

TAX CONTROVERSY

United Arab Emirates



Tax Controversy

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Quick reference guide enabling side-by-side comparison of local insights, including into the legal and regulatory framework; compliance and enforcement; involvement/investigation of third parties; cooperation between tax and other authorities; special procedures, voluntary disclosure, and amnesties; rights of taxpayers; court actions; and recent trends.

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UPDATE AND TRENDS

Key developments of the past year

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United Arab Emirates



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ABOUT

Waseel & Waseel is a heavyweight international disputes law firm with a focus on international arbitration, complex litigation, and tax controversy. We have been engaged in over USD 10 billion of dispute mandates with offices in Abu Dhabi, Melbourne, and Toronto.

RECOGNITION

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OVERVIEW

Legislation

What is the relevant legislation relating to tax administration and controversies? Aside from legislation, are there other binding rules for taxpayers and the tax authority?

Tax administration and controversies are regulated primarily by the following legislations (as amended):

- 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
- Cabinet Decision 23/2018 Forming the Tax Disputes Resolution Committees, their Work Systems and Procedures.

Other relevant tax legislation is Federal Decree-Law 7/2017 on Excise Tax and Federal Decree-Law 8/2017 on Value Added Tax (VAT), and the to be introduced corporate income tax legislation which is expected to come into force in mid-2023.

Legislation other than the Tax Procedures Law, such as the Civil Procedures Law (for general or 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 that the United Arab Emirates is signatory to, may bind taxpayers and the UAE Federal Tax Authority.

Private and public clarifications issued by the Federal Tax Authority also assist in understanding how the Authority interprets and applies the legislation.

Tax disputes are governed by the overarching corpus of administrative law in the UAE. Administrative law in the UAE is derived from authoritative case law and scholarly works.

Law stated - 12 July 2022

Relevant authority

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.

The Federal Tax Authority is the first of its kind in the UAE 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.

Law stated - 12 July 2022

ENFORCEMENT

Verification of compliance with tax laws

How does the tax authority verify compliance with the tax laws? Does this vary for different taxpayers or taxes?

The UAE tax regime is dominantly 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 timeframes for review of a tax return.

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

Law stated - 21 January 2022

Tax return review procedure and limitation periods

What is the typical procedure for the tax authority to review a tax return and how long does the review last? What limitation periods apply?

Tax returns are, generally, automatically processed through the online user account system of the Federal Tax Authority. Every taxable person shall prepare the tax return for each tax period for which the registration has been made, submit the tax return to the Authority, and settle any payable tax as determined in the tax return. Any incomplete tax return submitted to the Authority shall be treated as rejected by it in case it does not include the main data required. Every taxable person is responsible for the accuracy of the information and data included in the tax return related thereto and in any correspondences with the Authority.

Record keeping is required for a period of five years after the end of the tax period for taxable persons, and five years after the end of the calendar year which the concerned document was created for non-taxable persons. The Authority may require the person to maintain the records for a further period not exceeding four years.

Law stated - 21 January 2022

Tax authority requests for information

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 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 the registered contact details (email, phone) 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.

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Law stated - 21 January 2022

Taxpayer failure to provide information

What actions may the tax authority 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, and ultimate to the Federal Public Treasury.

The Federal Tax Authority may conduct an audit at the premises of the taxpayer and inspect all documents, assets and accounting systems available. The taxpayer 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.

Law stated - 21 January 2022

Protecting commercial information

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.

Law stated - 21 January 2022

Alternative dispute resolution

What (if any) alternative dispute resolution (ADR) or settlement options are 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 40 weekdays 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 45 weekdays of receiving the reconsideration application.

If no decision is issued by the Authority within the timeframe, the taxpayer may resort to the competent tax dispute resolution committee.

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 themselves to divert a reconsideration application to a reduction and exemption committee.

Law stated - 21 January 2022

Collecting overdue payments

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 weekdays of the date the taxes or penalties, or both, 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.

Law stated - 21 January 2022

Penalties - scope of application

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.

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Law stated - 21 January 2022

Penalties – calculation

How are penalties calculated?

Cabinet Decision 40/2017 (as amended by Cabinet Decision 49/2021) provides a list of penalties that may be applied for general defaults of the taxpayer, and for VAT-related issues 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 while failing to pay the taxes shown on a tax return may result in late payment penalty of up to 300 per cent.

Tax evasion is also punishable by a prison sentence and five times the amount of tax debt that has been evaded.

Law stated - 12 July 2022

Penalties – defences

What defences are available if penalties are imposed?

The Federal Courts continue to provide guidance given that the tax legal framework was introduced in 2017.

The Federal Courts have cancelled penalties in cases where the original taxes were found to be invalid, or where taxpayers had made payment but through different accounts.

