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

May 1, 2025

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.

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

May 1, 2025

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.

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UAE Supreme Court 212/2023:

Empowering Taxpayers when Evidence is with the FTA

May 1, 2025

In a recent ruling (UAE Federal Supreme Court 212/2023, Administrative Division), the court addressed a critical issue for taxpayers who find themselves in disputes with the Federal Tax Authority (FTA) but lack access to essential documents. In essence, the court recognized that, while the standard rule is that the burden of proof lies with the claimant, there are instances where this burden can shift onto the administrative body if that body alone holds the evidence needed to decide the case.

In English, the respective part of the judgment translates to:

> *"It is established that the burden of proof lies upon the claimant, and that the administrative judiciary's departure from this principle in certain situations and placing the burden of proof upon the administration occurs only when the documents necessary for ruling on the case are exclusively in the administration's possession… Therefore, if a taxpayer challenges the legality of the contested decision on the grounds that it was based on an unsound premise, and the administrative authority fails to respond or produce evidence refuting this claim, the court may rule on the basis of a presumption that the taxpayer's claim is correct in light of the administration's negative stance."*

This ruling carries important implications for taxpayers engaged in disputes with the FTA, especially when the documents or evidence that might prove their position are under the sole control of the authority. Ordinarily, an

individual or a company that brings a challenge before the court bears the responsibility to prove their case. This general principle ensures that those seeking to overturn or modify an existing administrative decision must present compelling evidence demonstrating why the decision is flawed. However, as the court acknowledges, the rigid application of this principle can be unfair to the taxpayer in situations where the evidence they need is not publicly available or is kept exclusively by the FTA.

By recognizing that the burden of proof can shift to the FTA, the Supreme Court judgment introduces an equitable balance. If a taxpayer alleges that a tax assessment or penalty was improperly calculated or imposed on an incorrect legal basis, they would typically need to present proof of those errors. Yet if the FTA alone holds the relevant records—perhaps internal calculations, documents exchanged with other agencies, or internal correspondence that could shed light on the assessment—the taxpayer is at a disadvantage. The court has effectively stated that in such circumstances, the FTA must either supply the evidence or accept the risk that the court will presume the taxpayer's position to be correct.

This mechanism prevents the authority from withholding documents that could clarify factual or legal questions. It also incentivizes administrative bodies to participate actively in litigation, rather than remaining silent and relying on the presumption that the taxpayer has the sole duty to prove every aspect of their case. When the FTA fails to submit the necessary documents or offers no substantive rebuttal to the taxpayer's claims, the court may interpret that silence as an indication that the taxpayer's assertions are true.

For taxpayers, this ruling underscores the importance of highlighting to the court precisely what documents they believe the FTA possesses and why those documents matter. It is not enough merely to state that the taxpayer disagrees with

the FTA’s calculations. The taxpayer must show that the vital pieces of evidence lie in the authority’s domain, making it impossible to provide them on their own. Once that hurdle is cleared, if the FTA does not meet its obligation to disclose or rebut, the taxpayer can benefit from the presumption that their allegations are correct.

In conclusion, Federal Supreme Court decision 212/2023 provides a fairer framework for disputes involving tax assessments and penalties. It ensures that if the FTA alone holds decisive evidence, it cannot deprive taxpayers of the opportunity to prove their case by refusing to produce the necessary records. This development helps maintain a balance in tax litigation and affirms the judiciary’s commitment to equitable treatment when critical evidence is solely in the hands of the administration.

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UAE Supreme Court on Constitutionality of “Pay Now, Argue Later” System in Tax Disputes

May 1, 2025

Navigating the landscape of tax disputes in the United Arab

Emirates presents unique challenges for taxpayers and legal practitioners alike. Central to this environment is the **“pay now, argue later”** system, a framework that mandates taxpayers to settle disputed taxes before contesting decisions through legal channels. This approach has sparked considerable debate regarding its fairness and constitutional validity. Drawing on our extensive experience at **Wasel & Wasel** in over 300 tax dispute procedures, we delve into the intricacies of this system and explore the recent judgment by the **UAE Federal Supreme Court** that upholds its constitutionality.

The **“pay now, argue later”** system operates on a straightforward principle: when a taxpayer challenges a decision by the **Federal Tax Authority (FTA)**, they must first pay the full amount of the disputed taxes during the second step of the dispute process before the competent tax dispute resolution committee.

If the taxpayer fails at the committee stage, they may escalate to the federal primary court. At this stage, the requirement shifts slightly; taxpayers must pay half the value of the penalties in dispute to grant the primary court jurisdiction. This system ensures that tax revenues are collected promptly while providing a structured pathway for dispute resolution.

We have observed firsthand the impact of this system on taxpayers. Clients frequently express reservations about the necessity of paying disputed taxes upfront. Concerns center around the financial burden imposed on individuals and businesses, particularly when the outcome of the dispute is uncertain. Taxpayers often question the **equity** of this requirement, fearing that it may disproportionately affect those with limited financial resources or those facing substantial penalties.

