

# UAE Supreme Court on Taxability of Employee Housing

November 11, 2024

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The recent judgment by the UAE Federal Supreme Court in Case No. 629 of 2024 marks a significant advancement in the interpretation of value-added tax (VAT) laws concerning employee benefits. This ruling provides critical guidance on how companies should handle VAT related to housing expenses provided to employees.

In this case, a company sought to recover input VAT incurred on expenses for providing housing to its employees, accommodating job candidates, and offering hotel stays during marketing campaigns. The company argued that these expenses should be exempt from VAT and that it was entitled to reclaim the input VAT paid.

The Federal Supreme Court delved into whether expenses such as water, gas, and electricity fall within the concept of a housing allowance. According to the court, these utilities **“are outside the concept of housing allowance that is considered a component of the salary as an in-kind benefit granted to the employee by the employment contract and fall within services that must be reclaimed in respect of VAT.”** The court emphasized that unless these expenses are explicitly included in the employment contract, they cannot be deducted from the tax base.

Furthermore, the court highlighted the necessity of precise documentation in employment contracts. Article 10 of Cabinet Decision No. 1 of 2022 stipulates that **“the employment**

**contract must contain... the agreed wage, including benefits and allowances."** This means that any in-kind benefits, such as housing allowances or utility payments, must be clearly defined in the contract to be considered for VAT exemption.

The court found that the lower court had failed to verify whether these expenses were included in the employment contracts. **"The judgment under appeal did not properly examine whether these expenses were included in the employment contract... It has violated the law and must be reversed,"** the court stated. This oversight led to the reversal of the lower court's decision and a remand for further examination.

This ruling underscores the importance for companies operating in the UAE to structure their employment contracts. By clearly outlining all benefits and allowances, companies can ensure compliance with VAT regulations and avoid unexpected tax liabilities.

For businesses, this judgment serves as a crucial reminder of the intricate relationship between employment law and tax obligations. Companies must be vigilant in documenting all aspects of employee compensation to optimize their tax positions and comply with the law.

At Wasel & Wasel, we understand the challenges that companies face in this area. With our experience in over 300 tax procedures collectively valued at over USD 1 billion, we are well-equipped to assist businesses in navigating these complexities. Our team is dedicated to providing clear, practical advice to ensure that our clients remain compliant while maximizing their operational efficiency.

The Federal Supreme Court's decision represents a pivotal moment in the interpretation of VAT laws related to employee benefits. It highlights the need for businesses to be proactive in reviewing and updating their employment contracts and tax strategies.

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# Dubai Courts on Criminality of Unlicensed Virtual Asset Operations

November 11, 2024

In a recent decision by the Dubai Court of Appeal, **Judgment No. 829 of 2023**, the court identified the criminal conviction of a former employee who was found guilty of both **embezzling funds** and **engaging in virtual asset service activities without obtaining the necessary license** from the relevant regulatory authorities. This case serves as a critical reminder of the legal obligations that come with handling virtual assets and the severe consequences of failing to adhere to them.

The court's findings were rooted in the criminal judgment from an earlier case, **Criminal Case No. 16363 of 2021**, where it was established that:

*“the defendant was convicted of embezzling funds belonging to one of the plaintiff's clients, [redacted], in addition to being convicted of engaging in virtual asset service provider activities without obtaining the necessary license from the relevant regulatory authorities.”*

The connection between the defendant's embezzlement and his

unlicensed activities in the virtual asset space cannot be understated. The court recognized that by operating without a license, the defendant not only breached regulatory requirements but also facilitated his illicit activities. Deductively, **engaging in unregulated virtual asset services** provided the defendant with opportunities to handle and misappropriate client funds, which ultimately led to his conviction.

In Dubai, the regulation of virtual asset service providers is overseen by the **Virtual Assets Regulatory Authority (VARA)** for mainland activities and the **Dubai International Financial Centre** regulates operations in its respective jurisdiction which mandates that any entity offering services in Dubai related to virtual assets must obtain the appropriate licenses. These regulations are designed to protect investors, maintain the integrity of the financial system, and ensure that all transactions involving virtual assets are conducted transparently and lawfully.

The defendant's failure to obtain the necessary license from VARA or otherwise was not a minor oversight; it was a fundamental breach of the regulatory framework that governs virtual assets in Dubai. Operating without a license meant that the defendant's activities were outside the purview of regulatory oversight, allowing him to engage in transactions that were both unmonitored and unregulated. This lack of oversight was seemingly connected to the crime of embezzlement of funds, as there were no regulatory checks in place to detect or prevent the misuse of client assets.

The court's decision underscores the serious consequences of engaging in virtual asset service activities without proper licensing. It highlights that **unlicensed activity in this sector is not just a regulatory breach—it can also be a gateway to criminal behavior**, such as the embezzlement of funds. The connection between unregulated virtual asset services and the illicit obtainment of funds in this case

serves as a clear warning to others in the industry.

