UAE overhauls tax dispute procedures (re-litigation, penalty refunds, fewer payments, longer time-bars)

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As of first November 2021, the tax dispute procedures have been amended pursuant to Federal Decree-Law No. 28/2021 creating a new opportunity to re-litigate disputes, permitting payments by installments or bank guarantees, providing longer time-bars for objection actions, reducing the payments required to proceed with a tax dispute, and other notable changes.

Re-litigation

- Article 33(2)(c) of the new amendments states:

"Failure of the person to provide proof of payment of no less than 50% of the amount of the administrative penalties as decided by the Committee, or as ruled by the court, as the case may be…"

- The text of this article illustrates a novel circumstance where the court may issue a judgment ordering a person to pay certain penalties, but subsequently, the person re-litigates those penalties before the court. Essentially creating a new opportunity to dispute penalties that have already been ruled on.
- It has generally been the case that tax disputes make their way to court in challenging a decision by the Federal Tax Authority only, after fulfilling the

requirements of filing a reconsideration application and objection the competent tax dispute resolution committee.

- The new text creates a new dynamic for the Federal Courts to potentially consider re-litigation for cases that have been already concluded.
- This also goes hand-in-hand with the new amendments to the Civil Procedures Law (the overarching legislation to the Tax Procedures Law) which – as of 2 September 2021 – allow for re-litigation of final and binding judgments in certain circumstances such as procedural mistakes, or judgments based on a repealed law, where the application of the correct law would change the opinion reached in the case.

Penalty refunds and installment payments

- A new committee is to be formed responsible for deciding on penalty waivers, permission to pay penalties in installments, and penalty refunds.
- The new amendments require bylaws to be issued to manage the procedures to be conducted by the committee.
- A matter of consideration is whether the refund mechanisms will apply to penalty refunds granted by the FTA directly, or also to refunds ordered by the court.

Time-bars

- The time-bar to file a reconsideration application against a decision of the FTA has been increased to forty weekdays as opposed to the prior twenty weekdays' limit.
- The time-bar for the FTA to decide on a reconsideration application has also been increased to forty weekdays from twenty weekdays.
- Objections against FTA reconsideration decisions to be filed before a tax dispute resolution committee must be filed within forty weekdays from the date of

notification of the reconsideration decision. This is also an increase from the prior twenty-weekday limit.

- Once a tax dispute resolution committee issues its decision, the person may challenge that decision before the Federal Primary Court. The new amendments have increased the timeframe to file the challenge before the Federal Primary Court to forty weekdays as well, as opposed to the prior time-bar of twenty weekdays.

Pay-now-argue-later (tax dispute resolution committees)

- Objections before a tax dispute resolution committee previously required settlement of all taxes and penalties subject to the objection prior to filing with the committee. Otherwise, the objection would be rejected on a procedural basis.
- The new amendments require payment of only the taxes subject of the objection. The amendments are silent on any requirements to pay any penalties. Implicitly, this should mean that payment of penalties is no longer necessary for a tax dispute resolution committee to rule on an objection.

Pay-now-argue-later (Federal Primary Court)

- Once a tax dispute resolution committee issues its decision, the person may challenge that decision before the Federal Primary Court.
- The new amendments require payment of at least 50% of the penalties in dispute to be conducted before the Federal Primary Court (or subsequent Appeals and Supreme Court) may address the dispute.
- However, the new amendments permit payment by cash to the FTA, or by an approved bank guarantee in favor of the FTA.

Government-to-Government disputes

- The new amendments exclude Government taxpayers (Federal or Emirate specific) from the application of the texts governing the tax dispute resolution committee's jurisdiction, the procedure for submitting objections, procedures of the committee, enforcement of the committee's decision, and challenges before the courts.
- However, the new amendments require a decision to be issued by the Cabinet of Ministers to create new mechanisms for Government-to-Government tax disputes, and until then, the standard procedure will continue to apply.

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