



Revised Tax Penalties under Cabinet Resolution No. (49) of 2021

Introduction

On April 28, 2021, the UAE Government issued Cabinet Resolution No. (49) of 2021 ('Resolution') substantially reducing VAT & Excise penalties and introducing country's first tax amnesty scheme. The Resolution will be effective 60 days post-publication and comes as a much-needed support to taxpayers who have had significant challenges in the past with their tax compliances.

Prior to the issuance of the Resolution, taxpayers were faced with hefty penalties for non-compliance under the VAT & Excise rules and regulations. Although the penalties imposed under previous Cabinet Resolution were to discourage non-compliance, these also posed a heavy burden on taxpayers who wanted to voluntarily rectify genuine mistakes.

The Resolution proposes opportune changes to ease up the travails of remedy, offering a clean slate and a chance to start anew with Tax.

In this alert, we have summarized the key aspects of the Resolution along with our detailed comments.

A. Key Violations and Reduction in Penalties thereto

S. No.	Particulars	Ref. No. ¹	Old Penalty	New Penalty	WTS Dhruva Comments
1	Penalty for late payment of tax due on filing tax return	9.	Penalty consisting of: <ul style="list-style-type: none"> • (2%) of unpaid tax due immediately once the payment of payable tax is late; • (4%) of unpaid tax from seventh day till one calendar month; • (1%) daily penalty from end of one calendar month and onwards (up to 300%) 	Penalty consisting of: <ul style="list-style-type: none"> • (2%) of unpaid tax due immediately once the payment of payable tax is late; • (4%) monthly penalty from end of one month of the tax due (up to 300%) 	While the maximum ceiling limit remains the same, change in percentage penalty from 1% per day to 4% per month is a significant reduction. This will provide much-needed support to taxpayers who may have cash flow challenges aggravated by the COVID-19 pandemic.
2	Penalty for incorrect filing of return	10.	<u>Fixed Penalty</u> <ul style="list-style-type: none"> • (3,000) for first time • (5,000) in case of repetition 	<u>Fixed Penalty</u> <ul style="list-style-type: none"> • (1,000) for first time • (2,000) in case of repetition • If tax difference is less than fixed fines, a fine for difference shall be imposed, provided it is not less than AED (500). • In case tax return is corrected before the 	While the penalties are separately prescribed for incorrect filing of return, the facility to correct tax return except through Voluntary Disclosure (VD) is not available. It needs to be seen if the FTA would introduce facility to correct tax return in cases where VD may not be required (e.g., input VAT less than AED 10,000 missed to be recovered)

¹ Sr. No. of the Table 1 of the Cabinet Resolution (49) of 2021

S. No.	Particulars	Ref. No. ¹	Old Penalty	New Penalty	WTS Dhruva Comments
				payment due date, above penalties will not be imposed.	<p>within 2 tax periods, output and input VAT RCM missed to be reported etc).</p> <p>Important takeaway is the exemption provided for fixed penalties where corrections are made before the due date. e.g. if VAT return for the month of June is filed on 15th July 2021 and correction made on or before the due date 28th July 2021, no penalties would be imposed. Even if a voluntary disclosure is filed before due date, variable penalty under Sr. No. 11 would not be imposed as it is applicable only after the due date.</p>
3	Penalty on submission of Voluntary Disclosure	9., 10. & 11.	<p><u>Fixed VD Penalty</u></p> <ul style="list-style-type: none"> • (3,000) for first time • (5,000) in case of repetition <p><u>Variable VD Penalty</u></p> <ul style="list-style-type: none"> • (50%) if submitted after start of tax audit / being asked for info. relating to audit 	<p><u>Fixed VD Penalty</u></p> <ul style="list-style-type: none"> • (1,000) for first time • (2,000) in case of repetition <p><u>Variable VD Penalty</u></p> <ul style="list-style-type: none"> • (5%) if correction made within one-year from the event* or 	<p>Three important changes in relation to penalties applicable on VD:</p> <ol style="list-style-type: none"> 1. Late Payment Penalty (2% / 4%) would be imposed only after 20 days of submission of the VD as opposed to previous Cabinet Resolution where it was applied from the due date of the original return.

