

Dubai Appeals Court Upholds Compensatory Damages for Cryptocurrency Embezzlement

April 4, 2024

Brief

In Dubai Appeals Court appeal no. 27/2024, the appeals court upheld a decision awarding punitive damages in a case of cryptocurrency embezzlement. The case highlights the judiciary's stance on financial crimes in the digital currency space, detailing the interaction between criminal and civil liabilities.

Facts

The plaintiff initiated a lawsuit claiming the defendant embezzled AED 200,000 intended for cryptocurrency transactions. The defendant had previously faced criminal proceedings for the same act, resulting in a fine. Despite this, the plaintiff sought compensation for the financial loss incurred.

Procedures of Different Courts

Criminal Court Proceedings: The defendant was tried in a criminal court for embezzling AED 200,000 from the plaintiff. The court found the defendant guilty, imposing a fine of AED 20,000 and ordering the defendant to pay the embezzled amount of AED 200,000 as restitution.

Civil Court Proceedings: Subsequently, the plaintiff pursued civil litigation to recover the financial loss. The Court of First Instance ruled in favor of the plaintiff, ordering the defendant to pay AED 200,000 with a 5% annual interest from

the date of demand until full payment. Additionally, the defendant was ordered to cover legal expenses and attorney fees.

Appeal Court Proceedings: The defendant appealed the civil court's decision, challenging it on several grounds, including double jeopardy, lack of jurisdiction, and insufficient evidence. The Dubai Appeals Court heard the appeal, examining the arguments presented by both parties.

Arguments, Defenses, and Court Ruling

Defendant's Arguments: The defendant argued that the criminal court's judgment, which included a directive to pay the embezzled amount, precluded further civil liability on the same grounds, invoking the principle of ne bis in idem (not being judged twice for the same act). The defendant also contested the civil court's jurisdiction and argued that the plaintiff's evidence was insufficient to warrant the claimed damages.

Plaintiff's Defense: The plaintiff maintained that the criminal penalty did not negate the right to civil compensation for the loss suffered. The plaintiff also highlighted the jurisdiction of civil courts to adjudicate financial disputes and presented the criminal court's judgment as evidence of the defendant's liability.

Court Ruling: The Dubai Appeals Court rejected the defendant's arguments and upheld the Civil Court of First Instance's judgment. It clarified that the criminal court's ruling imposed a penalty for the criminal act, while the civil court's judgment aimed at compensating the plaintiff for the financial loss. The court found the civil lawsuit valid, emphasizing that the punitive damages awarded were distinct from the criminal fines and served to compensate the plaintiff adequately.

Significance on Cryptocurrency Scams

This ruling underscores the Dubai judiciary's serious approach to financial crimes, particularly in the emerging field of cryptocurrencies. By distinguishing between criminal penalties and civil compensations, the court affirms that victims of cryptocurrency scams have a clear path to recovery beyond criminal proceedings. This case sets a precedent for handling similar disputes in the future, indicating that the legal system is equipped to address the complexities associated with digital currency fraud. It sends a strong message about the consequences of engaging in cryptocurrency embezzlement, reinforcing the importance of integrity in digital financial transactions.

Author: Mahmoud Abuwaseel

Title: Partner – Disputes

Email: mabuwaseel@waselandwaseel.com

Profile:

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

Lawyers and consultants.

Tier-1 services since 1799.

www.waselandwaseel.com

business@waselandwaseel.com

UAE Supreme Court Sets Precedent: Bans Compound Interest in Financial Transactions

April 4, 2024

The UAE Federal Supreme Court's ruling on the restrictions of compound interest represents a significant shift in the legal landscape governing financial transactions within the country. This judgment, detailed in case number 1254 of 2023 dated 10

January 2024, highlights the court's firm stance on the prohibition of compound interest, drawing upon specific provisions within the Federal Decree-Law No. 23 of 2022 and the Federal Law No. 50 of 2022.

Understanding the Legal Provisions

Federal Decree-Law No. 23 of 2022 – Article 121/4: This article is a cornerstone in the court's decision, explicitly prohibiting licensed financial institutions from charging any interest on frozen interests, commonly referred to as compound interest, on the facilities granted to customers. The decree mandates that such practices must adhere to the controls and rules stipulated in the control regulations issued by the Central Bank, emphasizing the protection of customers and ensuring fair financial practices.

Federal Law No. 50 of 2022 – Article 88: Complementing the provisions of the Federal Decree-Law No. 23 of 2022, Article 88 of this law reinforces the prohibition of compound interest. It states, "The creditor may not claim compound interest – which is interest on compounded interests – or claim those interests as supplementary compensation." This provision further solidifies the legal framework against the application of compound interest in financial transactions, ensuring that creditors adhere to a simple interest model.

Implications of the Supreme Court's Ruling

The Supreme Court's ruling, grounded in these explicit legal provisions, marks a pivotal move towards enhancing consumer protection in the financial sector. By prohibiting compound interest, the court aims to prevent the undue accumulation of debt on borrowers, promoting transparency and fairness in lending practices.

For Financial Institutions: The ruling necessitates a

significant shift in how interest is calculated and applied to loans and credit facilities. Financial institutions must now ensure their practices are aligned with the stipulated legal framework, moving away from compound interest calculations to a simple interest model as mandated by the Central Bank's regulations.

For Borrowers: This decision is a significant win for consumer rights, offering borrowers protection against the potential financial strain caused by compound interest. It ensures that loan and credit facility repayments are more manageable and predictable, reducing the risk of escalating debt burdens.

The Broader Legal and Economic Context

The prohibition of compound interest by the UAE Federal Supreme Court reflects a deliberate effort to strengthen the legal and regulatory framework surrounding financial transactions. It underscores a commitment to ensuring ethical lending practices, safeguarding consumer interests, and maintaining the integrity of the financial sector.

In the broader economic landscape, this ruling may influence lending and credit practices, potentially leading to more conservative risk assessments by financial institutions. However, it also promotes a more sustainable and equitable financial environment, encouraging responsible lending and borrowing practices.

Conclusion

The UAE Federal Supreme Court's decision to restrict compound interest, as articulated in Article 121/4 of the Federal Decree-Law No. 23 of 2022 and Article 88 of the Federal Law No. 50 of 2022, sets a new legal precedent in the financial sector. This landmark ruling not only enhances consumer protection but also aligns the UAE's financial practices with global standards of fairness and transparency. As the

implications of this ruling unfold, it is expected to have a lasting impact on the financial industry, promoting a more stable and equitable economic environment for both financial institutions and consumers alike.

