UAE Federal Primary Court applies Supreme Court ruling on late tax payment penalties

March 21, 2021

Since early 2019, the tax dispute resolution committees, and Federal Primary and Federal Appeals Courts have ordered the invalidity of applying late payment tax penalties capped at 300% retroactively to voluntary disclosures.

On 14 October 2020, the Federal Supreme Court overturned the position taken by the committee and Court judges, and ordered that voluntary disclosures are to be considered a branch of the original tax return – hence that both are one and the same, meaning that submission of a voluntary disclosure is akin to a late submission of a tax return.

The subsequent question circulating was whether the tax dispute resolution committees, and the Federal Appeals and Federal Primary Courts would echo the judgment by the Supreme Court.

In the week of 25 October, several judgements were passed by the Federal Primary Court applying the judgment of the Federal Supreme Court verbatim – in both content and principles – applying late payment penalties to voluntary disclosures retroactively calculated as of the date of the original tax return.

This confirms the expectation that the judges of the committees, and the Primary and Appeals Courts will echo and mirror the findings of the Supreme Court on this matter.

Does this close all avenues to litigate?

This does not necessarily prevent taxpayers from challenging late payment penalties on voluntary disclosures.

The right to resort to the judiciary is a constitutional right, and the procedure itself is granted as a subject matter right in the tax procedures legislation.

There are certain conditions, however, that must be respected when litigating a matter that is similar to one that has been previously litigated and adjudicated on by the Federal Supreme Court.

The Constitutional Circuit of the UAE Federal Supreme Court ruled in 2019 that:

"…the Federal Supreme Court's ruling has an absolute authority that is binding on all and all state authorities, including courts of different degrees and types, and it is not permissible to disband it, debate it, override its content, or reconsider the same case from a newcomer to this court…"

Hence, for taxpayers arguing the same basis that voluntary disclosures are to be considered a separate procedure than that of tax returns and hence subject to independent penalties – the Federal Supreme Court judgment will likely dismantle and trump this argument before any committee of Federal Court judge.

However, alternative procedures and arguments not heard by the Federal Supreme Court, that do not contradict the findings of the Federal Supreme Court judgment issued on 14 October, may provide an avenue for taxpayers to dispute the application of late payment penalties on voluntary disclosures.

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UAE Supreme Court Rules No Privacy Invasion via WhatsApp

March 21, 2021

The case involved a husband (the defendant) who took a video of his wife (the complainant) and sent the video recording to the complainant's mother instantaneously through the instant messaging application; WhatsApp.

The complainant/wife filed a criminal complaint against the defendant/husband for breach of Federal Decree-Law No. 5/2012 on Combating Cybercrimes (the "Cybercrime Law") which prohibits the use of a computer network or electronic information system or any information technology means for the purpose of the invasion of privacy.

The complainant/wife requested that the defendant/husband be penalized under Article 374/1 of the Penal Code and Article 21 of the Cybercrime Law. (Citations provided below.)

Amongst the requests by the complainant for the judiciary to order a fine against, and the imprisonment of the defendant, the complainant also requested an order for the prohibition of the defendant to access WhatsApp and the telecommunication network used by the defendant in the purported crime.

The complaint was first filed in mid-2017, with the final and binding ruling being issued by the Federal Supreme Court in mid-2019.

It is was decided by the Federal Supreme Court that invasion of privacy crimes committed through WhatsApp are not covered by the Cybercrime Law if the crime involves two or more persons in a closed room with the subject matter and media not privy to others outside that room.

The court did not rule on whether there were breaches under the Penal Code as the limitation period of three months on insult and slander accusations had expired by the time the complaint was filed.

In this ruling the Federal Supreme Court sets two elements to the test of whether the privacy of another person has not been invaded via electronic/digital means:

- Outside of cyberspace, if the accused, the suggested victim, and the recipient(s) of the media purported to have invaded the privacy of another, are physically located in a place closed-off to others; and
- If the media purported to have invaded the privacy of another is distributed only to persons in the same closed-off venue, who are also privy to the subject matter of the distributed media.

In the Workplace

The ruling raises questions towards the applicability of the Cybercrime Law in a workplace environment.