In summary, the Dubai Court of Appeal's ruling in **Judgment No. 829 of 2023 / Criminal Case No. 16363 of 2021** strongly affirms the importance of regulatory compliance in the virtual asset sector. The case demonstrates that operating without a license is not only illegal but also potentially criminal, especially when it leads to misappropriation of client funds. As the virtual asset market continues to grow, the need for stringent regulatory oversight and compliance becomes ever more critical. This judgment serves as a reminder that the consequences of ignoring these regulations can be severe, leading to criminal convictions and significant legal repercussions

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# Dubai Courts Confirm Employment Salaries are Payable in Cryptocurrency

November 11, 2024

In a significant evolution of the UAE judiciary's approach to cryptocurrency, the Dubai Court of First Instance has made a landmark ruling in 2024, effectively recognizing the payment of salaries in cryptocurrency under employment contracts. This

decision, rendered in case number 1739 of 2024 (Labour), represents a notable departure from a previous judgment by the same court in 2023, where a similar claim involving cryptocurrency was denied due to the employee's failure to provide a precise valuation of the digital currency.

## Case Background and Summary

The case arose when the plaintiff employee filed a lawsuit claiming unpaid wages, wrongful termination compensation, and other related employment benefits. The plaintiff's employment contract stipulated a monthly salary in fiat currency and an additional **5,250 EcoWatt tokens**, a form of cryptocurrency. The dispute centered on the defendant's failure to pay the EcoWatt token portion of the salary for six months and the allegedly wrongful termination of the plaintiff's employment. The court's disposition is particularly noteworthy for its recognition and enforcement of cryptocurrency as a valid form of remuneration, despite the traditional payment norms that typically involve fiat currencies.

## The 2023 Judgment: A Cautious Approach

In the 2023 case (Judgment No. 6947 of 2023), the court was faced with an employment dispute where part of the employee's remuneration was supposed to be paid in **EcoWatt tokens**. The court acknowledged the inclusion of these tokens in the employment contract but ultimately refused to award the amount in EcoWatt tokens. The refusal was based on the employee's failure to provide a clear method of calculating the value of the cryptocurrency in terms of its equivalent in fiat currency. The court's reasoning reflected a more traditional view, requiring precise and tangible evidence of financial obligations, especially when dealing with unconventional forms of payment like digital currencies.

The court's ruling in 2023 emphasized:

*“It is established according to the Court of Cassation that determining the employment relationship, its start, duration, and the resulting effects falls under the authority of the trial court (Appeal No. 85 of 2005 Labour). Accordingly, it is evident to the court from the case documents and evidence that the employment relationship between the claimant and the respondent is governed by the fixed-term employment contract previously mentioned. Regarding the determination of the start date of the claimant’s employment and the monthly salary, the court relies on what the claimant stated, with the start date being [redacted], and the gross and basic salary being [redacted] AED, with the end of service date being [redacted] (according to the termination letter). As the claimant did not provide evidence of the value of the digital currency (EcoWatt tokens), the court disregards it, since the respondent did not provide opposing evidence or any defense, and therefore, the court concludes that the duration of the claimant’s service was [redacted] and that the gross and basic salary was [redacted] AED, and the court rules in the case accordingly.”*

This statement from the 2023 judgment reflected a cautious and traditional approach, where the court required concrete evidence of the digital currency’s value before it could enforce such a claim.

## **The 2024 Judgment: Embracing Cryptocurrency**

In a remarkable turn, the Dubai Court demonstrated a more progressive stance in the 2024 judgment, where it again addressed an employment dispute involving remuneration in EcoWatt tokens. This time, the court ruled in favor of the employee, not only recognizing the validity of payment in cryptocurrency but also ordering the payment to be made in EcoWatt tokens rather than converting it into fiat currency.

The court’s decision in 2024 was based on the principle that

**wages are a right of the employee for the work agreed upon.**  
The court noted:

*“Regarding the request for the monthly salary for [redacted] days of [redacted], it is established according to Article 912 of the Civil Transactions Law that wages are a right of the worker against the employer in return for the agreed work, and the provisions of Article 22 of Federal Decree-Law No. (33) of 2021 on the Regulation of Labour Relations and Article 16 of the Cabinet Resolution No. 1 of 2022 concerning the Executive Regulations of this Decree-Law provide that the employer is obligated to determine the amount and type of wage in the employment contract, and if not, the court shall determine it. The employer must pay the wages to the workers on the due dates, either through the Wage Protection System (WPS) or any other approved systems, and it is the employer who is tasked with proving the payment of wages to the workers and providing evidence of that. As the respondent did not provide evidence of payment of the claimant’s salary for the claimed period, and since the documents were void of such evidence, the court orders the respondent to pay the claimant [redacted] AED in addition to [redacted] EcoWatt tokens.*

*Regarding the claimant’s request for [redacted] AED for the delayed salaries over [redacted] months in EcoWatt tokens according to the contract, as the respondent did not provide evidence of payment of the due amount to the claimant for the claimed months in EcoWatt tokens, the court orders the respondent to pay the claimant the value of her wages in EcoWatt tokens amounting to [redacted] EcoWatt tokens.”*

This ruling marks a significant shift in the court’s approach, demonstrating a greater acceptance of cryptocurrency as a valid and enforceable means of remuneration. It underscores the importance of upholding contractual agreements as long as they are clear, agreed upon by both parties, and not in conflict with public policy or law.

