Tax Controversy
2021

Contributing editor
Richard Jeens

© Law Business Research 2020
Lexology Getting The Deal Through is delighted to publish the eighth edition of Tax Controversy, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Ecuador and Taiwan.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Richard Jeens of Slaughter and May, for his continued assistance with this volume.

London
September 2020

Reproduced with permission from Law Business Research Ltd
This article was first published in September 2020
For further information please contact editorial@gettingthedealthrough.com

© Law Business Research 2020
# Contents

<table>
<thead>
<tr>
<th>Country</th>
<th>Page</th>
<th>Authors</th>
</tr>
</thead>
</table>
| Global overview    | 3    | Richard Jeens
Slaughter and May |
| Austria            | 6    | Gerald Schachner, Kornelia Wittmann, Nicolas D Wolski and Lucas Hora
bpv Hügel Rechtsanwälte GmbH |
| Brazil             | 13   | Luciana Rosanova Galhardo, Felipe Cerrutti Balsimelli and Pedro Augusto A Asseis
Pinheiro Neto Advogados |
| Ecuador            | 19   | Andrea Moya and Francisco Rosales
CorralRosales |
| Greece             | 25   | John Papadakis
Dryllerakis & Associates |
| India              | 32   | Lokesh Shah, Ajinkya Gunjan Mishra, Devashish Poddar and Avani Tewari
L&L Partners |
| Ireland            | 42   | Greg Lockhart, Joe Duffy and Kathryn Stapleton
Matheson |
| Italy              | 50   | Massimo Antonini, Irene Pellecchia and Giovanni Monte
Chiomenti |
| Japan              | 58   | Eiichiro Nakatani and Yutaka Shimoo
Anderson Möri & Tomotsune |
| Malta              | 65   | Donald Vella and Kirsten Debono Huskinson
Camilleri Preziosi |
| Netherlands        | 73   | Frank Pötgens, Ingrid Mensing and Sophia van Straalen
De Brauw Blackstone Westbroek |
| Norway             | 80   | Anne Kristin Meyer, Ola Mæle and Sindre Kleive
KPMG |
| Switzerland        | 88   | Ruth Bloch-Riemen
Bär & Karrer |
| Taiwan             | 96   | Michael C H Wang
Chien Yeh Law Offices |
| United Arab Emirates | 103 | Mahmoud Abuwasel
Wasel & Wasel Ltd |
| United Kingdom     | 110  | Charles Osborne, Dominic Robertson and Richard Jeens
Slaughter and May |
United Arab Emirates

Mahmoud Abuwasel
Wasel & Wasel Ltd

OVERVIEW

Legislation

1. What is the relevant legislation relating to tax administration and controversies? Other than legislation, are there other binding rules for taxpayers and the tax authority?

Tax administration and controversies are regulated primarily by:
- Federal Law 7/2017 on Tax Procedures (the Tax Procedures Law);
- Cabinet Decision 36/2017 on the Executive Regulations of Federal Law 7/2017;
- Cabinet Decision 40/2017 on Administrative Penalties for Violations of Tax Laws; and

Other relevant tax legislation is Federal Decree-Law 7/2017 on Excise Tax and Federal Decree-Law 8/2017 on Value Added Tax (VAT).

Legislation other than the Tax Procedures Law, such as the Civil Procedures Law (for general/civil tax disputes) or the Criminal Procedures Law (for criminal matters such as tax evasion) may be referred to.

Regional legislation (eg, the 2016 Common VAT Agreement of the States of the Gulf Cooperation Council) and international treaties, including double tax treaties to which the United Arab Emirates is signatory, may bind taxpayers and the UAE Federal Tax Authority.

Relevant authority

2. What is the relevant tax authority and how is it organised?

Federal Decree-Law 13/2016 on the Establishment of the Federal Tax Authority was issued on 26 September 2016 and came into effect 90 days thereafter. The Federal Tax Authority has been operational since then.

The Federal Tax Authority is the first of its kind in the United Arab Emirates and is entrusted with the management and collection of taxes and penalties, and the implementation of the federal tax legislation and tax penalties. The Federal Tax Authority is a federal public authority and has financial and administrative independence.

Pursuant to article 62 of Federal Law 23/1991 on the Regulation of the Legal Profession, the Federal Tax Authority is represented by the Department of State Disputes at the Ministry of Justice with respect to arbitration disputes and disputes before all instances of the UAE courts.

