UAE Federal Court rules no tax penalties on payment delays caused by the tax authority

November 4, 2022

Brief

It was evidenced before the Federal Primary Court that the taxpayer had informed the Federal Tax Authority of an obstacle in the online tax filing portal that prevented the taxpayer from being able to file their tax returns.

The taxpayer continuously requested resolve of the issues since early 2018 until mid-2021.

The issue was finally resolved by the Tax Authority in 2021 and the taxpayer was able to file their returns and make tax payments after that date.

The Federal Tax Authority applied penalties retrospectively on the taxpayer for (i) late filing of tax returns and (ii) late payment of taxes.

Arguments

The taxpayer argued that Article 25(1)(i) permits the application of penalties in case the "…taxable person fails to settle the tax defined as the payable tax in the tax return that has been submitted or the tax assessment notified thereto within the period set forth under the tax law".

And since the payable tax never manifested because of the

inability to file a tax return, nor by way of an audit, no tax had become payable.

The taxpayer argued that the Payment User Guide of November 2018 indicates that the filing of tax returns and payment of taxes are sequential procedures.

In that payment of the tax is a subsequent stage to accepting the tax return.

That is only after accepting the tax return, the taxpayer must pay the tax due, otherwise the Federal Tax Authority may implement penalties.

However, where the taxpayer does not have the opportunity to submit the tax return due to the fault of the Authority, without cause on the part of the taxpayer, the subsequent stage of paying the tax cannot be triggered.

In other words, the unencumbered submission of the tax return is a pre-condition for payment of the tax.

Judgment

The Federal Primary Court ruled that:

- the obligations of the taxpayer to make tax payments on time and the procedural nature of the law are undeniable,
- however, that does not produce an effect unless the way to implement the procedures is in accordance with what falls within the obligations of the Federal Tax Authority,
- and if this is prevented by the Tax Authority without cause on the part of the taxpayer, there is no liability on the taxpayer that requires the imposition of penalties.

Wasel & Wasel was counsel on this matter.

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