Restrictions on unincorporated joint ventures disputing taxes and tax penalties in the UAE

June 20, 2021

Issue

Companies often engage in, and operate projects, in the UAE through a joint venture or consortium structure. This is often the case in the construction industry.

Generally, these joint ventures or consortiums are unincorporated – meaning that the parties making up the joint ventures do not incorporate a company but are rather organized contractually.

For tax purposes, joint ventures or consortiums may nonetheless register for tax and obtain tax certificates.

However, the Federal Supreme Court has yet to confirm whether obtaining a tax certificate grants joint ventures or consortiums the right to dispute decisions by the Federal Tax Authority in the UAE, and/or subsequently litigate decisions by the FTA before the Federal Courts.

Unincorporated joint ventures (registered as a single taxpayer) may not be permitted to dispute decisions by the Federal Tax Authority.

To avoid the risk of losing the right to challenge or grieve against a tax decision, unincorporated joint ventures should consider the trial procedure restrictions and ensure their

dispute process is initiated properly from the reconsideration stage (or earlier).

Background / personhood

When the FTA issues a decision, the Tax Procedures Law and its Executive Regulations grant a person the right to challenge that decision through a five-tier dispute resolution process:

1. Lodging a reconsideration application with the FTA disputing the decision;
2. Submitting an objection against the FTA's reconsideration decision before the competent tax dispute resolution committee;
3. Filing a case to challenge the tax dispute resolution committee ruling before the Federal Primary Court;
4. Appealing the Federal Primary Court judgment before the Federal Appeals Court; and
5. Filing a case before the Federal Supreme Court appealing the Federal Appeals Court judgment.

The Tax Procedures Law is explicit in limiting the permission to proceed with the dispute process to a single 'person' as follows:

- "Any person shall have the right to submit an application to the authority for reconsideration of any decision issued by it…"
- "…the authority and the person may appeal the decision of the Tax Dispute Resolution Committee before the competent court…"

The Tax Procedures Law has explicitly restricted the dispute procedure to persons (i.e., those enjoying personhood under law) – not merely those with an issued tax certificate.

Statutory limitations

The general rule is that the capacity to sue or be sued

requires the party to litigation have the requisite legal capacity (personhood) to be a party to a lawsuit. Article 93 of the Civil Transactions Law grants the right to sue to legal persons.

By law, a 'person' may be a natural person (i.e., a human) or a legal person. A legal person is defined under Article 92 of the Civil Transactions Law as mainly State entities, companies, and private associations and institutions, amongst others.

Unincorporated joint ventures were previously recognized as commercial companies under the old Commercial Companies Law of 1984 as particular partnership companies ('*Mahasa*' companies) – albeit not necessarily obtaining independent legal personhood – but merely being governed with respect to the liabilities and obligations of the parties to the unincorporated joint venture.

Under the new Commercial Companies Law of 2015, unincorporated joint ventures are no longer considered a form of a commercial company.

Consequently, under the current legislative regime in the UAE, each company that is party to an unincorporated joint venture or consortium is a separate legal person. The joint venture itself does not enjoy legal personhood.

This was confirmed by the Dubai Cassation Court in 2011 (in respect of both the old and new Commercial Companies Laws) where it ruled that:

"It is also decided in the judiciary of this court that the association of the names of two companies in the contract with the word "joint venture" does not make them one company and does not create another legal person other than them and does not affect the right of each of them to sue in their name, and the meaning of this word is nothing more than the two companies' sharing of interests and rights resulting from the

[joint venture] contract."

Given that unincorporated joint ventures lack legal personhood, it is the general rule that they are hence not granted the right to sue (or be sued).

FTA guide

The Federal Tax Authority acknowledges that unincorporated joint ventures are not necessarily legal persons.

In the 'Getting Started Guide – VAT' reference VATG115, the FTA highlights in Section 2 therein that:

"A person can be an individual (i.e., operating as a sole trader), or a legal person … or another form of entity (e.g., an unincorporated body such as a charity or club, a partnership or trust)."

Accordingly, the FTA identifies that registrants can be natural persons (humans / individuals), legal persons, or another form such as an unincorporated body. The FTA recognizes that unincorporated bodies are not legal persons for tax purposes.

Considerations

These considerations must be taken into account for unincorporated joint ventures when facing a decision by the FTA that they wish to challenge.

The right to challenge a decision is permissible only once and is subject to strict time limitations that are generally twenty weekdays triggered upon the issuance of a decision at a particular stage.

If the procedure is found deficient at any step – at the reconsideration stage, tax dispute resolution committee, or at any level of the Federal Courts, the taxpayer may lose their right to challenge said decision again.

That deficiency may very well be lack of personhood for an unincorporated joint venture to challenge a decision by the Federal Tax Authority.

Erring on the side of caution would be the most appropriate way forward until the Federal Supreme Court addresses this issue and confirms or defuses whether an unincorporated joint venture with a tax certificate can challenge decisions by the Federal Tax Authority – or whether the dispute procedure has to be strategized differently to ensure the right of the joint venture to challenge an unfavorable tax decision.

Author: Mahmoud Abuwasel
Title: Partner – Disputes
Email: mabuwasel@waselandwasel.com
Profile:
https://waselandwasel.com/about/mahmoud-abuwasel/

Lawyers and consultants.
Tier-1 services since 1799.
www.waselandwasel.com
business@waselandwasel.com