UAE Supreme Court on Constitutionality of “Pay Now, Argue Later” System in Tax Disputes

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Navigating the landscape of tax disputes in the United Arab Emirates presents unique challenges for taxpayers and legal practitioners alike. Central to this environment is the **“pay now, argue later”** system, a framework that mandates taxpayers to settle disputed taxes before contesting decisions through legal channels. This approach has sparked considerable debate regarding its fairness and constitutional validity. Drawing on our extensive experience at **Wasel & Wasel** in over 300 tax dispute procedures, we delve into the intricacies of this system and explore the recent judgment by the **UAE Federal Supreme Court** that upholds its constitutionality.

The **“pay now, argue later”** system operates on a straightforward principle: when a taxpayer challenges a decision by the **Federal Tax Authority (FTA)**, they must first pay the full amount of the disputed taxes during the second step of the dispute process before the competent tax dispute resolution committee.

If the taxpayer fails at the committee stage, they may escalate to the federal primary court. At this stage, the requirement shifts slightly; taxpayers must pay half the value of the penalties in dispute to grant the primary court jurisdiction. This system ensures that tax revenues are collected promptly while providing a structured pathway for dispute resolution.

We have observed firsthand the impact of this system on taxpayers. Clients frequently express reservations about the necessity of paying disputed taxes upfront. Concerns center around the financial burden imposed on individuals and businesses, particularly when the outcome of the dispute is uncertain. Taxpayers often question the **equity** of this requirement, fearing that it may disproportionately affect those with limited financial resources or those facing substantial penalties.

The crux of the debate lies in whether this system aligns with the principles enshrined in the UAE Constitution, particularly regarding **equality before the law** and the **right to access the judiciary** without undue hindrances. These concerns were addressed in a landmark judgment by the **UAE Federal Supreme Court** in case number **928/2023 AD**, which examined the constitutionality of the **"pay now, argue later"** approach.

In its ruling, the Supreme Court emphasized the **principle of equality before the law** as a cornerstone of the UAE Constitution. The court stated:

"The Constitution of the United Arab Emirates ensures the principle of equality before the law and guarantees its application to all citizens as the foundation of justice and freedom. It recognizes that the aim pursued is primarily the rights and freedoms of citizens in the face of discriminatory phenomena that undermine or restrict their practice. The emergence of discrimination is based on origin, gender, language, religion, or creed and is not limited exclusively. The Constitution also guarantees the right to litigation for all people."

This declaration underscores that the **"pay now, argue later"** system does not infringe upon the constitutional mandate of equality. Instead, it operates within the framework designed to balance the **social function of taxation** with the protection of **property rights**. The court recognized that while taxation

is a legitimate exercise of state authority, it must be regulated in a manner that considers the social utility of taxes and the necessity of maintaining public services and infrastructure.

Furthermore, the judgment addressed the **right to access the judiciary**, a fundamental right enshrined in the Constitution. The court affirmed:

“It also guaranteed the empowerment of every litigant to access the judiciary easily without being burdened by financial obligations or procedural obstacles. This access means that every individual has the right to resort to the judiciary, whose doors are not closed to anyone seeking to benefit from them. The path to it is paved by law.”

While acknowledging the importance of this right, the court also recognized the state’s legitimate interest in ensuring the efficient collection of taxes. By requiring taxpayers to pay disputed amounts before challenging decisions, the system aims to prevent the undue accumulation of tax liabilities and ensure the steady flow of revenue necessary for public services.

The Supreme Court further elaborated on the **legislative authority over taxation**, highlighting that the legislative branch holds the primary responsibility for determining tax laws, including their **application** and **assessment**. The court stated:

“The legislative authority is the one that holds the reins of public taxation, as it undertakes to regulate its conditions through laws issued by it, designed to determine its scope and assessment principles, specify its amount, and oblige its performance. It also establishes the rules for its calculation, analysis, and collection, as well as the procedures for its payment, the statute of limitations, and what appeals can be made against it, encompassing everything

related to the tax and its collection framework."

This clarification asserts that the legislature is empowered to set the framework within which tax disputes are resolved, provided that these regulations do not infringe upon constitutional rights. In this context, the **"pay now, argue later"** system was deemed a lawful exercise of legislative authority, designed to uphold the Constitution's mandates while facilitating effective tax administration.

Moreover, the court underscored the importance of **procedural fairness** within the system. The judgment noted:

"Cases of non-acceptance of submissions or appeals as stated above are merely legislative regulations. They fall within the discretionary authority of the body regarding methods of tax collection, submitting them to the established authority for collection, and appealing them before the judiciary. They do not infringe upon the principle of equality and equal opportunities granted by Articles (14) and (25) of the Constitution."

This indicates that while the system requires upfront payment, it also provides structured avenues for taxpayers to contest decisions, thereby ensuring that their **legal rights** are preserved. The requirement to pay half the penalties before escalating to the federal primary court serves as a compromise, balancing the need for revenue collection with the taxpayer's ability to challenge assessments without bearing the full financial burden initially.

Given that the requirement to pay taxes arises at the tax dispute resolution committee stage, it is imperative for taxpayers to engage expert tax dispute counsel early on during audits, voluntary disclosures, or reconsideration requests to address liabilities before they may be required to be paid at the tax dispute resolution committee and reduce penalties at the federal primary court levels, respectively. The **"pay now,**

argue later” system represents a balanced approach to tax administration in the UAE, aligning with constitutional principles of **equality** and **access to justice**. The recent judgment by the **UAE Federal Supreme Court** reaffirms the system’s constitutionality, providing a legal foundation that supports both effective tax collection and the protection of taxpayer rights.

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