The Federal Tax Authority is made up of a board of directors chaired by the Minister of Finance. The Director General of the Federal Tax Authority is responsible for executive decisions.

ENFORCEMENT

Compliance with tax laws

3. How does the tax authority verify compliance with the tax laws and ensure timely payment of taxes? What is the typical procedure for the tax authority to review a tax return and how long does the review last?

The UAE tax regime is predominantly a self-assessment system that requires taxpayers to self-assess their tax liabilities and submit them to the Federal Tax Authority. Taxpayers are responsible for preparing their tax returns for each tax period. Submissions are done via the taxpayers’ online portal. There are no time frames for review of a tax return.

In the case of an incorrect tax return, the Federal Tax Authority issues a tax assessment to the taxpayer and may also apply administrative penalties.

Types of taxpayer

4. Are different types of taxpayers subject to different reporting requirements? Can they be subjected to different types of review?

The Federal Tax Authority identifies ‘taxpayers’ as mainly legal persons or natural persons located within or outside the United Arab Emirates. More granularly, the Federal Tax Authority requests taxpayers to identify whether they are a public joint stock company, an incorporation, a club, a charity or association, or a federal or emirate government entity.

For a natural person, the Federal Tax Authority requests clarification as to whether the natural person is an individual or a partnership.

Tax periods for submitting tax returns may differ depending on the value of the taxpayer’s revenues: quarterly submissions for taxpayers with an annual turnover below 150 million dirhams, and monthly for taxpayers with an annual turnover above 150 million dirhams.

A taxpayer is allocated a different tax registration number for VAT and excise tax liability.

Cabinet Decision 32/2019 of 30 April 2019 requires country-by-country reporting to the Ministry of Finance for entities that are considered tax-resident in the United Arab Emirates and are part of a multinational group with consolidated revenues equal to or exceeding 3.15 billion dirhams in the preceding financial year.

There are also special provisions that govern taxpayers that are subject to excise tax (Federal Decree-Law 7/2017). These special provisions sometimes lead to longer or more intricate tax reviews.
Requesting information

5 | What types of information may the tax authority request from taxpayers? Can the tax authority interview the taxpayer or the taxpayer’s employees? If so, are there any restrictions?

As applicable, taxpayers are required to maintain balance sheets and profit-and-loss accounts, records of wages and salaries, records of fixed assets, and inventory records and statements. However, the Federal Tax Authority has the authority to require any other information to confirm an audit trail. Generally, taxpayers must maintain the documents for a period of five years after the end of the respective tax period. Original documents must be maintained and can be in a language other than Arabic or English, but in such a case the Federal Tax Authority may request documents to be translated into Arabic.

The Federal Tax Authority generally reaches out to employees via their registered contact details (email, telephone) to request any clarifications. Apart from audits by the Federal Tax Authority, there are no explicit tax-related rules governing the general communication by the Federal Tax Authority with the taxpayer.

Available agency action

6 | What actions may the agencies take if the taxpayer does not provide the required information?

The Federal Tax Authority may issue a tax assessment to determine the value of the payable tax and notify the taxpayer with the assessment if, among other things, the taxpayer fails to apply for registration, fails to submit a tax return or submits an incorrect tax return, or fails to settle the amount defined in a previous tax return. The Federal Tax Authority may also issue estimated tax assessments if it is deemed impossible to determine the amount of tax payable.

Once an assessment takes place and is notified to a taxpayer, it is deemed a debt to the Federal Tax Authority.

The Federal Tax Authority has the authority to conduct an audit at the premises of the taxpayer and inspect all documents, assets and accounting systems available. The taxpayer’s premises may be the headquarters, stores, warehouses or any other place deemed to be where the taxpayer conducts its business. During the audit, the Federal Tax Authority may also take samples of goods, equipment or other assets.

The Federal Tax Authority must generally notify the taxpayer five days prior to conducting a tax audit; however, the authority may conduct the audit without notification in certain cases, such as suspicion of tax evasion.

Protecting commercial information

7 | How may taxpayers protect commercial information, including business secrets or professional advice, from disclosure? Is the tax authority subject to any restrictions concerning what it can do with the information disclosed?

The law grants the Federal Tax Authority widespread authority to request access to whatever it deems necessary to conduct its audit, and failure to cooperate with the Federal Tax Authority tax auditor is punishable with a fine. Notwithstanding this, there is a duty of confidentiality imposed on the Federal Tax Authority’s personnel to not disclose any information accessed as part of their work. This duty extends beyond the end of the Federal Tax Authority’s employee’s service.

