

Tax Newsletter



UAE Federal Supreme Court decision on Voluntary disclosure penalties

UAE Federal Supreme Court recently released its judgement regarding applicability of late payment penalties to Voluntary disclosures.

Federal Supreme court took a different view than the views taken by Tax dispute resolution Committee (TDRC) and lower courts (Federal court of appeals). TDRC and lower court had previously ruled in favour of the taxpayer.

Key points of the Supreme Court decision are as below:

1. Voluntary disclosure ("VD") is part of tax return filing and is considered as an amendment of original return and not a separate document. VD is considered as branch of original VAT return and is same like late submission of VAT return
2. So, if the VD results in additional tax to be paid to the Federal tax

authority ("FTA") then penalties on this late payment of tax will be calculated from the date of original VAT return due date and not the date of filing of VD

3. Federal Supreme Court indicated in its decision that VD is a remedy of the mistake done by the taxpayer in its return and it prevents the tax payer from being exposed to any potential criminal claims for tax evasion

This decision confirms the view taken by FTA on applying penalties retrospectively.

This can in fact lead to potential late payment penalties up to 300% of the tax amount if the errors relate to prior tax periods.

It is likely that TDRC and Federal court of appeals will start following the judgement by the Federal Supreme Court.

IN THIS EDITION

- UAE Federal Supreme Court decision on Voluntary disclosure penalties
- FTA to issue Tax residency certificate and Commercial activities certificate in UAE
- UAE Economic Substance Regulations (ESR) – Deadlines
- VAT Public Clarification on Dubai Owner's Association and Management Entities
- Are you ready for Oman VAT?
- KSA GAZT published a detailed guide on the Real estate transaction tax

FTA to issue Tax residency certificate and Commercial activities certificate in UAE

Highlights:

Starting from November 14, 2020, the Federal Tax Authority (FTA) started receiving applications on the "Digital tax residency certificates and commercial activities certificates" through its e-services portal.

The aim behind this decision is to expedite the process of certificate issuance, specifically for the individuals and companies that are already registered with the FTA system. For such existing registered members, whose data is available in the FTA data records, it is easier and faster to issue the tax residency certificates and commercial activities certificate.

FTA also published a detailed guide on how to complete the registration process and apply for these certificates on the portal.

Tax residency certificate is a certificate issued to enable the applicants to benefit from Double Tax Avoidance agreements (DTAAs) signed between UAE and other countries.

Commercial activities certificate is issued to enable applicants to refund VAT paid in advance outside UAE whether or not DTAAs are applicable.

Documents required

For Tax Residency Certificate for a natural person:

- Emirates ID Copy
- Passport Copy
- Residency Copy
- Source of Income
- Official Bank Statement
- Immigration Report of Residency

For Tax Residency Certificate for a Legal person:

- Trade License Copy
- Authorized Signatory's Passport Copy
- Audited Financial Statement

- Official Bank Statement
- Certified Tenancy Contract
- Memorandum of Association or any relevant document

For Commercial Activities Certificate:

- First requirement is to be a VAT registered person with a TRN number
- Trade License Copy
- Requesting letter to be signed and stamped

(To obtain a Commercial Activities Certificate in the UAE, the applicant must be a registered taxpayer with a TRN Number)

UAE Economic Substance Regulations (ESR) – Deadlines

UAE introduced Economic substance regulations (ESR) in 2019 and further issued revised ESR regulations and guidance in August 2020.

ESR regulations apply to financial years commencing on or from 1st Jan 2019.

UAE Ministry of finance (MOF) has posted a circular on its website to provide information on the filing requirements and ESR deadlines as below:

- Entities undertaking relevant activities (as per the law) are required to submit ESR notification and Economic substance report (as applicable)
- All notifications and reports will need to be submitted online via MOF portal. MOF portal is expected to go live in first week of December 2020

- As per law, ESR notification needs to be submitted within 6 months of end of financial year. However, since the portal is not live yet, this deadline has been extended to 31st December 2020. For example, entities with 31st March 2020 or 30th June 2020 financial year end will also be required to submit the notification by 31st Dec 2020
- Entities which had financial year end of 31st Dec 2019 and already submitted the notification earlier by the deadline of 30th June are required to re-submit the notification by no later than 31st Dec 2020
- As per law, ESR report needs to be submitted within 12 months of end of financial year. Therefore, the deadline for filing ESR report for entities with financial year commencing on or after 1st Jan 2019 and ending on or before 31st

Dec 2019 shall be 31st Dec 2020

Guidance documents and templates:

- MOF also released detailed guidance documents and templates on Economic substance report and notification. This will help companies to analyze and prepare the requirements for ESR compliance. Businesses should take immediate steps as the deadline of 31st Dec 2020 is fast approaching.