Comparatively, if this ruling were to be used as reference in managing workplace privacy policies, then it is arguable that a recording/image of one employee shared amongst other employees may not necessarily fall under the Cybercrime Law’s invasion of privacy provisions if said employees are all

within a closed-off area (a closed office space for example) at the time, and the media is not distributed to persons outside that closed office space.

Provisions

- Article 21 of the Cybercrime Law:

Shall be punished by imprisonment of a period of at least six months and a fine not less than one hundred and fifty thousand dirhams and not in excess of five hundred thousand dirhams or either of these two penalties whoever uses a computer network or and electronic information system or any information technology means for the invasion of privacy of another person in other than the cases allowed by the law and by any of the following ways:

1- Eavesdropping, interception, recording, transferring, transmitting or disclosure of conversations or communications, or audio or visual materials.

2- Photographing others or creating, transferring, disclosing, copying or saving electronic photos.

3- Publishing news, electronic photos or photographs, scenes, comments, statements or information even if true and correct.

Shall also be punished by imprisonment for a period of at least one year and a fine not less than two hundred and fifty thousand dirhams and not in excess of five hundred thousand dirhams or either of these two penalties whoever uses an electronic information system or any information technology means for amending or processing a record, photo or scene for the purpose of defamation of or offending another person or for attacking or invading his privacy.

- Article 374/1 of the Penal Code:

Shall be sentenced to detention for a maximum period of six months or to a fine not exceeding five thousand dirhams in

case the libel or insult takes place through the telephone or facing the victim in the presence of others.

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Q&A: Labor and Employment Laws in the UAE

March 21, 2021

A comprehensive resource on laws and regulations that govern labor and employment in the United Arab Emirates that provides unique insights most critical to employees, employers, in-house counsel, and decision-makers in all industries.

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UAE Supreme Court rules late

payment penalties apply to voluntary tax disclosures

March 21, 2021

Issue

The first case involving the method of calculating late payment penalties on voluntary disclosures has been adjudicated by the Federal Supreme Court.

The Federal Supreme Court has taken a position divergent from that of the tax dispute resolution committees, and the Federal Primary and Federal Appeals Courts on this matter.

The judgment is significant because late payment penalties are calculated at a maximum of 300% of the tax debt.

A voluntary disclosure is when a taxpayer notifies the Federal Tax Authority ("FTA") of an error or omission in a previous tax return, tax assessment or tax refund application.

A voluntary disclosure is obligatory when the taxpayer discovers a mistake – and submission of the voluntary disclosure must be made within twenty weekdays of discovering the mistake.

Once the taxpayer makes a voluntary disclosure – the resulting late payment penalties can reach a maximum of 300% of the disclosed amount calculated retrospectively as of the original tax return, tax assessment, or tax refund application.

Voluntary disclosure penalty calculation

The voluntary disclosure results in the FTA applying fixed penalties that comprise of AED 3,000 for the first time, and

AED 5,000 for each subsequent voluntary disclosure.

A voluntary disclosure also results in the FTA applying a percentage-based penalty of 5% calculated based on the tax amount variance between the value in the voluntary disclosure and the original tax return, tax assessment, or tax refund application. This is referred to as a 'tax benefit' penalty.

Thirdly, the FTA generally applies a late payment penalty to voluntary disclosures at 2% immediately, 4% after the first week, and 1% daily up to a maximum of 300% calculated retrospectively as of the date of the tax return, tax assessment, or tax refund application that is being remedied – not as of the date of the voluntary disclosure.

Federal Supreme Court judgment

The case involved the application of late payment penalties on voluntary disclosures.

Since early 2019; the tax dispute resolution committees, the Federal Primary Court and the Federal Appeals Court, have taken the position that late payment penalties do not apply to the tax amount variance between the voluntary disclosure and the original tax return.

In other words – that the late payment penalties should be calculated as of the date of the voluntary disclosure, but not retrospectively as of the date of the original tax return.

However, the Federal Supreme Court has taken a position divergent from that of the tax dispute resolution committees, and the Federal Primary and Federal Appeals Courts.

