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

May 1, 2025

In a matter concerning the application of Value Added Tax (VAT) to a long-running construction project that began before 1 January 2018 but concluded years later, the Dubai Court of Cassation issued a notable ruling (Judgment No. 685 of 2024) regarding how VAT should be calculated. The dispute centered on whether the contractor could collect VAT on portions of the work that were either completed or invoiced prior to the official effective date of the UAE's VAT regime.

Before reaching the Court of Cassation, the lawsuit originated in the Dubai Court of First Instance under Case No. 2154 of 2022 Commercial (Partial). In that lower court judgment dated 28 March 2023, the factual background shows that the claimant (contractor) entered into a three-party construction agreement in mid-2017 with (1) the landowner and (2) the consulting engineer, who was in charge of supervision. The primary court found that the contract covered the construction of a villa consisting of a ground floor, upper floor, and a service block. Originally, the project term was set at 13 months. However, work on the villa extended well beyond that schedule. According to the primary court's findings, the final completion certificate was eventually issued on 12 June 2022:

"…after five years and 12 days from the date of signing the

> *contract between the parties, which was originally intended to last 13 months."*

The contractor had alleged that it completed 76.34% of the works by the time the project stalled in 2018. It further claimed that it stopped construction because of the owner's refusal to provide the required finishing materials, which the owner was contractually obliged to supply. By the time the dispute reached the courts, one key question involved the sum of AED 363,389 that the contractor demanded as payment, plus a requested declaration that a check held as security should be canceled.

While the primary court eventually awarded the contractor AED 171,996.50 plus legal interest, the issue of VAT became pivotal upon reaching appellate review and, ultimately, the Court of Cassation. The contractor argued that VAT should apply broadly to the amounts claimed. However, the Court of Cassation partially disagreed, confining VAT only to portions of the supply that took place after VAT's effective date (1 January 2018).

In its judgment, the Court of Cassation directly addressed whether sums paid for work done before January 2018 could be subject to VAT. It explained:

> *"…if a service is provided on a phased basis or in installments such that part of the supply occurred before the law's effective date, then VAT at the rate of 5% applies only to the portion of the supply executed after 1 January 2018. The work completed and paid for beforehand remains outside the scope of the new law."*

Referring to the contractor's specific situation, the Court of Cassation noted that the contractor received certain payments in 2017, well in advance of the 1 January 2018 VAT start date. and that the owner had disbursed AED 807,000 to the contractor

during that period. Thus, the Court reasoned:

> *"It was established through the expert's supplemental report that the respondent [the owner] paid an amount of 807,000 dirhams to the contractor in 2017, prior to the effective date of the VAT law. Therefore, no VAT is due in connection with this amount because the supply of those services was completed before 1 January 2018."*

Consequently, the Court "partially quashed" the lower judgment regarding the contractor's VAT entitlement. It revised the amount due to the contractor down to AED 128,801.49, specifically excluding any VAT on sums invoiced and paid before 2018. In the final dispositive clause, the Court stated:

> *"We rule to amend the appealed judgment so that the sum due to the contractor shall be 128,801.49 dirhams, and the contractor is not entitled to VAT on the works paid for in 2017."*

It is relevant to note that the case reached the Court of Cassation through a petition by the Dubai Public Prosecutor's Office "in the interest of the law." Once the highest court in Dubai rendered its decision, it clarified the treatment of VAT for a construction project that began prior to the introduction of the tax but was completed—and indeed extended—well after the tax took effect. The Court, however, only addressed the parties to the dispute, and its ruling does not establish direct obligations on the Federal Tax Authority (FTA) itself, as the FTA was not a party to the proceedings and the Cassation Court does not exercise jurisdiction over the FTA.

From a factual standpoint, the primary court's judgment documented how the villa construction started around mid-2017, that the contractor and the owner disagreed about

responsibility for supplying finishing materials, and that work effectively concluded in June 2022 under the contractor's name, even though the original timeframe was set at 13 months. The Court of First Instance awarded the contractor the principal sum but did not separate out pre-2018 VAT liabilities in its calculation. Only at the Court of Cassation stage was the VAT element clarified, leading to a partial reduction of the final amount payable.

Outside the specifics of this ruling, there is a broader historical position concerning development projects that transition from the pre-VAT to the post-VAT period, especially regarding property transfers. The general authoritative position has been that if the legal ownership of a property is transferred to the buyer—or if the buyer takes possession of it—before 1 January 2018, then that supply is considered outside the scope of VAT. However, if ownership or possession transfers on or after 1 January 2018, the entire supply may be considered subject to VAT under Article 80(1) of the Decree-Law, regardless of whether payments were received before or after the law's implementation. In such situations, Article 70(4) of the Executive Regulations, which deals with partially supplied goods or services before VAT took effect, would not apply to commercial units fully handed over after the effective date. Thus, a developer generally charges VAT on the entire value if the property is finished, transferred, or taken possession of post-implementation of the VAT laws on 1 January 2018.

In the villa construction case at issue, the contractor succeeded in demonstrating that certain works and payments fell firmly into the pre-2018 bracket, despite the project as a whole extending well into 2022. Under these facts, the court ultimately excluded pre-2018 amounts from being subject to VAT. In complex development scenarios, parties often need to document each phase carefully and confirm when a supply of services (or a transfer of ownership in real estate

transactions) is deemed to have taken place.

In the end, the judgment underlines the legal principle that VAT does not attach to works and payments definitively made prior to 1 January 2018, even if the overall project continued well beyond that date. The fact that this project took over five years to complete did not alter the Court’s view that the pre-2018 payments were outside the scope of the newly enacted tax. The ruling thus offers guidance on how courts may approach transitional VAT scenarios for long-duration construction contracts signed before the law’s inception.

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