# Legal Foundations and Implications

The court's reliance on **Article 912 of the UAE Civil Transactions Law** and the **Federal Decree-Law No. (33) of 2021** in both the 2023 and 2024 judgments highlights the consistent application of legal principles regarding the determination and payment of wages. However, the interpretation of these provisions evolved between the two judgments, reflecting the broader acceptance and integration of digital currencies in the UAE's legal and economic framework.

## Conclusion

The Dubai Court's 2024 ruling is a testament to the UAE's progressive legal environment, particularly regarding the use of digital currencies in employment contracts. The court's willingness to enforce cryptocurrency payments as stipulated in contracts sets a positive precedent that will likely encourage further integration of digital currencies in various sectors, not just in employment.

This evolution from the 2023 to the 2024 judgment illustrates the UAE courts' readiness to adapt to the changing financial landscape, providing a robust legal framework that respects modern financial practices while ensuring the protection of contractual rights.

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# Taxpayer Victory: Abu Dhabi Court Allows Recovery of VAT from Non-Compliant Suppliers

November 11, 2024

In a recent judgment by the Abu Dhabi Cassation Court, the UAE judiciary has delivered a crucial ruling that has significant implications for taxpayers across the country, particularly concerning the longstanding controversies surrounding Value Added Tax (VAT) refunds. This decision, encapsulated in **Judgment No. 648/2024** issued on **August 8, 2024**, addresses the recurring issue where the UAE Federal Tax Authority (FTA) has historically rejected VAT refund requests due to non-compliant supplier invoices. This ruling now opens the door for taxpayers to seek remedies from their suppliers, potentially reclaiming amounts that could run into millions of USD.

## Background and Legal Context

The case at hand involved a dispute where a construction company issued a check to a supplier as a guarantee for VAT related to a construction project. The dispute arose when the Federal Tax Authority (FTA) rejected the taxpayer's request for a VAT refund, citing the failure to provide the required documentation, specifically the VAT invoices issued by the supplier.

Historically, the FTA has been stringent in its requirements for VAT refunds, particularly where input tax is concerned. Under **Article 55 of the UAE VAT Law** (Federal Decree-Law No. 8 of 2017), businesses are entitled to recover input tax (VAT paid on goods and services) provided they hold a valid tax invoice. However, non-compliance with the invoicing

requirements as stipulated in **Article 59 of the Executive Regulations** has often led to the FTA rejecting refund requests, leaving taxpayers with significant unrecovered VAT amounts.

In this case, the taxpayer had submitted a refund request to the FTA but was unable to provide compliant invoices within the prescribed time frame. As a result, the FTA denied the refund, which led the taxpayer to initiate legal proceedings to recover the amount from the supplier.

### **The Court's Disposition**

The Abu Dhabi Cassation Court's ruling is pivotal in that it clarifies the legal recourse available to taxpayers when faced with such VAT refund rejections. The court upheld the principle that if a supplier issues a non-compliant tax invoice, and as a result, the taxpayer's refund claim is rejected by the FTA, the taxpayer is entitled to reclaim the corresponding amount from the supplier. This decision reinforces the taxpayer's right to not be left bearing the financial burden due to the supplier's failure to comply with tax invoicing regulations.

### **Key Aspects of the Judgment**

The court's reasoning centered around the obligations of the supplier under the UAE VAT Law. The judgment emphasized that **the issuance of a compliant tax invoice is a statutory requirement**, and failure to comply can result in significant financial implications for the purchaser (taxpayer). The court noted that in this particular case, the supplier had failed to provide the necessary VAT invoices within the stipulated timeframe, directly leading to the FTA's rejection of the refund request. Consequently, the court held that the taxpayer was entitled to recover the amount from the supplier.

Moreover, the court underscored that **the principle of equity demands that the financial burden resulting from non-**

**compliance should not rest on the taxpayer.** Instead, the supplier, who failed to fulfill their statutory obligations, should bear the consequences.

This ruling marks a significant shift in how tax disputes, particularly those involving VAT refunds, are likely to be handled in the UAE going forward. It sets a clear precedent that suppliers can be held financially accountable for the consequences of their non-compliance, potentially deterring future lapses in fulfilling VAT-related obligations.

### **Implications for Taxpayers and Suppliers**

For taxpayers, this judgment provides a much-needed remedy in situations where VAT refunds are denied due to non-compliant invoicing by suppliers. The ruling empowers taxpayers to seek redress directly from their suppliers, ensuring that they are not financially penalized for issues beyond their control.

For suppliers, this decision serves as a stark reminder of the importance of complying with VAT invoicing requirements. The ruling effectively places the onus on suppliers to ensure that their invoices meet the standards set by the FTA. Failure to do so could result in substantial financial liabilities, as they may be required to compensate their clients for any lost VAT refunds.

### **Conclusion**

The Abu Dhabi Cassation Court's judgment in **Case No. 648/2024** is a landmark ruling in tax law within the UAE. It reinforces the critical importance of compliance with VAT regulations and provides a clear legal avenue for taxpayers to recover amounts denied by the FTA due to non-compliant supplier invoices. Taxpayers and suppliers alike would do well to take heed of this judgment and its far-reaching implications.