The crux of the debate lies in whether this system aligns with the principles enshrined in the UAE Constitution, particularly

regarding **equality before the law** and the **right to access the judiciary** without undue hindrances. These concerns were addressed in a landmark judgment by the **UAE Federal Supreme Court** in case number **928/2023 AD**, which examined the constitutionality of the **"pay now, argue later"** approach.

In its ruling, the Supreme Court emphasized the **principle of equality before the law** as a cornerstone of the UAE Constitution. The court stated:

"The Constitution of the United Arab Emirates ensures the principle of equality before the law and guarantees its application to all citizens as the foundation of justice and freedom. It recognizes that the aim pursued is primarily the rights and freedoms of citizens in the face of discriminatory phenomena that undermine or restrict their practice. The emergence of discrimination is based on origin, gender, language, religion, or creed and is not limited exclusively. The Constitution also guarantees the right to litigation for all people."

This declaration underscores that the **"pay now, argue later"** system does not infringe upon the constitutional mandate of equality. Instead, it operates within the framework designed to balance the **social function of taxation** with the protection of **property rights**. The court recognized that while taxation is a legitimate exercise of state authority, it must be regulated in a manner that considers the social utility of taxes and the necessity of maintaining public services and infrastructure.

Furthermore, the judgment addressed the **right to access the judiciary**, a fundamental right enshrined in the Constitution. The court affirmed:

"It also guaranteed the empowerment of every litigant to access the judiciary easily without being burdened by financial obligations or procedural obstacles. This access

means that every individual has the right to resort to the judiciary, whose doors are not closed to anyone seeking to benefit from them. The path to it is paved by law.”

While acknowledging the importance of this right, the court also recognized the state’s legitimate interest in ensuring the efficient collection of taxes. By requiring taxpayers to pay disputed amounts before challenging decisions, the system aims to prevent the undue accumulation of tax liabilities and ensure the steady flow of revenue necessary for public services.

The Supreme Court further elaborated on the **legislative authority over taxation**, highlighting that the legislative branch holds the primary responsibility for determining tax laws, including their **application** and **assessment**. The court stated:

“The legislative authority is the one that holds the reins of public taxation, as it undertakes to regulate its conditions through laws issued by it, designed to determine its scope and assessment principles, specify its amount, and oblige its performance. It also establishes the rules for its calculation, analysis, and collection, as well as the procedures for its payment, the statute of limitations, and what appeals can be made against it, encompassing everything related to the tax and its collection framework.”

This clarification asserts that the legislature is empowered to set the framework within which tax disputes are resolved, provided that these regulations do not infringe upon constitutional rights. In this context, the **“pay now, argue later”** system was deemed a lawful exercise of legislative authority, designed to uphold the Constitution’s mandates while facilitating effective tax administration.

Moreover, the court underscored the importance of **procedural fairness** within the system. The judgment noted:

“Cases of non-acceptance of submissions or appeals as stated above are merely legislative regulations. They fall within the discretionary authority of the body regarding methods of tax collection, submitting them to the established authority for collection, and appealing them before the judiciary. They do not infringe upon the principle of equality and equal opportunities granted by Articles (14) and (25) of the Constitution.”

This indicates that while the system requires upfront payment, it also provides structured avenues for taxpayers to contest decisions, thereby ensuring that their **legal rights** are preserved. The requirement to pay half the penalties before escalating to the federal primary court serves as a compromise, balancing the need for revenue collection with the taxpayer’s ability to challenge assessments without bearing the full financial burden initially.

Given that the requirement to pay taxes arises at the tax dispute resolution committee stage, it is imperative for taxpayers to engage expert tax dispute counsel early on during audits, voluntary disclosures, or reconsideration requests to address liabilities before they may be required to be paid at the tax dispute resolution committee and reduce penalties at the federal primary court levels, respectively. The **“pay now, argue later”** system represents a balanced approach to tax administration in the UAE, aligning with constitutional principles of **equality** and **access to justice**. The recent judgment by the **UAE Federal Supreme Court** reaffirms the system’s constitutionality, providing a legal foundation that supports both effective tax collection and the protection of taxpayer rights.

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Landmark Arbitration Victory: Dubai Court Affirms Recoverability of Legal Costs Under ICC Rules

May 1, 2025

In a monumental decision, the Dubai Court of Cassation has issued a groundbreaking judgment in Case No. 756/2024, reshaping the arbitration landscape in the country. This judgment confirms that arbitral tribunals operating under the **ICC Rules** have the authority to award legal fees to parties, even if not explicitly stated in the arbitration agreement. This marks a significant departure from previous rulings that limited such recoverability.

At **Wasel & Wasel**, we had the honor of representing the successful party in this landmark case. We presented arguments emphasizing that **Article 38(1) of the ICC Rules** inherently empowers arbitral tribunals to award legal fees, as they form an integral part of the costs incurred by parties during arbitration. We referenced authoritative sources and interpretations by the ICC, which clarify that arbitration costs include not only the fees and expenses of the arbitrators and administrative expenses but also the legal fees and expenses of the parties.