Author: Mahmoud Abuwaseel

Title: Partner – Disputes

Email: mabuwaseel@waselandwaseel.com

Profile:

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

Lawyers and consultants.

Tier-1 services since 1799.

www.waselandwaseel.com

business@waselandwaseel.com

Supreme Court rules on intra-GCC VAT liabilities

April 4, 2024

In Federal Supreme Court case number 1066 of 2022, the primary focus was on the application of the Value Added Tax (VAT) within the context of the Gulf Cooperation Council (GCC) countries, specifically between the Kingdom of Saudi Arabia and the United Arab Emirates (UAE). The appellant, a Saudi Arabian entity, was involved in importing and introducing special equipment into the UAE for repair purposes, as well as purchasing goods from a local supplier within the UAE.

The key issues revolved around the applicability of VAT on these transactions and the eligibility for VAT exemption under the Unified VAT Agreement for GCC countries. The appellant contended that Saudi Arabia, being a non-implementer of VAT, should exempt them from this tax. However, it was established that Saudi Arabia does apply VAT, as evidenced by Royal Decree No. M/113 dated 2/11/1438 H and its subsequent amendments.

The court reasoned as follows:

“It is established that the legislator has decided that the law is the source of the obligation for the taxpayer to pay tax. Article 2 of the Federal Decree-Law No. 8 of 2017 concerning the Value Added Tax stipulates that every supply of a good in exchange for monetary compensation is subject to tax. The appellant acknowledged in their lawsuit that they imported and introduced their equipment into the United Arab Emirates from the Kingdom of Saudi Arabia for the purpose of repair, and consequently, they were charged with Value Added Tax for repair services from a local supplier in the UAE and for their purchase of certain goods. Therefore, the provision of Article 75 of the same law, which allows the authority to exempt a taxpayer from this tax if they are from a GCC country that does not implement this tax, does not apply to them. This is because, according to the Unified VAT Agreement for GCC countries and the appellant’s acknowledgment in their appeal that Saudi Arabia implements the Value Added Tax law, which is evidenced by Saudi Royal Decree No. M/113 dated 2/11/1438 H and amended by Royal Decree M/52 dated 28/4/1441 H and Royal Order No. A/638 dated 5/10/1441 H. Moreover, the non-applicability of Article 67 of the Executive Regulations of this law, issued by Cabinet Resolution No. 52 of 2017, which requires for the exemption eligibility that the supply should not have a place of supply in the state or belong to a GCC country that does not implement the Value Added Tax. Consequently, the appellant does not meet the legal conditions for exemption, making their second reason for appeal, regarding not considering Saudi Arabia as a country that does not implement the Value Added Tax law, irrelevant.”

The finding of the court can be analyzed in three considerations:

- 1. Article 75 – Exemption for Non-implementing GCC Countries:** The first aspect of the judgment concerns Article 75, which provides for the possibility of

exempting taxpayers from VAT if they are from a GCC country that does not implement this tax. In this case, the court found that the provision of Article 75 does not apply to the appellant. This conclusion was based on the fact that the appellant's activities fell within the scope of the UAE's VAT law. Essentially, the exemption under Article 75 is designed for entities from GCC countries that do not have a VAT regime in place. Since Saudi Arabia, the country of the appellant, does implement VAT, the exemption was deemed inapplicable.

2. Acknowledgment of VAT Implementation by Saudi Arabia:

The court's decision also took into account the Unified VAT Agreement for GCC countries and the appellant's acknowledgment that Saudi Arabia implements VAT. This is corroborated by Saudi Royal Decree No. M/113 and its amendments. The acknowledgment is a crucial aspect of the judgment as it signifies the appellant's acceptance of Saudi Arabia's VAT regime, which in turn influences the applicability of VAT exemptions and liabilities under the UAE law.

3. Article 67 and Non-Applicability of Exemptions: The final aspect involves the interpretation of Article 67 of the Executive Regulations of the law, issued by Cabinet Resolution No. 52 of 2017. This article sets conditions for VAT exemption eligibility, including that the supply should not have a place of supply in the state or belong to a GCC country that does not implement VAT. In this context, the court ruled that the conditions for exemption were not met by the appellant. This part of the judgment underscores the specificity and strict compliance expected under the VAT law regarding the eligibility for exemptions.

In the context of sophisticated intra-GCC activities, companies, investors, and tax advisors should focus on advanced strategies like contractual and corporate structuring, and segmenting rights and liabilities. This

involves designing contracts and corporate structures that are not only compliant with the VAT regulations of each GCC country but also flexible enough to adapt to changes in these laws. For instance, considering the court's findings, businesses should meticulously evaluate where and how their services and goods are supplied within the GCC to determine VAT liabilities and exemptions accurately.

Segmentation of rights and liabilities in contracts can be a key strategy. For example, in transactions involving countries like Saudi Arabia, which has implemented VAT, the contracts should clearly stipulate the parties' responsibilities regarding VAT payments. This might include clauses specifying how VAT is to be handled in cross-border transactions. Moreover, corporate structuring should be such that it aligns with the most favorable VAT regimes within the GCC, considering exemptions and the place of supply rules.

Adequately managing multi-jurisdictional tax disputes is a crucial aspect for companies operating within the GCC. Given the diverse VAT regimes and the nuanced legal interpretations, as evidenced by the recent court findings, businesses need to develop robust strategies for dispute resolution. This involves creating clear, comprehensive documentation and maintaining detailed records of transactions to substantiate their VAT positions. Additionally, they should establish protocols for timely and effective communication with tax authorities across different jurisdictions. By doing so, businesses can navigate the complexities of multi-jurisdictional tax landscapes and mitigate the risks associated with tax disputes.

These sophisticated strategies require a deep understanding of both the letter and the spirit of VAT laws across the GCC. This understanding will enable entities to structure their intra-GCC activities in a way that optimizes tax efficiency while ensuring full compliance with the law..

Author: Mahmoud Abuwaseel
Title: Partner – Disputes
Email: mabuwaseel@waselandwaseel.com
Profile:
<https://waselandwaseel.com/about/mahmoud-abuwaseel/>

Lawyers and consultants.
Tier-1 services since 1799.
www.waselandwaseel.com
business@waselandwaseel.com

UAE Supreme Court on Retroactive Tax Liability for Pre-2018 Building Projects

April 4, 2024

In a significant judgment delivered on 18 October 2023 in petition nos. 1480 of 2022 and 1 of 2023, the UAE Federal Supreme Court addressed the complexities surrounding tax liabilities that arise from building projects initiated before the enactment of a new tax law. The court considered interpretations and implications of retroactive application of tax laws, particularly for the engineering and construction industry in contracts executed prior to 2018.