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# Dubai Primary Court 1024/2024: Evidence Requirements and Director Accountability in Cryptocurrency Claims

November 11, 2024

## Introduction

As the UAE courts increasingly face cases involving cryptocurrency transactions, it becomes essential to understand the legal complexities and the critical need for robust evidence. The Dubai Primary Court's recent judgment in case number **1024 of 2024**, issued on **21 May 2024**, underscores this necessity. This article examines the importance of presenting acceptable evidence in cryptocurrency claims and highlights the personal guilt of directors and officers in cryptocurrency investment scenarios.

## Case Facts

The claimant filed a lawsuit against the defendant, seeking compensation for a failed cryptocurrency investment. The claim demanded the defendant to pay **USD 90,000,000** or its equivalent

in **AED 330,300,000**, plus legal interest of **12%** from the due date of **23 January 2023**, until full payment, along with court fees and attorney fees.

According to the lawsuit, the defendant persuaded the claimant to invest in bitcoin, promising extravagant returns if the bitcoin was transferred to the defendant's wallet on the **Binance platform**. The claimant complied, making multiple transfers, and initially received weekly reports from the defendant. However, the defendant ceased providing these reports and refused to return the claimant's cryptocurrency.

A criminal case, numbered **12309/2023**, resulted in a six-month prison sentence and a **USD 10,000,000** fine for the defendant, along with deportation. This judgment was final, as confirmed by the Public Prosecution on **07 May 2024**.

### **The Importance of Evidence in Cryptocurrency Claims**

In cryptocurrency claims, presenting **robust and acceptable evidence** is crucial due to the **opaque nature of cryptocurrency transactions**. The court emphasized that the claimant must prove their claims with **clear and convincing evidence**, particularly given the digital and often non-transparent nature of cryptocurrencies. The claimant's failure to provide sufficient evidence for the claimed profits and lost potential earnings led to the dismissal of those claims.

The claimant sought several forms of compensation:

1. **USD 10,000,000** as determined by the criminal judgment.
2. **USD 25,000,000** for profits allegedly earned by the defendant from **359 bitcoins**.
3. **USD 35,000,000** for lost potential profits.
4. **USD 20,000,000** for material and moral damages.

Additionally, on **22 April 2024**, the claimant's legal representative submitted an amended list of demands, highlighting that the value of bitcoin had increased since the

initial transfers. The amended claims included:

1. **USD 53,661,779** for the principal amount and profits.
2. **USD 108,661,779** for the return of **809 bitcoins** or their equivalent in USD, including lost profits and compensation for material and moral damages, with legal interest of **12%** from **23 January 2023** until full payment.

The court ruled in favor of the claimant for only **USD 10,000,000** as previously determined in the criminal case and dismissed the additional claims due to insufficient evidence. The judgment states:

“The claimant is required to prove their claims, and the court is not obligated to guide the parties on the necessities of their defense. The only evidence presented by the claimant for the profits and lost earnings was a screenshot from Google showing the bitcoin exchange rate, which the court deemed unreliable. The claimant did not submit expert or financial reports to substantiate their claims.”

“The claimant failed to provide sufficient evidence for the claimed profits and lost potential earnings.”

Consequently, the court dismissed the additional claims due to insufficient evidence.

### **Personal Culpability of Directors and Officers**

The court’s decision also highlights the potential **personal culpability** of directors and officers in cryptocurrency investment scenarios. The defendant’s **personal control** over the claimant’s cryptocurrency investments led to their criminal conviction and civil liability. The court found that the **Binance wallet** used for the transactions was in the name of the director/officer, which directly implicated him in the misconduct. This case serves as a cautionary tale for cryptocurrency investment providers, illustrating how personal control of cryptocurrency by directors and officers can lead

to significant legal consequences, including **criminal convictions** and **substantial fines**.

The judgment specifies:

“The criminal judgment, which convicted the defendant, established the foundational facts of the case, specifically that the claimant was the victim, and the defendant was the perpetrator. This binding judgment made it clear that the defendant’s actions were wrongful, thereby fulfilling the requirements for tortious liability: fault, damage, and causal relationship.”

“The court held that the criminal judgment, which convicted the defendant, established the foundational facts of the case, specifically that the claimant was the victim, and the defendant was the perpetrator.”

## Takeaways

The Dubai Primary Court’s judgment in case **1024 of 2024** underscores the critical importance of presenting **robust evidence** in cryptocurrency claims. Given the **opaque nature** of cryptocurrency transactions, claimants must ensure their evidence meets the stringent standards of proof required by the courts to secure a favorable judgment. Additionally, the case highlights the potential **personal culpability** of directors and officers in cryptocurrency investment scenarios, serving as a precedent for future cryptocurrency litigation in the UAE.

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# Stopping Tax Enforcement in the UAE: Recent Court Judgment Guidance

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The enforcement of tax payment orders issued by the Federal Tax Authority (FTA) in the UAE can often lead to court enforcement applications by the FTA to seize assets of delinquent taxpayers.

The federal primary court in Abu Dhabi executes FTA applications to enforce tax debts. When a taxpayer challenges and stops tax enforcement the orders issued by the court are not necessarily judgments (with reasoning) but are merely court instructions to stay the execution.