Reversing Previous Limitations

Historically, the courts in Dubai held a narrow view on the

recoverability of legal fees in arbitration. In prior cases over the years, the Dubai courts had determined that unless the arbitration agreement or the arbitration rules explicitly granted the tribunal the power to award legal fees, such costs could not be recovered. This interpretation posed challenges for parties seeking to fully recover their arbitration expenses.

The Court's Reasoning

In this recent judgment, the court examined **Article 38(1) of the ICC Rules**, which states:

"The costs of the arbitration shall include the fees and expenses of the arbitrators and the ICC administrative expenses fixed by the Court, in accordance with the scale in force at the time of the commencement of the arbitration, as well as the fees and expenses of any experts appointed by the arbitral tribunal and the reasonable legal and other costs incurred by the parties for the arbitration."

The court emphasized that when the wording of a legal provision is clear and unambiguous, it should be applied as written without resorting to interpretation that alters its meaning. The use of the word "include" indicates that the list of costs is not exhaustive, thereby encompassing legal fees incurred by the parties.

The court further noted that the phrase "and other reasonable costs incurred by the parties for the arbitration" is broad and unrestricted, covering various costs without limitation. This interpretation aligns with common practices in international arbitration, recognizing that legal fees are a significant component of the costs parties incur.

The court reasoned as follows [translated]:

"And the legal costs, which include lawyers' fees paid by the parties to the legal representatives who represent them in

arbitration proceedings, are considered reasonable costs incurred by the parties in arbitration. Therefore, they are deemed arbitration expenses that are estimated and awarded by the arbitral tribunal according to the text of the first paragraph of Article 38 of the aforementioned rules. This is not altered by the argument that the absence of an explicit mention of legal representatives' fees—as is explicitly stated in the first paragraph of Article 36 of the 2022 Rules of Arbitration of the Dubai International Arbitration Centre—would mean they are not considered arbitration expenses. This is because such an absence does not imply that the drafter of the ICC Rules intended to exclude the arbitral tribunal's jurisdiction to award lawyers' fees after including the phrase 'and other reasonable expenses incurred by the parties in arbitration,' which encompasses all reasonable costs incurred by the parties, including legal costs like lawyers' fees.

Furthermore, asserting otherwise contradicts the consistent practice of the ICC Rules, where Article 37(1) of its rules effective since 2012 includes the phrase 'reasonable legal costs and other expenses incurred by the parties in arbitration.' According to the ICC Guide, which provides commentary on these rules, the arbitral tribunal considers the following categories of recoverable costs: (a) fees and expenses of the parties' lawyers. This same text appears in Article 38(1) of its rules effective since 2017. Moreover, international arbitration practices applying these rules have established that lawyers' fees are included among the reasonable costs incurred by the parties in arbitration, which are estimated and awarded by the arbitral tribunal."

Implications for Arbitration in Dubai

This judgment has practical implications for arbitration proceedings in Dubai. The court's decision brings Dubai's arbitration practices closer to international standards, which commonly allow for the recovery of legal fees as part of

arbitration costs. This alignment enhances the jurisdiction's appeal to parties seeking arbitration consistent with global practices.

Parties can now approach arbitration in Dubai with increased confidence that they can recover reasonable legal fees, which may influence their decision to arbitrate disputes in this jurisdiction. This greater certainty reduces the financial risk associated with arbitration and ensures that parties are more likely to be fully compensated for their legal expenses if successful.

Moreover, arbitral tribunals operating under the ICC Rules now have clear authority to award legal costs. This clarification contributes to more predictable and fair outcomes in arbitration proceedings, as tribunals can ensure that successful parties are not unduly burdened by their legal expenses.

Our involvement in this case reflects our commitment to contributing to the development of arbitration law in the region. By advocating for a practical interpretation of the ICC Rules that recognizes the full scope of recoverable costs, we aim to support efficient and equitable dispute resolution processes.

We believe that this decision will positively impact parties considering arbitration in Dubai, offering a clearer understanding of the potential costs and recoveries involved.

Conclusion

The Dubai Court of Cassation's judgment in Case No. 756/2024 provides important clarification on the recoverability of legal fees under the ICC Rules. By affirming that legal fees are included in the costs of arbitration, the court has enhanced the predictability and fairness of arbitration proceedings in Dubai.

At **Wasel & Wasel**, we are pleased to have led litigation to this outcome. Our focus on practical solutions and thorough legal analysis was instrumental in achieving a result that benefits not only our client but also the broader arbitration community in Dubai.

This decision offers greater clarity for parties engaging in arbitration and supports the use of arbitration as an effective method for resolving disputes.

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UAE Supreme Court on Taxability of Employee Housing

May 1, 2025

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

May 1, 2025

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

May 1, 2025

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

May 1, 2025

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

May 1, 2025

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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