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

February 21, 2026

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

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.

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile: https://waselandwasel.com/about/mahmoud-abuwasel/

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business@waselandwasel.com

UAE Crypto Litigation: WhatsApp and the Unsigned Contract

February 21, 2026

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

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).

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile: https://waselandwasel.com/about/mahmoud-abuwasel/

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www.waselandwasel.com
business@waselandwasel.com

The Cost of Clarity: Inside

Binance’s 2026 Terms and the New Dispute Resolution Regime

February 21, 2026

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.

Feature	HKIAC Administered Rules (Typical Previous Mechanism)	ICC Rules (2026 Terms, Clause 37)	Legal Implication for the Investor

Number of Arbitrators	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 *all* disputes.	The claimant must advance fees for three arbitrators. This creates a higher financial floor that may exceed the value of retail claims.
Expedited Procedure	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 JusticeIn 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.

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile: https://waselandwasel.com/about/mahmoud-abuwasel/

October 2025 Amendments to the UAE Tax Procedures Law and Relevant Federal Supreme Court Case Law

February 21, 2026

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 (الأثـــر الفـــوري المبـــاشر) 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

(التوضيحـــــات), 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 (Summary)	Amended Provision (Current Text Summary)	Applicable Legal Principles and Case Law

Temporal Application of Law (Retroactivity and Immediate Effect)	Governed by general principles of non-retroactivity and immediate effect of procedural laws.	Amendments (Federal Decree-Law No. 17 of 2025) are effective from 01-01-2026. Application governed by established principles.	Laws apply prospectively and do not affect stabilized legal positions. ***Federal Supreme Court No. 627/2023 (Administrative-Tax)***. New legislation applies with immediate effect to facts occurring after its effective date and to ongoing effects of prior situations. ***Federal Supreme Court Nos. 1480/2022 and 1/2023 (Administrative-Tax)***. Administrative penalties generally do not apply retroactively, even if more favorable. ***Federal Supreme Court No. 1108/2021 (Administrative-Tax); Federal Supreme Court No. 578/2022 (Administrative-Tax)***.

Articles 1 and 4 repeated: Electronic Invoicing System	No definition or specific provision for an Electronic Invoicing System.	Introduces the definition of "Electronic Invoicing System" (Article 1). Authorizes the Minister to issue decisions for the implementation of the system and to specify the persons subject to it (Article 4 repeated).	The courts recognize the validity of electronic communications and evidence in tax procedures. ***Federal Supreme Court No. 1034/2021 (Administrative-Tax)***: Notification via electronic means is valid once transmission is proven. ***Federal Supreme Court No. 212/2023 (Administrative-Tax)***: Electronic evidence has probative value if it meets legal authentication requirements.
Article 9(3): Allocation of Overpayments/Credit Balances	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.	The FTA retains the right to allocate overpayments or credit balances, but this allocation must occur **within 5 years** from the end of the relevant tax period (as referenced in Article 38(2)).	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. ***Federal Supreme Court Nos. 354/2024 and 477/2024 (Administrative-Tax)***: 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.

Article 10(5): Voluntary Disclosure (Error with No Tax Impact)	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.	Correction of errors with no tax impact requires a Voluntary Disclosure only **in cases specified by the FTA**; otherwise, it can be corrected **through a subsequent tax return**.	Tax procedures are a means to achieve the legislative intent of collecting the tax due, not an end in themselves. ***Federal Supreme Court No. 151/2022 (Administrative-Tax)***: 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.
Article 38: Request for Refund of Credit Balance (Statute of Limitations)	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.	Introduces a strict time bar: Refund requests must be submitted **within 5 years** 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 **extinguishes the right** to the refund (Article 38(6)).	Statutory timelines in tax procedures are strictly applied and relate to public order. ***Federal Supreme Court No. 760/2021 (Administrative-Tax)***: Procedures and timelines for appeals are matters of public order. ***Federal Supreme Court No. 853/2020 (Administrative-Tax)***: Emphasizes strict adherence to statutory timelines for initiating procedural steps.

Article 46: Statute of Limitations (Audits/Assessments)	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.	Retains the 5-year general limitation and existing extensions. **New additions:** 1. **(Art. 46(4))**: 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 **(2) two years** of the refund application. 2. **(Art. 46(6))**: Allows VDs after 5 years only if related to a pending refund request for which the FTA has not issued a decision.	The source of tax liability is the law; assessments are declaratory. Procedural delays do not alter the effective date of liability. ***Federal Supreme Court No. 277/2022 (Administrative-Tax)***.

