Stopping Tax Enforcement in the UAE: Recent Court Judgment Guidance

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The enforcement of tax payment orders issued by the Federal Tax Authority (FTA) in the UAE can often lead to court enforcement applications by the FTA to seize assets of delinquent taxpayers.

The federal primary court in Abu Dhabi executes FTA applications to enforce tax debts. When a taxpayer challenges and stops tax enforcement the orders issued by the court are not necessarily judgments (with reasoning) but are merely court instructions to stay the execution.

This article delves into a recent judgment that effectively halted and canceled the execution of an FTA tax payment order with detail underscoring the **grounds and principles** that guided the court's reasoning. The judgment guides taxpayers facing tax enforcement or having tax debts or tax audits that may lead to enforcement.

Context and Judicial Authority

In tax enforcement cases, the execution judge is tasked with resolving disputes related to the validity and enforcement of the executive document (i.e., the instrument used for enforcement). As such, the judge can issue rulings and decisions on all temporary disputes related to enforcement, provided they are urgent. The executive document in tax enforcement is generally a decision issued by the Director-General of the FTA.

Article 40/1/b of the Tax Procedures Law simplifies tax enforcement by deeming the Director-General's decision on Tax Assessment and Administrative Penalties Assessment as an executory instrument. This means that formal judgments are not necessary for the enforcement of tax debts; the Director-General's decision alone suffices. This provision allows the FTA to act swiftly to enforce the collection of taxes and/or tax penalties without requiring prior court judgments against the taxpayer that recognize the debt.

Within approximately 2-4 weeks of the FTA applying to the federal primary court for execution, the FTA typically makes applications to seize the taxpayer's assets, including vehicles, bank accounts, stocks and bonds, commercial and industrial licenses, and real estate. Furthermore, the FTA may request the federal courts to liaise with local courts, such as those in Dubai or Abu Dhabi, to support execution efforts with their local authorities (such as the Dubai Land Department).

Case Background

The taxpayer in this case objected to the enforcement based on the assertion that the **executive document's procedures** were invalid since the Federal Tax Authority (FTA) could not evidence that the tax was due before it was registered for enforcement.

Legislative Framework

Tax laws are inherently public order statutes. The Tax Procedures Law, particularly Article 40, outlines the steps the FTA must take if a taxpayer fails to pay the due tax or penalties within the specified deadlines:

1. The FTA must notify the taxpayer to pay the due tax and fines within 20 weekdays from the notification date.
2. If the taxpayer fails to comply, the Director-General issues a decision obliging the taxpayer to pay the due

tax and fines, notifying them within 5 weekdays from the decision's date.
3. The Director-General's decision regarding tax assessment and penalties becomes an executive document for enforcement by the execution judge at the federal primary court in Abu Dhabi.

Judicial Reasoning

The court highlighted that the **execution judge's jurisdiction** hinges on whether the executive document is valid and enforceable. The taxpayer's objection was based on the argument that the FTA could not provide evidence that the tax amount was due. The court found that the FTA failed to substantiate the claim.

The court's analysis revealed that the **tax enforcement registration was erroneous**. There was no solid evidence presented by the FTA to demonstrate that the tax was due, which was a crucial requirement for the enforcement process. This gap in evidence indicated a defect in the enforcement procedure.

The court reasoned as follows in staying the enforcement procedure:

> *"It is also established that an objection to enforcement is a supplementary lawsuit that does not aim to change the content of the judgment and is not a means to appeal it. Rather, it is a complaint against its execution procedure and, therefore, cannot be based on claims of the judgment's invalidity, nullity, or violation of the law except in cases where the judgment is inherently flawed, affecting its existence and essence.*
>
> …
>
> *The implication of this provision is that the legislator made the issuance of the Director-General's decision by the*

> *authority contingent upon the failure to pay after notification.*
>
> *Based on the above review by the court and given that the objector disputes the same executive document subject to enforcement for the payment of the claimed amount, which is evident in the documents and uncontested by the opposing party, the request to cancel the enforcement procedures is justified. The documents show that the enforcement registration was made in error.”*

Conclusion

The court concluded that the taxpayer’s request to cancel the enforcement procedures was justified. The evidence of the taxpayer substantiated that the enforcement application by the FTA was erroneously conducted due to the lack of evidence of the tax debt, thus halting and subsequently canceling the enforcement process.

Evolving Judicial Approach

A notable trend is the judiciary’s evolving approach to tax enforcement disputes. The federal primary court has shown greater diligence in reviewing challenges to tax enforcement cases, granting more relief in the enforcement of tax debts. Grounds for halting enforcement have included issues related to the finality of the demanded amount, defects in the executive document, and procedural errors in the application of the writ of execution.

The number of tax enforcement cases has significantly increased, rising from about 80 in 2023 to 80 in just the first two months of 2024. This surge indicates an intensified focus by the FTA on ensuring tax compliance. Consequently, there is a growing need for taxpayers to have a deeper understanding of the enforcement process and the available solutions.

Wasel & Wasel have been counsel on over 300 tax dispute procedures for collectively about USD 1 billion in tax disputes and have obtained precedent setting federal supreme court judgments and are actively engaged by taxpayers in challenging tax enforcement.

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