Limitation period for reviews

8 | What limitation period applies to the review of tax returns?

As a general matter, the Federal Tax Authority may not carry out any tax assessment (including those against tax returns) after the lapse of five years as of the end of the relevant tax period. In cases of proven tax evasion or where the taxpayer had not registered with the Federal Tax Authority, the Federal Tax Authority may carry out the tax assessment within 15 years of the date of the tax evasion event or when the taxpayer should have registered with the Federal Tax Authority.

However, the Federal Tax Authority’s right to claim payable taxes and penalties is not time-barred; there is no time limitation on when the Federal Tax Authority may make its claim against a taxpayer against a recorded debt.

Alternative dispute resolution

9 | Describe any alternative dispute resolution (ADR) or settlement options available.

Dispute resolution methods under the tax legislation consist mainly of the following five steps:

• lodging a reconsideration application with the Federal Tax Authority;
• submitting an objection against the Federal Tax Authority’s decision to the reconsideration before the competent tax dispute resolution committee;
• filing a case to challenge the tax dispute resolution committee ruling before the Federal Primary Court;
• appealing the Federal Primary Court judgment before the Federal Appeals Court; and
• filing a case before the Federal Supreme Court appealing the Federal Appeals Court judgment.

The main ADR mechanism to challenge a decision by the Federal Tax Authority, including challenging tax assessments, is by lodging a reconsideration application with the Federal Tax Authority for reconsideration of any decision issued by the authority within 20 working days of the date of the person receiving notification of the decision. The law requires the Federal Tax Authority to examine the application and respond with a justified decision within 20 working days of receiving the reconsideration application.

The tax legislation does not explicitly state what occurs if the Federal Tax Authority does not provide a decision on a reconsideration application within the requisite timeframe, but – as a general matter – UAE legislation states that any request submitted to a government entity is deemed rejected if a response has not been granted within the time frame.

Another ADR method is the submission of a reduction or exemption request to the Federal Tax Authority, which is overseen by a reduction and exemption committee. The committee, under the ambit of the Federal Tax Authority, is granted authority to reduce any administrative penalties imposed on a taxpayer if the taxpayer can provide an excuse acceptable to the Federal Tax Authority. In certain circumstances, the Federal Tax Authority may take it upon itself to divert a reconsideration application to a reduction and exemption committee.

Collecting overdue payments

10 | How may the tax authority collect overdue tax payments following a tax review?

If a taxpayer does not voluntarily pay the taxes and penalties due within 40 working days of the date on which the taxes or penalties are due, the Director General of the Federal Tax Authority may issue a decision to the execution judge of the competent court to seize and enforce against
the taxpayer’s assets. Decisions of the Director General concerning due taxes and penalties are deemed a writ of execution and can be submitted directly to the execution judge of the federal courts to enforce. The execution judge has authority to seize all assets of the taxpayer (bank accounts, real property, receivables from government contracts, etc.) for the purposes of covering the debts due to the Federal Tax Authority.

Penalties

11 | In what circumstances may the tax authority impose penalties?

The Federal Tax Authority may impose penalties in various circumstances defined in the tax legislation. These circumstances include a taxpayer’s failure to:

- keep the required records and other information;
- submit the data, records and documents related to the tax in Arabic to the Federal Tax Authority upon request;
- submit the registration application within the defined periods;
- notify the Federal Tax Authority of any event that requires the amendment of the information on the tax record, and
- submit a tax return in the allocated time or settle the taxes in a tax return or tax assessment.

A tax agent or legal representative may also be penalised for various defaults, including their failure to inform the Federal Tax Authority of their appointment or submit a tax return on behalf of the taxpayer.

12 | How are penalties calculated?

Cabinet Decision 40/2017 provides a list of penalties that may be applied for general defaults of the taxpayer, and for VAT-related and excise tax issues. The list provides for fixed figures and percentage-based penalties based on the unpaid taxes. For example, late registration is punishable with a penalty of 20,000 dirhams. Failure of a person to calculate any tax that may be due on the import of goods is punishable with a penalty of 50 per cent of the unpaid or undeclared tax. Tax evasion is also punishable by a prison sentence and five times the amount of tax debt that has been evaded.

13 | What defences are available if penalties are imposed?

