New rules on retrospective tax penalty waivers, installments, tax litigation, and class actions

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Brief

For the first time since the UAE tax laws came into effect in October 2017, the legislation now:

- Grants permission to pay tax penalties in installments.
- Specifies reasons that permit penalty waivers.*
- Prohibits installments or waivers if litigation is ongoing.
- Allows for a class action against tax penalties.
- Permits waiver of penalties paid during the past five years.

*Before, the legislation only stated that "*accepted justifications*" may substantiate penalty waivers, but it was unclear what would entail an accepted justification.

Importantly, taxpayers must choose between either disputing tax penalties through the tax dispute resolution committees and the Federal Courts – or filing installment applications. The new changes make it unworkable for both to occur at the same time. And because of the time limitations, a dispute may be time-barred if the taxpayer opts to file an installment application instead of contending the penalties before the tax dispute resolution committees and the Federal Courts.

Although there is no explicit similar restriction for waiver applications, it is assumed that litigation may prevent waiver applications as well.

This is a substantive consideration for taxpayers as they must weigh the risks of sacrificing litigation against the risk of receiving a rejection on an installment application (and potentially waiver applications).

Decree

Cabinet Decree number 105 of 2021 was signed into effect on 28 December 2021 and published in the official gazette in first week of January 2022.

The Decree is titled: 'Regarding Protocols and Procedures for [Tax] Penalty Installments and Waiver'.

The Decree comes into effect on 1 March 2022.

Acceptability of tax penalty installments

Approval of requests to pay tax penalties in installments is subject to the following conditions:

- The request must be in respect of unpaid tax penalties only.
- The minimum tax penalties subject to an installment request must be at least AED 50,000.
- The penalties subject of the installment request must not be currently in dispute before the tax dispute resolution committees or the Federal Courts, or any other relevant authorities.
- That the penalties do not have any associated outstanding taxes.

Acceptability of tax penalty waivers

Approval of requests to waive tax penalties (in part or in full) is subject to the tax penalties not be associated with

any crimes of tax evasion. The law is unclear on whether 'crimes' refers to mere allegations or actual convictions.

Accepted reasons to grant penalty waivers are as follows:

- Death or illness of the taxpayer if the taxpayer is a natural person or owner of an establishment.
- Death, illness, or resignation of a principal employee of the tax registrant.
- Evidence of restrictions, or precautionary or preventive measures, applied on the taxpayer by UAE government agencies.*
- Evidence of system failure in the general, payment or communication systems of the Federal Tax Authority that affects a class of persons.
- Causes relating to restrictions on liberty and freedom of a natural person taxpayer or owner of an establishment.
- Payment of all taxes via the tax account of another registered taxpayer.
- In cases of insolvency or bankruptcy, penalties may be waived if they have been paid prior to the insolvency or bankruptcy, ad if it is evident that the insolvency or bankruptcy was not for purposes of tax evasion.

*The law does not state "*other*" government agencies. It is unclear whether restrictions or precautionary or preventive measures, also apply to actions by the Federal Tax Authority itself.

These reasons must – of course – be evidently directly linked to the implementation of the penalties.

The committee maintains the right to waive penalties for any other reasons it deems acceptable.

Class actions: The Decree permits the Director-General to propose to the committee waiver of penalties against a class of persons to whom are collectively affected by one of the

accepted reasons noted above.

As a note, the Decree refers to natural person owners of establishments. The Decree does not discuss single-person owned limited liability companies.

Procedure for either tax penalty installment or waiver applications

The applicant of either an installment or waiver application must provide the general details (tax number, penalty amounts, reasons, etc.) in their applications.

Importantly for installment requests, the taxpayer must file an undertaking that the penalties will be paid in accordance with the payment schedule that is accepted by the committee.

Importantly for waiver requests, the taxpayer must file an undertaking that the cause of the penalties shall be rectified, and that the cause shall not occur again.

A taxpayer may not file more than one application for the same penalty[ies].

Breach of the undertakings will nullify and void the underlying application. In other words, if the taxpayer breaches an undertaking against a waiver application by repeating the problem, the waived penalties may be re-implemented by the Federal Tax Authority.

An application will be reviewed by the Federal Tax Authority within forty weekdays for compliance with all requirements, if the application is valid, it shall be referred to the committee. The committee has sixty weekdays to decide on an application (and ten days to notify the applicant thereafter). Lack of a decision is deemed a final rejection.

Committee decisions

The committee will be responsible for setting the time limit

for filing waiver applications.

The committee will draw the payment procedures and schedules for installment applications.

The committee is free to decide the percentage of penalties to be waived in respect of waiver applications.

The committee may request any guarantee it sees fit to process an installment application. Presumably, the committee may request corporate, personal, or bank guarantees against an installment application.

Failing to adhere to an installment payment plan may result in either:

- A new payment plan if there is a justifiable excuse for non-compliance with the schedule, or
- Action by the Federal Tax Authority against the taxpayer to collect the penalties.

Retrospective penalty waivers

The Decree requires waiver applications to be made in respect of unpaid penalties only – but the Decree also grants the committee authority to waive paid penalties that were paid five years prior to a waiver application.

The Decree grants the committee authority to stipulate the circumstances and rules related to waiver applications in respect of paid penalties.

If paid penalties are waived retrospectively, the paid penalties subject of the waiver will be credited to the taxpayer's account with the Federal Tax Authority or refunded in cash in case the taxpayer has canceled their tax registration.

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