UAE Supreme Court on Taxability of Employee Housing

November 11, 2024

The recent judgment by the UAE Federal Supreme Court in Case No. 629 of 2024 marks a significant advancement in the interpretation of value-added tax (VAT) laws concerning employee benefits. This ruling provides critical guidance on how companies should handle VAT related to housing expenses provided to employees.

In this case, a company sought to recover input VAT incurred on expenses for providing housing to its employees, accommodating job candidates, and offering hotel stays during marketing campaigns. The company argued that these expenses should be exempt from VAT and that it was entitled to reclaim the input VAT paid.

The Federal Supreme Court delved into whether expenses such as water, gas, and electricity fall within the concept of a housing allowance. According to the court, these utilities **"are outside the concept of housing allowance that is considered a component of the salary as an in-kind benefit granted to the employee by the employment contract and fall within services that must be reclaimed in respect of VAT."** The court emphasized that unless these expenses are explicitly included in the employment contract, they cannot be deducted from the tax base.

Furthermore, the court highlighted the necessity of precise documentation in employment contracts. Article 10 of Cabinet Decision No. 1 of 2022 stipulates that **"the employment**

contract must contain… the agreed wage, including benefits and allowances." This means that any in-kind benefits, such as housing allowances or utility payments, must be clearly defined in the contract to be considered for VAT exemption.

The court found that the lower court had failed to verify whether these expenses were included in the employment contracts. **"The judgment under appeal did not properly examine whether these expenses were included in the employment contract… It has violated the law and must be reversed,"** the court stated. This oversight led to the reversal of the lower court's decision and a remand for further examination.

This ruling underscores the importance for companies operating in the UAE to structure their employment contracts. By clearly outlining all benefits and allowances, companies can ensure compliance with VAT regulations and avoid unexpected tax liabilities.

For businesses, this judgment serves as a crucial reminder of the intricate relationship between employment law and tax obligations. Companies must be vigilant in documenting all aspects of employee compensation to optimize their tax positions and comply with the law.

At Wasel & Wasel, we understand the challenges that companies face in this area. With our experience in over 300 tax procedures collectively valued at over USD 1 billion, we are well-equipped to assist businesses in navigating these complexities. Our team is dedicated to providing clear, practical advice to ensure that our clients remain compliant while maximizing their operational efficiency.

The Federal Supreme Court's decision represents a pivotal moment in the interpretation of VAT laws related to employee benefits. It highlights the need for businesses to be proactive in reviewing and updating their employment contracts and tax strategies.

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