Article 54 repeated: Guiding Decisions	(New Article – No previous provision).	Authorizes the FTA to issue "Guiding Decisions" regarding the application of tax laws. These decisions are explicitly stated to be **binding on both the FTA and the taxpayer.**	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. ***Federal Supreme Court No. 25/2021 (Administrative-Tax)*:** Defines an administrative decision as requiring an intent to effect a specific legal position. ***Federal Supreme Court Nos. 79/2021 and 95/2021 (Administrative-Tax)*:** Clarifications are preliminary procedures, not appealable decisions. ***Federal Supreme Court No. 206/2022 (Administrative-Tax)*:** Clarifications are revealing (interpretive), not creating (constitutive). The binding nature conferred by Art. 54 repeated may render "Guiding Decisions" appealable administrative acts.

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

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

February 21, 2026

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.

<u>Application of the Law to the Facts</u>

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.

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile: https://waselandwasel.com/about/mahmoud-abuwasel/

Designated Zones and the Burden of Proof: An Analysis of Federal Supreme Court Case 1570/2024 on Excise Tax

February 21, 2026

In a definitive judgment that clarifies the boundaries of criminal liability for tax evasion, the **Federal Supreme Court**, in its session on 5 August 2025, has affirmed the acquittal of individuals accused of evading excise tax amounting to over fifteen million dirhams. The ruling, in Case No. 1570 of 2024, provides a robust analysis of the distinction between the mere possession of untaxed goods within a designated zone and the substantive offence of tax evasion. It reinforces the paramount importance of judicial conviction and the high threshold of proof required by the prosecution in criminal matters.

The case was brought by the Public Prosecution following the discovery on 9 February 2022 of a substantial quantity of **excise goods**—specifically 1,787,120 units of one product and

32,820 kilograms of another—which did not bear the requisite digital tax stamps. The goods were found in the warehouse of a shipping company. The Prosecution's case was straightforward: the possession of such goods within the territory of the State, without the tax having been paid, constituted a deliberate evasion of a tax that was legally due. After the defendants were acquitted by the Court of First Instance, a decision upheld by the Court of Appeal, the Public Prosecution elevated the matter to the nation's highest court, arguing that the lower courts had erred in law and fact.

At the heart of the final judgment lies a powerful restatement of a core tenet of criminal jurisprudence. The court began its reasoning by affirming the principle that, **"The essence of criminal trials lies in the conviction of the trial judge, based on the evidence presented, regarding the guilt or innocence of the accused."** The judgment makes clear that a court cannot be compelled to adopt a particular piece of evidence. The law vests in the judge the full authority to weigh the probative value of the evidence and to found his judgment upon any proof or presumption with which he is satisfied. Most critically, the court reiterated that **"it is sufficient in criminal trials for the judge to harbour doubt as to the soundness of the accusation in order to acquit."** This principle establishes not a mere technicality, but a formidable barrier that the prosecution's evidence must overcome.

Applying this principle to the facts, the Federal Supreme Court found the prosecution's case to be fundamentally deficient. The judgment adopted the reasoning of the lower court, which had concluded that the evidence **"was inadequate to reach the threshold of conviction, having been beset by frailty and weakness and enveloped in such doubt and suspicion that the court could not be satisfied by it."** The prosecution's case rested almost entirely on the findings of a tax enforcement officer. This, in the court's view, was insufficient to establish guilt beyond a reasonable doubt.

The court’s decision turned on a crucial finding of fact regarding the location and purpose of the seized goods. It drew a sharp and legally significant distinction regarding the warehouse’s location in a **“designated zone,”** defined as a fenced area with security controls specifically intended to monitor the movement of excise goods.

The judgment determined that the goods had not been released for consumption into the local market. Instead, they were being stored **“for the purpose of transit, the clearance of their transactions, and their subsequent export out of the country.”** This was consistent with the defendant’s unwavering denial and his explanation that his company was merely a shipping and logistics agent. The court noted that **“it is legally established that excise goods which are to be exported are exempt from tax, provided they are not released for consumption.”** As the goods were seized within a designated zone and destined for an overseas market, they were not yet subject to the excise tax.

In dismissing the Public Prosecution’s appeal, the Federal Supreme Court delivered a judgment of significant clarity for businesses engaged in logistics and trade. It confirms that the physical location of goods is paramount. The presence of untaxed excise goods within the secure confines of a designated zone for the purpose of re-export does not, in itself, constitute the crime of tax evasion. The ruling stands as an authoritative statement that the heavy burden of proof in a criminal case remains squarely on the prosecution, and that mere suspicion, however strong, cannot substitute for evidence that removes all reasonable doubt.

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile: https://waselandwasel.com/about/mahmoud-abuwasel/

UAE Tax Disputes: Silence Is No Longer Refusal at the Committee Stage (Supreme Court 388/2024)

February 21, 2026

For almost seven years UAE taxpayers and their advisers treated the **lapse of the statutory time-frame** given to a Tax Disputes Resolution Committee (TDRC) as a de-facto “no” and went straight to court. The Federal Supreme Court has now changed that position in Judgment No. 388/2024 issued on 14 May 2025.