The various statutes that make up the tax legal framework were introduced in late 2017, with some continuing to be promulgated and come into effect to date. The legislation’s novelty may lead to different interpretations that are presented before the tax dispute resolution committees or the federal courts to rule on. Where the issue is a question of law, the defences available are those of judicial interpretation. For example, in penalties related to voluntary disclosures the main question is the taxpayer’s awareness of the incident that gave rise to such disclosure, in which case defences of mistake and intent play an important role. There are also various public and private clarifications issued by the Federal Tax Authority that may clarify a position that was previously unclear to the taxpayer, in which case a respective defence may be presented. Comparative analysis of tax laws and reliance on tax rulings of regional jurisdictions, such as Egypt or Jordan or, in some cases, as far away as the United Kingdom, may be used to assist in judicial interpretation.

Collecting interest

14 | In what circumstances may the tax authority collect interest and how is it calculated?

Failure of the taxpayer to settle a tax amount within the required time-frame is punishable by 2 per cent of the tax amount due immediately, 4 per cent due upon the seventh day of the expiry of the time frame period, and 1 per cent daily thereafter up to a maximum of 300 per cent. The same applies for failure of the registrant to settle a tax amount on behalf of another person.

Criminal consequences

15 | Are there criminal consequences that can arise as a result of a tax review? Are these different for different types of taxpayers?

Criminal proceedings may be initiated only by request of the Director General of the Federal Tax Authority, and are administered by the public prosecutor.

Tax evasion can lead to criminal consequences under tax legislation. Tax evasion can arise if, among other things, the taxpayer abstains from settling any payable tax or penalties; underestimates the actual value of his or her business or omits any related business; imposes and collects amounts from clients without being registered; submits wrong information and incorrect data to the Federal Tax Authority; conceals or destroys documents or other materials that he or she is required to submit to the Federal Tax Authority; or prevents the Federal Tax Authority from performing its duties.

Tax evasion is punishable with imprisonment or a penalty of up to five times the amount of tax evaded, or both. Imposition of criminal liability does not exempt a person from the due taxes or penalties.

Joint and several liability may be applied to persons who are proven to have directly participated in or caused tax evasion. This could apply to employees of a taxpayer (or, in some instances, shareholders) who are found to be accomplices to tax evasion.

Enforcement record

16 | What is the recent enforcement record of the authorities?

Enforcement records are not public, but there have been enforcement cases where the values of the taxes and penalties unpaid by the taxpayer have exceeded tens of millions of UAE dirhams.

THIRD PARTIES AND OTHER AUTHORITIES

Cooperation with other authorities

17 | Can a tax authority involve or investigate third parties as part of the authority’s review of a taxpayer’s returns?

The powers of the Federal Tax Authority under the tax legislation are widespread. The Federal Tax Authority may notify any person to provide any information or any documents related to a person under investigation, or any other person, if the Federal Tax Authority deems such documents or information necessary. Failure to do so may result in a fine or, in more severe circumstances, a finding of tax evasion.

If a dispute is being heard by the federal courts, the Federal Tax Authority may also request the courts to appoint an expert with powers to enter and audit the premises, systems and records of any entity (public or private). The expert may also be empowered to question any person deemed necessary for the litigation process.
Voluntary disclosure and amnesties

SPECIAL PROCEDURES

19. Do any special procedures apply in cases of financial or other hardship, for example when a taxpayer is bankrupt?

The tax legislation addresses special cases, such as the death or lack of capacity of a taxpayer, and bankruptcy.

In the case of the death of a taxpayer, the taxes and penalties due would be settled from the value of the estate prior to being distributed to heirs and legatees. If there remain taxes and penalties unpaid after the settlement of the estate, the Federal Tax Authority may take recourse against the heirs and legatees in proportion to their inheritance share.

Where the taxpayer lacks capacity or is absent or lost, the legal representative of the taxpayer shall be responsible to settle the taxes and penalties from the assets of the taxpayer.

In case of bankruptcy, the appointed trustee must communicate with the Federal Tax Authority and provide the taxes due or, alternatively, liaise with the Federal Tax Authority to run an audit on the bankrupt business. The trustee may challenge the Federal Tax Authority’s decision through the methods permitted by law (i.e., reconsideration application, objection to the competent tax dispute resolution committee, and appeals to the federal courts).

20. Are there any voluntary disclosure or amnesty programmes?

There are no amnesty programmes.