The Federal Supreme Court reasoned that voluntary disclosures are to be considered a branch of the original tax return.

Based on this reasoning, the Federal Supreme Court ordered that late payment penalties should apply retrospective to the voluntary disclosure, calculated as of the date of the

original tax return.

For example, if a person discovers a mistake in a tax return from April 2018, and makes a voluntary disclosure in April 2020, the late payment penalties up to 300% would be calculated as of April 2018 – not April 2020.

Article 101 of the UAE Constitution states that the judgements of the Federal Supreme Court shall be final and binding upon all. Thus, it is expected that the tax dispute resolution committees, and the Federal Primary and Federal Appeals Courts shall echo the position taken by the Federal Supreme Court on this issue.

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Tax Trials & Construction Disputes: Considerations of VAT on Liquidated Damages (UAE)

March 21, 2021

VAT on Liquidated Damages

Construction litigation is generally segmented into two claims. The first is a claim for sums that are due but unpaid, whether contractually or on *quantum meruit* basis, generally for a transaction which has concluded. The second type of

claim is compensation for a transaction that has not taken place, i.e. no underlying service or good has been provided.

In respect of the second type of claim, the UAE Civil Transactions Law permits the parties to set a compensatory amount for liquidated damages. Notwithstanding, the law also permits a court *"…at the request of one of the parties, amend such an agreement, in order to make the amount assessed equal to the prejudice*."

Often before a competent court or an arbitration tribunal, litigants trigger the right to reassess compensation for liquidated damages which entails various applications, hearings, pleadings, and expert work that litigants should manage efficiently for any subsequent VAT liability concerns or tax trials.

The UAE Federal Tax Authority's public clarification on the matter titled 'VAT treatment of compensation-type payments' explains that liquidated damages for loss of earnings – not for the provision of any goods or services – are outside the scope of VAT.

In its public clarification, the Federal Tax Authority describes 'liquidated damages' as "*predetermined amounts that contractual parties designate during the formation of the agreement for the injured party to collect as compensation upon a specific breach – for example, in case of early termination of a contract or performance delay. The purpose of such payments is not to provide consideration for a provision of any goods or services but to compensate a party for loss of earnings. As such, the payments are outside the scope of VAT.*"

Litigation Considerations

The litigation commences with the dispute notice which sets out the allegations that create the basis for the claim. In this sense, the notice describes the allegations and heads of damages, it is a considerable piece of evidence to determine

the taxation treatment of the construction dispute proceeds received, and any expenses that may be incurred.

The complaint then materializes into a construction dispute before an arbitration tribunal or competent court and may have consequential effects in a subsequent tax trial before any of the Abu Dhabi, Dubai, or Sharjah tax dispute resolution committees, or before the tax disputes circuits at the federal courts.

With VAT liabilities in mind, litigants should maintain a holistic approach during submission of documentation in a construction dispute to ensure that the segmentation of the claims allows for determination of the tax treatment of the moneys that will ultimately be awarded.

Ultimately, the judgement or award issued in the construction dispute may or may not specifically allocate the award moneys clearly and consequentially hinder a litigant from identification of the tax treatment that should apply. Litigants should be vigilant in their analysis of how the judgement or award is detailed and follow any necessary applications before the courts or arbitration tribunal to obtain evidentiary documentation of how the awarded moneys are allocated.

Set-Off / Nomenclature

The respective public clarification by the Federal Tax Authority explicitly considers and elaborates on nomenclature in determining whether a payment is consideration for a supply or not. The public clarification states verbatim that *"…it is important to ignore the labels or titles the parties give to a payment."*

For employers, this should be accounted for where the employer is the recipient of liquidated damages and applies rights of set-off. Although the treatment of liquidated damages would be outside the scope of VAT, employers must account for potential

VAT liability in cases where payment of liquidated damages by a contractor are set-off against contractor invoices.

Evidence

Upon receipt of the judgement or award, the taxpayer (e.g. the contractor) will determine the tax treatment that shall be applicable to the moneys awarded. The treatment should be in line with the Federal Tax Authority's public clarifications and general tax legislation. Article 48 of the Tax Procedures Law places the burden of proof on the taxpayer to evidence the justification of the tax treatment.

