

UAE Remote Notarization / Attestation amidst COVID-19

March 21, 2021

The COVID-19 pandemic has left many businesses unable to go about performing their normal day-to-day operations. With people stuck at home, offices locked down, and restrictions on global travel in place, many have found difficulties in ensuring that their work makes it through the pandemic.

Notarization is necessary for any business in order to avoid fraud and to ensure proper execution. The UAE continues to thrive in maintaining an ascendant economic ecosystem by doing all that it can to ensure that businesses do not face the challenges that come about with situations such as these.

In April 2020, the Dubai Courts announced that public notary services would be available to be conducted remotely, as to abide by the health and safety measures put in place due to the pandemic, whilst also ensuring that business operations remain steadfast. The circular states that the following Notary Services can be conducted remotely:

- i) Power of Attorney notarization;
- ii) Notarization of legal notices;
- iii) Acknowledgments;
- iv) Notarization of Local Service Agent Agreements;
- v) Notarization of Memorandums/Articles of Association and addendums thereto with respect to civil companies (i.e. companies not subject to the Commercial Companies Law).

Companies that are subject to the Commercial Companies Law that wish to incorporate or amend constitutional documents

must do so with the Dubai Economic Department.

This remote notary service requires a subscription to BOTIM, a video/voice calling application that can be found on the App Store for Apple users and the Play Store for Samsung users. The process entails the Dubai Courts' notary office contacting the attestor to the document through this video connection to establish the identity of the principal and full knowledge of the contents of the document.

This document must be sent to the dedicated email address in PDF format with an approved declaration to the remote signing on the bottom of each page.

When sending the email, it must contain all the information and documentation that is relevant, including (1) applicant's name, mobile number, address, Emirates ID or passport and confirmation of capacity; (2) documentation proving the applicant's authority to appoint powers; and (3) the company's commercial registration details (e.g. trade license), if applicable.

For these remotely notarized documents to be permissible under this service, they must include the following language:

"I, the undersigned, declare with my full capacity, and through video communication, using BOTIM, my consent on all that is stated in this application and I sign accordingly."

After the Dubai Public Notary has reviewed the documents, the applicant will be contacted via BOTIM either for: (a) further documents to be presented, (b) amendments to be made, or (c) to confirm approval of the notarization request and verify the relevant details with the applicant.

The applicant will then receive an SMS and an email containing the amount due and the link for payment. Once the payment has been made online, the original document will be sent to the applicant's address. The fees for this procedure will be

payable by credit card and the courier will deliver the document at a cost of AED 21 to your address.

Author: Mahmoud Abuwasel

Title: Partner – Disputes

Email: mabuwasel@waselandwasel.com

Profile:

<https://waselandwasel.com/about/mahmoud-abuwasel/>

Lawyers and consultants.

Tier-1 services since 1799.

www.waselandwasel.com

business@waselandwasel.com

Getting The Deal Through 2021: Tax Controversy – UAE Chapter

March 21, 2021

The #1 global guide on tax disputes and procedures.

A guide to disputes and controversy arising from complex and multi-layered modern tax laws, with international experts providing overviews and in-depth analysis of relevant legislation and regulation, including jurisdiction-specific tax authorities and third parties, taxpayer rights, enforcement and penalties, dispute resolution methods, and court and trial procedures.

For the second year in a row, firm Managing Partner, Mahmoud Abuwasel has been selected to author the United Arab Emirates chapter.

[Click Here to Download: Getting The Deal Through 2021 – Tax Controversy \(UAE Chapter\)](#)

Please [contact us](#) for more details or assistance in this matter.

Author: Mahmoud Abuwaseel

Title: Partner – Disputes

Email: mabuwaseel@waselandwaseel.com

Profile:

<https://waselandwaseel.com/about/mahmoud-abuwaseel/>

Lawyers and consultants.

Tier-1 services since 1799.

www.waselandwaseel.com

business@waselandwaseel.com

38 Tax Disputes Filed in Dubai in 2019: Lessons Learned

March 21, 2021

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

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

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

their registered tax address.

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

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

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

Nature of the Tax Dispute Resolution Committees

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

Official Form Issued

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

- The capacity of the person submitting the challenge.
- Evidence of empowerment (POA) of the legal representative.
- Memorandum explaining the reasoning of the objection.
- The decision of the FTA being objected to.
- Proof of payment of the tax and penalties, as applicable.

Notification

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

would reject such challenge. For the Dubai tax dispute resolution committee, taxpayers can continuously check the public online case inquiry service for an update on their dispute.

‘Pay Now, Argue Later’

UAE laws and by-laws making up the tax legislation have an explicit requirement for the taxpayer to pay all taxes and penalties due before being able to resort to a tax dispute resolution committee, and subsequently, the federal courts. The rule is generally known as ‘pay now, argue later’. This rule has been respected by the tax dispute resolution committees and the higher levels of the federal courts to be a mandatory requirement, not subject to any leeway.