The tax dispute resolution committees have also cancelled penalties in cases where the penalties were imposed due to factors outside the control of the taxpayer.

Taxpayers may also challenge the quantum if the formulation of the penalties is arguably incorrect.

Where the issue is a question of law, the defences available are those of judicial interpretation. There has also been a series of Federal Supreme Court judgments that provide tests for when a penalty should or should not be imposed. These judgments or case law can be relied on by taxpayers when defending against the imposition of penalties.

Law stated - 12 July 2022

Collecting and calculating interest

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

If the taxable person failed to pay the tax shown as a tax payable in the tax return or voluntary declaration that was submitted, or the tax assessment that was notified within the time limit specified in the tax law, the taxable person shall pay the penalty applicable to the late payment of the payable tax, with a maximum of 300 per cent, in accordance with the following: (1) 2 per cent of the unpaid tax due on the day following the due date for payment, upon late payment of the payable tax and (2) 4 per cent monthly penalty due after one month from the payment due date, and on the same date every month after that, on the amount of tax that has not been paid to date. For the purposes of this penalty, the due date for payment in the event of voluntary declaration and tax assessment is (1) In the case of the voluntary declaration, 20 weekdays from the date of its submission and (2) in the case of tax assessment, 20 business days from the date of its receipt.

If the person or taxpayer makes a voluntary declaration of errors in the tax return, tax assessment or tax refund application, a proportional penalty shall be imposed on the amount of the difference between the tax calculated and the tax that should have been calculated at 5 per cent for the first year, 10 per cent for the second year, 20 per cent for the third, 30 per cent for the fourth and 40 per cent thereafter.

If the person or taxpayer fails to make a voluntary declaration of an error in the tax return, tax assessment or tax refund application, before being notified of a tax audit, the Authority applies a 50 per cent penalty on the amount of the error, and 4 per cent for each month or part of the month from any of the following tax unpaid to the Authority, from the date that payment is due for the relevant tax period until the date of receipt of the tax assessment, or the tax that has not been refunded to Authority due to an unjust tax refund, from the date of the tax refund from Authority until the date of receiving the tax assessment.

Law stated - 21 January 2022

Criminal consequences

Can criminal consequences arise as a result of tax non-compliance? Are these different for different types of taxpayers?

Criminal proceedings may be initiated only by a request of the director general of the Federal Tax Authority and are administered by the public prosecution.

Criminal consequences under the tax legislation are for tax evasion. Tax evasion can arise if, among other things, the taxpayer abstains from settling any payable tax or penalties, understates 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 or caused tax evasion. This could apply to employees of a taxpayer (or, in some instances, shareholders) who are found to be accomplice to tax evasion.

Law stated - 21 January 2022

Tax avoidance

Are there specific rules or provisions regarding perceived tax avoidance?

There are no specific statutes regarding tax avoidance.

Law stated - 12 July 2022

Enforcement record

What is the recent enforcement record of the authorities?

Non-criminal tax enforcement through the courts continues to rise as more taxpayers become delinquent in payments. As a general matter, there are 10-20 enforcement cases per year. A recent Ministerial Decision no. 386/2022 established a specific department with the Federal Prosecution to pursue tax evasion crimes which is indicative of the increase of focus on tax evasion cases.

Law stated - 21 January 2022

THIRD PARTIES AND OTHER AUTHORITIES

Third-party involvement with tax reviews

Can a tax authority involve 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 and 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.

Law stated - 12 July 2022

Cooperation with other authorities

Does the tax authority cooperate with other authorities within the country? Does the tax authority cooperate with the tax authorities in other countries? (Describe, for example, tax information exchange agreements.)

The law establishing the Federal Tax Authority grants it powers to coordinate with the federal government and governments of the seven emirates on all matters related to federal taxes and penalties. The Authority is also permitted to exchange information and expertise with other states and international organisations, bodies and federations related to tax.

On a more routine level, the Federal Tax Authority coordinates with the Ministry of Finance with respect to country-by-country reporting, and with the Ministry of Justice as the ministry responsible for overseeing the tax dispute resolution committees.

Law stated - 12 July 2022

FINANCIAL OR OTHER HARDSHIP

Voluntary disclosure and amnesties

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

Waivers from penalties may be granted by the Federal Tax Authority for death or illness of the taxpayer, or death, illness, or resignation of a key employee, restrictions, or precautionary or preventive procedures imposed by government authorities, or a general malfunction in the Federal Tax Authority's systems, payment gateways or used telecommunication services, or execution of a custodial sentence on the registered person or the owner of a sole establishment, or if the person carries out the tax obligations and settles all due tax amounts through an account of another person registered for tax purposes with the Authority.

Waivers may also be granted if the person has been declared insolvent or bankrupt, and due taxes before the declaration of bankruptcy or insolvency were settled, unless the purpose of declaring the bankruptcy or insolvency is to evade paying such administrative penalties.

