

## UAE Federal Supreme Court rules for the first time in favour of taxpayers in one of the biggest tax cases in the UAE

The UAE Federal Supreme Court recently dismissed an appeal filed by the Federal Tax Authority (FTA) against taxes and administrative 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. This was considered to be the first time the Federal Supreme Court issued a judgment in favour of a taxpayer and removed all taxes and administrative penalties levied by the FTA.

Baker McKenzie Habib Al Mulla had also successfully represented the company at all stages of the dispute resolution process: before the Court of Appeal, Court of First Instance, and the Tax Dispute Resolution Committee (TDRC). Both the Court of First Instance and Court of Appeal rejected the FTA's appeal against the previous decision of the TDRC, and allowed the company's counter appeal against the decision of the TDRC (in doing so, both Courts held that no penalties should be due).

The Federal Supreme 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 alleged to have been collected were **legally not subject to tax at the time**, because the company was then not a stockpiler for excise tax purposes, the company cannot be considered to have made an incorrect tax declaration;
- If there was no basis for collection of the excise tax, then there can be no evidence or grounds 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.

### Contact information

**Dr. Habib Al Mulla**  
Executive Chairman  
Dubai  
Habib.AIMulla  
@bakermckenzie.com

**Mohamed El Khatib**  
Partner  
Dubai  
Mohamed.ElKhatib  
@bakermckenzie.com

**Mohamed El Baghdady**  
Senior Associate  
Dubai  
Mohamed.ElBaghdady  
@bakermckenzie.com

**Reggie Mezu**  
Senior Tax Counsel  
Dubai  
Reggie.Mezu  
@bakermckenzie.com

- The FTA is not entitled to retain the amounts paid as "tax", and must refund the amounts, as in such case it is not acting as a "beneficiary" but acts as an "intermediary" for the return of wrongfully collected amounts.

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

**This judgment sets a final and conclusive precedent that could be very relevant in the consideration of several ongoing tax challenges, including those that are VAT related. It establishes a clear principle pertaining to the substantive application of tax as the basis for the imposition of administrative penalties.**

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

### **Challenge process**

These judgments 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 re-calculations, re-considerations and objections before the TDRC and the relevant UAE courts.

### **Seek legal counsel**

Over the last two years, Baker McKenzie Habib Al Mulla has increasingly been instructed to handle multiple first-of-its kind cases involving complex issues of VAT, excise duty, and penalties relating to tax returns and voluntary disclosures and others. Led by senior lawyer **Mohamed El Baghdady** who is the firm's go-to specialist on tax litigation, we have successfully represented clients across various industries, including consumer goods and retail, services and banking and finance, before the tax tribunals and courts. Mohamed's track record shows multiple successes achieved on behalf of a growing client base in the field of tax disputes.

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.

*This alert is prepared by Mohamed El Baghdady (Senior Associate, Tax Litigation, Dubai) and Reggie Mezu (Senior Tax Counsel, Dubai).*

### **Annex (Non-Official Translation)**

The Court in its reasoning stated the following:

*Whereas it is established pursuant to the concept of Article 2 (3) of the executive regulations of the Federal Decree-Law No. 7 of 2017 on Excise Tax that a stockpiler shall not be liable for the payment of the due tax if two conditions are fulfilled: **FIRST**, that the stockpiler has excise goods available for free circulation for business in*

the state provided that no tax was paid for these goods in the past and were not exempted or were refunded or postponed. This means that the tax should not be paid previously, i.e. the tax was not paid by a legal provision that prescribed it previously because taxes are only paid by a law. Of course, it is not meant that the person has collected the tax by mistake without a legal basis. The **SECOND** condition is that the excise goods are not stockpiled are not excess excise tax pursuant to Article 11 of the regulation. Accordingly, **if a person collected the tax by mistake for goods before the tax obligation is originated by Federal Decree-Law No. 7 of 2017, which is applicable as from 01/10/2017, he shall return the tax to FTA as he collected the tax for and on behalf of FTA.** The tax is returned to FTA **not as a beneficiary**, but rather **as an intermediary** between the person who collected the tax and the customers from whom such tax was collected so that the said person (the collector) does not enrich without a reason. After that, FTA shall take necessary action to return this tax collected unrightfully to the payers thereof. **The capacity of FTA as a beneficiary ends because the incident giving rise to the tax does not exist.** In this case, collecting tax in that sense does not require imposing delay penalty because the incident giving rise to the tax, which is the focus and basis of imposing delay penalties, does not exist.

*Such being the case and whereas the Contested Judgment ruled with upholding the judgment of the first instance based on what is established in the papers and expert's report filed in the case that collecting the tax for the sales of the stock of the Respondent Company in September 2017 was made by mistake as the excise tax entered into force as from the date when Law No. 7 of 2017 entered into force on 01/10/2017. However, whereas collecting the tax in the name of and for the Appellant Authority, the tax must be returned to FTA without imposing penalties for that tax because the law that gave rise to that tax obligation for the said goods was not applicable. The conclusion reached by the judgment is sound in light of the above mentioned principles and the expert's report filed in the case, which the court is convinced with its validity, which concluded that the description of excess goods in 30/09/2017 does not apply to the goods subject of the dispute and that the Company collected excise tax for the stock by mistake for the stock that is less than the permissible rate. Accordingly, the court, based on the foregoing, decided to dismiss the challenge in the counselling session.*

**Now & Therefore.**

*The court, in the counselling session, decided to dismiss the challenge, and obliged the Appellant to pay the costs and one thousand Dirhams as attorney's fees of the Respondent.*