This article delves into a recent judgment that effectively halted and canceled the execution of an FTA tax payment order with detail underscoring the **grounds and principles** that guided the court's reasoning. The judgment guides taxpayers facing tax enforcement or having tax debts or tax audits that may lead to enforcement.

## Context and Judicial Authority

In tax enforcement cases, the execution judge is tasked with resolving disputes related to the validity and enforcement of the executive document (i.e., the instrument used for enforcement). As such, the judge can issue rulings and decisions on all temporary disputes related to enforcement, provided they are urgent. The executive document in tax enforcement is generally a decision issued by the Director-General of the FTA.

Article 40/1/b of the Tax Procedures Law simplifies tax enforcement by deeming the Director-General's decision on Tax Assessment and Administrative Penalties Assessment as an executory instrument. This means that formal judgments are not necessary for the enforcement of tax debts; the Director-General's decision alone suffices. This provision allows the FTA to act swiftly to enforce the collection of taxes and/or tax penalties without requiring prior court judgments against the taxpayer that recognize the debt.

Within approximately 2-4 weeks of the FTA applying to the federal primary court for execution, the FTA typically makes applications to seize the taxpayer's assets, including vehicles, bank accounts, stocks and bonds, commercial and industrial licenses, and real estate. Furthermore, the FTA may request the federal courts to liaise with local courts, such as those in Dubai or Abu Dhabi, to support execution efforts with their local authorities (such as the Dubai Land Department).

## **Case Background**

The taxpayer in this case objected to the enforcement based on the assertion that the **executive document's procedures** were invalid since the Federal Tax Authority (FTA) could not evidence that the tax was due before it was registered for enforcement.

## **Legislative Framework**

Tax laws are inherently public order statutes. The Tax Procedures Law, particularly Article 40, outlines the steps the FTA must take if a taxpayer fails to pay the due tax or penalties within the specified deadlines:

1. The FTA must notify the taxpayer to pay the due tax and fines within 20 weekdays from the notification date.
2. If the taxpayer fails to comply, the Director-General issues a decision obliging the taxpayer to pay the due

tax and fines, notifying them within 5 weekdays from the decision's date.

3. The Director-General's decision regarding tax assessment and penalties becomes an executive document for enforcement by the execution judge at the federal primary court in Abu Dhabi.

## Judicial Reasoning

The court highlighted that the **execution judge's jurisdiction** hinges on whether the executive document is valid and enforceable. The taxpayer's objection was based on the argument that the FTA could not provide evidence that the tax amount was due. The court found that the FTA failed to substantiate the claim.

The court's analysis revealed that the **tax enforcement registration was erroneous**. There was no solid evidence presented by the FTA to demonstrate that the tax was due, which was a crucial requirement for the enforcement process. This gap in evidence indicated a defect in the enforcement procedure.

The court reasoned as follows in staying the enforcement procedure:

*"It is also established that an objection to enforcement is a supplementary lawsuit that does not aim to change the content of the judgment and is not a means to appeal it. Rather, it is a complaint against its execution procedure and, therefore, cannot be based on claims of the judgment's invalidity, nullity, or violation of the law except in cases where the judgment is inherently flawed, affecting its existence and essence.*

...

*The implication of this provision is that the legislator made the issuance of the Director-General's decision by the*

authority contingent upon the failure to pay after notification.

Based on the above review by the court and given that the objector disputes the same executive document subject to enforcement for the payment of the claimed amount, which is evident in the documents and uncontested by the opposing party, the request to cancel the enforcement procedures is justified. The documents show that the enforcement registration was made in error."

## **Conclusion**

The court concluded that the taxpayer's request to cancel the enforcement procedures was justified. The evidence of the taxpayer substantiated that the enforcement application by the FTA was erroneously conducted due to the lack of evidence of the tax debt, thus halting and subsequently canceling the enforcement process.

## **Evolving Judicial Approach**

A notable trend is the judiciary's evolving approach to tax enforcement disputes. The federal primary court has shown greater diligence in reviewing challenges to tax enforcement cases, granting more relief in the enforcement of tax debts. Grounds for halting enforcement have included issues related to the finality of the demanded amount, defects in the executive document, and procedural errors in the application of the writ of execution.

The number of tax enforcement cases has significantly increased, rising from about 80 in 2023 to 80 in just the first two months of 2024. This surge indicates an intensified focus by the FTA on ensuring tax compliance. Consequently, there is a growing need for taxpayers to have a deeper understanding of the enforcement process and the available solutions.

Wasel & Wasel have been counsel on over 300 tax dispute procedures for collectively about USD 1 billion in tax disputes and have obtained precedent setting federal supreme court judgments and are actively engaged by taxpayers in challenging tax enforcement.

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# Dubai Landmark Judgment on the Requirement for Signature of a Dissenting Arbitrator

November 11, 2024

The recent ruling in **Case Number 11 of 2024** by the Dubai Court of Appeal, issued on 29 April 2024, sets a pivotal precedent regarding the requirement for the signature of a dissenting arbitrator. This judgment reinforces the principles outlined in the arbitration law, emphasizing the **integrity and robustness of arbitration procedures** even when not all arbitrators are in unanimous agreement.

