Landmark Ruling Cancels Tax Audit Penalties

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In a recent landmark ruling issued by one of the three Tax Dispute Resolution Committees ("TDRC"), the TDRC ordered the cancellation of not only the late payment penalties – but also the tax audit penalties resulting from a tax audit.

Generally, the penalties arising from a tax audit are 50% of the tax liability, and there is usually a late payment penalty of up to 300% of the tax liability.

Wasel & Wasel counseled a taxpayer before the TDRC who had been subject to a tax audit and the TDRC ruling obtained ordered the cancellation of nearly all penalties including both the late payment penalties and, additionally, the tax audit penalties.

Although in the past the TDRCs and Federal Courts have ruled on cancellation of late payment penalties (of which Wasel & Wasel counseled on), this recent ruling by the TDRC cancelling the tax audit penalties was the result of significant efforts in arguing that the lawful elements that give rise to the tax audit penalties were not completely fulfilled.

Audit Penalties Process

Once a taxpayer is audited, the taxpayer generally receives (i) notification of the audit results; (ii) notification of the tax assessment; and (iii) notification of the tax penalties levied.

The tax penalties levied as a result of a tax audit are generally based on §10 or §11 of Cabinet Decision 40/2017 which applies penalties as follows:

- Fixed penalty of AED 3,000 or AED 5,000 depending on whether a violation is a first-time or repeat violation.
- Percentage based penalty of the amount unpaid to the FTA due to the error and resulting in a tax benefit as follows:
- o 50% if the taxpayer / registrant does not make a voluntary disclosure or a voluntary disclosure is made after being notified of the tax audit and the FTA has started the tax audit process, or after being asked for information relating to the tax audit, whichever takes place first.
- 30% if the taxpayer / registrant makes the voluntary disclosure after being notified of the tax audit and before the FTA starts the tax audit.
- 5% if the taxpayer / registrant makes a voluntary disclosure before being notified of the tax audit by the FTA.

The second penalty generally applied from tax audits is pursuant to §9 of Cabinet Decision 40/2017 which is the late payment penalty calculated as follows:

- 2% immediately of the unpaid tax.
- 4% after the seventh day following the deadline for payment.
- 1% daily penalty charged on any amount that is still unpaid one calendar month following the deadline for payment with a maximum of 300%.

Wasel & Wasel has counseled taxpayers before the TDRCs and the Federal Courts (up to the Federal Appeals Court) where late payment penalties and other penalties (such as audit penalties) were canceled.

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