How the New FTA Public Clarifications Guide Affects Tax Disputes

March 21, 2021

In October – November 2019, the Federal Tax Authority issued an updated Clarifications User Guide (USEG001) replacing its predecessor version from June 2018.

Item '6′, pg. 10, of the previous version of the Clarification stated that:

"Once a response is issued by the FTA, you may decide whether to follow the Clarification provided by the FTA or not at your own risk".

In the updated version of the Clarification that was issued recently, this provision has been omitted, subsequently creating more mandatory application of public clarifications on taxpayers in the UAE.

How does this affect litigation procedures and the judicial interpretation of public clarifications?

As far as the black letter of the law goes; Federal Decree-Law No. 13/2016 On the Establishment of the Federal Tax Authority does not grant the FTA powers to issue laws – only to propose them in coordination with the Ministry of Finance.

As a general matter, Federal legislation may only be issued by the 'Legislator', i.e. the consensus of the seven Rulers of the seven respective Emirates. This was the issue with the DIFC Law in the past and is currently a matter of discussion on the Bylaws to the Civil Procedures Law.

Public clarifications – as far as matters stand today – are

administrative decisions that may be challenged as any other administrative decision is, originally pursuant to Article 84 of the Civil Procedures Law on actions for canceling administrative decisions; taking into consideration the special provisions of the Tax Procedures Law.

In March 2019, Minister of Justice Decisions Nos. 237 and 238 of 2019 established Tax Dispute Circuits in the Federal Courts. Prior to the Tax Dispute Circuits, tax cases were referred to the Administrative Circuits of the Federal Courts, i.e. the Circuits that hear disputes where one (or all) of the parties are public / government entities.

This reinforces the stance that a public clarification is an administrative decision. Consequently, meaning that if a taxpayer was existing in the State when the clarification was issued, they should challenge the clarification itself as an administrative decision within the time limit of its issuance, or otherwise be deemed to have conceded to it.

The complexity arises if the taxpayer is established in the UAE after that time limit on challenging a public clarification has passed, in which case the taxpayer may request the Tax Dispute Resolution Committees or Federal Courts to adjudicate on the contents of the clarification if there are substantive, arguable grounds to do so.

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