Incorporation of Civil Procedural Law Provisions

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

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

Law regulating the procedures of any matter, the provisions of the Civil Procedures Law and the Law of Evidence in Civil and Commercial Transactions shall apply.”

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

Article 67 of the Law for the Regulation and Protection of Industrial Property states that: *“The decisions of the committee may be appealed before the competent court in accordance with the Civil Procedures Law...”*

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

Author: Mahmoud Abuwaseel

Title: Partner – Disputes

Email: mabuwaseel@waselandwaseel.com

Profile:

<https://waselandwaseel.com/about/mahmoud-abuwaseel/>

Lawyers and consultants.

Tier-1 services since 1799.

www.waselandwaseel.com

business@waselandwaseel.com

Tax Dispute Time Bars – Weekdays, not business days

March 21, 2021

Time bars

UAE tax legislation provides taxpayers with relatively short time bars to act against decisions by the Federal Tax Authority (FTA) that a taxpayer disagrees with (including penalty assessments). In failing to do so, a taxpayer loses their right to challenge depending on the respective stage of the challenge.

With the Eid public holidays around the corner, we address a wide misconception in the reading of the Tax Procedures Law that had caused taxpayers substantial losses or missing the opportunity to challenge decisions.

The issue is that public holidays are not discounted from the time bars.

Generally, to dispute a decision by the FTA, a taxpayer can submit a reconsideration request and/or a reduction and waiver application to the FTA.

A taxpayer may then resort to the tax dispute resolution committee of Abu Dhabi, Dubai, or Sharjah, depending on the taxpayer's registered tax address or if they are an out-of-state registrant.

Subsequently, the taxpayer can challenge a committee decision before the Tax Disputes Circuit of the Federal Primary Court in Khalifa City.

All these steps share a common time bar between them.

(With the exception of reduction and waiver applications which have different time bars and procedural requirements.)

The time bars are set as per (أيام عمل) in the Tax Procedures Law in Article 27 for reconsideration requests, Article 30 for

objections before the competent tax dispute resolution committee, Article 33 for challenging before the Federal Primary Court, and in Article 26 of the Tax Procedures Law Executive Regulations with respect to reduction or exemption applications.

The time limit is 20 (أيام عمل). *

We use the Arabic terminology (أيام عمل) because the misconception has arisen out of the translation of this term to English.

The term (أيام عمل) is a descriptive term meaning 'days of work' and can be translated as business days.

But importantly, can also be translated as weekdays.

This elaboration is quite elementary, but significant for the purposes of this article and for taxpayers in pursuing reconsiderations of an FTA decision.

Lost in translation

In the English language, business days are generally accepted and understood to mean days other than weekends and holidays.

Weekdays are generally understood as meaning the working days of the week other than Saturday and Sunday (or the equivalent days of the weekend depending on the jurisdiction).

In the UAE, the weekend is Friday and Saturday.

Comparatively, in Arabic, there is no formal or colloquial direct translation for 'weekend'.

Instead, weekend is referred to in Arabic as a descriptive sentence being 'the end of the week' or as the 'holiday at the end of the week'.

Likewise, there is no common Arabic translation of the term 'weekdays' as is the case in the English language.

So, the use of the term (أيام عمل) in the Tax Procedures Law could mean business days or weekdays.

In the law

Of course, not only is language analysis important but more so the legislative backing for this deduction.

Here we refer to Article 45(2) of the Tax Procedures Law which states the following:

“If the last day of the time limit coincides with a public holiday, the time limit shall be extended to the first weekday thereafter.”

With this explicit provision, it is clear that the wording of the law in using the term (أيام عمل) is intended to mean weekdays, not business days.

Otherwise, if the term (أيام عمل) was to mean business days, Article 45(2) would serve no purpose.

Weekdays in the UAE are Sunday – Thursday.

Counting time bars for purposes of submitting a reconsideration request, a reduction or waiver application, an objection, or a challenge before the Federal Primary Court* should be on the basis of weekdays, irrespective of whether a public holiday occurs during the time bar. Unless the public holiday is on the last day of the time bar, at which point the last day to make a submission would be the first weekday after the public holiday (or weekend).

* Time bars for appealing a Federal Primary Court or Federal Appeals Court judgement are subject to the Civil Procedures Law and are counted in calendar days and are 30 and 60 calendar days respectively.

This manner of reference to ‘weekdays’ in legislation very rarely occurs. Emirati legislation almost uniformly refers to

calendar days for the purposes of time bars. Hence, the reason this novel confusion that has arisen in the reading of the Tax Procedures Law (and its Executive Regulations).

Origin of the 'business days' English translation

The Ministry of Finance provides an unofficial translation of tax laws; which is the version that has been commonly circulated between non-Arabic speakers in the market.

