim, focusing on the legal principles and evidentiary thresholds required to establish

employee liability for corporate tax penalties.

### **The Factual and Procedural Context**

The case was initiated by an employee (the “Plaintiff”) against his employer (the “Defendant”) seeking unpaid salary, end-of-service gratuity, payment in lieu of notice, arbitrary dismissal compensation, and other allowances. The dispute centered on the termination of the Plaintiff’s employment and his entitlement to various sums, including a disputed bonus allegedly promised.

The Defendant responded by filing a counterclaim (al-da’wa al-mutaqabila), which is the focus of this analysis. The Defendant sought to hold the Plaintiff, who was employed in its accounts department, personally liable for a fine imposed by the tax authority.

The judgment summarises the counterclaim as follows:

“In the Counterclaim: ... b- Obligating the Defendant-in-counterclaim to pay the Plaintiff-in-counterclaim the sum of AED 10,000, which is the fine it paid to the Federal Tax Authority due to the delay of the Defendant-in-counterclaim in registering for the corporate tax system within the timeframe. ... [The Defendant] based its counterclaim on the fact that the Defendant-in-counterclaim had caused material damages to the Plaintiff-in-counterclaim, which is the fine it paid to the Federal Tax Authority...”

The employer’s legal argument was, therefore, one of tortious liability (or a harmful act) under the UAE Civil Transactions Law. It contended that the employee’s specific failure, an omission to complete the corporate tax registration on time, was a wrongful act that directly caused the company to suffer a quantifiable financial loss, namely the AED 10,000 FTA penalty.

### **The Court’s Legal Framework and Reasoning**

The Court of First Instance accepted the counterclaim in form but ultimately rejected it on the merits. The judgment provides a clear exposition of the legal test it applied, which was not derived from the Labour Law but from the foundational principles of civil liability for harmful acts.

### **The Three Elements of Tortious Liability**

The court began its analysis by citing the established legal principle that liability for a harmful act requires the claimant (the employer, in this instance) to prove three essential elements:

1. **Fault (The Wrongful Act):** An act or omission committed by the defendant (the employee) that constitutes a breach of a duty. This act can be intentional (censure) or negligent (negligence).
2. **Damage (The Loss):** A demonstrable loss suffered by the claimant.
3. **Causation:** A direct causal link between the fault and the damage.

The judgment referenced the principles outlined in Article 282 of the UAE Civil Transactions Law, noting that the burden of proof rests entirely on the claimant (the employer) to establish all three elements. A failure to substantiate any one of these pillars results in the collapse of the entire claim.

### **Application of the Law to the Facts**

The court's rejection of the employer's counterclaim was absolute and based on a fundamental failure of evidence. The judgment identified two distinct and fatal flaws in the employer's case.

#### **1. Failure to Prove Fault and Causation**

The court found that the employer had not provided sufficient

evidence to link the employee's specific actions (or omissions) to the penalty. The judgment states:

"...the Defendant [the employer] did not provide any conclusive evidence that the reason for the imposition of the fine it is claiming was solely attributable to the Defendant-in-counterclaim [the employee]..."

This finding is of paramount importance. The court's use of the term "solely attributable" indicates that it was seeking a high standard of proof. It was not sufficient for the employer to simply state that the employee worked in the accounts department. The employer was required to demonstrate, with evidence, that:

- The specific duty of corporate tax registration was formally and clearly delegated to this employee.
- The employee's failure to perform this duty was the direct and proximate cause of the penalty.
- Other factors, such as a lack of management oversight, unclear instructions, systemic failures, or the newness and complexity of the tax law, were not contributing or intervening causes.

By finding that this evidence was absent, the court concluded that the "element of fault is negated."

## **2. Failure to Prove the Damage**

In addition to the failure to prove fault, the court noted a more fundamental evidentiary lapse. The employer failed to prove that it had actually suffered the loss it was claiming. The judgment states:

"...as well as the fact that the Defendant [the employer] did not provide any evidence of the damages it incurred or that it had paid the fine it claims to have paid."

This demonstrates a primary failure to meet the burden of

proof. To succeed, the employer would have been required to submit, at minimum, the official penalty assessment notice from the Federal Tax Authority and a corresponding proof of payment (such as a bank transfer or receipt). Without proving that a loss was actually incurred, the claim was unsubstantiated in fact, irrespective of the employee's alleged fault.

The court concluded its analysis of the counterclaim by stating:

"The elements of liability thus collapse, and the counterclaim is rendered unfounded in fact and law, and the court rules to reject it..."

### **Analysis and Implications**

The decision in *Case No. 309 of 2025* is a salient reminder of the precise legal and evidentiary standards required to pass liability for regulatory penalties from a corporation to an individual employee.

