

Client Alert: Tax Dispute Resolution under the UAE Tax Procedures Law

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The FTA and the Tax Procedures Law

The establishment of the UAE Federal Tax Authority (“FTA”) in May 2016 and the publication of Federal Law No. 7 of 2017 on Tax Procedures (the “**Tax Procedures Law**”) are part of the UAE’s plan to introduce a federal taxation system. Starting with excise taxes and value-added taxes, laws on which were issued shortly after the publication of the Tax Procedures Law, these new taxes will create an independent source of revenue for the UAE federal government which has historically been dependent on the individual Emirates, primarily Abu Dhabi, for funding the national budget. It is reported that the UAE is also considering the creation of a corporate tax at the federal level.

The Tax Procedures Law establishes a framework for the FTA to conduct tax audits, assess payable tax, determine tax evasion, and order administrative penalties. It also establishes a process of review, objection, and judicial review of such decisions by the FTA. More detailed provisions will be established in executive regulations and orders of the FTA, the UAE Federal Cabinet, the Ministry of Finance, and the Ministry of Justice. The overarching framework is created in the Tax Procedures Law. We provide an outline of the Law in this article.

Tax Audits

The FTA is empowered to carry out tax audits and is reputed to be hiring English and Arabic-fluent tax auditors from across the region. The FTA may perform a tax audit on any person, whether or not they have hold a tax registration number or are submitting tax returns, to ascertain the extent of that person’s compliance with federal tax law.

The audit may take place at an FTA office, the registered business office, or any other place where the audited entity or individual conducts business.

The Tax Procedures Law requires the FTA to inform a person at least five business days prior to the tax audit if it is to be conducted at the person’s place of business. Exceptionally, the tax auditor at the FTA may temporarily close a business for up to 72 hours if the FTA has grounds to believe that remaining open will hinder the conduct of the tax audit. An order of closure requires the approval of the Director General of the FTA, and may be extended beyond 72 hours with the consent of the public prosecutor.

While conducting a tax audit, the FTA may obtain original records or copies of records, and seize or take samples of stock, equipment, and other assets. A tax audit that takes place at a place of business may be attended by the audited person and his tax agents. The Tax Procedures Law sets out a framework for Tax Agents to register and represent taxpayers in the submission of tax returns and other tax matters, but the records of a person with a Tax Agent are not subject to attorney client privilege and must be disclosed to the FTA upon request.

Tax Assessments and Penalty Assessments

The FTA may issue a tax assessment to determine payable tax in the following events:

- A person does not register as required;
- A person fails to submit a tax return;
- A person fails to settle payable tax;
- A person submits an incorrect tax return; or
- A person makes payment of tax but there is a shortfall in payable tax as a result of tax evasion.

The FTA may issue administrative penalties of at least AED 500 but not greater than three times the amount of unpaid tax for evasion. Stricter penalties of up to five times the amount of evaded tax may be applied for more serious breaches of the law, which include:

- deliberate failure to settle payable tax or penalty;
- deliberate understatement of value;
- failure to consolidate businesses with the intent of remaining below the required registration threshold;
- charge of taxes to customers without being registered;
- deliberately providing false information or incorrect documents to the FTA;
- deliberately concealing or destroying documents that must be kept with or provided to the FTA;
- deliberate theft or misuse of documents or materials in the possession of the FTA;
- hindering FTA persons from performing duties; and
- tax evasion or tax evasion conspiracy.

First Objection: Request for Reconsideration

Any person subject to a FTA decision may apply to the Authority directly for reconsideration. This is done by the filing an application for reconsideration within 20 days of the notification of a decision, such as a notification of a tax assessment or a penalty assessment. The FTA must consider the application and make a decision within twenty days of the application, and then inform the applicant of the decision within five days of its decision.

Second Objection: Tax Disputes Resolution Committee(s) (TDRC)

The Tax Procedures Law calls for the creation of one or more Tax Disputes Resolution Committees (TDRC) that are outside of the jurisdiction of the Ministry of Finance, and chaired by judges under the jurisdiction of the Cabinet and the Ministry of Justice.

Within twenty days of a notification of decision by the FTA regarding a request for reconsideration, a person may petition the TDRC with jurisdiction over the matter for a review of the decision, which the TDRC shall consider and decide on within twenty days. The TDRC may extend this deadline to a total of forty days, and must inform the petitioner within five days of its decision.

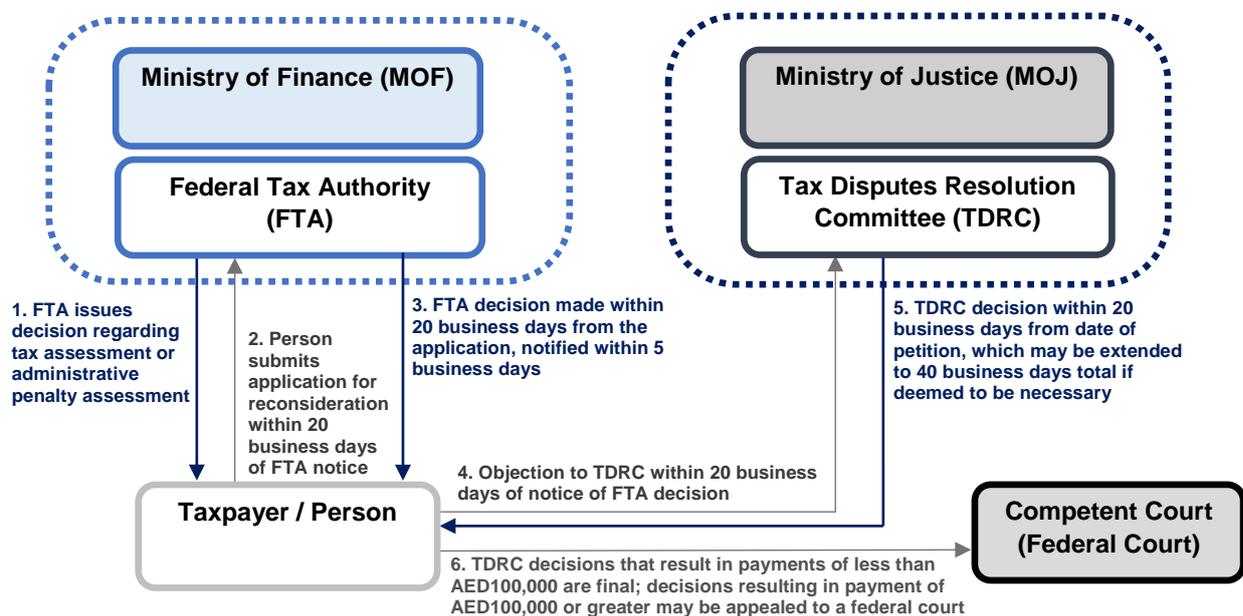
Third Objection: Judicial Appeal

An amount of less than AED 100,000 from the TDRC shall be final, not subject to judicial appeal, and equivalent to a judicial order that can be enforced by the execution department of the courts. An amount of AED 100,000 or greater may be appealed to a federal court.

The deadline for filing the dispute is twenty business days from the notification of the decision of the TDRC. A judgment of a federal court will be in accordance with the court procedures of the UAE. The judgment may be appealed to the Federal Court of Appeals and the Federal Supreme Court.

As the courts of the Emirates of Dubai and Ras Al Khaimah have opted out of the federal court system, most disputes will be heard in the federal courts of Abu Dhabi.

The framework of the entire reconsideration, objection, and appeal process can be illustrated with the following graphic chart.



If you would like more information about this topic then please contact us.

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