At the heart of this ruling is the application of VAT (value added tax) on transactions that were executed before the implementation of the VAT law in 2018 but continued to yield tax liabilities post-enactment.

The court's decision is grounded in the principle that new legislation applies immediately to facts and circumstances arising after its effective date. The rationale is that new legislation is presumed to be an improvement over old laws and, as such, should be applied to all relevant instances that occurred prior to the new law from the point of enactment of

the new law. **This principle was applied to the case at hand, where the supply and installation of goods took place before 2018 but created a tax liability post-2018.**

Another critical aspect of the judgment is the court's interpretation of tax obligations. According to the ruling, tax obligations arise from the law, which dictates the tax rate and the mechanism for its payment. The court emphasized that every entity subject to tax must register for tax and file tax returns for each tax period during their registration. **This requirement holds even if the underlying transactions were completed before the new tax laws came into effect.**

In this sense the court reasoned that:

"And this implies that all effects that occur under the authority of this legislation, even if they originate from facts that happened before its effective date, should be subject to its jurisdiction. This is to ensure uniformity in legal statuses. This does not constitute retroactive application of the legislation but is rather the implementation of its immediate effect."

In addressing the arguments presented by the appellants, the court rejected the notion that applying VAT retrospectively to pre-2018 transactions was unlawful. The court referred to specific provisions of the VAT law, particularly those concerning the timing of supply and the completion of the installation of goods, to support its ruling. **It was determined that the taxable event, in this case, occurred after the VAT law came into effect, thus subjecting it to VAT regulations.**

Moreover, the court underscored the importance of contract interpretation in determining tax liabilities. It highlighted that the intent of the contracting parties, as expressed in the contract terms, is paramount in deciding whether a

transaction falls within the scope of VAT. **In this case, the payments made under the contract for engineering works (purchase, construction, and operation) were deemed advance payments, falling under specific provisions of the VAT law.**

The court reasoned as follows:

"It is decided that Article 80 of the Federal Decree-Law No. 8 of 2017 concerning Value Added Tax stipulates that if the supplier receives the consideration or any part of it, or issues an invoice for goods or services before the date of the implementation of the provisions of this decree-law, the date of supply is considered to be the date of the implementation of the provisions of this decree-law in the cases stated below if it occurs after the date of the implementation of the decree-law... J – Completion of the assembly and installation of goods, and it is decided that the event that creates the Value Added Tax applies to the events that occur after its enforcement starting from 1/1/2018...

...

*It has not been proven that the amounts subject to tax in the appellants' accounts were recorded as a loan, and it is established from the terms of the contract that they were an advance payment under the account of works. The contract, which is the subject of the tax, concerns engineering works involving purchasing, construction, and operation, which falls under item J of Article 80 of the Value Added Tax Law."*Top of Form

The court further addressed the administrative and procedural aspects of tax collection. It stated that tax procedures are a means to achieve the legislative intent of tax collection and should fulfill the state's right to collect taxes within legally prescribed timelines. **Even in cases of procedural errors, the state's right to collect taxes remains intact.**

On this issue, the court reasoned that:

“Council of Ministers issued Decision No. 105 of 2021, and the second article of it stipulates that the provisions of this decision apply to requests for installment payments and exemptions, and the full or partial refund of administrative fines imposed on any person for violating the provisions of the Tax Procedures Law or the Tax Law. Given this, and the fact that the appellants did not resort to this committee or to the tax disputes resolution committee for any request for exemption or reduction of the penalties before or during the lawsuit of the contested judgment or the appealed judgment, what the appellants claim about the error in applying the law due to non-application of Council of Ministers Decision No. 49 of 2021 is not valid and not acceptable.”

The court indicates that the tax disputes resolution committee, traditionally limited to review of reconsideration decisions, might also possess the authority to consider requests for exemptions and reductions in administrative penalties. This revelation is significant as it potentially expands the options available to taxpayers in handling penalty disputes. Previously, such matters were primarily associated with the special committee outlined in Federal Decree-Law No. 28/2022. This new interpretation suggests a broader role for the tax disputes resolution committee beyond its conventional scope, offering taxpayers an additional avenue to seek penalty relief.

Author: Mahmoud Abuwaseh

Title: Partner – Disputes

Email: mabuwaseh@waselandwaseh.com

Profile:

<https://waselandwaseh.com/about/mahmoud-abuwaseh/>

Lawyers and consultants.

Tier-1 services since 1799.

www.waselandwaseh.com

business@waselandwaseh.com

Vanishing Arbitration: U.S. Court Rejects DIAC Jurisdiction Post DIFC-LCIA Abolition

April 4, 2024

In the recent dispute between Baker Hughes Saudi Arabia Co. Ltd. and Dynamic Industries, Inc. and its affiliates (Dynamic Industries International, LLC, and Dynamic Industries International Holdings, Inc.), the United States District Court for the Eastern District of Louisiana was presented with a significant contractual disagreement. The case, titled Baker Hughes Saudi Arabia Co. v. Dynamic Industries (Civil Action 2:23-cv-1396), was published on November 6, 2023.

The core of the dispute stemmed from a contract under which Baker Hughes Saudi Arabia agreed to supply materials, products, and services for an oil and gas project in Saudi Arabia, being executed by Dynamic Industries. Baker Hughes Saudi Arabia claimed it had fulfilled its contractual obligations but had not been paid the owed sum of \$1.355 million by Dynamic Industries.

Dynamic Industries, in response, filed a motion to dismiss the case on the grounds of forum non conveniens (a legal principle allowing courts to dismiss a case if another more appropriate forum is available) or to compel arbitration. They based their argument on the contract's clause, which stated that any unresolved disputes should be referred to and finally resolved by arbitration under the Arbitration Rules of the DIFC LCIA (Dubai International Financial Center London Court of

International Arbitration)[].

However, the situation was complicated by the fact that the DIFC LCIA had been abolished in 2021 by a decree from the government of Dubai and replaced with the Dubai International Arbitration Center (DIAC). Baker Hughes argued that the contract's arbitration provision was unenforceable because the agreed-upon forum, the DIFC LCIA, no longer existed[].

