Federal Supreme Court restricts tax clarification disputes

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In late April 2021, the UAE Federal Supreme Court issued the first judgments on disputes arising out of tax private clarifications.

The disputes had previously been adjudicated on by the Dubai tax dispute resolution committee, and by the Federal Primary Court and the Federal Appeals Court.

The Federal Supreme Court rejected the previous judgments and ordered that private clarifications issued by the Federal Tax Authority do not fulfil the requirements to be disputed.

Private clarification disputes

Previously, there was a level of procedural ambiguity with respect to disputes over private or public clarifications issued by the Federal Tax Authority.

These are disputes over decisions by the Federal Tax Authority that do not have an immediate monetary value; in comparison with a dispute over a tax assessment or voluntary disclosure, and the penalties arising thereof.

There have been different judicial interpretations on this particular issue as to whether a dispute that has no immediate monetary value (such as a private or public clarification dispute) can be accepted by the tax dispute resolution committees and Federal courts.

As a general matter, the Tax Procedures Law and the Cabinet Decision forming the tax dispute resolution committees require that a tax dispute litigant settle any taxes and/or penalties in dispute prior to objecting before the competent TDRC, which implies that tax disputes require a monetary value to be attached to the dispute.

However, general administrative law grants any person the right to dispute an administrative decision if that decision alters the legal position of the person subject of that decision, or if that decision affects (or potentially affects) the interest of the disputing person.

In some instances, the tax dispute resolution committees had accepted disputes over private clarifications. In other instances, the committees had rejected such disputes.

The Federal Primary Court and the Federal Appeals Court had also accepted disputes over private clarifications and ruled on their subject matter.

In April 2021, the Federal Supreme Court addressed this issue for the first time.

Federal Supreme Court decision

In its interpretation, the Federal Supreme Court reasoned that private clarifications are not administrative decisions – i.e., are not disputable decisions – because they do not alter nor cancel the legal position of the person to whom the decision is addressed.

To provide a comparable illustration of the nature of private clarifications issued by the Federal Tax Authority, the Court compared private clarifications to internal guidelines, and legal reports and commentary.

Finally, the Court established a private clarification cannot be disputed until such clarification results in tax or

penalties being applied to the disputing person.

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