S. No.	Particulars	Ref. No. ¹	Old Penalty	New Penalty	WTS Dhruva Comments
			<ul style="list-style-type: none"> • (30%) if submitted after being notified of tax audit but before start of tax audit. • (5%) if VD submitted before being notified of tax audit. <p><u>Late Payment Penalty</u></p> <ul style="list-style-type: none"> • (2%) of unpaid tax due immediately once the payment of payable tax is late; • (4%) of unpaid tax from seventh day till one calendar month; • (1%) daily penalty from end of one calendar month onwards (up to 300%) 	<ul style="list-style-type: none"> • (10%) if correction made between 1 to 2 years from the event or • (20%) if correction made between 2 to 3 years from the event or • (30%) if correction made between 3 to 4 years from the event or • (40%) if correction made after 4 years from the event. <p>*‘Event’ to mean due date of the tax return, tax assessment or related refund request.</p> <p><u>Late Payment Penalty</u></p> <ul style="list-style-type: none"> • No late payment penalty if tax paid within 20 days of VD submission. • (2%) of unpaid tax due immediately from the end of 20 days of VD submission • (4%) monthly penalty from end of one month after 20 	<p>2. Late payment penalty will not apply if tax is paid within 20 days of the VD submission.</p> <p>3. Variable VD Penalty depending on time taken by taxpayer to correct the error.</p> <p>Non-imposition of late payment penalty if tax paid within 20 days of submission is significant relief for the genuine taxpayers who wish to rectify errors voluntarily.</p> <p><u>For example</u>, if a taxpayer has identified a tax error of AED 100,000 for January 2018 tax period, the taxpayer would be subject to total estimated penalties of AED 31,000:</p> <ul style="list-style-type: none"> • Fixed Penalty AED 1,000 • Variable VD Penalty AED 30,000 (assuming date of Voluntary Disclosure is July 28, 2021) • No late payment penalty if tax error amount is paid within 20 working days of VD submission.

S. No.	Particulars	Ref. No. ¹	Old Penalty	New Penalty	WTS Dhruva Comments
				days of VD submission (up to 300%)	Under the previous Cabinet Resolution, the taxpayer, in this example, could have been subject to total estimated penalties of AED 308,000: <ul style="list-style-type: none"> • Fixed Penalty AED 3,000 • Variable VD Penalty AED 5,000 (assuming date of Voluntary Disclosure is July 28, 2021) • Late Payment Penalty of AED 300,000.
4	Penalty on Tax Assessment (Post Tax Audit Notice)	9., 10. & 12.	<u>Fixed Penalty</u> <ul style="list-style-type: none"> • (3,000) for first time • (5,000) in case of repetition <u>Variable Penalty</u> <ul style="list-style-type: none"> • (50%) of unpaid tax <u>Late Payment Penalty</u> <ul style="list-style-type: none"> • (2%) of unpaid tax due immediately once the payment of payable tax is late; • (4%) of unpaid tax from seventh day till one calendar month; 	<u>Fixed Penalty</u> <ul style="list-style-type: none"> • (1,000) for first time • (2,000) in case of repetition <u>Variable Penalty</u> <ul style="list-style-type: none"> • (50%) of error amount and • (4%) each month or part thereof from any of the following: <ol style="list-style-type: none"> a. Tax unpaid to FTA, from due of original tax return until date of 	Once tax audit notice is issued to the taxpayer, these penalties may apply on tax errors identified in the audit findings. <p><u>For example</u>, if a taxpayer has been issued audit notice and tax error of AED 100,000 has been identified for January 2018 tax period, the taxpayer would be subject to total estimated penalties of AED 215,000:</p> <ul style="list-style-type: none"> • Fixed Penalty AED 1,000 • Variable Penalty

S. No.	Particulars	Ref. No. ¹	Old Penalty	New Penalty	WTS Dhruva Comments
			<ul style="list-style-type: none"> (1%) daily penalty from end of one calendar month onwards (up to 300%) 	<p>receipt of tax assessment</p> <ul style="list-style-type: none"> Tax not refunded to FTA due to an unjust tax refund, from date of tax refund until date of receipt of tax assessment. <p><u>Late Payment Penalty</u></p> <ul style="list-style-type: none"> No late payment penalty if tax paid within 20 days of receipt of tax assessment. (2%) of unpaid tax due immediately from the end of 20 days of tax assessment (4%) monthly penalty from end of one month after 20 days of tax assessment (up to 300%) 	<ul style="list-style-type: none"> AED 50,000 AED 164,000 (assuming tax assessment is dated July 28, 2021) No late payment penalty if tax error amount is paid within 20 working days of the tax assessment. <p>Under the previous Cabinet Resolution, the taxpayer, in this example, could have been subject to total estimated penalties of AED 353,000:</p> <ul style="list-style-type: none"> Fixed Penalty AED 3,000 Variable Penalty AED 50,000 (assuming tax assessment is dated July 28, 2021) Late Payment Penalty of AED 300,000.

Note - For changes in other Administrative Penalties, please refer Annexure A

B. Introduction of Tax Amnesty Scheme

Administrative penalties imposed under previous Cabinet Resolution no. 40/2017, that have not been paid, will be reduced to 30% of the total unpaid penalties if all of the following conditions are met:

- a. The penalties were applied under the previous Cabinet Resolution no. 40/2017;
- b. The registrant has paid all taxes due by December 31, 2021; and
- c. By December 31, 2021, the registrant has paid 30% of the total administrative penalties due and unpaid by the effective date of the Resolution.

C. Effective Date

The Resolution shall be effective after sixty (60) days from the date of its issuance on April 28, 2021, i.e., effective from June 28, 2021.