Dynamic Industries countered by suggesting that the Dubai government's decree effectively transferred the assets, rights, and obligations of the DIFC LCIA to the DIAC, arguing that this allowed for the arbitration to proceed under the DIAC. However, Baker Hughes contested this, stating that the Dubai government could not unilaterally change the arbitration forum agreed upon in the contract[].

After reviewing the arguments and considering the legal precedents, the court ruled in favor of Baker Hughes Saudi Arabia. It denied Dynamic Industries' motion to dismiss the case or compel arbitration in the DIAC, concluding that the original forum for arbitration, the DIFC LCIA, no longer existed and could not be substituted unilaterally. This decision underlines the importance of specific arbitration clauses in contracts and the challenges that may arise when the selected arbitration forum is no longer available[].

The court reasoned:

"As the Fifth Circuit explained, this Court "cannot rewrite the agreement of the parties and order the [arbitration] proceeding to be held" in a forum to which the parties did not contractually agree. Nat'l Iranian Oil Co., 817 F.2d at 334. Nor can the Dubai government. Whatever similarity the DIAC may have with the DIFC LCIA, it is not the same forum in which the parties agreed to arbitrate. That forum is no longer available, and this Court thus cannot compel Plaintiff to arbitrate."

The ruling in Baker Hughes Saudi Arabia Co. v. Dynamic Industries sets a significant precedent for future disputes involving DIFC-LCIA clauses, particularly in U.S. and other international jurisdictions. With the dissolution of the DIFC-LCIA and government-mandated transfer of DIFC-LCIA arbitrations to DIAC, contracts specifying the former as the arbitration forum face legal uncertainties. U.S. courts, as demonstrated in this case, may not recognize the DIAC as a valid substitute, thereby impacting the enforceability of arbitration clauses and potentially leading to more litigations being adjudicated in court rather than through arbitration. This development urges parties in international contracts to reassess and potentially revise their arbitration clauses to ensure clarity and enforceability, acknowledging the evolving landscape of international arbitration forums.

Author: Mahmoud Abuwaseel

Title: Partner – Disputes

Email: mabuwaseel@waselandwaseel.com

Profile:

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

Lawyers and consultants.

Tier-1 services since 1799.

www.waselandwaseel.com

business@waselandwaseel.com

UAE Supreme Court Insight on Free-Zone Corporate Tax Exemptions

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The United Arab Emirates (UAE) has many free zones that attract businesses with tax benefits among other incentives. For example, free zones in the UAE typically offer a zero

percent corporate tax rate for a certain number of years, often extendable. However, with the introduction of a new corporate tax regime in the UAE, there have been questions about how federal tax laws interact with these domestic exemptions.

A recent judgment from the Federal Supreme Court issued in October 2023 provides clarity on this matter, setting a precedent for how tax laws are applied to entities operating in free zones. This article examines the judgment, explores the exemption provisions for free zone entities under the UAE corporate tax law, and discusses the implications of the judgment.

Wasel & Wasel was counsel on this matter and has represented clients in over two hundred tax dispute procedures in the UAE.

The Federal Supreme Court Judgment

The Federal Supreme Court of the UAE recently issued a judgment in October 2023, clarifying the relationship between federal tax laws and domestic emirate-specific tax laws, particularly concerning tax exemptions.

In this case, the Federal Primary Court and the Federal Appeals Court had found that domestic tax laws have no impact on federal tax legislation. The Supreme Court on the other hand took a different reasoning approach.

The Supreme Court stated: “The local law does not restrict or specify the federal law issued by the federal authorities; rather, they operate within a framework of legislative integration and synergy. The petitioner is considered subject to tax, as what it practices in the activity in question ... aims for profit as a whole. The [tax] exemption of the petitioner does not change the foregoing.”

The petitioner had approached the Supreme Court after being subject to a number of ministerial decrees in its respective

emirate that provided exemptions from any form of tax. The petitioner sought to overturn the findings of the lower federal courts.

The Federal Primary Court had stated: “That the law establishing the Federal Tax Authority in its Article 4 outlined the authority’s jurisdiction over the management, collection, and enforcement of federal taxes and related fines...The local laws regarding exemption from tax and local fees were only concerned with the concerned emirate and have no impact on the application of the federal tax law.”

Similarly, the Federal Appeals Court had noted: “The exemptions issued under local legislations have no impact on the application of the tax imposed under federal tax legislations.”

The lower federal courts focused on whether the exemptions granted to the petitioner in its respective emirate were reflected in the federal tax legislation or not. The lower federal courts reasoned that domestic emirate-specific tax exemptions operate only to the benefit of the taxpayer within the applicable emirate but not on a federal level.

However, the Supreme Court highlighted that the focus should be on whether an entity is engaged in profit-making activities, rather than where it operates, and whether the federal tax legislation has adopted the emirate-specific tax exemptions. Through this judgment, the Supreme Court confirmed that domestic tax laws do in fact apply but must be applied in “integration and synergy” with federal tax laws, marking a departure from the reasoning of the lower federal courts and providing reassurance for free zone entities.

Exemption Provisions for Free Zone Entities

The new corporate tax law in the UAE, introduced in 2022, outlined the tax obligations for all entities, including those in free zones. To be considered for tax exemptions, a free

zone entity needs to meet several conditions. These conditions include maintaining a substantial presence in the UAE, earning qualifying income, and following specific auditing and pricing regulations. If a free zone entity meets all the required conditions, it is termed a “Qualifying Free Zone Person” (QFZP) and can enjoy tax exemptions. The law aims to ensure that entities are compliant with international tax standards while also providing a clear framework for tax obligations and exemptions.

Implications of the Supreme Court Judgment

The judgment of the Supreme Court is crucial as it identifies that a profit-generating entity falls within the federal tax regime despite any emirate-specific tax exemptions. This confirms that profit-making entities in free zones are subject to federal tax laws, just like other entities outside free zones. The judgment helps in understanding how federal and local tax laws interact, ensuring that businesses in free zones are also contributing to the country’s tax revenue when they engage in profit-making activities. It aligns the tax treatment of free zone entities with the broader tax framework of the UAE, promoting fairness and compliance with the new corporate tax regime.

It is important to consider notwithstanding that the Supreme Court acknowledges the existence and validity of domestic tax exemptions, such as those provided in free zones, without setting them aside. Instead, the Supreme Court emphasizes a prerequisite for domestic emirate exemptions to operate in “integration and synergy” with federal tax laws. This denotes a principle of harmonization between federal and local tax frameworks, underscoring that the local exemptions are recognized as long as they are in alignment with the overarching federal tax laws.

