UAE Supreme Court rules late payment penalties apply to voluntary tax disclosures

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Issue

The first case involving the method of calculating late payment penalties on voluntary disclosures has been adjudicated by the Federal Supreme Court.

The Federal Supreme Court has taken a position divergent from that of the tax dispute resolution committees, and the Federal Primary and Federal Appeals Courts on this matter.

The judgment is significant because late payment penalties are calculated at a maximum of 300% of the tax debt.

A voluntary disclosure is when a taxpayer notifies the Federal Tax Authority ("FTA") of an error or omission in a previous tax return, tax assessment or tax refund application.

A voluntary disclosure is obligatory when the taxpayer discovers a mistake – and submission of the voluntary disclosure must be made within twenty weekdays of discovering the mistake.

Once the taxpayer makes a voluntary disclosure – the resulting late payment penalties can reach a maximum of 300% of the disclosed amount calculated retrospectively as of the original tax return, tax assessment, or tax refund application.

Voluntary disclosure penalty calculation

The voluntary disclosure results in the FTA applying fixed penalties that comprise of AED 3,000 for the first time, and AED 5,000 for each subsequent voluntary disclosure.

A voluntary disclosure also results in the FTA applying a percentage-based penalty of 5% calculated based on the tax amount variance between the value in the voluntary disclosure and the original tax return, tax assessment, or tax refund application. This is referred to as a 'tax benefit' penalty.

Thirdly, the FTA generally applies a late payment penalty to voluntary disclosures at 2% immediately, 4% after the first week, and 1% daily up to a maximum of 300% calculated retrospectively as of the date of the tax return, tax assessment, or tax refund application that is being remedied – not as of the date of the voluntary disclosure.

Federal Supreme Court judgment

The case involved the application of late payment penalties on voluntary disclosures.

Since early 2019; the tax dispute resolution committees, the Federal Primary Court and the Federal Appeals Court, have taken the position that late payment penalties do not apply to the tax amount variance between the voluntary disclosure and the original tax return.

In other words – that the late payment penalties should be calculated as of the date of the voluntary disclosure, but not retrospectively as of the date of the original tax return.

However, the Federal Supreme Court has taken a position divergent from that of the tax dispute resolution committees, and the Federal Primary and Federal Appeals Courts.

The Federal Supreme Court reasoned that voluntary disclosures are to be considered a branch of the original tax return.

Based on this reasoning, the Federal Supreme Court ordered

that late payment penalties should apply retrospective to the voluntary disclosure, calculated as of the date of the original tax return.

For example, if a person discovers a mistake in a tax return from April 2018, and makes a voluntary disclosure in April 2020, the late payment penalties up to 300% would be calculated as of April 2018 – not April 2020.

Article 101 of the UAE Constitution states that the judgements of the Federal Supreme Court shall be final and binding upon all. Thus, it is expected that the tax dispute resolution committees, and the Federal Primary and Federal Appeals Courts shall echo the position taken by the Federal Supreme Court on this issue.

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