UAE judgments and tax committee decisions on FTA reconsideration procedures

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Wasel & Wasel has represented clients in over two hundred tax dispute procedures in the United Arab Emirates, gaining valuable experience in protecting taxpayers from significant losses over small procedural errors.

From the start of a dispute at the reconsideration stage to the final trial at the Federal Supreme Court, the issues extend beyond taxes and penalties. They fundamentally focus on whether procedures have been followed correctly.

This focus has been clear in numerous Federal court judgments and tax dispute resolution committee decisions since 2018. As a tax dispute moves through the court system, procedural integrity becomes increasingly scrutinized.

The Federal Tax Authority's litigation team is held as one of the UAE's most skilled government litigation departments. Therefore, it is crucial to have counsel who are experts in the specific challenges of litigating Federal Tax Authority decisions.

This article outlines key procedural judgments from the Federal courts and committees, providing insights for taxpayers on risk assessments and mitigation of taxes and penalties.

Part I: Evidencing the Reconsideration Procedure

Procedural Requirement

The reconsideration procedure necessitates the submission of evidence to establish that the objector has filed a request for reconsideration in accordance with the law.

Position of the Courts or Committees

The Dubai Tax Dispute Resolution Committee no. 100/2021 emphasized the importance of evidence in the reconsideration procedure:

"The evidence was devoid of anything that benefits establishing that the objector had filed a request for reconsideration, in accordance with the procedure set by law until the objection is considered by this committee, which makes the objection request submitted to the committee non-compliant procedurally."

Legislative Impact

The Federal Decree-Law No. 28 of 2022 sets the legal framework for the reconsideration procedure, outlining the specific requirements for submitting evidence.

Takeaway/Guidance

The importance of evidence in the reconsideration procedure cannot be overstated. Taxpayers must ensure that all necessary documentation is included in the reconsideration request to establish compliance with the law.

Part II: Scope of the Tax Dispute

Procedural Requirement

The scope of the tax dispute must be clearly defined and confined to the specific issues at hand.

Position of the Courts or Committees

The Supreme Federal Court, in cases no. 327/2021, 220/2021, and 181/2021, provided guidance on the scope of the tax

dispute:

“What the appellant raised regarding the legality of the tax imposition’s origin does not detract from that, as the scope of the relevant lawsuit does not relate to the extent of the legality of the tax imposition basically but its scope is limited to challenging the committee’s decision to cancel the delay penalty in payment, which does not allow exceeding that to reasons that were not a place for the relevant dispute from the beginning.”

Legislative Impact

The Federal Decree-Law No. 28 of 2022 does not explicitly define the scope of the tax dispute, leaving it to the courts to interpret and apply the law in this regard.

Takeaway/Guidance

Understanding the specific nature of the dispute and aligning legal arguments accordingly is essential. The scope of the dispute must be confined to the original issues, and overreaching must be avoided. In contrast, before a reconsideration request is filed, the taxpayer must ensure that the underlying decision obtained from the FTA encompasses all the items the taxpayer wishes to dispute.

Part III: Discretion in Accepting Late Reconsideration Requests

Procedural Requirement

The reconsideration procedure allows for the possibility of accepting late requests, provided there are valid reasons for the delay.

Position of the Courts or Committees

The Emirati judiciary, in Federal Primary Court case no. 424/2019 and 438/2019, considered the discretion in accepting

late reconsideration requests:

“It is settled that the deadlines for appealing administrative decisions before the general appeal committees are characterized as regulatory deadlines intended for reconsideration of the administrative decision within specific deadlines without keeping them open without a controller for the stability of situations and legal positions. It means that the matter is left to the discretion of the administration in estimating the reasons for the excuse submitted for non-compliance with the deadline or the period specified by law, so if the applicant for reconsideration exceeds this specified period with an excuse accepted by the body, it has to override its will for these dates and address the reconsideration request. Saying otherwise makes the deadline set by the law non-existent, and the deadlines become open without a controller, which leads to instability of situations and legal positions that require the nature of tax laws and legislations due to the financial and economic effects on both parties, the state, and the tax funder. And the appellant company did not provide any reasons for not submitting its reconsideration request to the Federal Tax Authority within the specified period as stipulated in Article 27 of Law No. 7 on Taxes, and therefore the Authority rejected the request or did not accept it, its decision coincides with the correct law and what the tax legislator wanted.”

Legislative Impact

The Tax Procedures Law No. 7/2017, before being replaced with Decree-Law No. 28/2022, provided the legal basis for this discretion, allowing the administrative body to assess the reasons for non-compliance with stipulated deadlines.

Takeaway/Guidance

The discretion in accepting late reconsideration requests emphasizes the importance of providing valid reasons for any

delay. Taxpayers must be aware of this flexibility but should not rely on it without substantial justification.

Part IV: Issuance of a Reconsideration Decision After the Absence Thereof

Procedural Requirement

In the absence of a decision on a reconsideration request within the stipulated period, the administrative authority may still issue a decision, triggering a new period for recourse to the Tax Disputes Resolution Committee.

Position of the Courts or Committees

The Federal Supreme Court, in case no. 568/2022, provided guidance on this matter:

"As long as this deadline is among the regulatory deadlines, if a person submitted a reconsideration request and the request was not decided within the stipulated period, and he did not resort to the Tax Disputes Resolution Committee after the period specified to decide on his request had passed, and the administrative body – hypothetically – decided on the request a year after its submission, then the decision on the request opens a new period for resorting to the tax disputes resolution committee."

Legislative Impact

The Federal Decree-Law No. 28 of 2022 does not explicitly address this scenario, leaving it to the courts to interpret and apply the law in this unique situation.

Takeaway/Guidance

The lack of a reconsideration decision may be considered an implicit rejection that would grant the taxpayer right to proceed with the dispute before the competent Tax Dispute Resolution Committee, but if the FTA issues a decision on the

reconsideration request down the line, the time-bar restarts for the taxpayer to challenge the decision. Practitioners must be aware of the possibility of a late decision on the reconsideration request and be prepared to respond accordingly.

Conclusion

The federal courts and tax dispute resolution committees in the UAE have provided clear guidance on the reconsideration procedures in tax disputes. By understanding their positions and the legal framework set by Federal Decree-Law No. 28 of 2022, taxpayers can navigate the complex landscape of tax disputes efficiently.

The insights provided by the federal courts and committees, coupled with the comprehensive framework set by the Federal Decree-Law No. 28 of 2022, offer a robust foundation for tax advisors, taxpayers, and stakeholders to approach tax disputes with confidence and clarity.

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