Takeaway

In conclusion, this novel judgment by the Federal Supreme Court, along with the new corporate tax law, provides a clear understanding of the tax obligations for entities operating in free zones. It ensures that all entities, regardless of their location, are subject to the same tax laws if they are engaged in profit-making activities. This creates a level playing field for all businesses, contributing to a transparent and fair business environment in the UAE.

The principle set by the federal courts is reassuring for free zone entities as it does not dismiss domestic tax exemptions outright. It provides a structured approach where both federal tax obligations and local tax exemptions coexist, given they are operating in harmony. This balanced standpoint from the Federal Supreme Court affirms a level of reassurance to free zone entities, emphasizing a cooperative framework between federal and local tax legislations, which is crucial for the financial and operational stability of entities operating in free zones, and establishes grounds for free zone entities to apply and utilize free zone tax benefits.

Author: Mahmoud Abuwaseel

Title: Partner – Disputes

Email: mabuwaseel@waselandwaseel.com

Profile:

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

Lawyers and consultants.

Tier-1 services since 1799.

www.waselandwaseel.com

business@waselandwaseel.com

UAE Supreme Court Judgment on Constitutional and Sharia Limits of Tax Penalties

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The UAE Federal Supreme Court recently issued a judgment, shedding light on the formulation of tax penalties within the framework of constitutional and Sharia law. This judgment reveals the legal parameters for formulating and imposing tax penalties, offering a perspective on the alignment of religious and constitutional principles within the tax legislative arena.

Nuances of 'Delay Penalty'

Specifically, the judgment states:

"In addition to the foregoing, the phrase 'delay penalties' finds its basis in the law and cabinet decisions and is not subject to legal interest provisions and therefore is not restricted by the maximum limit stipulated therein."

This assertion underscores a significant principle in the formulation and application of tax penalties.

The absence of a restriction by the maximum limit in the context of delay penalties is particularly noteworthy. It implies a strategic flexibility within the legal framework to impose penalties that are not bound by a predefined upper limit, thereby providing a potent tool to enforce fiscal compliance and deter delayed payments. This approach aligns with the overarching legal and fiscal strategy, ensuring that the penalties serve not just as a recuperative measure for delayed financial inputs but also as a deterrent against potential future delays.

Moreover, the judgment articulates a logical consequence of an alternative approach, stating:

"Saying otherwise leads to an illogical result, which entails rewarding the people who are late in paying the installments due on them."

This perspective underscores the inherent risk in providing leniency or capping penalties for delayed payments, as it could inadvertently incentivize non-compliance and disrupt the fiscal equilibrium that the penalties seek to maintain.

Sharia Compliance and Constitutionality of Taxes

The Supreme Court reiterates that the constitution distinctly establishes Islam as the official religion of the UAE, with Islamic Sharia being a principal source of legislation. The judgment states:

“The constitution has established that Islam is the official religion of the Union and Islamic Sharia is the main source of legislation therein.”

A pivotal aspect highlighted by the Federal Supreme Court is the definitive and unalterable nature of Sharia rulings. The jurisprudence underscores that these rulings are:

“...the definitive Sharia rulings in their proof and indication. Only these rulings are not subject to interpretation, and they represent the total principles of Islamic Sharia and its established origins that do not allow interpretation or change.”

This reflects a principle of stability and constancy within the legal framework, ensuring that the Sharia principles, which are deeply rooted in religious and moral values, remain steadfast and unyielding amidst the variations of time and place.

The judgment further necessitates that:

“...the principles of Islamic Sharia do not conflict with the other principles stated in the constitution, including imposing taxes on residents in the state when the conditions for imposing them are met.”

This ensures that while the Sharia principles provide a moral

and ethical compass, the legislative and fiscal policies, such as tax imposition, are formulated and implemented within a framework that is consistent, fair, and in alignment with both religious and constitutional principles.

This dual adherence can be likened to certain European jurisdictions, such as Germany, where the church tax (Kirchensteuer) is implemented, intertwining fiscal policy with religious adherence, albeit in a different manner and context.

Symbiosis of Civil and Administrative Law

A critical point of emphasis is the role and approach of the administrative judiciary in applying and developing civil law rules, especially in the context of public law relationships. The judgment highlights that:

“While the rules of civil law were established to govern the ties of private law, the administrative judiciary has to apply from them what is compatible with the ties of public law and has to develop them according to their nature.”

This assertion underscores the administrative judiciary’s pivotal role in ensuring that the application and development of civil law rules are not only compatible with public law relationships but also evolve in accordance with their intrinsic nature. This ensures a dynamic and adaptable legal framework that can effectively navigate through various legal scenarios and challenges, maintaining a balance between individual (private) and collective (public) interests.

In the United Kingdom, for example, administrative and civil law often intertwine, particularly in matters pertaining to public services and individual rights. The UK’s approach to administrative law, especially in the context of judicial reviews, demonstrates how administrative judiciary can navigate through and even shape civil law rules, ensuring that the application of the law is both robust and adaptive to

various legal and social contexts.

This approach, while distinct in its application from the UAE, provides a tangible example of how administrative and civil law can coexist and coalesce to form a legal framework that is both stable and adaptable, ensuring the fair and consistent application of the law across various domains and contexts.

Takeaway

The recent UAE Federal Supreme Court judgment provides taxpayers with specific logical frameworks that can be strategically leveraged in managing and resolving tax disputes.

One of the pivotal aspects to consider is the acknowledgment of the administrative judiciary's role in applying and developing civil law rules, particularly in the context of public law relationships.

Taxpayers, especially those engaged in disputes related to tax penalties, can utilize this logic in consideration of civil law rules.

Moreover, the judgment's emphasis on the permissibility of the legislator to organize the imposition of taxes and penalties in a manner that achieves the public good provides taxpayers with a logical framework to consider the application of any tax impositions or penalties.

Thus, the logic of the Supreme Court, when astutely applied, can serve as a valuable tool for taxpayers in navigating through and effectively resolving tax disputes across the various administrative and judicial channels.

Author: Mahmoud Abuwaseel

Title: Partner – Disputes

Email: mabuwaseel@waselandwaseel.com

Profile:

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

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www.waselandwaseel.com

business@waselandwaseel.com

Exceptional Taxation: UAE Supreme Court Rules on Domestic and Foreign Related Companies' Tax Liabilities

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The recent judgment delivered by the Federal Supreme Court regarding the application of tax liabilities to related companies, even those situated outside the state, in exceptional circumstances where the tax event occurs within the state, is of paramount importance. It not only delineates the legal boundaries of tax obligations among interconnected corporate entities but also sets a precedent for how tax laws are interpreted and applied in cross-border corporate scenarios. This judgment underscores the necessity of a nuanced understanding of the legal and fiscal framework governing such entities, thereby providing a robust foundation for tax planning and compliance, especially in an increasingly globalized business environment.

