UAE Supreme Court: First Tax Evasion Criminal Case

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Case brief

In May 2021, the UAE Federal Supreme Court ruled on the first tax evasion criminal case ordering payment of five times the amount of the evaded tax, amounting to almost 4.2 million Dirhams.

At a hearing in October 2020, the Federal Primary Court ordered the taxpayer to pay five times the tax evaded. The Primary Court had relied on an expert report to confirm the quantum of the evaded tax.

The taxpayer appealed this sentence and at a hearing in March 2021, the Federal Appeals Court ruled accepting the appeal procedurally but rejected the taxpayer's defenses and upheld the Primary Court sentence.

Subsequent to this, the taxpayer challenged the Federal Appeals Court judgment before the Federal Supreme Court. The Federal Supreme Court upheld the sentence rendering it the first recorded Supreme Court case on tax evasion.

Previous address by the Supreme Court on tax evasion

Tax evasion was addressed by a court for the first time during civil proceedings in October 2020 when the Federal Supreme Court addressed tax evasion obiter dicta (in passing) in judgment number 227/2020 related to voluntary disclosures.

The Federal Supreme Court took the position that where a

person discovers an error, they must disclose and correct the error (within twenty weekdays) – or be found to have committed tax evasion, as follows:

“That is due to the fact that the voluntary disclosure along with tax differences it contained is not only a guarantee for the State Treasury but also a means of rectifying the taxpayer’s error as such in the declaration – or the result of the tax assessment – therefore, the aforementioned had to, in all cases, correct the errors in his declaration for the purpose of maintaining the dues of the State; otherwise, he would have faced the tax evasion offense, which requires his penalization.”

Tax evasion in law

Articles 1 of both the Tax Procedures Law and the Excise Tax Law defines ‘tax evasion’ as the “…use of illegal means, resulting in the reduction of the amount of the due tax, non-payment thereof or a refund of a tax that the Person did not have the right to have refunded…”.

Article 26 of the Tax Procedures Law sets out the penalties for tax evasion as imprisonment and/or a penalty of up to five times the amount of the evaded tax

Federal Tax Authority powers

Article 50 of the Tax Procedures Law grants the Director-General, and tax auditors appointed by a decision of the Minister of Justice, the capacity of judicial officers for tax violations.

Under Article 30 of the Criminal Procedures Law, judicial officers have the power to inquire about crimes, search for their perpetrators and collect the necessary information and evidence for investigation and indictment.

Article 45 of the Criminal Procedures Law grants judicial

officers the power to order the arrest of the accused, present and against whom there is enough evidence that they committed a crime.

Criminal complaints accusing a taxpayer of tax evasion are generally investigated by the State Funds department of the Federal Public Prosecution.

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