Judgment **No. 388/2024 (14 May 2025)** holds that:

- The TDRC is a **quasi-judicial body** whose work is governed by the Civil Procedures Law, not by the ordinary rules of administrative silence.
- The **20 + 60-working-day deadline** in Decree-Law 28/2022 is purely **regulatory**; exceeding it does **not** amount to an implied rejection.
- A court may only review a **written TDRC decision**. Filing a case before that moment is “premature and without subject-matter”.

In effect, the “implied-rejection” doctrine survives **only** at the *administrative* level (the Federal Tax Authority’s reconsideration stage). At the *quasi-judicial* committee level, silence no longer speaks.

The legal architecture in brief

Instrument	Relevant articles	Key deadlines
Cabinet Decision 23/2018 (creating the TDRCs)	Art. 6(1)-(2)	Committee decides objections within **20 WD**.
Decree-Law 7/2017 (old Tax Procedures Law)	Arts. 27-29	FTA must decide a *reconsideration* request in **20 WD**. Silence ⇒ taxpayer may object to TDRC.
Decree-Law 28/2022 (current Tax Procedures Law)	Art. 31	TDRC decides objections in **20 WD, extendable 60 WD** by the Exec. Regs.
Cabinet Decision 74/2023 (Exec. Regs.)	Art. 45	Confirms the **additional 60 WD** extension.

The “old” approach: silence = refusal

Courts had routinely applied classic principles of administrative law:

- **Primary Ct 507/2019** – declared the FTA’s failure to rule on a reconsideration within 20 days an implicit refusal, giving the taxpayer standing before a TDRC.
- **Primary Ct 180/2021** – extended the same logic upward: if a TDRC exceeded its own statutory period, silence equaled rejection.
- **Supreme Ct 1245/2022** – characterized *any* unjustified administrative omission as a “negative administrative decision” subject to annulment.

Because TDRCs were often viewed as administrative adjuncts to the FTA, litigants treated them the same way: once 20 (or 20 + 60) working days expired, they filed suit.

Courts reinforced that view, a recent example was in Federal Supreme Court Judgment No. 1020/2023 (issued January 2024) where the taxpayer lodged an objection with the TDRC; when no ruling emerged, the taxpayer petitioned the Federal Primary Court directly. The case travelled through **three tiers**—Primary Court ➔ Appeals Court ➔ Federal Supreme Court—**without a single court questioning the admissibility** of the claim in the absence of a TDRC decision. All three courts examined the substantive merits, confirming that – at that time – judicial practice accepted TDRC silence as a de-facto rejection.

Judgment 388/2024: the turn of the tide

Quasi-judicial status reaffirmed

The Supreme Court emphasized that a TDRC "exercises a form of judicial jurisdiction" and *applies the Civil Procedures Law*. Therefore **procedural silence does not generate a decision**—positive or negative. Only an express written decision can be challenged.

Regulatory vs. mandatory deadlines

Because the 20 + 60-day limit is "organizational", the committee may validly extend its deliberations without sanction. The Court explicitly stated that the legislator **attached no penalty** to non-compliance.

Premature actions dismissed

The claimant in the case filed in court five weeks **before** the extended deadline expired; the suit was struck out as "filed before its proper time".

Judgment extract

The reasoning of the Federal Supreme Court in Judgment 388/2024 was as follows:

“It is established that an administrative committee vested with quasi-judicial authority exercises a form of judicial jurisdiction and applies the provisions of the Civil Procedure Law. Accordingly, one must await its decision on the merits of the dispute, since that decision is the subject and basis of any subsequent challenge.

When a statutory text is clear, explicit, and definitive as to its intent, no departure from it or interpretation contrary to its wording is permissible under the pretext of pursuing the purpose that inspired it; there is no room for interpretation where the text is unequivocal.

Because the legislator has conferred jurisdiction on the court only upon the issuance of a decision by the Tax Disputes Resolution Committee, judicial review pertains to that decision alone, and the court may not go beyond it by examining grounds not contained in the committee’s ruling.

Where the claimant’s submissions before the committee are identical to those later brought before the court of first instance, the claimant must wait, then promptly challenge the committee’s decision once issued.

In the present case, the claimant challenged the respondent’s reassessment decision and filed an objection with the Tax Disputes Resolution Committee on 25 June 2024. The committee was entitled—after the initial 20-day period—to extend the objection’s review by 60 working days, ending on 22 October 2024, as stated by the claimant in his pleading. Yet he brought his action before the court of first instance on 20 September 2024, without awaiting the committee’s decision, which would have been subject to annulment proceedings. Consequently, his action was filed prematurely and was inadmissible.