Tax events amongst related entities

The Federal Supreme Court's analysis concerning a tax event and the separation of liabilities among multi-entity enterprises is a nuanced examination of the legal and fiscal responsibilities that these entities bear. The court's reasoning on the matter sheds light on the intricate fabric of corporate law and tax obligations, particularly in the context of parent and subsidiary companies or branches.

The court underscores the distinct legal persona of a subsidiary company, which is conceived through the collaboration of another company, yet operates independently from its parent company. This independence is manifested in its legal and moral personality, enabling it to acquire rights and bear obligations. The subsidiary, with its unique name and domicile, operates as a separate legal entity, its nationality remaining unblended with that of its partners or parent company.

On the other hand, the tax event, as delineated by the court, is a pivotal circumstance that triggers tax liability. The court adopts a clear standard in identifying the tax event, which is fundamentally the supply of goods within the state. This standard is instrumental in determining the tax liability, which is incumbent upon the entity where the tax event is realized.

The separation of liabilities among multi-entity enterprises is a complex domain, necessitating a meticulous examination of the legal and fiscal dynamics that govern the relationships between parent companies, subsidiaries, and branches. The court's analysis provides a robust framework for understanding these dynamics and the legal parameters that define tax liability in the context of multi-entity enterprises and multinational companies.

The Supreme Court says in this regard:

“The subsidiary company is the company that is co-founded by another company and is independent. Originally, from a legal standpoint, it is independent of the parent company, and its legal and moral personality is established, which qualifies it to acquire rights and bear obligations. It is considered a separate legal entity from the partners and the parent company. The subsidiary company has an independent name and domicile, which is the place where its main administration is located. Also, its nationality does not mix with the

nationality of the partners. The person liable for tax is the one in whom the event established by law is available. The legislator adopted a clear standard in determining the event that creates the tax liability."

Tax liabilities for out-of-state entities

The Federal Supreme Court's analysis on the application of tax liabilities to related companies, even those situated outside the state, in exceptional circumstances where the tax event occurs within the state, unveils a nuanced understanding of the legal and fiscal framework governing such scenarios. The Court emphasizes the sanctity of the distinct legal persona of each company, underscoring the principle that the tax liabilities of one cannot be arbitrarily imputed to the other. However, it carves out an exception to this rule in extraordinary circumstances, thereby introducing a layer of complexity to the tax liability discourse.

The Court's stance is rooted in a logical necessity that once the tax event is realized, the tax assessment becomes anchored in the legal truth. This notion of a tax event is pivotal as it triggers the tax liability, and its occurrence within the state's jurisdiction is a critical factor in determining the tax obligations of related companies. The Court highlights that the tax liability is not merely a function of the corporate structure or the domicile of the companies but is intricately tied to the locus of the tax event.

This analysis brings to the fore the concept of exceptional circumstances as a determinant of tax liability. The Court posits that in such rare scenarios, the veil of separate legal persona of related companies may be pierced, allowing for the tax liabilities to be assessed in a manner that transcends the conventional boundaries of corporate separateness. This is a significant departure from the traditional understanding of tax liability as being confined to the entity where the tax event is realized.

Furthermore, the Court's discourse illuminates the legal rationale underpinning this exception. It underscores the imperative of a rational and equitable assessment of tax liability, particularly in scenarios where the strict adherence to corporate separateness may lead to an unjust enrichment or evasion of tax obligations. The Court's analysis is grounded in a pragmatic understanding of the fiscal realities, recognizing the potential for cross-border corporate structures to be employed in circumventing tax liabilities.

The Court's exposition also hints at a broader legal and fiscal paradigm wherein the principles of equity and justice are harmonized with the tenets of corporate law and tax policy. It invites a reevaluation of the legal doctrines governing the assessment of tax liability, particularly in the context of multi-company enterprises with cross-border operations.

Moreover, the Court's narrative underscores the imperative for a meticulous examination of the circumstances surrounding the tax event, advocating for a judicious approach in the assessment of tax liabilities. This nuanced understanding of tax liability, as expounded by the Court, provides a robust framework for navigating the complex terrain of tax law, particularly in scenarios involving related companies with cross-border operations.

The Supreme Court says in this regard:

"It was decided, according to the judgment of this court, that the legal personality of both companies must be respected, and it is not permissible to penetrate it or decide the liability of one for the tax debts of the other, except in exceptional cases... As by logical necessity, as long as the tax event has occurred, the tax assessment becomes based on the correct law."

Takeaway

In light of this judgment, tax planners should meticulously evaluate the legal and fiscal landscape governing the operations of related companies, especially those with cross-border operations. The clear distinction between the legal personas of related companies, as emphasized by the court, necessitates a thorough examination of the tax implications arising from the activities of each entity. Moreover, the exceptional circumstances clause introduced by the court warrants a careful analysis to ensure that tax planning strategies are robust enough to withstand legal scrutiny, particularly when the tax event occurs within the state's jurisdiction.

Furthermore, tax planners should consider adopting a holistic approach that takes into account not only the legal stipulations but also the ethical and reputational considerations associated with tax liabilities. The judgment serves as a reminder of the intricate interplay between corporate law, tax policy, and the overarching principles of justice and equity. By fostering a comprehensive understanding of the legal doctrines and fiscal realities underscored in the judgment, tax planners can better navigate the complex terrain of tax law, ensuring that the tax strategies devised are in compliance with the legal stipulations, and are resilient in the face of evolving legal and fiscal landscapes.

Additionally, in structuring contractual commitments and arrangements, it becomes imperative to meticulously consider the position articulated by the Federal Supreme Court. The judgment accentuates the significance of clearly delineating the legal and fiscal responsibilities of each entity involved, especially in scenarios where related companies engage in transactions that could trigger tax events within the state. Contractual arrangements should be crafted with a keen eye towards the legal nuances that could potentially impact tax liabilities, ensuring that the terms and conditions

encapsulated within the contracts are in alignment with the legal framework elucidated by the court. This entails a thorough review and, if necessary, a revision of existing contractual commitments to ensure they are robust and resilient against the backdrop of the court's stance. By proactively addressing the implications of this judgment in contractual agreements, companies can mitigate risks, ensure compliance with prevailing tax laws, and foster a conducive environment for transparent and equitable business transactions.

