Corporate income tax disputes under the new UAE Federal Decree-Law No. 47/2022 on the Taxation of Corporations and Businesses

January 17, 2023

The new UAE law on taxation of corporate ("Corporate Tax Law") and business income was promulgated on 03 October 2022 and applies to tax periods commencing on or after 01 June 2023.

The Corporate Tax Law does not define its own dispute procedure system.

The Corporate Tax Law is subject to the Tax Procedures Law (Federal Decree-Law No. 7/2017).

The Tax Procedures Law regulates tax disputes through a five-tiered system: reconsiderations with the Federal Tax Authority, objections with the tax disputes resolution committees, and litigation before the Federal Primary Court, the Federal Appeals Court, and the Federal Supreme Court.

Here, we look at the top five prior tax-related judgments that would carry over to corporate tax disputes under the Corporate Tax Law.

1. No tax penalties on payment delays caused by the tax authority.

The Federal Primary Court has ruled that:

the obligations of the taxpayer to make tax payments on time and the procedural nature of the law are undeniable,

however, that does not produce an effect unless the way to implement the procedures is in accordance with what falls within the obligations of the Federal Tax Authority,

and if this is prevented by the Tax Authority without cause on the part of the taxpayer, there is no liability on the taxpayer that requires the imposition of penalties.

2. No tax penalties for re-submission of correct tax returns.

The Federal Supreme Court has ruled that:

"…it is decided that tax procedures are not an end in themselves, but rather a means to achieve the goal of the lawgiver in collecting the legally due tax. Allegedly, the tax returns made under the wrong procedure that were subsequently corrected were not taken into account. Rather, the FTA's right to collect the fine decided by the legislator on the wrong procedure only recedes, without this right going beyond that by imposing other fines for a tax collected on the date specified by the law, even under the aforementioned procedure."

3. No disputes available without tax or penalty liabilities:

The Federal Supreme Court has found that private clarifications are not disputable decisions until such clarification results in actual tax or penalties being applied to the disputing taxpayer.

In other words, if a decision by the Federal Tax Authority does not create a tax or penalty liability, it may not be disputed under the Tax Procedures Law.

4. No joint liability for tax evasion without laws

validating the conviction.

The Federal Supreme Court overturned a judgment against a party found to be an accomplice to a tax evasion crime on the basis that joint liability requires explicit provisioning in the law:

"…the Appeals Court's finding that the mere presence of the goods in the second accused's warehouse is considered participation with the first accused in evading the tax as stipulated in the laws of the State, without indicating the laws criminalizing the act and validating conviction, stigmatizes the judgment for insufficient causation, and breaches the [second accused's] right of defense, which requires it to be quashed."

5. Time limits related to tax disputes.

The Federal Supreme Court ruled that the time limits related to tax disputes do not necessarily commence when notification is issued – but rather require evidence of the receipt and fulfillment of knowledge of the taxpayer of that decision and its contents.

Takeaway

As the Federal Courts consider a wider array of complex tax disputes, taxpayers would benefit from the guidance of the courts on general matters, such as those listed above – but also on more industry-specific matters such as those affecting the insurance industry, manufacturing, construction, and real estate.

As taxpayers begin planning for compliance with the Corporate Tax Law, it is necessary to understand the position of the courts and tax dispute resolution committees on substantive and technical issues.

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

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