## Background and Significance

The crux of the appeal centered on the claim that the arbitration award was invalid because it was signed by only two of the three arbitrators, with the third arbitrator's dissenting opinion neither included nor explained in the final

document. The appellant argued that the absence of the dissenting opinion and the refusal to include it invalidated the arbitration award.

However, the Court's ruling provides crucial insights and clarifications about the arbitration process and the legal framework that supports it. The judgment leverages **Article 54(6)** of the new arbitration law, which allows for the correction of procedural errors based on the parties' request, thereby **reducing the grounds for nullifying an arbitration award**.

## Key Legal Findings

In its detailed judgment, the Court reiterated the principles enshrined in the arbitration law:

1. **Majority Rule in Arbitration:** The judgment emphasized that as long as the arbitration award is issued by the majority of the arbitrators, it remains valid. The law specifically states:

*"The arbitration award is issued by a majority of the opinions if the arbitration panel is composed of more than one arbitrator. If the arbitrators' opinions diverge such that a majority is not achieved, the president of the arbitration panel issues the award unless the parties agree otherwise."*

2. **Signature Requirement:** The judgment clarified the requirements for the arbitrators' signatures:

*"The arbitrators sign the award, and if any arbitrator refuses to sign, the reason for not signing must be mentioned. The award is valid if signed by the majority of the arbitrators."*

## Case Analysis

In the specific case at hand, the arbitration panel consisted of three arbitrators. The award was signed by two arbitrators, **Arbitrator A** and **Arbitrator B**, while the third arbitrator, **Arbitrator C**, refused to sign due to his dissenting opinion.

The appellant's argument hinged on the claim that this dissent invalidated the award. However, the Court dismissed this claim, noting:

*"The failure to record the dissenting opinion of one arbitrator does not undermine the validity of the award signed by the majority. The arbitration award is valid as long as it adheres to the legal requirements and is signed by the majority of the arbitrators."*

Furthermore, the Court underscored that the procedural framework established by the new arbitration law aims to **prioritize the validity of procedural actions over potential grounds for nullification**, as long as the fundamental objectives of the procedure are met.

## Practical Implications

This ruling has significant implications for arbitration practices. It underscores that:

- The **validity of arbitration awards** hinges on the adherence to procedural rules and the majority rule principle.
- **Dissenting opinions**, while important, do not invalidate an award if not included, provided the majority of arbitrators have signed the award.
- The **arbitration law** is designed to ensure procedural robustness and minimize the potential for nullification based on technicalities.

The judgment provides a clear message that **arbitration awards**

**should be respected and upheld if they comply with the procedural requirements**, even in the presence of dissenting opinions. This promotes the **efficiency and reliability of arbitration as a dispute resolution mechanism**.

## **Conclusion**

The Dubai Court of Appeal's judgment in **Case Number 11 of 2024** is a landmark decision that reinforces the principles of arbitration law, particularly concerning the requirement for the signature of dissenting arbitrators. By prioritizing **procedural correctness and the majority rule**, this ruling enhances the robustness of arbitration awards and minimizes unnecessary annulments based on technicalities.

This precedent not only **clarifies legal ambiguities** but also strengthens the arbitration framework, ensuring that it remains a trusted and efficient method for resolving disputes. The judgment is a testament to the evolving nature of arbitration law and its alignment with international best practice.

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# **DIFC Court of Appeal Affirms Enforceability of Foreign Interim Arbitral Awards (Neal**

# v Nadir)

November 11, 2024

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## Mini-summary

In the case of Neal v Nadir [2024] DIFC A 001, the Dubai International Financial Centre (DIFC) Court of Appeal upheld the enforceability of foreign interim arbitral awards, reinforcing the DIFC's commitment to arbitration and international legal standards. The court held that interim awards, which are not final, can still be recognized and enforced within the DIFC jurisdiction. This decision is significant for practitioners in international arbitration and commercial law, as it underscores the DIFC Courts' supportive stance on arbitration and offers clarity on the enforceability of interim measures.

## What are the practical implications of this case?

The practical implications of Neal v Nadir are far-reaching for practitioners in international arbitration and commercial law. By affirming the enforceability of foreign interim arbitral awards, the DIFC Court of Appeal enhances legal certainty and predictability for parties engaged in cross-border arbitration. This decision reassures international businesses that interim measures granted in arbitration proceedings abroad will be respected and enforced in the DIFC, thus bolstering the attractiveness of the DIFC as a hub for international dispute resolution.

For arbitration practitioners, this ruling underscores the importance of obtaining interim measures in jurisdictions that are supportive of arbitration. The court stated, "Recognition or enforcement of an arbitral award, irrespective of the State or jurisdiction in which it was made, may be refused by the DIFC Court only on the grounds specified in that Article," reinforcing the robustness of the enforcement regime. Furthermore, the court noted, "few would regard it as desirable that awards of this kind should not be enforceable," highlighting the modern view on interim relief.

Commercial lawyers will also find this decision relevant when advising clients on the risks and benefits of interim relief in arbitration. The ruling provides a clearer understanding of the enforceability of interim awards, which can be crucial in maintaining the status quo or preventing harm during the pendency of arbitration proceedings.