The Federal Tax Authority also has the right to waive penalties for any other reasons it deems acceptable.

Law stated - 21 January 2022

Are there any voluntary disclosure or amnesty programmes?

There was an ongoing amnesty programme from 28 June 2021 until 31 December 2021. This has been renewed until

31 December 2022.

The amnesty programme grants the Federal Tax Authority the right to reduce previously unpaid penalties to 30 per cent of the total of such penalties where the following conditions are met:

- the penalties were applied under the previous Cabinet Decision No. 40/2017 regulating tax penalties;
- the registrant has paid all taxes due by 31 December 2021 at most; and
- by 31 December 2021, at most, the registrant must have paid 30 per cent of the total tax penalties owed until the coming into effect of the new Decision (ie, 60 days as of 28 April).

Voluntary disclosures are permitted but would result in penalties ranging from 5 per cent to 40 per cent depending on the length of time from whence the error had occurred, and the date on which it was rectified via a voluntary disclosure.

Law stated - 21 January 2022

RIGHTS OF TAXPAYERS

Rules protecting taxpayers

What rules are in place to protect taxpayers when dealing with the tax authority?

Federal Tax Authority personnel are bound by confidentiality to protect taxpayers. Also, during an audit by the Federal Tax Authority, the taxpayer may request the auditor to show their respective job identification card, obtain a copy of the tax audit notification, attend the audit (outside the premises of the Federal Tax Authority), and obtain a copy of any original documents (in hard copy or digital format) that are seized or obtained by the Federal Tax Authority during the audit.

Law stated - 12 July 2022

Requesting information from tax authority

How can taxpayers obtain information from the tax authority? What information can taxpayers request?

The tax legislation permits any person to submit a request to the Federal Tax Authority to view any document or assets that have been taken by the Federal Tax Authority. The Federal Tax Authority may reject the request if it would prejudice a tax audit (over the requesting person or any other person), or any related investigations or criminal proceedings.

Where a tax audit takes place, the subject of the audit may request the Federal Tax Authority to view or obtain the documents and data that are the basis of the audit results. The Federal Tax Authority may reject the request if it reveals internal correspondences or decisions by the Federal Tax Authority or any confidential data related to any other persons.

Further, disclosure of information by the Federal Tax Authority is permitted where it is requested by a person or their tax agent in relation to any part of their file maintained by the Federal Tax Authority.

Law stated - 12 July 2022

Oversight of tax authority governance

Is the tax authority subject to non-judicial oversight?

The supreme authority overseeing the Federal Tax Authority is its board of directors, chaired by the Minister of Finance, and pursuant to instructions of the Council of Ministers. The State Disputes Department of the Ministry of Justice is responsible for representing the Federal Tax Authority in any disputes.

Law stated - 12 July 2022

COURT PROCEEDINGS

Competent courts

Which courts have jurisdiction to hear tax disputes?

Distinct committees were set up to act as the first level of review of government tax-related disputes. Cabinet Decision 23/2018 on Forming the Tax Disputes Settlement Committees, their Work Systems and Procedures was promulgated on 1 May 2018.

The tax dispute resolution committees are administered by the Ministry of Justice but located in their respective emirate (Abu Dhabi, Dubai or Sharjah).

There are tax dispute resolution committees in the United Arab Emirates in three of the seven emirates:

- in Abu Dhabi, dedicated to taxpayers with a registered address in Abu Dhabi or foreign taxpayers;
- in Dubai, dedicated to taxpayers with a registered address in Dubai; and
- in Sharjah, dedicated to taxpayers with a registered address in one of the other five emirates – namely, Ajman, Fujairah, Sharjah, Ras Al Khaimah and Fujairah.

Tax disputes circuits were established in 2019 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.

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.

Law stated - 21 January 2022

Lodging a claim

How can tax disputes be brought before the courts?

Any person may apply to the Federal Tax Authority to reconsider any of its decisions issued in connection to him or her, in whole or in part, within 40 weekdays of the aggrieved person being notified of the decision. The Federal Tax Authority must decide on the application within 40 weekdays and communicate the decision to the applicant within five weekdays.

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 one of the tax dispute resolution committees of Abu Dhabi, Dubai or Sharjah, depending on the registered tax address of the objector.

For a tax dispute resolution committee to accept the objection, the aggrieved person must have perfected the reconsideration application procedures in regard to the Federal Tax Authority and paid all the taxes subject of the objection. There is no requirement to pay the penalties (if any) at the committee stage.

The law requires a tax dispute resolution committee to issue its decision within 20 weekdays, which may be extended by a further 20 weekdays in cases where a tax dispute resolution committee has reasonable grounds to extend. The decision must be communicated to the objector within five weekdays of its being issued.