- **High Evidentiary Burden:** The judgment confirms that such a claim is not a simple matter of set-off. An employer must affirmatively prove its case by meeting the three-part test for civil liability. The court's focus on "solely attributable" fault suggests that any ambiguity in the employee's job description, reporting lines, or delegation of new compliance tasks will likely be fatal to such a claim.
- **Clarity in Delegation is Key:** For an employer to have a prospect of success in a similar future action, it would need to demonstrate a clear and unambiguous assignment of responsibility. This would likely require documentation such as a detailed job description, an internal memo, or a specific written instruction that assigns the task of corporate tax registration (or other filings) to that specific employee, along with the

associated deadlines.

- **Proof of Loss is Non-Negotiable:** The court's second finding highlights a basic, but critical, point. A claim for damages must be supported by primary evidence of the loss. An allegation of payment is not proof of payment.

While this is a Court of First Instance judgment, the legal principles it applies are fundamental. The court did not rule that an employee *can never* be held liable for such penalties. Rather, it affirmed that the burden of proving this liability rests entirely with the employer, and this burden requires conclusive evidence of the employee's exclusive fault, the employer's tangible loss, and the direct causal link between the two.

### **Corporate Implications: Policies for Tax Personnel**

The court's findings on the counterclaim offer a critical lesson for corporations navigating new compliance obligations. The judgment implicitly underscores the necessity of robust internal governance. From a corporate viewpoint, this case demonstrates that relying on a general job title, such as "accountant," is insufficient to establish an employee's liability for a specific regulatory failure. The high evidentiary bar set by the court, requiring proof that the penalty was "solely attributable" to the employee, necessitates a formal and precise framework of accountability.

To protect their position, companies must implement detailed policies and procedures. Job descriptions for finance and tax personnel should be clearly drafted, moving beyond general duties to explicitly delineate responsibility for specific statutory deadlines and filings, including Corporate Tax registration, return submission, and payment. This responsibility should be formally communicated and acknowledged in writing. Furthermore, establishing a matrix of responsibility or a compliance calendar that assigns specific tasks to named individuals can serve as critical evidence in

any future dispute, demonstrating that the employee was fully aware of their specific obligations.

### **Internal Controls and Proving Fault**

This judgment also highlights the importance of internal controls and oversight. A corporation's ability to prove an employee's sole fault is significantly weakened if its own internal processes are ambiguous or lacking. Implementing a 'four-eyes' or 'maker-checker' principle\* for all tax-related submissions is a prudent mitigatory measure. While this may diffuse sole responsibility, its primary corporate benefit is the prevention of the error and penalty in the first place. This layered approval process, coupled with documented training on new legislation, demonstrates that the company has exercised due care. Should a penalty still arise due to a clear and demonstrable breach of these established, well-communicated procedures, the employer is in a far stronger position to isolate the fault, prove the employee's negligence, and meet the high evidentiary standard for recovery.

\*The 'four-eyes' principle, often implemented as a 'maker-checker' system, is a fundamental internal control mechanism used to prevent errors and fraud.

Its core concept is the segregation of duties, meaning no single person has the authority to complete a critical task from start to finish. The process is split into at least two parts:

1. The Maker: This is the first person (the first pair of eyes) who *initiates* a transaction, creates a record, or prepares a task. For example, they might enter a wire transfer into the banking system or draft a tax return.
2. The Checker: This is a second, independent person (the second pair of eyes) who *reviews* and *approves* (or rejects) the maker's work before it is finalized or

executed. This checker verifies the accuracy, legitimacy, and compliance of the task.

By requiring two different individuals to complete one process, the company significantly reduces the risk of an accidental mistake (e.g., a typo in a payment amount) or deliberate fraud (e.g., an employee creating and approving a payment to themselves).

### **Conclusion: Proactive Mitigation in an Evolving Tax Landscape**

The judgment in Case No. 309 of 2025 serves as a definitive judicial signal: UAE employers cannot assume that financial liability for corporate tax penalties can be easily delegated or recovered from employees or others. The court has affirmed a high evidentiary threshold, demanding conclusive proof of sole and direct fault; a standard that generic job descriptions or ambiguous internal hierarchies will fail to meet.

This ruling moves the entire discussion from reactive litigation to proactive mitigation. The sound corporate strategy is to prevent the penalty from ever being imposed. This requires more than standard policies; it demands the implementation of a robust, defensible, and auditable tax governance framework.

At Wasel & Wasel, we focus on comprehensive tax controversy mitigation, advising clients on the specific internal controls and evidential trails necessary to withstand scrutiny. Our experience in the UAE, spanning over 300 distinct tax dispute procedures with a cumulative value exceeding AED 1 billion, provides our clients with an unparalleled perspective on the tax disputes and enforcement issues.

We understand the precise points of failure that lead to penalties and the exact documentation the courts will demand. We invite corporate leadership, in-house counsel, and finance departments to engage with our specialist team to audit,

strengthen, and, where necessary, defend their corporate tax positions in this new and exacting regulatory environment.

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