Overall, the decision enhances the credibility and effectiveness of the DIFC as a venue for enforcing arbitral awards, both interim and final, making it a pivotal case for practitioners involved in international arbitration and commercial disputes.

### **What was the background?**

The dispute in *Neal v Nadir* originated from a contractual agreement between the parties, which included an arbitration clause stipulating that any disputes would be resolved through arbitration. During the arbitration proceedings, an interim award was issued by the arbitral tribunal in favor of Neal, granting certain provisional measures to preserve assets and maintain the status quo until the final award was rendered.

Nadir challenged the enforceability of this interim award in the DIFC Courts, arguing that interim awards should not be enforceable as they are not final and binding decisions. Neal, on the other hand, contended that the interim award was

essential for protecting his interests during the arbitration and sought the DIFC Courts' assistance in enforcing it.

The primary issue before the DIFC Court of Appeal was whether a foreign interim arbitral award could be recognized and enforced in the DIFC jurisdiction. The court had to consider the relevant legal principles and international conventions applicable to the enforcement of arbitral awards, particularly focusing on the New York Convention and the DIFC Arbitration Law.

### **What did the court decide?**

The DIFC Court of Appeal ruled in favor of Neal, affirming the enforceability of foreign interim arbitral awards within the DIFC jurisdiction. The court held that the interim award, despite not being a final adjudication of the dispute, met the criteria for recognition and enforcement under the DIFC Arbitration Law and the New York Convention. The court emphasized, "An interim measure is any temporary measure, whether in the form of an award or in another form, made by the Arbitral Tribunal at any time prior to the issuance of the award by which the dispute is to be finally decided."

The court emphasized that the purpose of interim measures in arbitration is to provide immediate relief and prevent irreparable harm, aligning with international arbitration principles. By recognizing and enforcing such awards, the DIFC Courts uphold the integrity and efficacy of the arbitral process. "The purpose of interim measures in arbitration is to provide immediate relief and prevent irreparable harm," the court stated, highlighting the critical role of interim measures in arbitration proceedings.

The decision was grounded in the interpretation of the DIFC Arbitration Law, which allows for the recognition and enforcement of interim measures issued by an arbitral tribunal. The court also referenced international

jurisprudence and academic commentary supporting the enforceability of interim awards to bolster its decision.

This ruling sets a precedent for the DIFC Courts and reinforces the jurisdiction's reputation as an arbitration-friendly forum. It clarifies that interim awards, which play a critical role in arbitration proceedings, can be effectively enforced in the DIFC, providing greater assurance to parties seeking interim relief in international arbitration.

### **Case details**

Court: Court of Appeal, Dubai International Financial Centre Courts

Judge: Chief Justice Tun Zaki Azmi, Justice Sir Jeremy Cooke, and Justice Andrew Moran

Date of judgment: 19/3/2024

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# **Abu Dhabi Court's Landmark Decision: No Tax Invoice, No Tax Claim**

November 11, 2024

The ruling No. 229 of 2024 by the Court of Cassation in Abu Dhabi on 04 April 2024 sets a new precedent regarding the

necessity for taxpayers to provide **tax invoices** to claim tax debts from debtors. This judgment underscores the importance of adhering to formal documentation requirements in tax matters, ensuring that taxpayers have the appropriate records to support their claims.

In this case, the court emphasized that understanding the facts of the case and evaluating the evidence, including expert reports, is within the jurisdiction of the trial court. The trial court has the authority to accept or reject expert reports wholly or partially, provided that its decision is based on reasonable grounds.

The case involved a contract dispute where the contractor completed 86.50% of the contracted work. The appointed expert reviewed the work, identified deficiencies in workmanship, and deducted their value from the contractor's dues. Additionally, the expert calculated the value of the extra work performed and settled the contractor's entitlements based on the actual work completed. The court ruled that the contractor was entitled to AED 665,697 for the work executed, a sum supported by the expert report.

One critical aspect of the ruling was the dismissal of the contractor's claim for VAT reimbursement. The contractor presented an accounting document from the Federal Tax Authority's system to support the VAT claim. However, the court found that this document was not a **tax invoice**, and there was no evidence of any tax invoice being submitted to the respondents for the amount claimed. According to the contract terms, the contractor needed to provide a valid tax invoice to be eligible for VAT reimbursement.

The lack of proper **tax invoices** not only affects the ability to claim tax debts but also exposes taxpayers to potential **penalties** imposed by the Federal Tax Authority. The FTA has strict guidelines and regulations for VAT documentation, and failure to comply can result in significant fines and

penalties. This ruling by the Abu Dhabi Court of Cassation prevents creditors from claiming taxes from debtors if they lack the appropriate tax invoices, expanding the **plight** of not issuing accurate tax invoices.

This ruling reinforces the legal requirement for **tax invoices** to claim tax debts and ensures that such claims are substantiated by appropriate documentation. The court's decision aligns with the principles of fairness and legal integrity, ensuring that claims are based on solid evidence rather than assumptions or incomplete documentation.

Moreover, this judgment highlights the significance of maintaining accurate and comprehensive records in commercial transactions. For businesses, this serves as a reminder of the critical role of **documentation** in supporting their financial claims and legal rights. Ensuring that all transactions are properly documented with **tax invoices** not only complies with legal requirements but also protects businesses in potential disputes.