Nor is the matter altered by the committee's statement of 15 November 2024 that the objection was still under consideration, for the committee may extend the period even after 80 working days have elapsed; that time limit is regulatory, and the legislator has prescribed no sanction for its breach.

Moreover, the court's review is confined to the committee's decision; it is not competent to revisit the respondent's underlying reassessment, as doing so would contravene the express statutory provisions cited above.

The requirement that a decision be issued by the Tax Disputes Resolution Committee—a body with quasi-judicial competence—is a formal prerequisite that must be satisfied."

Practical consequences

Issue	Before 388/2024	After 388/2024
When can a taxpayer go to court?	On day 21 (or day 81) if the TDRC had not ruled.	**Only after** receiving a written TDRC decision.
Risk of limitation periods	Taxpayer controlled timing by filing early.	Taxpayer must monitor issuance of the TDRC decision and file within **40 WD** of notification (Art. 46, Exec. Regs.).
Case-management strategy	Encourage early escalation to avoid delay.	Emphasise proactive engagement with the TDRC; consider follow-up letters but **do not** file in court prematurely.

The boundary that remains

FTA reconsideration stage

The FTA is a traditional administrative authority. Its silence for **20 WD** (or where extended) still triggers an implied rejection, enabling the taxpayer to proceed to a TDRC (Cabinet 23/2018 Art. 6(2); Decree-Law 28/2022 Art. 31(2)). Nothing in 388/2024 disturbs this.

TDRC stage
From 14 May 2025 onward, an objection **remains alive**—no matter how long it takes—until the committee signs and notifies its decision.

What taxpayers and advisors should do now

1. **Calendar both statutory windows** – the committee's 20 + 60 days **and** the court appeal window of 40 working days once a decision issues.
2. **Maintain correspondence** – ask the committee to confirm hearing dates or expected issuance, creating an evidentiary trail of diligence.
3. **Update timelines** – factor in the possibility that disputes may stay at the committee level for significantly longer than 80 working days.
4. **Educate finance teams** – delayed resolution affects provisioning and cash-flow planning (especially under the "pay now, argue later" rule).
5. **Screen legacy cases** – if a court claim was filed solely on the basis of a lapsed TDRC deadline, assess the vulnerability of a court strike-out and consider retrial, withdrawal or settlement.

Looking ahead

Whether the legislator will codify an explicit consequence for TDRC delay—mirroring the rule that already exists for the FTA—is now a policy question. Until that happens, **procedural patience** replaces "silence is refusal" at the committee stage.

For taxpayers, the takeaway is clear:

Wait for the TDRC gavel, not the clock.

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile: https://waselandwasel.com/about/mahmoud-abuwasel/

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ADGM Courts and Arbitrations Administered by the ICC ADGM Office: A Revisited Look at the Onshore/Offshore Divide in Light of Recent UAE Decisions

February 21, 2026

Introduction

Throughout 2022 onwards, multiple judgments of the Abu Dhabi Cassation and Appeals Courts took the view that an ICC arbitration "seated" in Abu Dhabi but administered by the ICC office in the Abu Dhabi Global Market (ADGM) came under the exclusive jurisdiction of the ADGM Courts rather than the onshore Abu Dhabi Courts. The outcome generated significant debate over whether the mere presence of an ICC office in the

ADGM could, by itself, shift supervisory jurisdiction away from the courts of onshore Abu Dhabi.

In August 2024, the ADGM Court itself addressed whether an ICC arbitration might fall under its supervisory jurisdiction simply because it was administered by the ICC ADGM branch and some of the hearings took place in the ADGM, despite the parties having originally designated “Dubai” as the seat. The ADGM Court ultimately emphasized that **party autonomy** in specifying the seat prevailed over the physical location of the ICC office or any hearings.

At the same time, two recent judgments of the Dubai Cassation Court—**Case 460 of 2023** and **Case 805 of 2022**—clarified that, while courts should consider whether the agreement explicitly identifies the seat, the **factual** place of arbitration and the **actual** operations of the arbitral institution are equally important. Even though these Dubai cases involved the Emirates Sports Arbitration Center rather than the ICC, they reflect the principle that determining which local court has jurisdiction depends on where the institution in question functioned and conducted its proceedings, rather than on a nominal reference alone.

The ADGM Court’s August 2024 Decision

In A15 v B15, the claimant sought to have its ICC award recognized and enforced under section 61 of the ADGM Arbitration Regulations 2015, arguing either that the ADGM was the seat or, alternatively, that the court could exercise enforcement jurisdiction by treating the award as foreign. The underlying subcontract had referred to the UAE as the place of arbitration, with the ICC Rules governing. Procedurally, the Terms of Reference specified “Dubai” as the legal seat, but the arbitration hearings had been held in the ADGM. The ADGM Court concluded that the parties’ explicit choice of “Dubai” as the seat should not be overridden simply because the ICC branch in the ADGM administered the arbitration. It considered the seat of arbitration a legal concept, determined above all by **party autonomy** and the relevant contractual documentation, rather than by the physical location where hearings happened or where the ICC had its local office. Accordingly, the court decided that, under section 60(1)(a), it did not have supervisory jurisdiction but still had authority to recognize and enforce the award under section 60(1)(c).

