UAE Supreme Court 212/2023: Empowering Taxpayers when Evidence is with the FTA

February 3, 2025

In a recent ruling (UAE Federal Supreme Court 212/2023, Administrative Division), the court addressed a critical issue for taxpayers who find themselves in disputes with the Federal Tax Authority (FTA) but lack access to essential documents. In essence, the court recognized that, while the standard rule is that the burden of proof lies with the claimant, there are instances where this burden can shift onto the administrative body if that body alone holds the evidence needed to decide the case.

In English, the respective part of the judgment translates to:

> *"It is established that the burden of proof lies upon the claimant, and that the administrative judiciary's departure from this principle in certain situations and placing the burden of proof upon the administration occurs only when the documents necessary for ruling on the case are exclusively in the administration's possession… Therefore, if a taxpayer challenges the legality of the contested decision on the grounds that it was based on an unsound premise, and the administrative authority fails to respond or produce evidence refuting this claim, the court may rule on the basis of a presumption that the taxpayer's claim is correct in light of the administration's negative stance."*

This ruling carries important implications for taxpayers engaged in disputes with the FTA, especially when the

documents or evidence that might prove their position are under the sole control of the authority. Ordinarily, an individual or a company that brings a challenge before the court bears the responsibility to prove their case. This general principle ensures that those seeking to overturn or modify an existing administrative decision must present compelling evidence demonstrating why the decision is flawed. However, as the court acknowledges, the rigid application of this principle can be unfair to the taxpayer in situations where the evidence they need is not publicly available or is kept exclusively by the FTA.

By recognizing that the burden of proof can shift to the FTA, the Supreme Court judgment introduces an equitable balance. If a taxpayer alleges that a tax assessment or penalty was improperly calculated or imposed on an incorrect legal basis, they would typically need to present proof of those errors. Yet if the FTA alone holds the relevant records—perhaps internal calculations, documents exchanged with other agencies, or internal correspondence that could shed light on the assessment—the taxpayer is at a disadvantage. The court has effectively stated that in such circumstances, the FTA must either supply the evidence or accept the risk that the court will presume the taxpayer's position to be correct.

This mechanism prevents the authority from withholding documents that could clarify factual or legal questions. It also incentivizes administrative bodies to participate actively in litigation, rather than remaining silent and relying on the presumption that the taxpayer has the sole duty to prove every aspect of their case. When the FTA fails to submit the necessary documents or offers no substantive rebuttal to the taxpayer's claims, the court may interpret that silence as an indication that the taxpayer's assertions are true.

For taxpayers, this ruling underscores the importance of highlighting to the court precisely what documents they

believe the FTA possesses and why those documents matter. It is not enough merely to state that the taxpayer disagrees with the FTA's calculations. The taxpayer must show that the vital pieces of evidence lie in the authority's domain, making it impossible to provide them on their own. Once that hurdle is cleared, if the FTA does not meet its obligation to disclose or rebut, the taxpayer can benefit from the presumption that their allegations are correct.

In conclusion, Federal Supreme Court decision 212/2023 provides a fairer framework for disputes involving tax assessments and penalties. It ensures that if the FTA alone holds decisive evidence, it cannot deprive taxpayers of the opportunity to prove their case by refusing to produce the necessary records. This development helps maintain a balance in tax litigation and affirms the judiciary's commitment to equitable treatment when critical evidence is solely in the hands of the administration.

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