Employee Liability for Corporate Tax Penalties: A Judicial Analysis of Dubai Court of First Instance Case No. 309 of 2025

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The introduction of the UAE Corporate Tax regime, effective from June 2023, has established a new and complex compliance landscape for businesses. With this landscape come novel legal questions regarding accountability. A critical issue is the extent to which an employer, having incurred penalties from the Federal Tax Authority (FTA), may successfully recover such losses from an employee whose duties included tax compliance.

The Dubai Court of First Instance, in its judgment for Labour Case No. 309 of 2025, issued on 9 July 2025, provides significant judicial insight into this question. While the primary claim was a standard labour dispute, it was the employer's counterclaim that raised this novel point of law. This article will provide a dispassionate analysis of the court's findings on the counterclaim, focusing on the legal principles and evidentiary thresholds required to establish employee liability for corporate tax penalties.

The Factual and Procedural Context

The case was initiated by an employee (the "Plaintiff") against his employer (the "Defendant") seeking unpaid salary, end-of-service gratuity, payment in lieu of notice, arbitrary dismissal compensation, and other allowances. The dispute

centered on the termination of the Plaintiff's employment and his entitlement to various sums, including a disputed bonus allegedly promised.

The Defendant responded by filing a counterclaim (al-da'wa al-mutaqabila), which is the focus of this analysis. The Defendant sought to hold the Plaintiff, who was employed in its accounts department, personally liable for a fine imposed by the tax authority.

The judgment summarises the counterclaim as follows:

"In the Counterclaim: … b- Obligating the Defendant-in-counterclaim to pay the Plaintiff-in-counterclaim the sum of AED 10,000, which is the fine it paid to the Federal Tax Authority due to the delay of the Defendant-in-counterclaim in registering for the corporate tax system within the timeframe. … [The Defendant] based its counterclaim on the fact that the Defendant-in-counterclaim had caused material damages to the Plaintiff-in-counterclaim, which is the fine it paid to the Federal Tax Authority…"

The employer's legal argument was, therefore, one of tortious liability (or a harmful act) under the UAE Civil Transactions Law. It contended that the employee's specific failure, an omission to complete the corporate tax registration on time, was a wrongful act that directly caused the company to suffer a quantifiable financial loss, namely the AED 10,000 FTA penalty.

The Court's Legal Framework and Reasoning

The Court of First Instance accepted the counterclaim in form but ultimately rejected it on the merits. The judgment provides a clear exposition of the legal test it applied, which was not derived from the Labour Law but from the foundational principles of civil liability for harmful acts.

The Three Elements of Tortious Liability

The court began its analysis by citing the established legal principle that liability for a harmful act requires the claimant (the employer, in this instance) to prove three essential elements:

1. **Fault (The Wrongful Act):** An act or omission committed by the defendant (the employee) that constitutes a breach of a duty. This act can be intentional (censure) or negligent (negligence).
2. **Damage (The Loss):** A demonstrable loss suffered by the claimant.
3. **Causation:** A direct causal link between the fault and the damage.

The judgment referenced the principles outlined in Article 282 of the UAE Civil Transactions Law, noting that the burden of proof rests entirely on the claimant (the employer) to establish all three elements. A failure to substantiate any one of these pillars results in the collapse of the entire claim.

Application of the Law to the Facts

The court's rejection of the employer's counterclaim was absolute and based on a fundamental failure of evidence. The judgment identified two distinct and fatal flaws in the employer's case.

1. **Failure to Prove Fault and Causation**

The court found that the employer had not provided sufficient evidence to link the employee's specific actions (or omissions) to the penalty. The judgment states:

"…the Defendant [the employer] did not provide any conclusive evidence that the reason for the imposition of the fine it is claiming was solely attributable to the Defendant-in-counterclaim [the employee]…"

This finding is of paramount importance. The court's use of the term "solely attributable" indicates that it was seeking a high standard of proof. It was not sufficient for the employer to simply state that the employee worked in the accounts department. The employer was required to demonstrate, with evidence, that:

- The specific duty of corporate tax registration was formally and clearly delegated to this employee.
- The employee's failure to perform this duty was the direct and proximate cause of the penalty.
- Other factors, such as a lack of management oversight, unclear instructions, systemic failures, or the newness and complexity of the tax law, were not contributing or intervening causes.

By finding that this evidence was absent, the court concluded that the "element of fault is negated."

2. **Failure to Prove the Damage**

In addition to the failure to prove fault, the court noted a more fundamental evidentiary lapse. The employer failed to prove that it had actually suffered the loss it was claiming. The judgment states:

"…as well as the fact that the Defendant [the employer] did not provide any evidence of the damages it incurred or that it had paid the fine it claims to have paid."

This demonstrates a primary failure to meet the burden of proof. To succeed, the employer would have been required to submit, at minimum, the official penalty assessment notice from the Federal Tax Authority and a corresponding proof of payment (such as a bank transfer or receipt). Without proving that a loss was actually incurred, the claim was unsubstantiated in fact, irrespective of the employee's alleged fault.

