

Federal Courts issues a landmark judgment reversing all penalties imposed by the FTA on undue excise tax

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In brief

The Abu Dhabi Court of First Instance recently dismissed an appeal filed by the Federal Tax Authority (**FTA**) against fines and penalties imposed by the FTA against a UAE company, a Dubai based beverage distributor, in connection with excise taxes. Baker McKenzie Habib Al Mulla represented the company. The court also ordered that the FTA repay the **full amount of the penalties** to the company. The Tax Dispute Resolution Committee had previously ordered the reduction of tax penalties levied on the company from the amount of AED 20.8 million to AED 8.8 million. The FTA appealed to the Court of First Instance against that decision. Baker McKenzie Habib Al Mulla had also represented the company at the Tax Dispute Resolution Committee, and the company counter appealed that no penalties were legally due. The Court of First Instance rejected the FTA's appeal against the decision of the Tax Disputes Resolution Committee, and allowed the company's appeal that no penalties should be due.

The Court held that the FTA wrongly imposed administrative penalties, because the FTA imposed them on the incorrect premise that the company had collected funds as tax, and had not reported or voluntarily declared such tax. The Court declared that the FTA's argument was invalid for the following reasons:

- Since it was established that the goods for which "tax" was collected were legally not subject to tax at the time, because the company was not then a stockpiler for excise tax purposes, the company cannot be considered to have made an incorrect tax declaration;
- If the basis for collection of the excise tax was absent, then there can be no evidence to support the imposition of administrative taxes;
- As the obligation to declare tax did not exist during the period prior to implementation of the law, there was no tax due to be paid from the total amounts collected by the company from customers.
- The FTA is not entitled to retain the amounts paid as "tax", and must refund the amounts.

Based on the foregoing the Court declared that the approach the FTA adopted to impose administrative penalties was groundless in law.

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The Court's relevant reasoning is set out in the Annex hereto.

Challenge process

This judgment and others confirm the robustness of the UAE judiciary with respect to the adjudication of tax matters, upholding taxpayers' lawful rights to challenge the FTA's assessment on taxes and penalties. When challenging the FTA's assessment, taxpayers should adhere to the specific procedures and timeline for recalculations, re-considerations and objections before the TDRC and the relevant UAE courts.

We are happy to support you throughout the challenge process in relation to your taxes and penalties. For further information, please contact **Mohamed El Baghdady** and **Reggie Mezu**, members of our UAE Tax Litigation team.

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Annex

The Court in its reasoning stated the following:

“Whereas it is established from the lawsuit declarations, the findings reached by the technical expert and the aforementioned deliberations of the court that the goods for which tax has been collected, which covers the month of September 2017 shall not be subject to tax, which are sales that the Company shall not be responsible for paying their due taxes, in accordance with the provisions of Law No. 7 of 2017 and Executive Regulation thereto, and that the plaintiff has paid the amount collected to the Authority, thus, it is legally groundless to calculate any penalty for it.

Furthermore, when calculating any penalty for it, the defendant depended upon the calculation of penalties on the basis that the plaintiff collected funds as tax, which it has not reported or presented a voluntary declaration on the same. This argument shall not be valid to impose administrative penalties in the first place and it lacks legal evidence as long as it is established that the goods for which tax was collected are not subject to tax at the time. Hence, the case of making incorrect tax declaration shall not apply to it, whereas whenever the basis for collection of tax as such is absent, the evidence for imposition of administrative taxes becomes also non-existent as well. And originally there was no existence of obligation to make a declaration on the time period prior to implementation of the law and there was no due tax to be paid from the total taxes collected from consumers.

Accordingly, the plaintiff shall not be entitled to withhold such amount, which must be refunded to the competent government agency concerned with managing and collecting taxes as it is collected in its name, where it shall be responsible for handling the case according to law. Hence, the approach the defendant has adopted to deal with the matter by imposing administrative penalty becomes groundless in law, which has taken the track of administrative penalties that are imposed on violations No. 9, 10 and 12 from the table attached to the Cabinet Resolution No. 40 of 2017. These are violations that are not concerned with the case, subject of dispute, as Article 9 of the same talks about violation of failure to pay the due tax in the tax declaration and Article 10 tackles the violation of submitting incorrect tax declaration, whereas Article 12 came in violation of failure to make voluntary declaration on tax declaration or tax assessment fault.

*As for all plaintiff's motions, whereas the appealed decision concluded to reduce the imposed penalty and paid by the plaintiff to the defendant to AED 8,883,493.44, the imposition of penalty **was originally without any evidence.** Moreover, **the court concluded that the appealed decision in its entirety is in violation of the correct law and the court decides to overturn the same and orders that the penalties paid be refunded and dismisses anything else.**"*