Litigants would be prudent in considering the tax treatment of the ultimate judgement (or award) at the outset of the litigation and plan accordingly, with tax litigation expertise involved in the case management process, in case of a potential subsequent tax trial.

The outcome of the construction dispute will also provide evidence on whether the compensation can be attached to an underlying service or good – even if they are considered liquidated damages by the parties – at which point a VAT liability may be incurred (such as the case of set-off rights noted above).

The taxpayer will have to evidence that the moneys received are indeed compensatory in nature for liquidated damages before the Federal Tax Authority, or a tax dispute resolution committee, or the federal courts, in a potential tax trial.

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UAE Supreme Court Rules on Unclear Arbitration Clause

March 21, 2021

When drafting an arbitration clause, it is vital to make sure that the clauses are simple and clear in order to avoid uncertainty and disputes over their semantics and effect. This is the first step to ensuring the time and cost-effectiveness of a potential dispute as it will minimize the risk of possible disagreements regarding the jurisdiction of the tribunal or the process of appointing the arbitrators. At the very outset of drafting the arbitration clause, it must be explicit that the parties wish to have their disputes resolved via arbitration and to waive the original jurisdiction of the courts. If this intention cannot be inferred, it means that the 'medium' used has missed its target.

The repercussions of the failure to express clarity and intention of the parties to refer to arbitration in case of a dispute manifested in a case leading to a Federal Supreme Court judgment issued recently.

The Case in Question

The case in question revolves around an agreement that was executed in March of 2013, relating to the non-payment of medical supplies.

The language used in the arbitration clause was in English and the issue arose out of whether or not the clause was explicit in commanding the parties to refer to arbitration as the dispute resolution mechanism.

The arbitration clause stated in case the parties could not reach an amicable settlement in relation to any dispute within 30 days, either party may trigger arbitration dispute

proceedings to be seated in Abu Dhabi, conducted in English and subject to the rules of the Abu Dhabi Commercial Conciliation & Arbitration Centre.

When the dispute arose for non-payment over the sale of the medical supplies, one of the parties filed the dispute before the Primary Court. The Primary Court found it had no jurisdiction to hear the case due to the arbitration clause.

The Primary Court judgement was appealed with the argument that the original language used in the arbitration clause did not obligate the parties to refer to arbitration, but rather, was an optional method for dispute resolution. The Appeals Court accepted the appeal argument and remanded the case to the Primary Court to apply its jurisdiction and rule on the merits of the dispute.

The party arguing that the arbitration clause was obligatory challenged the ruling of the Appeals Court before the Federal Supreme Court on the basis that it had submitted a translation of the arbitration clause from English to Arabic, provided by a judicially certified legal translator, to the court which evidenced that the arbitration clause was obligatory.

The Federal Supreme Court ruled that the judgement of the Appeals Court was unfounded as it did not debunk the translation presented by the party advocating for the obligatory language of the arbitration clause.

The Federal Supreme Court found that the Appeals Court could have ordered the appointment of a language expert from the respective expert registry, or the party advocating for the courts' jurisdiction could have submitted a counter-translation evidencing that the arbitration clause was indeed optional. Neither of these potential procedures had occurred.

The Federal Supreme Court overturned the Appeals Court judgement.

But what if the Appeals Court of its own accord or by litigant’s request ruled for the requirement of a court-appointed language expert to opine on the English text of the arbitration clause?

Or what if the party advocating for litigation had submitted a translation by a judicially certified translator that arbitration clause was optional?

In both hypotheticals; the result would have been an even further prolongation of the dispute and an increase in costs.

The moral of the case is the importance of clear and effective arbitration clauses (or agreements); that include the seat of arbitration, number and selection of arbitrators, institutional or ad hoc, governing law of the subject matter in dispute and possibly governing law of the arbitration agreement (if different), capacity to agree to arbitration, the authority to sign arbitration agreements, multiple party arbitration, enforcement, opt-in and opt-out provisions (although they may be problematic), sovereign immunity if a party to the transaction is a State, scopes of disputes covered, and other matters.

