



WTS Dhruva Assists in Obtaining Substantial Relief on Voluntary Disclosure Penalties from Tax Disputes Resolution Committee (TDRC)

In a recent landmark ruling, Dubai's Tax Dispute Resolution Committee (TDRC) has passed a favourable decision for a very large Dubai based business group ('the Group') by setting aside voluntary disclosure penalties by more than AED 3.5 million. The TDRC led by one judicial authority and two expert members heard the matter on merits and granted relief to reduce penalties from AED 4+ million to less than 0.5 million.

Background

VAT, being a self-assessment tax, requires taxpayer to compute its VAT liability correctly and submit VAT return to the Federal Tax Authority (FTA) in the UAE. In case the taxpayer realizes an error or omission in the past VAT filings which results in net tax payable more than AED 10,000, the VAT law provides a mechanism to rectify the error or omission by filing Voluntary Disclosure (VD) within given timeframe and notify the FTA.

The Cabinet Decision No. 40 of 2017 provides for various administrative penalties on violations of Tax Laws in the UAE. In case of VDs, following penalties are generally levied:

- Fixed penalty of AED 3,000 for the first time or AED 5,000 in case of repetition
- Percentage-based penalty ranging from 5% to 50% of the underpaid tax depending on whether it is filed voluntarily or subsequent to the tax assessment by the authorities
- Late payment penalty up to 300% calculated on underpaid tax starting from due date of VAT filings to the actual date of payment.



Issues Identified while conducting the VAT Health Check

Since the introduction of VAT, the FTA has issued several guidelines, public and private clarifications, awareness sessions and tax clinics to ensure businesses comply with the tax legislation. The Group had appointed WTS Dhruva Consultants to carry out VAT health check on the tax positions implemented vis-à-vis guidelines and clarifications issued till date. Based on the health check report, the Group, as law-abiding organization, proceeded with filing VDs to rectify the errors and omissions and discharged the additional tax liability.

On acceptance of the VD by the FTA, the Group was imposed with penalties amounting to AED 4+ million. As a legal recourse, reconsideration application was filed for cancellation / waiver of penalties which was later rejected. The Group aggrieved by the decision, preferred to file objection before the TDRC.

Legal submissions

WTS Dhruva assisted the Group in making the legal submissions and filing the statement of objections against the decision issued by the FTA. In the legal submissions, the emphasis was made on the fact that the Group acted in good faith and undertook corrective action by way of filing VDs on their own within the timeframe of 20 business days from the date of realizing the error. Reliance was placed on UAE Federal Supreme Court judgements and global jurisprudences to indicate that unintentional error is not punishable, especially if it has been committed in good faith. To substantiate that there was no *mala fide* intention, evidences in form of private clarifications, internal communications, VAT audit findings etc. were submitted.

TDRC Ruling

Based on the legal submissions and evidences placed before the TDRC and relying on the UAE Court precedence on civil matters, the judicial authority along with two experts accepted the objections filed in form and on merits. Out of the total VD penalties imposed, the TDRC granted substantial relief by reducing the penalties from AED 4+ million to less than 0.5 million.



Key takeaways

In our experience of advising the Group in this entire process of filing VDs and managing litigation with the Tax Authority, there are two key takeaways:

1. Businesses should proactively review their tax positions and wherever errors are identified, VDs should be filed *suo moto* well before the FTA Audit. Each Industry has unique and complex transactions that requires thorough analysis and documentation. Therefore, the need for VAT Audit / Health Check before the actual FTA Audit plays critical role.
2. Appropriate tax and legal advice should be taken while drafting the arguments to be submitted with the Tax authorities and TDRC/Courts. Since the opportunity for personal hearing before TDRC to explain the case in detail could be limited, legal submissions would carry a heavy weight in deciding the fate of the matter.

Should you wish to speak to us to get more details on this matter, please feel free to contact us.



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