The Abu Dhabi Courts' Position

In contrast, several onshore Abu Dhabi judgments—among them decisions numbered 101/2022, 87/2022, 81/2022, 57/2023, 53/2021, and 635/2022—adopted a starkly different stance when dealing with the ICC ADGM branch. These courts generally held that, where an arbitration agreement referred to Abu Dhabi and the ICC administered the proceedings through its ADGM office, the seat was effectively deemed the ADGM, with **exclusive** supervisory power vested in the ADGM Courts. Their reasoning often drew on Article 18 of Federal Law No. 6/2018 (the UAE Federal Arbitration Law), together with the principle that the ICC ADGM office was regarded as an "ADGM establishment." The result was that if parties specified Abu Dhabi as the place of arbitration but employed the ICC's local presence in the ADGM, the onshore Abu Dhabi courts would refuse jurisdiction and direct all challenges or annulment actions to the ADGM.

Dubai Cassation Court Judgments

In Dubai Cassation Court Cases 460 of 2023 and 805 of 2022, the court examined the extent to which it had jurisdiction over annulment applications involving the Emirates Sports Arbitration Center, whose headquarters are in Abu Dhabi but which has branches in other Emirates. The facts concerned whether the arbitration had been conducted in a recognized branch within Dubai, or whether it remained centralized in Abu Dhabi. In Case 460 of 2023, the court found that the arbitration had taken place at the Dubai branch and consequently assumed jurisdiction. In Case 805 of 2022, it concluded there was insufficient evidence that the place of arbitration was in Dubai; the arbitral proceedings were in Abu Dhabi, so the Dubai courts had no valid basis to intervene. These two cases illustrate that **factual** determination of where the center held its sessions or from which branch it operated can be decisive. The courts would not simply rely on a notional reference to “Dubai” or “Abu Dhabi” if that reference did not match the practical and administrative reality.

Synthesis of Approaches

The ADGM Court, in its August 2024 judgment, prioritized the written choice of seat in the parties’ agreement. It would not accept that simple administrative involvement by a branch office or the convenience of holding hearings in the ADGM could nullify a clear contractual arrangement specifying “Dubai.” In so doing, it adhered to the principle that party autonomy is paramount in defining the seat. Meanwhile, the onshore Abu Dhabi courts appear to consider that, wherever the ICC’s ADGM office administers an Abu Dhabi-related dispute, the matter is necessarily seated in the ADGM, thus excluding onshore Abu Dhabi jurisdiction. By contrast, the Dubai courts highlight the **actual** conduct of arbitration would bear weight: if the evidence shows the arbitration happened in Dubai, they assume jurisdiction; if it took place elsewhere, they decline jurisdiction. Although the various rulings do not center on the exact same arbitration centers or identical contractual wording, they underscore that practical facts and **precise** drafting can be as significant as textual references in determining the seat.

Practical Implications

These developments underscore the **essential** need for clarity. When drafting dispute-resolution clauses, parties should unambiguously specify the seat and the intended supervisory court, taking care to distinguish between references to Abu Dhabi onshore courts, the ADGM, the Dubai onshore courts, or the DIFC. Equally important is the reality of where the arbitration will be administered. If parties choose “Dubai” but rely on a center headquartered outside the Emirate, they risk an onshore court ruling that it lacks jurisdiction because the proceedings were not genuinely held within its boundaries. Conversely, the ADGM Court may decline to exercise supervisory authority if the seat is expressed as “Dubai,” even if the actual hearing occurred in the ADGM. Such potential misalignments can lead to contested proceedings over set-aside or enforcement applications, creating uncertainty, delay, and additional legal costs.

The potential for contradictory rulings exists. Onshore courts may direct parties to the ADGM if an ICC branch there is used in practice, while the ADGM Court might defer to another Emirate if the contract says the seat is elsewhere. These outcomes reinforce the message that contracting parties ought to identify **precise** seat provisions, ensuring they do not inadvertently empower or disempower an intended court.

Conclusion

The question of which court exercises jurisdiction over ICC arbitrations with a connection to the ADGM, or indeed any arbitration center across different Emirates, now turns heavily on two factors: the parties’ **express** designation of the seat and the **factual** location or branch where the arbitration was administered. The ADGM Court’s August 2024 ruling shows that it will respect contractual seat clauses without automatically accepting jurisdiction simply because the ICC office or hearings took place within ADGM territory. Yet the onshore Abu Dhabi courts and the Dubai courts have demonstrated a willingness to interpret seat designations with reference to practical realities of administration. For parties and counsel involved in UAE-seated arbitrations—whether through the ICC’s ADGM branch or other arbitration centers—**careful drafting** and deliberate planning about where the tribunal will function remain the best safeguards to avoid the complexities arising from this evolving and sometimes divergent jurisprudence.