Key Takeaway for Businesses

- Considering the difference in quantum of penalties applicable on voluntary disclosure vis-à-vis subsequent to tax audit, businesses should assess their past VAT & Excise returns immediately, identify the errors, and file voluntary disclosures appropriately.
- In cases where there is ambiguity on tax position, businesses should immediately seek a private clarification and take necessary steps upon receipt.
- While further details are awaited from the FTA on tax amnesty scheme, it needs to be seen if it would apply to cases pending under litigation.

Annexure A – Changes in other Administrative Penalties

S.No	Violation	Penalty under Previous Resolution (in AED)	Penalty under New Resolution (in AED)	WTS Dhruva Comments
1.	Failure to keep the required records / info.	<ul style="list-style-type: none"> (10,000) for first time. (50,000) - repetition 	<ul style="list-style-type: none"> (10,000) for first time (20,000) - repetition 	Penalty Reduction
2.	Failure to submit requested info. in Arabic	<ul style="list-style-type: none"> (20,000) 	<ul style="list-style-type: none"> (20,000) 	No change
3.	Delay in submission of registration application	<ul style="list-style-type: none"> (20,000) 	<ul style="list-style-type: none"> (10,000) 	Penalty Reduction
4.	Delay in submission of deregistration application	<ul style="list-style-type: none"> (10,000) 	<ul style="list-style-type: none"> (1,000) immediately and on same date for each month up to maximum of (10,000) 	Penalty Reduction
5.	Failure to inform about amendment of information pertaining to tax records	<ul style="list-style-type: none"> (5,000) for first time. (15,000) - repetition 	<ul style="list-style-type: none"> (5,000) for first time (10,000) - repetition 	Penalty Reduction
6.	Failure of Legal Representative (LR) to inform his appointment within specified timeframe	<ul style="list-style-type: none"> (20,000) 	<ul style="list-style-type: none"> (10,000) 	Penalty Reduction
7.	Failure of LR to submit Tax Return within the specified timeframe	<ul style="list-style-type: none"> 1,000) for the first time (2,000) - repetition within (24) months 	<ul style="list-style-type: none"> 1,000) for first time (2,000) - repetition within (24) months 	No change
8.	Failure to submit the Tax Return within the specified timeframe	<ul style="list-style-type: none"> 1,000) for first time. (2,000) - repetition within (24) months. 	<ul style="list-style-type: none"> 1,000) for first time. (2,000) - repetition within (24) months. 	No change
9.	Failure to facilitate the work of Tax Auditor	<ul style="list-style-type: none"> (20,000) 	<ul style="list-style-type: none"> (20,000) 	No change
10	Failure to account for any tax that may be due on import of goods	<ul style="list-style-type: none"> (50%) of unpaid or undeclared tax 	<ul style="list-style-type: none"> (50%) of unpaid or undeclared tax 	No change
11.	Failure to display prices inclusive of Tax	<ul style="list-style-type: none"> (15,000) 	<ul style="list-style-type: none"> (5,000) 	Penalty Reduction

S.No	Violation	Penalty under Previous Resolution (in AED)	Penalty under New Resolution (in AED)	WTS Dhruva Comments
12.	Failure to notify Authority of applying Tax based on the margin	<ul style="list-style-type: none"> (2,500) 	<ul style="list-style-type: none"> (2,500) 	No change
13.	Failure to comply with conditions and procedures for keeping the Goods in a DZ or moving them to another DZ.	<ul style="list-style-type: none"> Higher of AED (50,000) or (50%) of the tax, if any, chargeable in respect of the goods as result of violation. 	<ul style="list-style-type: none"> Higher of AED (50,000) or (50%) of the tax, if any, chargeable in respect of the goods as result of violation. 	No change
14.	Failure to issue a Tax Invoice / Tax Credit Note / comply with conditions and procedure for electronic Tax Invoices / Tax Credit Notes	<ul style="list-style-type: none"> (5,000) for each document 	<ul style="list-style-type: none"> (2,500) for each discovered case 	Penalty Reduction
Penalties specific to Excise Tax				
15.	Failure to display prices inclusive of Tax	<ul style="list-style-type: none"> (15,000) 	<ul style="list-style-type: none"> (5,000) 	Penalty Reduction
16.	Failure to comply with conditions for transfer of goods from one DZ to another DZ, and mechanism of processing and storing of such Excise Goods.	<ul style="list-style-type: none"> Higher of AED (50,000) or (50%) of the tax, if any, chargeable on goods as a result of violation 	<ul style="list-style-type: none"> Higher of AED (50,000) or (50%) of tax, if any, chargeable on goods as a result of violation 	No change
17.	Failure to provide price lists for Excise Goods produced, imported or sold.	<ul style="list-style-type: none"> (5,000) for the first time. (20,000) - repetition 	<ul style="list-style-type: none"> (5,000) for first time (10,000) - repetition 	Penalty Reduction

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