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UAE Supreme Court ruled tender committee liable for

contractor’s rejected bids of 65 million Dirhams

March 21, 2021

In the late nineties, a contractor sued a government tender committee for AED 65,467,250 in compensation for losses and lost earnings as a result of not being awarded five tenders related to construction and maintenance works that the contractor had bid for.

The contractor argued that its five bids contained the lowest prices and fulfilled all the conditions of the tenders. Both the primary court and the appeals court rejected the claim.

The Federal Supreme Court, however, overturned the lower court judgments and found the tender committee to be administratively liable towards the contractor for the five rejected bids.

The case was brought forth on grounds of contravening Abu Dhabi Law No. 4/1977 On Tenders, Auctions and Warehouses in the Emirate of Abu Dhabi – particularly on the basis that Article 21 of the said law states that:

“The preference between the tenderers shall be according to the selection of the tenderer presenting the lowest total price, should the bid thereof be consistent with the tender conditions. However, the tenderer presenting a higher price may be chosen should the lower prices be unreasonably low and not assuring proper work progress.”

The Federal Supreme Court ruled that it was evident from the statutes regulating contracting by way of tender, that the legislator has subjected public tenders to basic principles of

openness, equality, freedom of competition and the mechanism for awarding the tender, and obligates the administrative authority (i.e. the tender committee) to disclose the reasons for rejection of a bid.

The Court’s rationale was that this is to ensure that the administrative authority follows a decreed path in order to reach the appointment of the best bidders in accordance with the law. The contracting procedures are organized by way of tender, so that it takes place in two stages, the first of which includes preliminary work and the second in which the contract is concluded.

Continuing, the Court stated that the preliminary tender processes consist of setting the conditions for the tender, announcing it, receiving bids, fulfilling the conditions of the tender, and then separating between the bids. These were considered by the Court to be internal organizational rules that are the prerogative of the tender committee. Nonetheless, the Court opined that the provisions that are set by the legislator are for the benefit of the administrative authority (i.e. the tender committee) and private persons alike, with the aim of ensuring the impartiality of the bidding processes and respecting the principle of equality among all bidders.

In interpreting the law, the Federal Supreme Court noted that the bidder with the lowest price is originally the owner of the right to the award whenever the bid is consistent with the terms of the tender, and with the exception of this principle, the administrative authority may award the tender that was submitted at a higher price if the lower price was unreasonably reduced, as there may be concerns regarding good performance, and this exception was a violation of the basic principle that governs public tendering procedures, which is the mechanism for awarding the tender.

In its judgment, the Federal Supreme Court found the tender committee to be administratively liable.

The significance of this case is not only that a contractor had succeeded in an action against an administrative decision issued by an administrative authority (i.e. the tender committee), but that the Federal Supreme Court found the committee to be liable for its decision.

In other words, the Court did not only invalidate the decision, but also found that liability arose against the contractor's claim of AED 65,467,250.

One of the rarely commented upon competencies under Emirati law is administrative law and administrative decisions; the law that governs the relations between government agencies, and government agencies and the private sector, and the decision taken by government agencies.

There is no single administrative legislative text in the UAE, rather, the corpus of administrative law is comprised of scattered provisions in various pieces of legislation – but mainly the Constitution and Article 84 (bis) of the Civil Procedures Law – and also scholarly works and jurisprudence.

As a matter of fact, Article 84 (bis) was only added to the Civil Procedures Law in 2014.

In 2019, there were almost 1,130 administrative cases filed before the various stages of the Federal Courts. Not to mention the myriad other administrative cases that are domestic respective of domestic administrative authorities in Emirates that have independent judicial authorities (i.e. Abu Dhabi, Dubai, RAKI, DIFC, and ADGM).

Most administrative disputes revolve around invalidating an administrative decision – in other words – cancelling the administrative decision and its consequence. The discussion surrounding forms and procedures of administrative disputes is quite broad and has its own respective nuances such as the effects of administrative decision *in rem* and those *in personam*, and whether effects can be retrospective, or whether

there can be a monetary value attached to an administrative decision and its invalidation.