Wasel & Wasel was counsel on record in this matter A15 v B15 before the ADGM Courts.

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile: https://waselandwasel.com/about/mahmoud-abuwasel/

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www.waselandwasel.com
business@waselandwasel.com

Dubai Cassation Court Exempts Pre-2018 Supplies from VAT in Construction of Property That Extended Past 2018 into VAT Implementation

February 21, 2026

In a matter concerning the application of Value Added Tax (VAT) to a long-running construction project that began before 1 January 2018 but concluded years later, the Dubai Court of Cassation issued a notable ruling (Judgment No. 685 of 2024) regarding how VAT should be calculated. The dispute centered on whether the contractor could collect VAT on portions of the work that were either completed or invoiced prior to the official effective date of the UAE’s VAT regime.

Before reaching the Court of Cassation, the lawsuit originated in the Dubai Court of First Instance under Case No. 2154 of 2022 Commercial (Partial). In that lower court judgment dated 28 March 2023, the factual background shows that the claimant (contractor) entered into a three-party construction agreement in mid-2017 with (1) the landowner and (2) the consulting engineer, who was in charge of supervision. The primary court found that the contract covered the construction of a villa consisting of a ground floor, upper floor, and a service block. Originally, the project term was set at 13 months. However, work on the villa extended well beyond that schedule. According to the primary court's findings, the final completion certificate was eventually issued on 12 June 2022:

> *"…after five years and 12 days from the date of signing the contract between the parties, which was originally intended to last 13 months."*

The contractor had alleged that it completed 76.34% of the works by the time the project stalled in 2018. It further claimed that it stopped construction because of the owner's refusal to provide the required finishing materials, which the owner was contractually obliged to supply. By the time the dispute reached the courts, one key question involved the sum of AED 363,389 that the contractor demanded as payment, plus a requested declaration that a check held as security should be canceled.

While the primary court eventually awarded the contractor AED 171,996.50 plus legal interest, the issue of VAT became pivotal upon reaching appellate review and, ultimately, the Court of Cassation. The contractor argued that VAT should apply broadly to the amounts claimed. However, the Court of Cassation partially disagreed, confining VAT only to portions of the supply that took place after VAT's effective date (1 January 2018).

In its judgment, the Court of Cassation directly addressed whether sums paid for work done before January 2018 could be subject to VAT. It explained:

> *"…if a service is provided on a phased basis or in installments such that part of the supply occurred before the law's effective date, then VAT at the rate of 5% applies only to the portion of the supply executed after 1 January 2018. The work completed and paid for beforehand remains outside the scope of the new law."*

Referring to the contractor's specific situation, the Court of Cassation noted that the contractor received certain payments in 2017, well in advance of the 1 January 2018 VAT start date. and that the owner had disbursed AED 807,000 to the contractor during that period. Thus, the Court reasoned:

> *"It was established through the expert's supplemental report that the respondent [the owner] paid an amount of 807,000 dirhams to the contractor in 2017, prior to the effective date of the VAT law. Therefore, no VAT is due in connection with this amount because the supply of those services was completed before 1 January 2018."*

Consequently, the Court "partially quashed" the lower judgment regarding the contractor's VAT entitlement. It revised the amount due to the contractor down to AED 128,801.49, specifically excluding any VAT on sums invoiced and paid before 2018. In the final dispositive clause, the Court stated:

> *"We rule to amend the appealed judgment so that the sum due to the contractor shall be 128,801.49 dirhams, and the contractor is not entitled to VAT on the works paid for in 2017."*

It is relevant to note that the case reached the Court of

Cassation through a petition by the Dubai Public Prosecutor’s Office “in the interest of the law.” Once the highest court in Dubai rendered its decision, it clarified the treatment of VAT for a construction project that began prior to the introduction of the tax but was completed—and indeed extended—well after the tax took effect. The Court, however, only addressed the parties to the dispute, and its ruling does not establish direct obligations on the Federal Tax Authority (FTA) itself, as the FTA was not a party to the proceedings and the Cassation Court does not exercise jurisdiction over the FTA.

From a factual standpoint, the primary court’s judgment documented how the villa construction started around mid-2017, that the contractor and the owner disagreed about responsibility for supplying finishing materials, and that work effectively concluded in June 2022 under the contractor’s name, even though the original timeframe was set at 13 months. The Court of First Instance awarded the contractor the principal sum but did not separate out pre-2018 VAT liabilities in its calculation. Only at the Court of Cassation stage was the VAT element clarified, leading to a partial reduction of the final amount payable.