Voluntary disclosure is permitted under the tax legislation. However, voluntary disclosures are penalised in three different situations:

- with a 50 per cent penalty of the taxes due after the Federal Tax Authority audits the taxpayer and requires a voluntary disclosure to be made;
- with a 30 per cent penalty of the taxes due when a taxpayer is informed of an audit that will take place, but before the audit is actually performed; or
- with a 5 per cent penalty of the taxes due prior to being notified of any audit that may take place.

In some instances, voluntary disclosure may result in fines of up to 300 per cent of the taxes due if the taxpayer does not make filings within the time limitations.
Minister of Justice Decisions 237/2019 and 238/2019 established tax disputes circuits in the Federal Primary Court and the Federal Court of Appeals to hear challenges against a ruling by any of the tax dispute resolution committees at the federal court level. The Federal Supreme Court is the last level of appeal where a litigant chooses to appeal a judgment by the Tax Disputes Circuit of the Federal Appeals Court.

The execution judge of the Federal Courts is responsible for executing enforcement decisions by the Director General of the Federal Tax Authority, rulings by a tax dispute resolution committee or judgments by the federal courts, as the case may be.

The Federal Public Prosecution is responsible for the administration of tax evasion crimes and the federal criminal courts are the competent courts to adjudicate tax evasion crimes.

**Lodging a claim**

### 25 | How can tax disputes be brought before the courts?

Any person may submit an application to the Federal Tax Authority to reconsider any of its decisions issued in connection to him or her, in whole or in part, within 20 working days of the aggrieved person being notified of the decision. The Federal Tax Authority must decide on the application within 20 working days and communicate the decision to the applicant within five working days.

Subsequently, if the aggrieved person wishes to contest the Federal Tax Authority’s decision on the reconsideration application, the next step would be to submit an objection against the Federal Tax Authority’s decision to the Tax Dispute Resolution Committee of Abu Dhabi, Dubai or Sharjah, depending on the registered tax address of the objector.

For the Tax Dispute Resolution Committee to accept the objection, the aggrieved person must have perfected the reconsideration application procedures vis-à-vis the Federal Tax Authority and have settled all taxes and penalties subject of the objection.

The law requires the Tax Dispute Resolution Committee to issue its decision within 20 working days, which may be extended by a further 20 working days in cases where the Tax Dispute Resolution Committee has reasonable grounds to extend. The decision must be communicated to the objector within five working days of its being issued.

The Tax Dispute Resolution Committee’s ruling is deemed final and a writ of execution (directly enforceable) is issued if the amount in dispute is less than 100,000 dirhams. If the amount in dispute is more than 100,000 dirhams the ruling may be challenged before the federal courts.

The first level of challenge is before the Tax Disputes Circuit of the Federal Primary Court. A judgment of the Federal Primary Court can be appealed to the Tax Disputes Circuit of the Federal Appeals Court.

Lastly, a judgment of the Federal Appeals Court can be appealed to the Federal Supreme Court.

In the case of an execution order against the taxpayer, an appeal or grievance can be filed to challenge the execution.

### Combination of claims

### 26 | Can tax claims affecting multiple tax returns or taxpayers be brought together?

Any person may submit a reconsideration application to the Federal Tax Authority to reconsider any of its decisions issued in connection to the person, in whole or in part.

Decisions by the Federal Tax Authority may be in respect of one tax return or several. Such cases have occurred before the tax dispute resolution committees.

Moreover, taxpayers are sometimes registered under one tax registration as a group whereby the main registrant is the entity that corresponds with the Federal Tax Authority, submits reconsideration applications, and is the objecting party and litigant on behalf of itself or the other taxpayers registered under its profile with the Federal Tax Authority in a tax dispute.

### Pre-claim payments

### 27 | Must the taxpayer pay the amounts in dispute into court before bringing a claim?

Payment of the taxes and penalties in dispute is an explicit request under the law, otherwise known as the ‘pay now, argue later’ rule. For an objection to be accepted by a tax dispute resolution committee, and subsequently by the federal courts, the taxpayer must settle all taxes and penalties due. If the taxpayer does not do so, the competent tax dispute resolution committee overseeing the objection and the federal courts will reject the objections and lawsuits on a procedural basis.

### Cost recovery

### 28 | To what extent can the costs of a dispute be recovered?

The Tax Dispute Resolution Committee and the federal courts may order the expenses of the lawsuit to be imposed on the losing party, either the taxpayer or the Federal Tax Authority. The expenses include the attorneys’ fees. However, attorneys’ fees ordered by the federal courts usually amount to between 500 and 3,000 dirhams, irrespective of the actual attorneys’ fees incurred by the litigant.