However, with all that said, it is extremely rare for a Court to find an administrative authority liable for an administrative decision – particularly where the plaintiff is claiming compensation for losses and lost earnings.

Generally, the Courts either uphold the administrative decision, or invalidate it, or invalidate it *and* replace it with a quasi-judicial/administrative decision – but rarely does a Court find the administrative authority liable.

This particular case in this article is what one may refer to as an 'orphan' case. It occurred in an exceptional instance, and it is unclear if there are other similar judgments, or whether the Federal Supreme Court may repeat such a judgment.

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UAE Federal Supreme Court Rules on Double-Exequatur Requirement for Arbitral Awards

March 21, 2021

In January 2019, the Federal Supreme Court (FSC) ruled on whether a double-exequatur requirement was necessary for the

enforcement of an arbitral award issued under the Rules of the London Court of International Arbitration (LCIA), seated in London.

The declaration sought from the FSC was whether an arbitral award issued under LCIA rules and seated in London could (or not) be recognized and enforced as it had not been granted exequatur by the English Courts before a petition to confirm and enforce the award had been lodged in the United Arab Emirates.

The appeal to the FSC was in challenge to a rejection by the Khor Fakkan Federal Appeal Court (KFFAC) to submit a petition to confirm and subsequently enforce the award. The KFFAC rejected the petition on the basis that it has not been granted exequatur by the English Court prior to enforcement in the UAE. Essentially, the KFFAC's judgement was that the party looking to confirm the award for enforcement must obtain a double-exequatur; a requirement under the Geneva Convention of 1927 where the award must be "final" in the country of origin as.

The necessity for a double-exequatur was abolished by the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the Convention), which was adopted by the UAE pursuant to Federal Decree No. 43 of 2006. The Convention replaced the word "final" with "binding" so that no leave for enforcement (or exequatur) would be required from the country of origin.

Overturning the ruling of the KFFAC, the FSC found that the court's refusal to recognize and enforce the award was due to misinterpretation of the term "authenticated" under in Article IV(1)(a) of the New York Convention which requires that a duly authenticated original award (or a duly certified copy) must be presented by a party looking to confirm and enforce an arbitral award.

The FSC found that the KFFAC had misinterpreted the meaning of the term “authenticated” with the meaning of enforceability or exequatur. The interpretation by KFFAC was due to the Ground e of Article V(1) of the Geneva Protocol on Arbitration Clauses (1923) and the Geneva Convention on the Execution of Foreign Arbitral Awards (1927). Ground e of Article V(1) provided that the enforcement of an award may be refused if the party against whom the award is to be enforced evidences that the award is not “binding”. Succeeding the 1923 Geneva Protocol, the 1927 Geneva Convention amended the requirement from “binding” to “final” which was ultimately interpreted by courts as a requirement to obtain grant of an exequatur from the court of the country of origin; hence the coming into practice of the double-exequatur system until the 1958 New York Convention.

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Supreme Court Ruling: Defamation via Snapchat (Parody and the DIFC IP Law)

March 21, 2021

Case facts, arguments, and Federal Supreme Court ruling

In late 2018, a complaint was filed before the public prosecution alleging the editing and alteration of an advert video on Snapchat by the accused for purposes of mocking and

defaming the advertiser (the complainant/victim).

The complaint was filed pursuant to Article 21 of the Cybercrime Law for using “an electronic information system or any information technology means for amending or processing a record, photo or scene for the purpose of defamation of or offending another person or for attacking or invading his privacy”, punishable with imprisonment of a minimum of one year and/or a fine of AED 250,000 to AED 500,000.

The defendant challenged the accusation on two grounds;

1. That the complainant/victim had withdrawn the complaint.
2. That the purported crime lacked financial or moral causation on the part of the defendant.

The criminal courts rejected the first argument on the grounds that withdrawal of criminal complaints pursuant to Article 16 of the Criminal Procedures Law is limited to the crimes laid out in Article 10 of the Criminal Procedures Law; theft, breach of trust, insult, slander, and other crimes, but does not include the Cybercrime Law provision subject of the complaint.

