Navigating Downstream Corporate Tax Liability in the UAE: An Analysis of Dubai Court of First Instance Judgment No. 1188 of 2025

April 6, 2026

Introduction

The introduction of the UAE Corporate Tax regime via Federal Decree-Law No. 47 of 2022 has fundamentally shifted the commercial landscape in the region. As businesses adapt to the new regulatory environment, a critical legal question has emerged: to what extent can a company unilaterally pass its corporate tax liabilities downstream to independent contractors, agents, or service providers? A recent judgment from the Dubai Court of First Instance (Case No. 1188 of 2025) provides vital clarity on this issue. By decisively ruling against unilateral tax deductions, the Court established clear tests and boundaries for corporate tax liability distribution, setting an essential precedent for future commercial disputes.

Overview of the Facts

The dispute arose from a real estate brokerage relationship. The Plaintiff, an independent real estate agent, successfully brokered the sale of a property unit for a total transaction value of AED 1,638,947. According to the agreement between the Plaintiff and the Defendant, a real estate brokerage company, the total 6% sales commission was to be split, with the Plaintiff receiving an 80% share, amounting to AED 78,669.47.

However, upon final settlement, the Defendant company remitted

only AED 71,589.22 to the Plaintiff, withholding a balance of AED 7,080.25. When the Plaintiff demanded the outstanding amount, the Defendant justified the withholding by claiming the deduction was necessary to cover its Corporate Tax and Value Added Tax (VAT) liabilities. Following unsuccessful attempts to resolve the matter amicably, the Plaintiff initiated legal proceedings to claim the withheld balance plus a statutory delay interest of 5%.

The Legal Arguments and Laws Cited

In its defense, the Defendant company relied heavily on the nascent tax legislation, specifically citing Federal Decree-Law No. 47 of 2022 on the Taxation of Corporations and Businesses (referencing Articles 1, 2, 3, 11, and 12) and the applicable UAE Value Added Tax legislation (cited in the pleadings as Law No. 18 of 2022). The company argued that because taxes are imposed on corporate income and revenues at respective rates of 9% and 5%, the proportionate burden of these taxes should naturally be deducted from the commission paid out to the agent who generated that revenue.

The Court evaluated this premise by rooting its analysis in the UAE Civil Transactions Law. Citing the Law of Evidence (Article 1), which dictates that the burden of proof lies with the claimant, the Court examined the contractual nexus between the parties. It heavily referenced Article 243(2) of the Civil Transactions Law, which mandates that each contracting party must fulfill what the contract obliges them to do, and Article 246, which requires contracts to be executed in good faith and in accordance with their explicit terms. Furthermore, the Court invoked Article 272(1), emphasizing that if one party fails to perform their contractual obligations, the other party has the right to demand execution.

The Court’s Tests for Downstream Tax Liability

Upon reviewing the findings of a court-appointed accounting

expert, the Court laid down a definitive framework, effectively establishing key tests, to determine the ability or inability of a corporate entity to impose tax liabilities downstream onto service providers:

1. **The Statutory Burden Test (Who bears the legal incidence?):** The Court affirmed that the statutory burden of Corporate Tax and VAT inherently falls upon the taxable corporate entity that registers the revenue; in this case, the Defendant company. The legal framework establishes that the tax burden is placed on the company itself, rather than being an automatic obligation of the downstream service provider or commission earner. Absent any other legal or contractual mechanism, the entity legally defined as the taxable person under the prevailing tax laws must bear its own tax costs.

2. **The Express Contractual Agreement Test (Is there explicit consent?):** To shift or deduct this statutory tax burden from a downstream party's remuneration, the Court established a strict evidentiary threshold. There must be an express, written agreement between the parties authorizing such a deduction. The Court categorically stated that without a written contract explicitly permitting the company to deduct statutory taxes from the agent's commission, any such deduction is legally baseless and unsupported by documentary evidence. Because the Defendant could not produce a written agreement authorizing the tax deduction, the Court deemed the unilateral "tax sharing" an unlawful breach of contract.

Judgment and Strategic Implications

Applying these tests, the Court ruled in favor of the Plaintiff, ordering the Defendant to pay the withheld AED 7,080.25. Additionally, reflecting updated judicial precedent

from a 2021 directive of the General Assembly of the Dubai Court of Cassation, the Court awarded a 5% legal interest rate on the owed amount from the date of the judicial claim until full settlement, and ordered the Defendant to bear all legal fees and expenses.

This judgment serves as a strict warning to corporations in the UAE. Companies cannot use the introduction of Corporate Tax as a unilateral excuse to reduce payouts to contractors, freelancers, or agents. If a business intends to share its tax burden or calculate commissions on a post-tax basis, this mechanism must be explicitly drafted into written agreements. Moving forward, businesses should urgently audit and revise their independent contractor and brokerage agreements to ensure tax liability allocations are clearly defined, mutually agreed upon, and fully compliant with UAE contract law.

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