No tax penalties without Federal Tax Authority public clarification – rules the Dubai tax dispute resolution committee

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In various decisions issued by the (second) Tax Dispute Resolution Committee of Dubai, the Committee ordered that tax obligations that are not explicitly provided for in the legislation do not create a tax obligation on the taxpayers until a public clarification is issued by the Federal Tax Authority.

Disputes

Three separate disputes were heard in 2023 by the (second) Tax Dispute Resolution Committee of Dubai on whether penalties should be applied to taxpayers against matters that are not explicitly clear in the legislation – but were instead clarified by the Federal Tax Authority via public clarification.

The FTA ordered the taxpayers to voluntarily disclose certain liabilities.

The FTA instructed the taxpayers that the tax legislation required certain tax liabilities to be disclosed by the taxpayers.

The taxpayers argued that the tax legislation did not

explicitly require disclosing said liabilities.

The position of the FTA was that irrespective of whether the taxpayer had read the legislation in a particular manner – the understanding of the taxpayer should have been as that of the FTA.

The FTA also relied on a public clarification that it had issued in mid-2022 to justify its position.

The taxpayers complied with the FTA instructions and filed voluntary disclosures throughout the year 2022.

The FTA applied the tax liabilities in addition to tax penalties against voluntary disclosure filings and late payments.

The taxpayers disputed the taxes and penalties before the Tax Dispute Resolution Committee.

Decision

The Tax Dispute Resolution Committee issued similar findings in the three disputes as follows:

- The tax legislation does not explicitly require the disclosure that the FTA had instructed the taxpayers to make.
- The position on how the tax legislation should be applied by the FTA was unknown to the taxpayer as it was derived from the specific legislative interpretation by the FTA.
- The interpretation of the tax liabilities by the FTA only became known to the taxpayers via the public clarification issued by the FTA.
- The taxpayers cannot be penalized for tax liabilities that dominantly arise from a public clarification issued by the FTA if such tax liabilities are not explicitly provided for in the tax legislation.

The Committee ordered the cancellation of all penalties up to the date of issuance of the public clarification by the FTA.

Takeaway

A substantial number of tax disputes in the UAE arise from differences in interpretation of the tax legislation – whether value-added tax legislation, excise tax legislation, or in due course, corporate income tax laws.

The decisions issued by the (second) Tax Dispute Resolution Committee of Dubai provide solace to taxpayers who are faced with penalty liabilities dating back to October 2017 or January 2018 for interpretations of tax legislation that differ from the interpretation by the FTA.

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