As for the second argument, the defendant argued that the accusation lacked financial or moral causation, arguing that the advertisement by the victim published via Snapchat was not edited by the defendant in malice.

The defendant argued that he had discovered a grammatical error in the advert which he commented on in an edited reproduction of the original video, with no intent to defame or insult the advertiser. This argument was also rejected by all levels of courts.

The Federal Supreme Court upheld the lower courts ruling in finding the defendant guilty of violating Article 21 of the Cybercrime Law.

In its judgment, the Federal Supreme Court reasoned that the reproduction of the victim's original video that had been published via Snapchat and the defendant proceeding to publish the edited version via Snapchat was punishable as the act was for the purposes of creating parody out of the original content.

Fair use, parody, the DIFC IP law, and what this means for businesses

The Federal Supreme Court's judgment raises questions towards the liability of parties in what could generally be considered as fair use for a limited and transformative purpose, to comment upon, criticize, or parody works (such as multimedia/social media).

Between 2006 and 2009, Mac (Apple) ran 66 television spots that parodied Microsoft. In 2014, IKEA published an advert on YouTube that parodies Apple's iPhone. In 2019, BMW published an advert that parodies the retirement of Mercedes-Benz's CEO, Dieter Zetsche, showing an actor playing Zetsche substituting a Mercedes-Benz for a BMW.

Business generally employ parody and satire for numerous reasons – sometimes targeted against other businesses for market exposure, at other times to sell content (such as satirical magazines).

Various jurisdictions generally allow for the reproduction of works for commentary and criticism, or parody, unless actual malice is proven, and in which case the threshold to evidence actual malice is generally high.

Recently, on 21 November 2019, DIFC Law No. 4 of 2019 on Intellectual Property was promulgated, and interestingly, the new law explicitly permits the use of a trademark registered in the UAE, or a well-known trademark, for parody purposes so long as the parody is conducted within the jurisdiction Dubai International Financial Center.

This is the first explicit statute on parody in the UAE.

Notwithstanding, the Federal Cybercrime Law is federal criminal legislation, which would essentially supersede the DIFC jurisdiction.

As for social media businesses, internal curator policies, geotagging, end-user license agreements, and other considerations must be addressed in light of these substantial novel developments.

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Federal Appeals Court Reverses Tax Penalties (UAE)

March 21, 2021

Client Alert

Recently, the Federal Appeals Court (UAE) reversed late payment penalties applied by the Federal Tax Authority on voluntary disclosures in two separate tax disputes for two separate taxpayers assisted by Wasel & Wasel.

The Federal Appeals Court has ruled on nearly six tax disputes between 2019 and June 2020, almost three of which have been successful in reversing penalties imposed on taxpayers by the Federal Tax Authority.

Wasel & Wasel has been counsel on two of the three successful

judgements before the Federal Appeals Court reversing multi-million Dirham tax penalties.

The penalties reversed were late payment penalties imposed on voluntary disclosure submissions.

These latest judgements by the Federal Appeals Court continue the success record of Wasel & Wasel on tax disputes before the tax disputes resolution committees and the Federal courts.

Moreover, Wasel & Wasel was able to obtain these successful judgements without the Federal Courts ordering the appointment of a court expert, which lead to an increased speed of the court proceedings.

The two companies had filed objections before the Dubai Tax Dispute Resolution Committee in 2019 against the late penalties on voluntary disclosures.

In mid-2019, the Dubai TDRC ruled in favour of the taxpayers and reversed late penalties imposed on voluntary disclosures.

The TDRC rulings were subsequently challenged before the Federal Primary Court in late 2019.

The Federal Primary Court upheld the TDRC rulings in early 2020, maintaining the reversal of late penalties on the voluntary disclosures.

The Federal Appeals Court judgements follow a significant number of TDRC and Federal Court rulings and judgements since 2019 that Wasel & Wasel has assisted taxpayers with, in addition to various other issues taxpayers face; such as private clarification tax disputes, out-of-State taxpayer disputes; tax disputes arising out of audits by the Federal Tax Authority; tax disputes arising out of supply to Government entities; and more.

To access the Getting The Deal Through publication on tax disputes in the UAE; click here.

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