UAE Supreme Court on Retroactive Tax Liability for Pre-2018 Building Projects

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In a significant judgment delivered on 18 October 2023 in petition nos. 1480 of 2022 and 1 of 2023, the UAE Federal Supreme Court addressed the complexities surrounding tax liabilities that arise from building projects initiated before the enactment of a new tax law. The court considered interpretations and implications of retroactive application of tax laws, particularly for the engineering and construction industry in contracts executed prior to 2018.

At the heart of this ruling is the application of VAT (value added tax) on transactions that were executed before the implementation of the VAT law in 2018 but continued to yield tax liabilities post-enactment.

The court's decision is grounded in the principle that new legislation applies immediately to facts and circumstances arising after its effective date. The rationale is that new legislation is presumed to be an improvement over old laws and, as such, should be applied to all relevant instances that occurred prior to the new law from the point of enactment of the new law. **This principle was applied to the case at hand, where the supply and installation of goods took place before 2018 but created a tax liability post-2018.**

Another critical aspect of the judgment is the court's interpretation of tax obligations. According to the ruling, tax obligations arise from the law, which dictates the tax rate and the mechanism for its payment. The court emphasized

that every entity subject to tax must register for tax and file tax returns for each tax period during their registration. **This requirement holds even if the underlying transactions were completed before the new tax laws came into effect.**

In this sense the court reasoned that:

"And this implies that all effects that occur under the authority of this legislation, even if they originate from facts that happened before its effective date, should be subject to its jurisdiction. This is to ensure uniformity in legal statuses. This does not constitute retroactive application of the legislation but is rather the implementation of its immediate effect."

In addressing the arguments presented by the appellants, the court rejected the notion that applying VAT retrospectively to pre-2018 transactions was unlawful. The court referred to specific provisions of the VAT law, particularly those concerning the timing of supply and the completion of the installation of goods, to support its ruling. **It was determined that the taxable event, in this case, occurred after the VAT law came into effect, thus subjecting it to VAT regulations.**

Moreover, the court underscored the importance of contract interpretation in determining tax liabilities. It highlighted that the intent of the contracting parties, as expressed in the contract terms, is paramount in deciding whether a transaction falls within the scope of VAT. **In this case, the payments made under the contract for engineering works (purchase, construction, and operation) were deemed advance payments, falling under specific provisions of the VAT law.**

The court reasoned as follows:

"It is decided that Article 80 of the Federal Decree-Law No. 8 of 2017 concerning Value Added Tax stipulates that if the

supplier receives the consideration or any part of it, or issues an invoice for goods or services before the date of the implementation of the provisions of this decree-law, the date of supply is considered to be the date of the implementation of the provisions of this decree-law in the cases stated below if it occurs after the date of the implementation of the decree-law… J – Completion of the assembly and installation of goods, and it is decided that the event that creates the Value Added Tax applies to the events that occur after its enforcement starting from 1/1/2018…

…

*It has not been proven that the amounts subject to tax in the appellants' accounts were recorded as a loan, and it is established from the terms of the contract that they were an advance payment under the account of works. The contract, which is the subject of the tax, concerns engineering works involving purchasing, construction, and operation, which falls under item J of Article 80 of the Value Added Tax Law."*Top of Form

The court further addressed the administrative and procedural aspects of tax collection. It stated that tax procedures are a means to achieve the legislative intent of tax collection and should fulfill the state's right to collect taxes within legally prescribed timelines. **Even in cases of procedural errors, the state's right to collect taxes remains intact.**

On this issue, the court reasoned that:

"Council of Ministers issued Decision No. 105 of 2021, and the second article of it stipulates that the provisions of this decision apply to requests for installment payments and exemptions, and the full or partial refund of administrative fines imposed on any person for violating the provisions of the Tax Procedures Law or the Tax Law. Given this, and the fact that the appellants did not resort to this committee or

to the tax disputes resolution committee for any request for exemption or reduction of the penalties before or during the lawsuit of the contested judgment or the appealed judgment, what the appellants claim about the error in applying the law due to non-application of Council of Ministers Decision No. 49 of 2021 is not valid and not acceptable."

The court indicates that the tax disputes resolution committee, traditionally limited to review of reconsideration decisions, might also possess the authority to consider requests for exemptions and reductions in administrative penalties. This revelation is significant as it potentially expands the options available to taxpayers in handling penalty disputes. Previously, such matters were primarily associated with the special committee outlined in Federal Decree-Law No. 28/2022. This new interpretation suggests a broader role for the tax disputes resolution committee beyond its conventional scope, offering taxpayers an additional avenue to seek penalty relief.

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