Outside the specifics of this ruling, there is a broader historical position concerning development projects that transition from the pre-VAT to the post-VAT period, especially regarding property transfers. The general authoritative position has been that if the legal ownership of a property is transferred to the buyer—or if the buyer takes possession of it—before 1 January 2018, then that supply is considered outside the scope of VAT. However, if ownership or possession transfers on or after 1 January 2018, the entire supply may be considered subject to VAT under Article 80(1) of the Decree-Law, regardless of whether payments were received before or after the law’s implementation. In such situations, Article 70(4) of the Executive Regulations, which deals with partially supplied goods or services before VAT took effect, would not apply to commercial units fully handed over after the effective date. Thus, a developer generally charges VAT on the entire value if the property is finished, transferred, or taken possession of post-implementation of the VAT laws on 1 January 2018.

In the villa construction case at issue, the contractor succeeded in demonstrating that certain works and payments fell firmly into the pre-2018 bracket, despite the project as a whole extending well into 2022. Under these facts, the court ultimately excluded pre-2018 amounts from being subject to VAT. In complex development scenarios, parties often need to document each phase carefully and confirm when a supply of services (or a transfer of ownership in real estate transactions) is deemed to have taken place.

In the end, the judgment underlines the legal principle that VAT does not attach to works and payments definitively made prior to 1 January 2018, even if the overall project continued well beyond that date. The fact that this project took over five years to complete did not alter the Court’s view that the pre-2018 payments were outside the scope of the newly enacted tax. The ruling thus offers guidance on how courts may approach transitional VAT scenarios for long-duration construction contracts signed before the law’s inception.

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile: https://waselandwasel.com/about/mahmoud-abuwasel/

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A New Gateway to Challenge UAE FTA Decisions Through Enforcement: Analysis of Judgment No. 1322 of 2024 (Supreme Court – Administrative)

February 21, 2026

Introduction

In a significant development for taxpayers disputing Federal Tax Authority (FTA) decisions, the Federal Supreme Court issued Judgment No. 1322 of 2024 (Administrative) on January 8, 2025. While the law provides a structured procedure to challenge FTA rulings—such as filing for reconsideration, objecting to the Tax Disputes Resolution Committee (TDRC), and appealing before the competent federal courts—this judgment clarifies that taxpayers may also initiate a challenge in the context of **enforcement proceedings**. As a result, the door is open for taxpayers to dispute the **subject matter** of FTA decisions through a substantive enforcement dispute.

Below, we discuss the background and key points of the judgment, citing verbatim translations of critical excerpts from the original ruling where relevant.

1. Background of the Case

The dispute arose when a taxpayer (the Appellant) was subjected to an FTA enforcement action to collect allegedly unpaid Value Added Tax (VAT) and administrative penalties. The taxpayer claimed that the underlying debts did not, in fact, belong to its account. Faced with a **decision from the FTA Director General**—which, by operation of law, had the status of an "executory instrument" or "enforceable title"—the taxpayer contested its validity **within the enforcement stage** before the enforcement judge.

> ***Quote from the Judgment (translated)**: "If the person subject to tax fails to settle the tax due within the statutory time limits, the Federal Tax Authority notifies the person to pay; then the Director General issues a decision obligating the person to pay the tax due, and such Director General's decision shall be regarded as an executory instrument for the purposes of enforcement by the enforcement judge."*
> *(Judgment, ¶2 citing Article 40 of Federal Decree-Law No. 28 of 2022 on Tax Procedures)*

2. Established Path for Challenging FTA Decisions

Ordinarily, taxpayers disputing FTA assessments or decisions **must follow** a prescribed sequence:

1. **Reconsideration** with the FTA;
2. **Objection** before the Tax Disputes Resolution Committee (TDRC);
3. **Appeals** to the competent federal courts (the Federal Court of First Instance, then the Court of Appeal, and ultimately the Supreme Court).

The statutory regime aims to ensure that all administrative avenues are exhausted before judicial review on the merits. However, the new judgment acknowledges a **parallel route** when the dispute is raised during enforcement.

3. Substantive Versus Provisional Enforcement Disputes

A central issue in this judgment was whether the taxpayer's challenge during enforcement was merely a "provisional enforcement dispute" (seeking a temporary measure without touching the underlying obligation) or a "substantive enforcement dispute" (contesting the validity of the debt itself).

> ***Quote from the Judgment (translated)***: *"The intended temporary disputes in enforcement—over which the enforcement judge has exclusive urgent jurisdiction—are those in which a party seeks a provisional remedy that does not touch the substance of the right. However, a substantive dispute is one in which the objective is to resolve the underlying right and the nullity of the enforcement."*
> *(Judgment, ¶4)*

The Court firmly held that if the taxpayer is disputing "the essence of the alleged tax debt," the matter is a **substantive enforcement dispute**, which cannot be dismissed merely as a provisional request.