In conclusion, the ruling No. 229 of 2024 by the Abu Dhabi Court of Cassation sets a clear precedent that **taxpayers must provide tax invoices** to claim tax debts from debtors. This decision underscores the importance of adhering to formal documentation requirements and maintaining accurate records to support financial claims. For businesses and tax professionals, this serves as a crucial reminder of the need to ensure that all financial transactions are properly documented and supported by appropriate evidence. The ruling also highlights the potential consequences of failing to issue accurate tax invoices, which can include penalties from the Federal Tax Authority and the inability to claim taxes from debtors. This ruling will likely influence future cases, reinforcing the necessity for strict compliance with tax documentation regulations.

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# Understanding Tax Group Liability: Key Lessons from Recent Dubai Court Cases

November 11, 2024

In recent years, the intricacies of **liability among members of tax groups** have become increasingly relevant in commercial dealings. Several judgments from the Dubai Courts provide profound insights into this subject, highlighting the **nuanced interpretations** and applications of the law. This article delves into three pivotal cases, underscoring the complexities of liability within tax groups and their implications for commercial transactions.

## Dubai Primary Court Judgment No. 95 of 2021: Individual Liability Within a Tax Group

This case revolves around a **contractual dispute** involving Company A (Free Zone) and another company within the same tax group. The court noted, “It is legally established that a contractor agreement is a contract whereby one party undertakes to perform a task or make something in return for compensation agreed upon by the other party” (Article 872 of

the Civil Transactions Law). The judgment highlighted that the client is obligated to pay the compensation upon delivery of the agreed-upon work unless otherwise stipulated by agreement or custom (Article 885).

In this case, the court emphasized the **burden of proof**, stating, "The claimant must prove their right, and the defendant must refute it" (Article 1 of the Evidence Law). The judgment further clarified that **commercial account statements** maintained by a trader in their commercial books hold evidentiary weight, placing the burden of disproving the entries on the defendant. This is particularly significant in the context of tax groups, where **intercompany transactions** and their documentation can be contentious.

Despite their tax group affiliation, the court found that the **second defendant was individually liable** for the amount owed based on the specific contractual obligations and performance of services by the plaintiff. The court upheld the claim against the defendant, asserting, "The second defendant, a sister company within the same tax group, failed to fulfill its contractual obligations, resulting in a liability of AED 99,855."

## **Dubai Primary Court Judgment No. 2702 of 2020: Separate Legal Personalities in Tax Groups**

This case delves deeper into the concept of **tax group liability**. It involved Company B, part of the same tax group as Company C. The dispute centered on **purchase orders** issued by Company C, directing invoices to be made out to Company B. However, the court found no evidence that Company B had received or acknowledged the goods or issued any orders to the claimant. The judgment stated, "The relationship of the defendant to the contract in question is limited to the fact that the purchase orders directed the invoices to be issued in

its name.”

The court concluded that being part of the same tax group does not **automatically transfer liability** between companies. Each company retains its **separate legal personality**. Since Company B had an independent legal personality from the company issuing the purchase orders, it could not be held liable for the claim, underscoring the distinct legal identities within a tax group.

## **Dubai Primary Court Judgment No. 7794 of 2019: Unified Obligations Due to Intercompany Dependency**

This case addressed the broader implications of **VAT laws** on tax groups and examined the relationship between the companies within a tax group. The court explained, “Value Added Tax (VAT) is imposed on the import and supply of goods and services at each stage of production and distribution.” It further clarified that a tax group comprises two or more entities registered as a single taxable entity with the Federal Tax Authority, sharing **economic, financial, and organizational ties**.

The court took a different position in this case because it looked into the **intercompany dependency** between the tax group members. The judgment elaborated on the intercompany relationships, noting, “The tax group is treated as a single taxable person for VAT purposes, and all members are **jointly and severally liable** for the group’s VAT obligations.” In this case, the court found that the companies within the tax group were not financially or organizationally separate, stating, “The tax group members are **united in their obligations**, and the group’s restructuring decisions and financial statements reflected their collective responsibility.” Consequently, the court held the tax group members jointly liable for the VAT liabilities.

These judgments collectively underscore the critical importance of understanding the **legal and financial relationships** within tax groups in commercial dealings. They highlight that while tax group members may operate as separate legal entities, their collective obligations and responsibilities, especially concerning VAT, can blur these distinctions. This has significant implications for businesses operating within such structures, emphasizing the need for meticulous documentation and clear contractual terms to navigate the complexities of liability.

Moreover, these cases illustrate the courts' approach to interpreting **contractual obligations** and the evidentiary requirements in commercial disputes involving tax groups. The emphasis on the burden of proof, the evidentiary weight of commercial records, and the distinct legal personalities within tax groups provides a comprehensive framework for understanding liability in these contexts.

In conclusion, the liability of tax group members in commercial dealings is a **multifaceted issue** that requires careful legal and financial consideration. The insights from the Dubai Court judgments provide valuable guidance for businesses and tax practitioners navigating these complexities. Understanding the interplay between contractual obligations, tax laws, and the collective responsibilities of tax group members is crucial for mitigating risks and ensuring compliance in commercial transactions.

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