DIFC Court of Appeal Affirms Enforceability of Foreign Interim Arbitral Awards (Neal v Nadir)

July 8, 2024

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Mini-summary

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

What are the practical implications of this case?

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

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

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

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

What was the background?

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

Nadir challenged the enforceability of this interim award in the DIFC Courts, arguing that interim awards should not be enforceable as they are not final and binding decisions. Neal, on the other hand, contended that the interim award was essential for protecting his interests during the arbitration and sought the DIFC Courts' assistance in enforcing it.

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

What did the court decide?

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

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

The decision was grounded in the interpretation of the DIFC Arbitration Law, which allows for the recognition and enforcement of interim measures issued by an arbitral tribunal. The court also referenced international jurisprudence and academic commentary supporting the enforceability of interim awards to bolster its decision.

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

Case details

Court: Court of Appeal, Dubai International Financial Centre Courts
Judge: Chief Justice Tun Zaki Azmi, Justice Sir Jeremy Cooke, and Justice Andrew Moran
Date of judgment: 19/3/2024

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

Tax Claim

July 8, 2024

The ruling No. 229 of 2024 by the Court of Cassation in Abu Dhabi on 04 April 2024 sets a new precedent regarding the necessity for taxpayers to provide **tax invoices** to claim tax debts from debtors. This judgment underscores the importance of adhering to formal documentation requirements in tax matters, ensuring that taxpayers have the appropriate records to support their claims.

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

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

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

The lack of proper **tax invoices** not only affects the ability to claim tax debts but also exposes taxpayers to potential **penalties** imposed by the Federal Tax Authority. The FTA has strict guidelines and regulations for VAT documentation, and failure to comply can result in significant fines and penalties. This ruling by the Abu Dhabi Court of Cassation prevents creditors from claiming taxes from debtors if they lack the appropriate tax invoices, expanding the **plight** of not issuing accurate tax invoices.

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

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

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

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

July 8, 2024

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

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

This case revolves around a **contractual dispute** involving Company A (Free Zone) and another company within the same tax group. The court noted, “It is legally established that a contractor agreement is a contract whereby one party undertakes to perform a task or make something in return for compensation agreed upon by the other party” (Article 872 of the Civil Transactions Law). The judgment highlighted that the client is obligated to pay the compensation upon delivery of the agreed-upon work unless otherwise stipulated by agreement or custom (Article 885).

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

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

Dubai Primary Court Judgment No. 2702 of

2020: Separate Legal Personalities in Tax Groups

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

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

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

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

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

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

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

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

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Dubai Appeals Court Upholds Compensatory Damages for Cryptocurrency Embezzlement

July 8, 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.

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UAE Supreme Court Sets

Precedent: Bans Compound Interest in Financial Transactions

July 8, 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.

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Supreme Court rules on intra-GCC VAT liabilities

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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..

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

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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, <u>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</u>…

…

*It has not been proven that the amounts subject to tax in the appellants' accounts were recorded as a loan, and <u>it is established from the terms of the contract that they were an advance payment under the account of works</u>. 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 <u>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</u>, 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.

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

July 8, 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.

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UAE Supreme Court Insight on Free-Zone Corporate Tax Exemptions

July 8, 2024

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.

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

July 8, 2024

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.

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