### Third-party funding

### 29 | Are there any restrictions on or rules relating to third-party funding or insurance for the costs of a tax dispute, including bringing a tax claim to court?

With the exception of the Dubai International Financial Centre and Abu Dhabi Global Market Courts, third-party funding is not regulated in the United Arab Emirates; consequently, third-party funding for tax disputes is not explicitly prohibited by UAE law.

However, tax evasion liability may be a risk for a third-party funder. If the taxpayer is convicted of tax evasion, the third-party funder may be found to be an accomplice to the tax evasion crime.

There is also no prohibition on insurance for the costs of a tax dispute.

### Court decision maker

### 30 | Who is the decision maker in the court? Is a jury trial available to hear tax disputes?

The tax dispute resolution committees are administrative committees with the authority to issue judicial decisions. They are physically located in the courts of their respective emirate, but are administered by the Ministry of Justice. Each committee is adjudicated over by a panel of three members: a judge who chairs the committee and two tax experts.

The Tax Dispute Circuits of the Federal Primary and Appeals Courts are constituted of a panel of three judges each.

The Federal Supreme Court, the last tier of appeal, is constituted of a panel of five judges, one of whom is the chief justice of the Federal Supreme Court, who chairs the panel.

### Time frames

### 31 | What are the usual time frames for tax trials?

The Tax Dispute Resolution Committee has a limit of 20 working days to issue its ruling, but may extend the period to an additional 20 working days. Once the ruling is issued, the Tax Dispute Resolution Committee must inform the taxpayer of its decision within five working days.
The Tax Dispute Resolution Committee communicates with the taxpayer via the email address that is submitted by the taxpayer when lodging the objection. The Regulations to the Civil Procedures Law mandate that notifications by email are deemed perfected upon being sent, not when received by the addressee. This is important, as the objector should be diligent in ensuring that the email address used in the objection is continuously monitored for any communication from the Tax Dispute Resolution Committee.

Once notified of the Tax Dispute Resolution Committee's ruling, the taxpayer has 20 working days to challenge the ruling before the Federal Primary Court.

The taxpayer then has 30 days from the date of issuance of the Federal Primary Court judgment to appeal it before the Federal Appeals Court.

Finally, the taxpayer then has 60 days from the date the issuance of the Federal Appeals Court judgment to appeal before the Federal Supreme Court.

The time frames for the respective courts to adjudicate a case are variable and depend on the complexity of the case. A taxpayer would usually expect two to six months on average for the Federal Primary Court, two to four months on average for the Federal Appeals Court, and one to three months on average for the Federal Supreme Court.

Disclosure requirements
32 | What are the requirements concerning disclosure or a duty to present information for trial?

There is no formal disclosure requirement. The taxpayer and the Federal Tax Authority are not obliged to submit to the Tax Dispute Resolution Committee and federal courts all documents that either support or are detrimental to their case. There are also no discovery processes either.

Permitted evidence
33 | What evidence is permitted in a tax trial?

In civil tax disputes, the litigants may submit documentary evidence and official statements. The litigants may also provide testimony. There is, generally, no cross-examination in civil disputes. However, if the tax trial is a criminal trial, persons may be subpoenaed to appear for cross-examination.

At the Tax Dispute Resolution Committee level, there are usually minimal hearings and generally no appointment of experts takes place (as the committee is constituted of a judge and two tax experts).

Before the federal courts, the litigants (or the judge of his or her own accord) may request the appointment of an expert to investigate a matter. The expert may not necessarily be a tax expert, and his or her assignment may not necessarily be a tax-related assignment. For example, the court may appoint a technology or corporate expert. Court-appointed experts usually have wide powers, such as to question related persons, investigate the premises of the litigants and any government authorities, or to investigate any hard copy or digital documents related to the case, and so forth.

All documents presented to the Tax Dispute Resolution Committee and the federal courts must be in Arabic or translated into Arabic.

Permitted representation
34 | Who can represent taxpayers in a tax trial? Who represents the tax authority?

A taxpayer may represent themselves before the Tax Dispute Resolution Committee and the federal courts. Otherwise, an authorised representative may appear before the Tax Dispute Resolution Committee on behalf of the taxpayer, whereas before the federal courts, the taxpayer must be represented by a lawyer with rights of audience before the federal courts.

Legal aid may be provided for defendants in tax criminal cases. There are also legal aid services provided by the Abu Dhabi Justice Department, but not particularly aimed at tax disputes.