The court concluded its analysis of the counterclaim by stating:

“The elements of liability thus collapse, and the counterclaim is rendered unfounded in fact and law, and the court rules to reject it…”

Analysis and Implications

The decision in *Case No. 309 of 2025* is a salient reminder of the precise legal and evidentiary standards required to pass liability for regulatory penalties from a corporation to an individual employee.

- **High Evidentiary Burden:** The judgment confirms that such a claim is not a simple matter of set-off. An employer must affirmatively prove its case by meeting the three-part test for civil liability. The court’s focus on “solely attributable” fault suggests that any ambiguity in the employee’s job description, reporting lines, or delegation of new compliance tasks will likely be fatal to such a claim.
- **Clarity in Delegation is Key:** For an employer to have a prospect of success in a similar future action, it would need to demonstrate a clear and unambiguous assignment of responsibility. This would likely require documentation such as a detailed job description, an internal memo, or a specific written instruction that assigns the task of corporate tax registration (or other filings) to that specific employee, along with the associated deadlines.
- **Proof of Loss is Non-Negotiable:** The court’s second finding highlights a basic, but critical, point. A claim for damages must be supported by primary evidence of the loss. An allegation of payment is not proof of payment.

While this is a Court of First Instance judgment, the legal principles it applies are fundamental. The court did not rule

that an employee *can never* be held liable for such penalties. Rather, it affirmed that the burden of proving this liability rests entirely with the employer, and this burden requires conclusive evidence of the employee's exclusive fault, the employer's tangible loss, and the direct causal link between the two.

Corporate Implications: Policies for Tax Personnel

The court's findings on the counterclaim offer a critical lesson for corporations navigating new compliance obligations. The judgment implicitly underscores the necessity of robust internal governance. From a corporate viewpoint, this case demonstrates that relying on a general job title, such as "accountant," is insufficient to establish an employee's liability for a specific regulatory failure. The high evidentiary bar set by the court, requiring proof that the penalty was "solely attributable" to the employee, necessitates a formal and precise framework of accountability.

To protect their position, companies must implement detailed policies and procedures. Job descriptions for finance and tax personnel should be clearly drafted, moving beyond general duties to explicitly delineate responsibility for specific statutory deadlines and filings, including Corporate Tax registration, return submission, and payment. This responsibility should be formally communicated and acknowledged in writing. Furthermore, establishing a matrix of responsibility or a compliance calendar that assigns specific tasks to named individuals can serve as critical evidence in any future dispute, demonstrating that the employee was fully aware of their specific obligations.

Internal Controls and Proving Fault

This judgment also highlights the importance of internal controls and oversight. A corporation's ability to prove an employee's sole fault is significantly weakened if its own

internal processes are ambiguous or lacking. Implementing a ‘four-eyes’ or ‘maker-checker’ principle* for all tax-related submissions is a prudent mitigatory measure. While this may diffuse sole responsibility, its primary corporate benefit is the prevention of the error and penalty in the first place. This layered approval process, coupled with documented training on new legislation, demonstrates that the company has exercised due care. Should a penalty still arise due to a clear and demonstrable breach of these established, well-communicated procedures, the employer is in a far stronger position to isolate the fault, prove the employee’s negligence, and meet the high evidentiary standard for recovery.

*The ‘four-eyes’ principle, often implemented as a ‘maker-checker’ system, is a fundamental internal control mechanism used to prevent errors and fraud.

Its core concept is the segregation of duties, meaning no single person has the authority to complete a critical task from start to finish. The process is split into at least two parts:

1. The Maker: This is the first person (the first pair of eyes) who *initiates* a transaction, creates a record, or prepares a task. For example, they might enter a wire transfer into the banking system or draft a tax return.
2. The Checker: This is a second, independent person (the second pair of eyes) who *reviews* and *approves* (or rejects) the maker’s work before it is finalized or executed. This checker verifies the accuracy, legitimacy, and compliance of the task.

By requiring two different individuals to complete one process, the company significantly reduces the risk of an accidental mistake (e.g., a typo in a payment amount) or deliberate fraud (e.g., an employee creating and approving a payment to themselves).

Conclusion: Proactive Mitigation in an Evolving Tax Landscape

The judgment in Case No. 309 of 2025 serves as a definitive judicial signal: UAE employers cannot assume that financial liability for corporate tax penalties can be easily delegated or recovered from employees or others. The court has affirmed a high evidentiary threshold, demanding conclusive proof of sole and direct fault; a standard that generic job descriptions or ambiguous internal hierarchies will fail to meet.

This ruling moves the entire discussion from reactive litigation to proactive mitigation. The sound corporate strategy is to prevent the penalty from ever being imposed. This requires more than standard policies; it demands the implementation of a robust, defensible, and auditable tax governance framework.

At Wasel & Wasel, we focus on comprehensive tax controversy mitigation, advising clients on the specific internal controls and evidential trails necessary to withstand scrutiny. Our experience in the UAE, spanning over 300 distinct tax dispute procedures with a cumulative value exceeding AED 1 billion, provides our clients with an unparalleled perspective on the tax disputes and enforcement issues.

We understand the precise points of failure that lead to penalties and the exact documentation the courts will demand. We invite corporate leadership, in-house counsel, and finance departments to engage with our specialist team to audit, strengthen, and, where necessary, defend their corporate tax positions in this new and exacting regulatory environment.

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