4. Court's Reasoning: Re-Characterizing the Dispute

The Supreme Court reproached the lower courts for classifying the taxpayer's objection as a mere provisional enforcement dispute. Instead, the Court stressed that judges must **look beyond** the labels used by the parties and consider the real nature of the claim.

> ***Quote from the Judgment (translated)***: *"It is established that the court of the merits is obliged to bestow the correct designation upon the action and to apply the correct legal characterization to it, unrestricted by the terms used by the*

> *litigants."*
> *(Judgment, ¶3)*

Because the taxpayer was **directly challenging the existence and correctness** of the underlying tax debt (alleging clerical errors, unrelated import transactions, and mismatched amounts), the claim was undeniably substantive in nature.

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5. Enforcement Orders as "Executory Instruments" but Not Final Judgments

The key legal nuance is that a **decision from the FTA Director General**—which the law treats as an enforceable title—remains an **administrative decision**, not a final judicial determination. This distinction allows the taxpayer to contest the debt's validity in an enforcement proceeding.

> ***Quote from the Judgment (translated)****: "Since the executory instrument in question is not a judgment but an administrative decision endowed by the legislator with the force of an enforceable title, it remains open for the debtor to raise a substantive enforcement dispute regarding the genuineness of the debt. An administrative decision does not enjoy the same conclusive presumption as a judicial ruling, and thus it may be rebutted."*
> *(Judgment, ¶6)*

Thus, the taxpayer may demonstrate the inaccuracy or invalidity of the sums claimed, even after enforcement begins, so long as the challenge truly concerns **the heart of the debt.**

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6. Court's Criticism of the Lower Judgments

The Supreme Court found that the lower courts erred in refusing to entertain the taxpayer's objections about wrongfully attributed import transactions and contradictory figures. Simply stating that Article 40 of the Tax Procedures Law designates the Director General's decision as an enforceable title **did not** absolve the lower courts from examining the substance of the taxpayer's defense.

> ***Quote from the Judgment (translated)***: *"The contested judgment ignored what the appellant insisted upon—namely that its dispute is a substantive enforcement dispute aimed at demonstrating the non-liability for the claimed amounts—and ruled in favor of dismissing the enforcement objection under the pretext that the Director General's decision has the status of an executory instrument. Such reasoning violates the law and deprives the appellant of the right to defend itself."*
> *(Judgment, ¶7)*

The Supreme Court thus overturned (or "quashed") the prior ruling and remanded the case for further examination.

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7. Practical Implications: A New Gateway for Taxpayers

This judgment underscores that **taxpayers are not strictly confined** to the official reconsideration or TDRC route when challenging disputed tax liabilities. Even if the FTA has already issued an enforceable decision, the taxpayer **can still raise a substantive dispute** at the enforcement stage, provided the taxpayer can present factual or legal grounds indicating the debt is incorrect.

1. **Substantive Enforcement Dispute**: Taxpayers may argue they owe nothing or a reduced amount, attacking the very basis of the FTA’s claim.
2. **Continued Enforcement**: Per Article 239 of Federal Decree-Law No. 42 of 2022, the court may permit ongoing enforcement unless it orders suspension, but the taxpayer still has the chance to register a substantive challenge.
3. **Procedural Safeguards**: Enforcement judges must assess whether the objection is provisional or substantive, directing the taxpayer to file the appropriate claim before the competent court if it is truly a matter of the underlying right.

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8. Conclusion

The Federal Supreme Court’s decision in **Judgment No. 1322 of 2024 (Administrative)** serves as a landmark precedent, confirming that although a set procedure exists for disputing FTA decisions (reconsideration, TDRC objection, and judicial appeals), **taxpayers may also raise substantive challenges at the enforcement stage**. This development broadens the channels available to taxpayers and compels enforcement judges to scrutinize the legitimacy of the underlying tax claim when genuine disputes arise.

Ultimately, this ruling reinforces judicial oversight of administrative tax decisions and ensures that the so-called “executory instrument” conferred upon FTA determinations does not become an irreversible fait accompli. Taxpayers, therefore, should be aware of this **new gateway** to protect their rights when confronted with FTA enforcement actions.

As of this writing, **Wasel & Wasel** has successfully halted enforcement actions against taxpayers exceeding approximately **AED 250,000,000** maintaining a near-perfect track record. We warmly invite you to **speak with us** if you wish to explore your legal options in challenging or staying FTA enforcement.

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile: https://waselandwasel.com/about/mahmoud-abuwasel/

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www.waselandwasel.com
business@waselandwasel.com