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# Amendment of Administrative Penalties for violations of tax law in the UAE

16 May 2021

The UAE Cabinet issued Cabinet Decision No.49 of 2021 on 28 April 2021 amending the provisions of Cabinet Decision No. (40) of 2017 on Administrative Penalties for Violations of Tax Law in the UAE (“Decision”). The amendment shall be effective 60 days from the date of the issuance, which is 27 June 2021.

In this article we summarize the most important changes to the penalty regime for violations with the tax laws in the UAE.

## 1. Penalty waiver

One of the highlights of the Decision is the waiver provided to taxpayers for payment of penalties. Taxpayers with outstanding penalties from the old penalty regime are given the chance to have 70% waiver on such penalties, provided that the following conditions are met:

- The taxpayer settles the full tax payable by him, no later than December 31, 2021.
- The taxpayer settles (30%) of the total payable administrative penalties unpaid up to the effective date of the new regime, no later than December 31, 2021.

It is not very likely that the waiver can be applied by taxpayers that have already paid penalties to the FTA in

the past. Furthermore, it is not clear how the waiver should be applied by taxpayers for penalties which are disputed in a reconsideration request, in a procedure with the Tax Dispute Resolution Committee or the UAE Courts.

The FTA will release further guidelines on the mechanism for the penalty waiver.

## 2. Penalty for incorrect filing of tax return

The fixed penalty for submission of incorrect tax returns is reduced to AED 1,000 for the first time (previously AED 3,000) and AED 2,000 for repetition (previously AED 5,000). Moreover, the new regime provides further relief that if tax difference due to the error is less than the fixed fine, the fixed penalty to be imposed shall instead be equal to the tax difference, provided it is not less than AED (500). However, if the tax return is corrected before the payment due date the taxpayer shall be exempted from the fixed penalty.

## 3. Penalty for voluntary disclosure

The penalties related to filing a voluntary disclosure are reduced under the new regime. The percentage-based penalty under the old regime ranges between 5% to

50% depending on if the application is submitted to the FTA before or after a tax audit notification.

Now the percentage-based penalty for submission of voluntary disclosure ranges between 5% and 40%, depending on the time lapsed from the original due date of the tax return, tax assessment, or refund application. The more time has lapsed since the tax return, tax assessment, or refund application, the higher the percentage of the penalty.

However, in the old penalty regime the percentage-based penalty shall be based on the amount unpaid to the FTA. Meanwhile, the new regime bases the penalty on the tax difference between the originally filed return and the voluntary disclosure. Hence under the new regime the percentage-based penalties may also be imposed on voluntary disclosures for tax returns with a VAT refund position.

If the taxpayer does not submit a voluntary disclosure before being notified of a tax audit by the FTA, the taxpayer shall be subject to a fixed 50% penalty on the amount of the error. In addition, a penalty of 4% shall apply for each month or part of the month of the tax unpaid or tax not refunded to FTA from the relevant tax period until the date of receipt of the tax assessment..

#### 4. Late payment penalties

The penalties for late payment of tax in a tax return, voluntary disclosure, or tax assessment are reduced in the Decision.

Below we provide a comparison of the late payment penalties under both regimes:

Non compliance	Old regime	New regime
Immediately upon being late	2%	2%
seventh day following the deadline for payment	4%	N/A
one calendar month following the deadline for payment	1% daily (capped at 300%)	4% monthly (capped at 300%)

As stated above, the daily 1% penalty is repealed and changed into a monthly penalty of 4%. In both regimes the late payment penalty is capped at 300% of the unpaid tax.

In the new Decision the due date for payment of the tax in the voluntary disclosure or tax assessment shall be 20 business days from the date of submission of the voluntary disclosure or receipt of the tax assessment.

This means that no late payment penalty applies if the taxpayer pays the penalty within 20 business days of the filing of the voluntary disclosure or tax assessment. This change is very welcome for taxpayers, as in the previous regime the late payment penalty on voluntary disclosure or tax assessment was applied by the FTA from the date when the original tax return was due. Previously this resulted in high penalty amounts for taxpayers that submitted a voluntary disclosure.

#### 5. Other penalty changes

The following penalties are amended in the Decision:

Non - compliance	Old regime	New regime
Failure to keep the required records and other information	1 <sup>st</sup> time- 10,000 Repetition- 50,000	1 <sup>st</sup> time - 10,000 Repetition - 20,000
Late registration	20,000	10,000
Late deregistration	10,000	1,000 upon delay in submitting the application and on the same date per month, with a maximum of 10,000
Failure to inform FTA of any situation that	1 <sup>st</sup> time - 5,000 Repetition -	1 <sup>st</sup> time - 5,000 Repetition -

Non - compliance	Old regime	New regime
may require amending the information related to its tax record kept with FTA.	15,000	10,000
Failure of the taxable person's legal representative of the taxable person to report its appointment within the specified dates (penalties shall be from the legal representative's own money)	20,000	10,000
Failure to present the prices as inclusive of the tax.	15,000	5,000
Failure to provide FTA with price lists of excise goods produced, imported, or sold	1 <sup>st</sup> time - 5,000 Repetition - 20,000	1 <sup>st</sup> time - 5,000 Repetition - 10,000
Failure to issue the tax invoice, tax credit notes or alternative document when making any supply.	5,000 each	2,500 each
Failure to comply with the conditions and procedures related to issuing the tax invoice and tax credit	5,000 each	2,500 each

Non - compliance	Old regime	New regime
note electronically.		

## 6. What is next?

Under the new penalty regime, taxpayers are encouraged to perform health check procedures regularly to determine their level of compliance to the tax rules. It must be evaluated how the new penalty regime will affect their operations. If a taxpayer does not perform regular health checks and does not disclose its errors, then it will accumulate more penalties.

Until the new penalty regime comes in effect on 27 June 2021, there may be instances where it is more beneficial to file a voluntary disclosure under the old regime than it is under the new regime because of the penalty waiver. The risk of waiting for the effective date of the new

penalty regime is that the taxpayer may be subjected to tax audit which may then result to higher penalties. Furthermore, taxpayers should await the guidance from the FTA on the scope of the penalty waiver, since it is not clear how it should be applied in dispute situations.

To minimize the risks due to non-compliance with the tax laws, taxpayers should discuss and consult with their tax advisors on the impact of the new Decision to their business. If there are any outstanding penalties to be paid, then it should be questioned whether the taxpayer is eligible for the waiver introduced in the new penalty regime.

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