UAE Federal Primary Court applies Supreme Court ruling on late tax payment penalties

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Since early 2019, the tax dispute resolution committees, and Federal Primary and Federal Appeals Courts have ordered the invalidity of applying late payment tax penalties capped at 300% retroactively to voluntary disclosures.

On 14 October 2020, the Federal Supreme Court overturned the position taken by the committee and Court judges, and ordered that voluntary disclosures are to be considered a branch of the original tax return – hence that both are one and the same, meaning that submission of a voluntary disclosure is akin to a late submission of a tax return.

The subsequent question circulating was whether the tax dispute resolution committees, and the Federal Appeals and Federal Primary Courts would echo the judgment by the Supreme Court.

In the week of 25 October, several judgements were passed by the Federal Primary Court applying the judgment of the Federal Supreme Court verbatim – in both content and principles – applying late payment penalties to voluntary disclosures retroactively calculated as of the date of the original tax return.

This confirms the expectation that the judges of the committees, and the Primary and Appeals Courts will echo and mirror the findings of the Supreme Court on this matter.

Does this close all avenues to litigate?

This does not necessarily prevent taxpayers from challenging late payment penalties on voluntary disclosures.

The right to resort to the judiciary is a constitutional right, and the procedure itself is granted as a subject matter right in the tax procedures legislation.

There are certain conditions, however, that must be respected when litigating a matter that is similar to one that has been previously litigated and adjudicated on by the Federal Supreme Court.

The Constitutional Circuit of the UAE Federal Supreme Court ruled in 2019 that:

"…the Federal Supreme Court's ruling has an absolute authority that is binding on all and all state authorities, including courts of different degrees and types, and it is not permissible to disband it, debate it, override its content, or reconsider the same case from a newcomer to this court…"

Hence, for taxpayers arguing the same basis that voluntary disclosures are to be considered a separate procedure than that of tax returns and hence subject to independent penalties – the Federal Supreme Court judgment will likely dismantle and trump this argument before any committee of Federal Court judge.

However, alternative procedures and arguments not heard by the Federal Supreme Court, that do not contradict the findings of the Federal Supreme Court judgment issued on 14 October, may provide an avenue for taxpayers to dispute the application of late payment penalties on voluntary disclosures.

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

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www.waselandwasel.com
business@waselandwasel.com