Tax Dispute Time Bars – Weekdays, not business days

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Time bars

UAE tax legislation provides taxpayers with relatively short time bars to act against decisions by the Federal Tax Authority (FTA) that a taxpayer disagrees with (including penalty assessments). In failing to do so, a taxpayer loses their right to challenge depending on the respective stage of the challenge.

With the Eid public holidays around the corner, we address a wide misconception in the reading of the Tax Procedures Law that had caused taxpayers substantial losses or missing the opportunity to challenge decisions.

The issue is that public holidays are not discounted from the time bars.

Generally, to dispute a decision by the FTA, a taxpayer can submit a reconsideration request and/or a reduction and waiver application to the FTA.

A taxpayer may then resort to the tax dispute resolution committee of Abu Dhabi, Dubai, or Sharjah, depending on the taxpayer's registered tax address or if they are an out-of-state registrant.

Subsequently, the taxpayer can challenge a committee decision before the Tax Disputes Circuit of the Federal Primary Court in Khalifa City.

All these steps share a common time bar between them.

(With the exception of reduction and waiver applications which have different time bars and procedural requirements.)

The time bars are set as per (أيام عمل) in the Tax Procedures Law in Article 27 for reconsideration requests, Article 30 for objections before the competent tax dispute resolution committee, Article 33 for challenging before the Federal Primary Court, and in Article 26 of the Tax Procedures Law Executive Regulations with respect to reduction or exemption applications.

The time limit is 20 (أيام عمل). *

We use the Arabic terminology (أيـــــام عمـــــل) because the misconception has arisen out of the translation of this term to English.

The term (أيـــام عمـــل) is a descriptive term meaning ‘days of work’ and can be translated as business days.

But importantly, can also be translated as weekdays.

This elaboration is quite elementary, but significant for the purposes of this article and for taxpayers in pursuing reconsiderations of an FTA decision.

Lost in translation

In the English language, business days are generally accepted and understood to mean days other than weekends and holidays.

Weekdays are generally understood as meaning the working days of the week other than Saturday and Sunday (or the equivalent days of the weekend depending on the jurisdiction).

In the UAE, the weekend is Friday and Saturday.

Comparatively, in Arabic, there is no formal or colloquial direct translation for ‘weekend’.

Instead, weekend is referred to in Arabic as a descriptive sentence being ‘the end of the week’ or as the ‘holiday at the end of the week’.

Likewise, there is no common Arabic translation of the term ‘weekdays’ as is the case in the English language.

So, the use of the term (أيـــام عمـــل) in the Tax Procedures Law could mean business days or weekdays.

In the law

Of course, not only is language analysis important but more so the legislative backing for this deduction.

Here we refer to Article 45(2) of the Tax Procedures Law which states the following:

“If the last day of the time limit coincides with a public holiday, the time limit shall be extended to the first weekday thereafter.”

With this explicit provision, it is clear that the wording of the law in using the term (ايـــــام عمـــــل) is intended to mean weekdays, not business days.

Otherwise, if the term (أيـــام عمـــل) was to mean business days, Article 45(2) would serve no purpose.

Weekdays in the UAE are Sunday – Thursday.

Counting time bars for purposes of submitting a reconsideration request, a reduction or wavier application, an objection, or a challenge before the Federal Primary Court* should be on the basis of weekdays, irrespective of whether a public holiday occurs during the time bar. Unless the public holiday is on the last day of the time bar, at which point the last day to make a submission would be the first weekday after the public holiday (or weekend).

* Time bars for appealing a Federal Primary Court or Federal Appeals Court judgement are subject to the Civil Procedures Law and are counted in calendar days and are 30 and 60 calendar days respectively.

This manner of reference to 'weekdays' in legislation very rarely occurs. Emirati legislation almost uniformly refers to calendar days for the purposes of time bars. Hence, the reason this novel confusion that has arisen in the reading of the Tax Procedures Law (and its Executive Regulations).

Origin of the 'business days' English translation

The Ministry of Finance provides an unofficial translation of tax laws; which is the version that has been commonly circulated between non-Arabic speakers in the market.