Author: Mahmoud Abuwaseel

Title: Partner – Disputes

Email: mabuwaseel@waselandwaseel.com

Profile:

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

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www.waselandwaseel.com

business@waselandwaseel.com

UAE Judgment on Creditors Claiming Tax Penalties from Debtors

April 4, 2024

Waseel & Waseel has represented clients in over two hundred tax dispute procedures in the United Arab Emirates, gaining valuable experience in protecting taxpayers from tax penalties.

The tax consequences arising out of deficient payments by debtors in commercial transactions has consistently grown more important as more taxpayers face tax penalties. A recent Dubai

judgment introduces a novel perspective to this dynamic. This judgment, which potentially empowers creditors to claim tax penalties from their debtors, represents a significant shift in the commercial and tax law landscape. This development is particularly noteworthy given the evolving tax regime in the UAE, underscoring its potential implications for future commercial interactions.

Liquidity Shortfall and Tax Penalties: The Age-Old Dilemma

When creditors issue invoices, they anticipate timely payment. However, delays in these payments can lead to a liquidity shortfall, preventing the creditor from meeting their tax obligations. This can result in penalties from the Federal Tax Authority (FTA). These penalties, often substantial, further strain the creditor's finances, essentially penalizing them for the debtor's delay.

The New Test Established by the Judgment

The recent judgment has introduced a potentially groundbreaking test for creditors. The creditor was subject to tax penalties imposed by the FTA and claimed those tax penalties from the debtor. The three-member tribunal addressed the claim over the tax penalties as follows:

“Regarding the request for the value added tax penalty, the plaintiff demands that the defendant be obligated to pay the VAT penalty...and whatever accrues until the date of paying the VAT. Given that the plaintiff did not provide evidence of paying the value of this penalty to the Federal Tax Authority, he cannot claim its payment from the defendant.”

This implies that if a creditor can provide evidence of having paid the respective tax penalty, they might be able to claim it from the debtor. This test, while seemingly straightforward, could have profound implications for commercial transactions, especially when considering the broader context of the UAE's evolving tax landscape.

Understanding the Scope of Damages

The Civil Transactions Law recognizes both direct and indirect damages. If a particular head of damage encompasses both direct and indirect elements, the direct aspect takes precedence. Nevertheless, this does not preclude the possibility of claiming other heads of damages that are indirect alongside those that are direct.

The distinction between direct and indirect damages is further clarified in Articles 283 and 284 of the Civil Transactions Law. Direct damages necessitate a guarantee without any conditions. In contrast, indirect damages require an offence, intent, or an action that leads to harm. If both direct and indirect causes coexist, the ruling leans towards the direct cause.

Given this legal framework, it is evident that creditors have a viable avenue to claim tax penalties from their debtors. If a debtor's delay in payment (the act) leads to a creditor facing tax penalties (the damage), and there is a clear causal relationship between the delay and the penalties, the debtor could be held responsible.

UAE Federal Decree-Law No. 47 of 2022: Implications for Companies and Their Debtors

The introduction of the UAE Federal Decree-Law No. 47 of 2022 on the taxation of corporations and businesses marks a significant shift in the UAE's tax regime. With corporations now having to pay taxes on their profits, the financial landscape for businesses has undeniably changed.

In this new environment, the judgment's potential to allow creditors to claim tax penalties from their debtors becomes even more relevant. Companies, now burdened with tax obligations on their profits, might face penalties due to liquidity issues arising from delayed payments by debtors. This judgment provides them with a potential avenue to recoup

these penalties.

In essence, companies can utilize this legal avenue to ensure that they are not doubly penalized – first by the delay in payments from debtors and subsequently by the tax penalties arising from the new corporate income tax law. This development not only provides a safety net for businesses navigating the new tax regime but also serves as a deterrent for debtors, emphasizing the importance of timely payments in the broader context of the country's tax obligations.

Flexibility of Courts and Evidence Consideration

The judgment's statement, " Given that the plaintiff did not provide evidence of paying the value of this penalty to the Federal Tax Authority, he cannot claim its payment from the defendant," opens the door to a broader discussion on evidence. While evidence of payment is a clear route to claiming penalties, the courts' flexibility in considering other forms of evidence is crucial.

For instance, would enforcement actions by the FTA, despite the liquidity of the creditor, be sufficient evidence? This could be particularly relevant in cases where the creditor has made arrangements with the FTA or is contesting the penalty. Other forms of evidence might include communication with the FTA regarding the penalty, documentation of the liquidity shortfall directly resulting from the debtor's delay, or even evidence of the debtor acknowledging their role in the creditor's financial strain.

Such flexibility would be in line with the pragmatic approach by the UAE courts, focusing on the real-world implications and fairness of the law, rather than a rigid adherence to form.

Pragmatic Implications and the Way Forward

From a pragmatic standpoint, this judgment, especially when viewed in the context of the UAE's new tax law, could be

transformative for creditors. It offers a potential remedy against the financial strain of delayed payments and the new tax obligations. Moreover, the potential flexibility of the courts in considering varying evidence further strengthens the creditor's position.

However, this potential remedy is not without challenges. Debtors could contest the validity of claims, and the exact nature and type of evidence accepted will likely be refined over time through subsequent judgments.

Conclusion

This judgment represents a significant development in the commercial and tax law landscape of the UAE. As the country's tax regime evolves, this judgment offers a potential safety net for businesses, ensuring they are not unduly penalized due to the actions of their debtors. The road ahead will undoubtedly see further clarifications and refinements, but for now, creditors have a new avenue to explore when faced with tax penalties..

Author: Mahmoud Abuwaseel

Title: Partner – Disputes

Email: mabuwaseel@waselandwaseel.com

Profile:

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

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www.waselandwaseel.com

business@waselandwaseel.com

Disputes on Delayed Approvals in Construction: An Analysis of Dubai Court Judgments

April 4, 2024

In the intricate tapestry of construction law within the United Arab Emirates (UAE), delays related to approvals have emerged as a recurring theme in disputes. The courts' approach to these matters is both nuanced and pragmatic, reflecting a deep understanding of the complex realities of construction projects. This article will dissect three key judgments from the Dubai Courts, each shedding light on the stance of the judiciary on delays arising from construction-related approvals.

Judgment 1: Case No. 673 of 2021, Court of Cassation (Dubai)

The case involves a maritime construction project. The developer's failure to obtain necessary approvals, licenses, and permits led to significant delays, resulting in the purchaser's request for contract termination.