Penalties for failure to submit the ESR notification and report within timeline:

- Failure to submit ESR notification – Penalty of AED 20,000
- Failure to submit ESR report – Penalty of AED 50,000

VAT Public Clarification on Dubai Owner's Association and Management Entities

As per recent public clarification number VATP022 issued by Federal Tax Authority ("FTA"), Dubai Owners' Associations are required to de-register from VAT due to implications from Law No. 6 of 2019 issued in September 2019 Concerning Ownership of Jointly Owned Real Property in the Emirate of Dubai ("Law No. 6"). Management Entities are responsible to fulfill VAT obligations for such properties.

Key Points:

- On 3 November 2019, all rights and obligations of Dubai Owners' Associations were transferred to Management Entities, which resulted in Dubai Owners' Associations no longer making taxable supplies.
- Dubai Owners' Associations were, therefore, required to apply for VAT deregistration within the period prescribed in the tax legislation of 20 business days; that is, no later than 4 December 2019.
- Management Entities are regarded as making supplies to the owners of Jointly Owned Real Property and required to fulfill VAT obligations in this regard, including the issuing of valid tax invoices and VAT reporting.

Owners Association Obligation to De register:

On the basis of Law 6 above all of the Owners' Associations' rights and obligations were transferred to Management Entities, the Owners' Associations no longer make any taxable supplies.

Based on the above, VAT registered Dubai Owners' Associations were required to apply for deregistration no later than 4 December 2019.

Any VAT registered Owners' Association that failed to apply for



VAT deregistration within 20 business days from the date it stopped making taxable supplies is liable for administrative penalties.

Management Entities to Account for VAT:

For VAT purposes, the Management Entity is not regarded as an agent but as a person supplying goods and services to the owners of the units (as a result of Law No. 6), thus Management Entity becomes a taxable person and under Article 65(1) of the Decree-Law is required to issue valid tax invoices to the recipients of these supplies.

The management of a Jointly Owned Real Property constitutes a taxable supply of services, which is subject to 5% VAT

The Management Entity is entitled, under Article 54(1)(a) of the Decree-Law,⁷ to recover VAT paid in respect of goods and services acquired to manage the Jointly Owned Real Property, provided the it obtains and retains valid tax invoices addressed to the Management Entity.

Management Entity, as a VAT registrant, is liable for any penalties which may arise as a result of non-compliance from VAT.

Are you ready for Oman VAT?

Oman VAT law was published in official gazette in Oct 2020.

VAT is expected to be implemented from April 2021 and the VAT Executive Regulations are likely to be issued in December 2020.

With this announcement, it is critical for businesses to plan and evaluate the impact of VAT in a timely manner. VAT will affect all the parts of the business right from supply chain, sales, IT, legal, accounting, human resources and finance.

The transition would have to be managed in a phased manner, wherein companies would have to start by understanding key areas of impact in their business and prepare for the design and application of VAT.

Phases for VAT readiness/compliance:

Phase 1 – Impact assessment

- Mapping of existing transactions and processes



- Identify the key stakeholders and appoint a VAT champion to lead the vat implementation project
- Review of agreements
- Identify impact on existing IT systems
- Prepare summary of VAT touch points
- Review communication plan with employees, suppliers and customers
- Design and implement changes to accounting processes and IT systems
- Implement changes to the clauses of legal contracts
- Test run of the revised systems
- Communication with suppliers and customers
- VAT manual and procedures

Phase 2 – Planning, design and implementation

- VAT operational model for all business units
- Staff training

Phase 3 – Compliance and on-going support

- VAT registration
- Review and filing of returns
- On-going compliance and advisory issues

KSA GAZT published a detailed guide on the Real estate transaction tax

Royal Decree A84 was issued in Oct 2020 announcing the creation of a new Real Estate Transaction Tax (RETT) with a rate of 5% calculated on the value of the real estate transaction.

The decision was entered into force on Sunday 4th Oct 2020.

As per the provision, tax is imposed at the rate of 5% of the total real estate disposal value.

The transactions include transfer of ownership; the sale of commercial,

residential, or agricultural real estate; and the sale of developed and undeveloped land.

RETT is levied on all the organisations involved in real estate disposals.

KSA GAZT has also recently published a guide on RETT to provide clarify on certain points including:

- Definitions
- Tax base calculation

- Due date
- Explanation on exclusions from the scope of tax such as transfer of real estate by inheritance etc.
- Mechanism of the real estate transaction service
- What are the powers of KSA GAZT?
- Penalties for non-compliance
- Off plan properties treatment
- What will be the liabilities of transferor? etc.

CONTACT

+971 4 354 2959
info@premier-brains.com
www.premier-brains.com

OFFICE LOCATIONS

ABU DHABI BAHRAIN
 DUBAI INDIA
 KUWAIT OMAN

FOLLOW US