The Ministry of Finance makes an explicit caveat in its English translations that it is an unofficial translation. In other words, it has no legal bearing.

Because of the nomenclature between business days and weekdays, it would have been expected that the reader would either refer to Article 45(2) or refer to the Arabic text.

Ultimately, a person subject to a specific law is expected to rely on the official language text as is published in the Official Gazette – or to be diligent, request counsel to advise.

For purposes of an example, another explicit discrepancy between an English translation of a law available on the Ministry of Finance website and the official Arabic text is seen in is Article 37(2)(c) of the VAT Law Executive Regulations.

The unofficial English translation states '*a service apartment…*'.

The official Arabic text states '*a hotel apartment…*'.

Nonetheless, reiterating, it is the general expectation that persons to whom a law applies will rely on the original text in the Official Gazette as opposed to unofficial translations, and seek counsel to advise on interpretation.

In the courts and counting time bars in general

Since 2018, during the first tax cases before the Federal Courts, and repeatedly thereafter at the reconsideration, objection, and Federal Court stages, positions have been taken that the public holidays are not to be discounted from the time periods.

In calculating time bars in general, Article 11 of the Civil Procedures Law administers the calculation of time bars as follows:

Article 11(1): If the law has set, for attendance or for the occurrence of procedures, a duration counted by days, months or years, the day on which the notice is served or the matter considered by the law as giving effect to the duration shall not be counted. The duration shall expire by the end of the office hours of the last day thereof.

Article 11(5): In all cases, if the end of the duration falls on a public holiday, the duration shall be extended to the following weekday.

Significance

Because a taxpayer generally has a relatively short period of 20 weekdays to act between every stage of a tax dispute up to the Federal Primary Court, we have seen most decisions being taken, or most applications being submitted, on the last day or last few days of the time bar.

This is generally because – in a practical sense – upon receipt of a decision not agreed to, the taxpayer engages in internal discussions (possibly amongst management in different

jurisdictions), then obtains input from tax advisors and tax counsel, and must prepare the application and confirm the application. A process which generally takes a few weeks.

Moreover, a substantial number of tax disputes since 2018 have been rejected due to being submitted late and falling outside the time bar.

As the Eid holidays close in, taxpayers with current applications or disputes will be taking the Eid holidays into account whilst counting time bars.

It is necessary to consider that the Eid holidays will not be discounted from the time bar, but only need to be accounted for if the last day of the time bar falls during the public holiday, at which point the last day of the time bar would be extended to the first weekday after the public holiday.

Tax dispute time bars

Reconsideration request to the FTA against a decision by the FTA: 20 weekdays as of the following weekday from the date of notification of the decision.

Objection to the competent tax dispute resolution committee against a reconsideration decision: 20 weekdays as of the following weekday from the date of notification of the decision.

Challenge to the Federal Primary Court against a tax dispute resolution committee ruling: 20 weekdays as of the following weekday from the date of notification of the ruling.

Appealing a Federal Primary Court judgement before the Federal Appeals Court: 30 calendar days as of the following calendar day from the date of notification of the judgement.

Appealing a Federal Appeals Court ruling before the Federal Supreme Court: 60 calendar days as of the following calendar day from the date of notification of the judgement.

Note: Notifications of reconsideration decisions and tax disputes resolution committee rulings are conducted via email. A person being notified by email is deemed notified upon the date the email is sent. * Not when the email is received. Taxpayers are generally advised to create dedicated email addresses for tax procedure purposes and whitelist the FTA, Ministry of Justice, and tax dispute resolution committee email addresses respective of the tax dispute procedures to ensure awareness of any notifications during the tax disputes procedure. Currently, the Federal Court is also notifying taxpayers of tax disputes via email in certain instances and taxpayers should follow-up diligently with the Federal Courts to ensure whether a case has been filed, and what email address the Federal Courts used to communicate the trial details to the taxpayer.

* According to Ministerial Decision No. 33 of 2020 amending certain provisions of Ministerial Decision No. 57 of 2018 promulgating the Executive Regulations of Law No. 11 of 1992 on Civil Procedures.

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