Court's Findings and Reasoning

Contractual Obligations and Delayed Approvals: The court found that the developer's delay in obtaining necessary approvals was not excusable. The developer was expected to study the project's requirements and obtain all necessary approvals before commencing the project. The delay of over three years was deemed a breach of contractual obligations.

Rejection of Force Majeure: The court rejected the developer's claim of force majeure, reasoning that the delay in obtaining approvals did not constitute an unforeseeable event. The court emphasized that the delay was within the developer's control and did not render performance impossible.

Expert Evidence and Site Inspection: The court relied on an expert committee's report and site inspection, which revealed that the construction was incomplete and did not meet the agreed specifications. The court found this evidence sufficient to form its belief in the developer's failure to

perform.

Interest Rate Adjustment: The court reduced the interest rate from 9% to 5%, balancing the developer's breach and the purchaser's legitimate expectations.

Relation to Disputes Arising from Approval Delays

The judgment offers significant insights into how courts may approach disputes arising from approval delays in construction projects:

Pre-Contractual Planning: The judgment emphasizes the importance of thorough planning and understanding of regulatory requirements before entering into a contract.

Clear Contractual Terms: The case underscores the need for clear contractual terms addressing potential delays and unforeseen challenges, including approval delays.

Judicial Discretion and Evidence Evaluation: The judgment illustrates the court's discretion in evaluating evidence and understanding the factual matrix, particularly concerning delayed approvals.

Judgment 2: Case No. 105 of 2013, Court of Cassation (Dubai)

The dispute at hand revolves around a construction project that suffered significant delays. The developer (the appellant) alleged that the delays were caused by factors beyond its control, including changes made by the principal developer and governmental inaction. The buyer (the respondent), on the other hand, contended that the developer's negligence and failure to meet its fundamental obligations led to the delays.

The Court's Reasoning

The Developer's Obligations: The court embarked on a detailed analysis of the developer's obligations under the contract and

the relevant statutory provisions. It emphasized that the developer's commitment was not confined to the explicit terms of the contract but extended to all that was necessary for the proper execution of the project, including obtaining necessary approvals and ensuring the readiness of the land.

The Developer's Conduct: The court scrutinized the developer's conduct, finding no credible evidence to support the claim that the delays were beyond its control. The absence of documents proving governmental interference or changes by the principal developer led the court to conclude that the developer was either negligent or in default of its obligations.

The Buyer's Rights: The court also considered the buyer's rights under the law, recognizing that the buyer was entitled to withhold payment if the developer failed to fulfill its corresponding obligations. The court's reasoning was grounded in the principles of good faith and reciprocity that underpin contract law.

Analysis and Implications

The Importance of Documentation: This judgment underscores the critical importance of proper documentation in construction disputes. The developer's failure to provide evidence of external factors leading to delays proved fatal to its case. Parties must be diligent in maintaining records that can substantiate their claims, particularly when alleging circumstances beyond their control.

The Interplay between Contractual and Statutory Obligations: The court's interpretation of the developer's obligations illustrates the complex interplay between contractual terms and statutory provisions. It serves as a reminder that parties must be mindful of not only the express terms of their agreements but also the broader legal framework within which they operate.

The Broader Context of Construction Disputes: The judgment also sheds light on the broader context of construction disputes arising from approval delays. It highlights the multifaceted nature of such disputes, encompassing not only legal and contractual issues but also practical considerations such as project readiness, governmental actions, and the conduct of various stakeholders.

Judgment 3: Case No. 161 of 2011, Court of Cassation (Dubai)

The dispute arose between a contractor and a property owner. The contractor, having completed a significant portion of the construction, alleged breaches due to delayed approvals, which they claimed led to increased costs and project delays. The owner, on the other hand, attributed the project's delays to the contractor's actions, particularly their cessation of work pending increased prices.

Delayed Approvals: The Heart of the Dispute

Cancellation of Annex and Modified License: The court's analysis delved deep into the impact of delayed approvals. Specifically, it examined the contractor's claim that the cancellation of parts of the work, such as a service annex, required a halt in work pending a modified license. The court found that such cancellations did not necessarily warrant a work stoppage.

Impact on Timelines: The court juxtaposed the actual project delays against the contractual timelines. It underscored the contractor's refusal to continue work without price hikes as a breach of contract. Yet, it also acknowledged the role of delayed approvals in extending the project's duration.

Increased Costs: The court recognized that delayed approvals, combined with the contractor's cessation of work, led to escalated costs for completing the remaining work. Damages were awarded, reflecting the multifaceted repercussions of delayed approvals.

The Court's Reasoning

The court's approach was marked by a meticulous examination of the contractual obligations, the parties' conduct, and the overarching role of delayed approvals.

Contractual Obligations: The judgment emphasized the importance of clear contractual terms. In this case, the absence of provisions allowing the contractor to demand price increases due to delays became a pivotal point.

Expert Testimony: The court leaned heavily on expert testimony to decipher the cause of delays and the resultant damages. This reliance underscores the significance of expert analysis in disputes pivoting on delayed approvals.

The disposition of the court in this vein was as follows:

"And the cancellation of the annex and the issuance of a modified license does not cause a delay because the contractor does not stop work pending the issuance of the modified license, and there are no instructions from the municipality to stop the work until the issuance of the modified license, except in the works that include the execution of additions or additions to the building. As for the cancellation of parts of an issued license, as is the case in this lawsuit, the cancellation of a part of the licensed works, such as a service annex, does not require the contractor to stop until the issuance of the modified license. Also, the cancellation of the annex reduces the agreed-upon work that must be executed, and therefore reduces the time needed to execute what is agreed upon, and does not cause a delay."

Implications for Construction Disputes

This judgment offers a lens into the handling of delayed approvals in construction disputes.

Understanding Different Types of Delays: The court's nuanced

differentiation between various types of delays provides a roadmap for future disputes, offering clarity on the distinct impacts of each delay type.

The Importance of Contractual Clarity: The case accentuates the need for lucid contractual terms, especially when navigating the murky waters of delayed approvals.

Assessment of Damages: The court's methodical assessment of damages resulting from delayed approvals sets a precedent for gauging the multifaceted impact of such delays..

Author: Mahmoud Abuwaseh

Title: Partner – Disputes

Email: mabuwaseh@waselandwaseh.com

Profile:

<https://waselandwaseh.com/about/mahmoud-abuwaseh/>

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