The Federal Tax Authority is represented by the Department of State Disputes of the Ministry of Justice.

Publicity of proceedings
35 | Are tax trial proceedings public?

With certain exceptions, the hearings themselves can generally be attended by the public. The tax dispute resolution committees and lower federal courts’ rulings and judgments are so far undisclosed. Most of the judgments of the Federal Supreme Court are disclosed online. The government is increasing its efforts to make more federal court judgments available on public websites.

Burden of proof
36 | Who has the burden of proof in a tax trial?

The burden of proving the accuracy of a tax return falls upon the taxpayer, and the burden of proving cases of tax evasion falls upon the Federal Tax Authority.

Case management process
37 | Describe the case management process for a tax trial.

Objections submitted to a tax dispute resolution committee are done via an official form and submitted to the Ministry of Justice. A memorandum can be appended to the form. Subsequently, the Ministry of Justice must communicate the objection to the competent tax dispute resolution committee (Abu Dhabi, Dubai or Sharjah) within two working days.

A tax dispute resolution committee may, of its own accord or upon the request of the objector, allow the holding of sessions in the presence of the taxpayer and his or her legal representative or tax agent.

The ruling of a tax dispute resolution committee is communicated to the taxpayer via the email address provided by the taxpayer at the time of registering the objection.

At the federal courts level, the challenge is filed by the plaintiff submitting his or her statement of claim to the case management office. After filing, the date for appearance of the defendant before the case management office or the court is 10 days from the date of filing.

Appeal
38 | Can a court decision be appealed? If so, on what basis?

A ruling of a tax dispute resolution committee can be challenged before the Tax Disputes Circuit of the Federal Primary Court.

A judgment of the Federal Primary Court can be appealed to the Tax Disputes Circuit of the Federal Appeals Court.

A judgment of the Federal Appeals Court can be appealed to the Federal Supreme Court.
**Key developments of the past year**

What are the current trends in enforcement of tax controversies? What are the current concerns of the authorities and taxpayers in relation to the enforcement and handling of tax controversies and are these likely to change? Are there proposals to change the relevant legislation or other rules?

Although Cabinet Decision 23/2018 Forming the Tax Dispute Resolution Committees was promulgated in May 2018, the committees did not begin operation until March 2019. Thus issues for taxpayers under the new tax regime have only recently begun to arise. Prior to 2019, tax disputes were extremely rare (essentially, two federal court cases and a few unprocessed Tax Dispute Resolution Committee challenges that were lodged in 2018 but heard only in April 2019). A few enforcement orders have been made against taxpayers, but there have been no known convictions of tax evasions or accusations.

**Coronavirus**

What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

On 21 April 2020 the Federal Tax Authority issued a directive, on an exceptional basis, to provide an alternative date of 28 May 2020 as the deadline for submitting VAT returns and settling payable tax for the tax periods ended 31 March 2020.
Mahmoud Abuwasel is a Harvard graduate practitioner and represents clients in corporate and tax disputes. He has represented leading HNW investors and multinationals across the globe in multibillion-dollar litigation and arbitration and has counseled on over USD 400 million worth of tax disputes in the UAE. Mahmoud was counsel on the first tax dispute resolution committee challenges, and Federal court tax cases in 2018 in the UAE, and was counsel on almost a quarter of all committee challenges of 2019. He has and continues to counsel on precedent setting tax dispute rulings and is regularly engaged by HNW clients and tax advisors. Mahmoud has obtained USD multi-million favorable judgements for taxpayers at the tax dispute resolution committee stage, the Federal Primary Court, and the Federal Appeals Court, has been counsel on almost a third of the tax dispute cases before the Federal Supreme Court, and is a leading author and reference in tax dispute procedures in the UAE.

“A master at his game. An unstoppable force in tax disputes.” - Chief Legal Officer, multi-billion UAE family company.

"The go-to tax litigator in the UAE." – one of the Big Four accounting firms.

