# New Tax Evasion Court (UAE)

March 21, 2021

**New court**

On 10 November 2020, His Highness Sheikh Mansour bin Zayed Al Nahyan, Deputy Prime Minister and Minister of Presidential Affairs, and Chairman of the Abu Dhabi Judicial Department issued Resolution No. 35 of 2020 (the "Resolution").

Article 1 of the Resolution states that:

"A Court is to be established in the city of Abu Dhabi and shall be dedicated to hearing Money Laundering and Tax Evasion Crimes. The Court shall be under the Abu Dhabi Criminal Court."

So far, there have not been reported tax evasion crimes in the UAE.

In December 2019, however, news was issued that the Federal Tax Authority and the Federal Public Prosecution had begun coordination and cooperation on regulatory measures to address cases of tax evasion, to develop training courses in the field of tax evasion and means of confronting it, and to form a joint team to work on identifying the legal documents and requirements to be dealt with for tax evasion issues and to manage the witness and victim protection program.

Tax evasion was addressed by a court for the first time during civil proceedings on 14 October 2020 when the Federal Supreme Court addressed tax evasion in a judgment related to voluntary disclosures.

The Federal Supreme Court took the position that where a person discovers an error, they must disclose and correct the

error (within twenty weekdays) – or be found to have committed tax evasion.

**Tax evasion**

Tax evasion is defined in the law as:

“The use of illegal means resulting in the reduction of the amount of the due tax, nonpayment thereof, or a refund of a tax that a person does not have the right to have refunded under any tax law.”

The criminal penalty for tax evasion is a prison sentence and/or a monetary penalty up to five times the amount of evaded tax.

The tax legislation does not limit the prison sentence term, but Article 69 of the Penal Code states that:

“The minimum period of imprisonment may not be less than a month nor exceed three years, unless the law provides otherwise.”

Because the tax legislation does not state otherwise, one can draw from the Penal Code that prison sentences for tax evasion crimes can be a minimum of a month and a maximum of three years.

As opposed to the self-declaratory tax regime for tax returns and so on, where the burden of proving the accuracy of the tax return falls upon the taxable person, in tax evasion issues, the burden of proving tax evasion falls on the Federal Tax Authority. – As is the case between civil and criminal cases.

It is to be noted that the Penal Code explicitly states that ignorance of the law is not to be considered an excuse – hence knowledge and application of the tax legislation is expected of all taxpayers, failure of which may lead to finding a tax evasion offense.

**Procedure**

As for the court procedure, Article 2 of the Resolution states that:

“Appeals to the judgements rendered by the specialized Court…shall be heard by one of the specialized circuits of Appeal of the Abu Dhabi Criminal Court.”

The specialized court will thus – seemingly – comprise of three stages of trial; a primary level, an appeals level, and final the Abu Dhabi Court of Cassation (criminal).

Prior, it was expected that tax evasion crimes would come under the ambit and jurisdiction of the Federal Primary Court (criminal circuit), given that tax evasion is a federal crime.

However, with the Abu Dhabi Judicial Department establishing an Abu Dhabi dedicated criminal court for tax evasion crimes, it is expected that the Emirates with independent judicial systems will have jurisdiction over tax evasion crimes that occur within their Emirate (or fall within their jurisdiction for other reasons).

The Emirates with independent judicial systems are Abu Dhabi, Dubai, and Ras Al-Khaimah (RAK). The remaining Emirates utilize the Federal court systems.

This will ultimately lead to potential diversity in judgments and reasonings, as there will expectedly be separate judgments over similar issues by the Abu Dhabi Cassation Court, the Dubai Cassation Court, the RAK Cassation Court, and the Federal Supreme Court.

**Liability**

As a general matter, a tax evasion accusation would be levied against the taxpayer (as the original debtor) and against the legal representative of the taxpayer company (i.e. the listed authorized signatory on the commercial registration of the

company, or the listed representative with the FTA).

However, both the tax legislation and the Penal Code address complicity – i.e. where others are involved in the potential tax evasion crime.

This is extremely important for employees of the taxpayer and external advisors to the taxpayer alike to take note of, as any could be deemed an accomplice to a tax evasion crime.

For example, if the finance director of a company discovers an error but does not take action on that error within the requisite time period to avoid tax penalties, the company (taxpayer) may be found to have committed tax evasion, and the finance director to be a direct accomplice to that action.

In another hypothetical, if a tax agent advises their client not to disclose a particular tax error to avoid facing tax penalties, the tax agent could be found to be an accomplice by causation.

Article 26 of the Tax Procedures Law addresses complicity as follows:

"The competent court shall impose tax evasion penalties against any person who is proven to have been directly involved or instrumental in tax evasion…[and] any person who is proven to have been directly involved or instrumental in tax evasion shall be jointly and severally liable with the person whom he has assisted, to pay the payable tax and administrative penalties pursuant to this law or any other tax law."

There are two types of criminal complicity; direct and by causation.

Direct complicity is defined in the Penal Code as one of three categories:

1. A person who perpetrates the crime with another person.

2. A person who participates in its perpetration when it consists of several acts and deliberately commits one of its constituent acts.
3. If a person sub-serves another person by any means to execute the criminal act and the latter is not criminally responsible for this act for any reason whatsoever.

Complicity by causation is also defined in the Penal Code under three categories:

1. If the person instigates to commit a crime that was perpetrated as a result of this instigation.
2. If the person conspires with others to perpetrate a crime that occurred as a result of this conspiracy.
3. If the person gives the doer a weapon, tools or anything else used in the perpetration of the crime of which he had knowledge; or willfully assists the perpetrator, by any other means, in the preparatory acts or those facilitating or completing the perpetration of the crime.

**FTA powers**

Article 50 of the Tax Procedures Law grants the Director-General, and tax auditors appointed by a decision of the Minister of Justice, the capacity of judicial officers for tax violations.

Under Article 30 of the Criminal Procedures Law, judicial officers have the power to inquire about crimes, search for their perpetrators and collect the necessary information and evidence for investigation and indictment.

Article 45 of the Criminal Procedures Law grants judicial officers the power order the arrest of the accused, present and against whom there is enough evidence that they committed a crime.

Nonetheless, criminal trial proceedings would be conducted by the respective public prosecution.

As such, the initiation of a criminal case may only be via an application of the FTA's Director-General pursuant to Article 17 of the Tax Procedures Law.

Ultimately, the Director-General and certain FTA tax auditors can act as judicial officers with the powers to search, investigation, question, and indict a person for tax evasion.

Subsequently, the complaint is submitted to the public prosecution by the Director-General in order for the new Tax Evasion Court to adjudicate the case.

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