The tax dispute resolution committee must decide on the objection within 20 weekdays and communicate the decision to the applicant within five weekdays. The period can be extended by a further 20 weekdays by the committee.

If the tax dispute resolution committee does not issue its decision with the timeframe, the objector may consider the lack of a decision to be a deemed rejection of the objection and proceed to the subsequent grievance stages.

Decisions of the tax dispute resolution committees are deemed final and a writ of execution (directly enforceable) 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 at which point the person must pay at least half of the penalties (if any) subject of the dispute.

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

Last, 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

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.

Law stated - 21 January 2022

Pre-claim payments

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 due before objecting before the competent tax dispute resolution committee, and subsequently half the amount of the penalties due before petitioning before the Federal Primary Court. 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.

Law stated - 21 January 2022

Cost recovery

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

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.

Law stated - 21 January 2022

Third-party funding

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.

Law stated - 21 January 2022

Availability of jury trials

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 Disputes 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.

Jury trial is not available.

However, at the Federal Primary Court and Federal Appeals Court, the taxpayer litigant may request the appointment of an expert from the expert rolls of the courts and may request the expert to opine on documents and evidence, hear witness statements, investigate private and government premises, among other powers, to prepare a report that is used by the Court to adjudicate the tax dispute.

Law stated - 21 January 2022

Time frames

What are the usual time frames for tax hearings?

Tax trials at the Federal Primary and Appeals Court generally require about four months to conclude, which could extend up to seven months if a court appointed expert is ordered to inspect the subject matter of the dispute.

Time frames for tax disputes at the Federal Supreme Court vary from two months to eight months depending on the subject matter and complexity of the dispute.

Law stated - 21 January 2022

Disclosure requirements

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.

Law stated - 21 January 2022

Permitted evidence

What evidence is permitted in tax hearings?

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.

Law stated - 21 January 2022

Permitted representation

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.

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

Publicity of proceedings

Are tax hearings 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.

Law stated - 21 January 2022

Burden of proof

Who has the burden of proof in tax hearings?

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.

Law stated - 21 January 2022

Case management process

What is the case management process for a tax hearing?

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).

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 generally 10 days from the date of filing.

At the Federal Primary and Appeals Courts, there is generally a case management session once every week or two weeks, whereby the taxpayer or the Federal Tax Authority submit their pleadings and evidence.

When the litigants are content with their submissions, they request the case management officer to refer the matter to the overseeing judge, who will either continue trial proceedings for further requirements (eg, clarifications, expert appointment) or reserve the dispute for judgment.

There are generally no trial hearings.

At the Federal Supreme Court stage, a petition is filed with the Supreme Court and the counterparty may file their rebuttal, after which the Supreme Court adjudicates the matter. There are rarely any intra-trial submissions or trial hearings.

Law stated - 21 January 2022

Appeal

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, either on merits of fact or law, and for substantive or procedural basis.

A judgment of the Federal Primary Court can be appealed to the Tax Disputes Circuit of the Federal Appeals Court, either on merits of fact or law, and for substantive or procedural basis.

A judgment of the Federal Appeals Court can be appealed to the Federal Supreme Court, either on merits of law, and for substantive or procedural basis.

Law stated - 21 January 2022

UPDATE AND TRENDS

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?

Except in cases of proven tax evasion or abstention from tax registration, the Federal Tax Authority may not carry out any tax assessment after the lapse of five years as of the end of the related tax period.

The first tax period was January 2018 after the tax framework was introduced in late 2017.

By January 2023, the limitation periods will trigger thereby preventing tax assessments for tax periods in 2018 and onwards as time passes.

There is a trend of increased auditing and tax assessments being conducted by the Federal Tax Authority ahead of the limitation periods commencing.

There is also a corporate income tax legislation proposed that will commence with effect in mid-2023 at a general proposed rate of 9 per cent.

Law stated - 21 January 2022

Jurisdictions

	Australia	Gadens
	Austria	bpv Hügel Rechtsanwälte GmbH
	Canada	McCarthy Tétrault LLP
	Ecuador	CorralRosales
	European Union	Freshfields Bruckhaus Deringer
	Germany	Freshfields Bruckhaus Deringer
	Greece	Dryllerakis & Associates
	Ireland	Matheson
	Italy	Chiomenti Studio Legale
	Japan	Anderson Mōri & Tomotsune
	Luxembourg	Arendt & Medernach
	Netherlands	De Brauw Blackstone Westbroek
	Norway	KPMG Law
	Portugal	Durham Agrellos
	Spain	Ashurst LLP
	Switzerland	Bär & Karrer
	Taiwan	Chien Yeh Law Offices
	Ukraine	GOLAW
	United Arab Emirates	Wasel & Wasel Ltd
	United Kingdom	Macfarlanes LLP