The Ministry of Finance makes an explicit caveat in its English translations that it is an unofficial translation. In other words, it has no legal bearing.

Because of the nomenclature between business days and weekdays, it would have been expected that the reader would either refer to Article 45(2) or refer to the Arabic text.

Ultimately, a person subject to a specific law is expected to rely on the official language text as is published in the Official Gazette – or to be diligent, request counsel to advise.

For purposes of an example, another explicit discrepancy between an English translation of a law available on the Ministry of Finance website and the official Arabic text is seen in is Article 37(2)(c) of the VAT Law Executive Regulations.

The unofficial English translation states '*a service apartment...*'.

The official Arabic text states '*a hotel apartment...*'.

Nonetheless, reiterating, it is the general expectation that persons to whom a law applies will rely on the original text in the Official Gazette as opposed to unofficial translations, and seek counsel to advise on interpretation.

In the courts and counting time bars in general

Since 2018, during the first tax cases before the Federal Courts, and repeatedly thereafter at the reconsideration, objection, and Federal Court stages, positions have been taken that the public holidays are not to be discounted from the time periods.

In calculating time bars in general, Article 11 of the Civil Procedures Law administers the calculation of time bars as follows:

Article 11(1): If the law has set, for attendance or for the occurrence of procedures, a duration counted by days, months or years, the day on which the notice is served or the matter considered by the law as giving effect to the duration shall not be counted. The duration shall expire by the end of the office hours of the last day thereof.

Article 11(5): In all cases, if the end of the duration falls on a public holiday, the duration shall be extended to the following weekday.

Significance

Because a taxpayer generally has a relatively short period of 20 weekdays to act between every stage of a tax dispute up to the Federal Primary Court, we have seen most decisions being taken, or most applications being submitted, on the last day or last few days of the time bar.

This is generally because – in a practical sense – upon receipt of a decision not agreed to, the taxpayer engages in internal discussions (possibly amongst management in different jurisdictions), then obtains input from tax advisors and tax counsel, and must prepare the application and confirm the application. A process which generally takes a few weeks.

Moreover, a substantial number of tax disputes since 2018 have been rejected due to being submitted late and falling outside the time bar.

As the Eid holidays close in, taxpayers with current applications or disputes will be taking the Eid holidays into account whilst counting time bars.

It is necessary to consider that the Eid holidays will not be discounted from the time bar, but only need to be accounted for if the last day of the time bar falls during the public holiday, at which point the last day of the time bar would be extended to the first weekday after the public holiday.

Tax dispute time bars

Reconsideration request to the FTA against a decision by the FTA: 20 weekdays as of the following weekday from the date of notification of the decision.

Objection to the competent tax dispute resolution committee against a reconsideration decision: 20 weekdays as of the following weekday from the date of notification of the decision.

Challenge to the Federal Primary Court against a tax dispute resolution committee ruling: 20 weekdays as of the following weekday from the date of notification of the ruling.

Appealing a Federal Primary Court judgement before the Federal Appeals Court: 30 calendar days as of the following calendar day from the date of notification of the judgement.

Appealing a Federal Appeals Court ruling before the Federal Supreme Court: 60 calendar days as of the following calendar day from the date of notification of the judgement.

Note: Notifications of reconsideration decisions and tax disputes resolution committee rulings are conducted via email. A person being notified by email is deemed notified upon the date the email is sent. * Not when the email is received. Taxpayers are generally advised to create dedicated email addresses for tax procedure purposes and whitelist the FTA,

Ministry of Justice, and tax dispute resolution committee email addresses respective of the tax dispute procedures to ensure awareness of any notifications during the tax disputes procedure. Currently, the Federal Court is also notifying taxpayers of tax disputes via email in certain instances and taxpayers should follow-up diligently with the Federal Courts to ensure whether a case has been filed, and what email address the Federal Courts used to communicate the trial details to the taxpayer.

* According to Ministerial Decision No. 33 of 2020 amending certain provisions of Ministerial Decision No. 57 of 2018 promulgating the Executive Regulations of Law No. 11 of 1992 on Civil Procedures.

Author: Mahmoud Abuwaseel

Title: Partner – Disputes

Email: mabuwaseel@waselandwaseel.com

Profile:

<https://waselandwaseel.com/about/mahmoud-abuwaseel/>

Lawyers and consultants.

Tier-1 services since 1799.

www.waselandwaseel.com

business@waselandwaseel.com

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.

Author: Mahmoud Abuwaseel

Title: Partner – Disputes

Email: mabuwaseel@waselandwaseel.com

Profile:

<https://waselandwaseel.com/about/mahmoud-abuwaseel/>

Lawyers and consultants.

Tier-1 services since 1799.

www.waselandwaseel.com

business@waselandwaseel.com