**Tax dispute experience:**

- One of the largest construction companies in Dubai since the 1960s on a VAT penalties dispute before the tax dispute resolution committee and the Federal Courts.
- A tobacco manufacturer on a USD nine figure tax dispute before the tax dispute resolution committee, Federal Courts, and enforcement circuits.
- One of the leading real estate developers in the UAE on a USD nine figure tax dispute before the committee and Federal Courts.
- A USD 3 billion software developer on a tax dispute before the Federal Courts relating to VAT in the e-commerce industry.
- One of the global top three exhibition management companies on a VAT and constitutional tax dispute before the Federal Courts.
- One of the top global rice manufacturers on a tax dispute before the committee and Federal Courts on issues relating to both VAT application and penalties.
- A leading family-owned Dubai education enterprise on penalties arising from voluntary disclosures before the committee and Federal Courts.
- A high-net-worth Abu Dhabi based family holding company involved in motor trade, off-shore works, construction, oil and gas, real estate and more before the TDRC.
- A global security firm in relation to services subject to international conventions and their tax treatment before the FTA.
- A large family business in the car dealership business before the tax dispute resolution committees.
- A global multi-billion telecom company in relation to off-shore trade before the FTA and tax dispute resolution committees.
- A USD 100 billion German multinational conglomerate in relation to import of goods and services before the tax dispute resolution committees.
- A leading UAE currency exchange house in relation to voluntary disclosures before the FTA.
- A tobacco manufacturer on a USD eight figure tax dispute before the tax dispute resolution committee.
- A global education service provider in relation to voluntary disclosures before the tax dispute resolution committees.
- One of the leading e-commerce companies in the UAE on application of digital goods or services before the tax dispute resolution committees.
- A tobacco manufacturer on a USD nine figure tax dispute before the tax dispute resolution committee, Federal Courts, and enforcement circuits.
- One of the largest construction companies in Dubai since the 1960s on a VAT penalties dispute before the tax dispute resolution committee and the Federal Courts.

**In the news:**

- Law.com interview: Is the UAE Likely to Introduce Corporate Taxes?
- Gulf Times interview: Tax authority ordered to refund Pepsi distributor Dh12 million
- Arabian Business interview: VAT and excise issues dominate Dubai tax dispute cases in 2019
- Thomson Reuters interview: Tax disputes and litigation in the UAE
- GCC FinTax interview: Interview with the the “go-to tax litigator” in the UAE
- Look Bahrain Webinar in 2020, Keynote Speaker, AmCham Abu Dhabi
- Managing Tax Disputes and Mitigating Tax Penalties in the UAE - Webinar in 2020, Keynote Speaker, Lexology
- Webinar in 2020, Keynote Speaker, AmCham Abu Dhabi
- Webinar in 2020, Keynote Speaker, Lexology

**Sample publications:**

- Landmark Ruling Cancels Tax Audit Penalties
- Federal Appeals Court Reverses Tax Penalties (UAE)
- Ruling Sets Precedent on Applicable Penalties for Voluntary Tax Disclosures (UAE)
- 18 Tax Disputes Filed in Dubai in 2019: Lessons Learned
- First constitutional tax case and how are constitutional cases litigated in the UAE?
- Two Trends to Expect from the Tax Dispute Resolution Committees in 2020
- Getting The Deal Through, Tax Controversy - UAE Chapter 2020
- Getting The Deal Through, Tax Controversy - UAE Chapter 2020

**Conferences (Keynote Speaker):**

- Mitigating Tax Penalties & Managing Tax Disputes: Conference in Dubai in 2019, Keynote Speaker
- Managing Tax Disputes: Webinar in 2020, Keynote Speaker, AmCham Abu Dhabi
- Managing Tax Disputes and Mitigating Tax Penalties in the UAE: Webinar in 2020, Keynote Speaker, Lexology

**Education:**

- Harvard University: Master’s in Management / Constitutional Law
- Middlesex University: Master’s in Islamic Law
- University of Southern Queensland: Juris Doctorate in Administrative Law
- Carleton University: Bachelor’s in Law

---

Wasel & Wasel is a precedent-setting, global disputes practice, with a Middle East focus. The firm is recognized as one of the regional law firms of the year 2020 by the Middle East Legal Awards, and as a leading law firm by market regulators (such as the Abu Dhabi Global Market), and has been a top ten firm in Lexology continuously since 2019. Our lawyers make an all-star team drawn from the top ranks of premier law firms, holding degrees from Ivy League universities, have worked on multi-billion dollar matters, and have held senior positions in government. Our clients include multinationals, Fortune 500 companies, high-net worth family businesses and ultra-high-net worth individuals. The firm and our practitioners have been seen on and interviewed by MEED, Arabian Business, Thomson Reuters, Entrepreneur Middle East, Lexis Middle East Law Alert, and more.

Find out more at: www.waselandwasel.com  
For general inquiries: inquiry@waselandwasel.com