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SUMMARY OF THE VAT TALK HELD ON DUBAI EYE ON 26 SEPTEMBER 2018

Tax Audit: The Basics

From the inception of the UAE Federal Tax Authority ("**FTA**"), the Department for Tax Compliance and Enforcement was created dedicated to performing Tax Audit of companies to ensure that all companies are compliant with the VAT law and regulations[1].

The FTA has the power to perform a tax audit on any taxable person to verify information, uncover fraud or inaccurate tax returns. The FTA may select tax returns both randomly (to simply ensure all information provided by the tax payer are accurate) or intentionally (if there are issues, errors, or possible frauds in reporting the tax return).

Before performing a tax audit, the FTA is obliged to inform the tax payer at least 5 business days in advance. This means that the audited tax payer will need to have their documents and/or accounting system ready. The tax payer may be required to generate an FTA audit file allowing to respond to the FTA quickly and accurately with all the information on goods and services supplied, VAT treatment etc.

Tax audit can be performed in any place where the tax payer carries out its business, where goods/records are stored and even at the residence of the tax payer (subject to a prior authorisation from the General Director of the FTA and Public Prosecutor). The tax auditor has the right to obtain copies of documents, original records as well as samples of stocks and other assets.

FTA also has the right to temporarily close the business place or the audited location of the tax payer for a maximum of 72 hours in specific cases such as where the FTA has serious grounds to believe that the tax payer is involved in tax evasion or is trying to hinder access to information. The audited place can be closed for an additional 72 hours with a permit from the Public Prosecutor before the expiry of the initial 72 hours.

After completion of the tax audit, the FTA has 10 business days to inform the tax payer of the final results. If the FTA issues a tax assessment for under tax paid with penalties, the tax payer can request and obtain the documents and data on which the FTA based its assessment.[2]

If a tax payer wishes to dispute a tax decision, a letter must be sent to the FTA requesting formal reconsideration within 20 business days. It is highly recommended for the tax payer to seek proper tax advice to ensure having valid legal grounds to increase the chance of settlement and avoid unnecessary litigation costs. You will find in Appendix 1 a flow chart summarising the reconsideration and appeal procedure of a tax assessment[3].

[1] Please refer to Articles 17 to 23 of the Tax Procedure Law

[2] Article 17 of the Executive Regulation of the Tax Procedure Law

[3] Please refer to Articles 27 to 32 of the Tax Procedure Law

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Correction of errors and Voluntary Disclosure

It is essential for businesses to correct the errors found on their tax returns as soon as they are discovered. The longer a tax payer waits, the greater the risk of incurring penalties. The applicable fines for a Voluntary Disclosure vary from 5% to 50% (if a tax audit has started) of the tax due in addition to a fixed penalty (AED 3,000 for the first time and AED 5,000 in case of repetition) and late payment penalties (maximum 300% of the tax due).

It is important to note that the statute of limitation in the UAE for the FTA to assess VAT on a tax payer expires after 5 years from the end of the relevant tax period, but is increased to 15 years in case of tax evasion. Businesses should seek proper assistance from a Tax Adviser to calculate correct amount of the VAT due and describe clearly the facts and circumstances of the errors disclosed to ensure no further penalties or interest cost arise.

For more information on the UAE Voluntary Disclosure procedure please refer to the following link and the flow chart in Appendix 2: https://www.tax.gov.ae/pdf/Voluntary-Disclosure-user-guide-English.pdf

Recent Public Clarification issued by the FTA on invoice requirements

To ensure that all UAE businesses understand the requirements listed in article 59 of the Executive Regulation of the VAT Law, the FTA has published a public clarification VATP006 to clarify the information to be included in a tax invoice.

It is therefore very important that UAE companies review their systems to ensure that the invoices sent to their customers and received from their suppliers are in full compliance with the VAT law and regulations to avoid non-compliance fines, rejection of invoices by customers and delay in receiving payment from customers. If the supplier's invoices are also not compliant, there is a risk of input VAT recovery being challenged in the future.

Note that a tax invoice must be issued and delivered (by courier or e-mail) to the recipient of goods or services in all circumstances whenever a taxable supply is made.

For more information about the above clarification, please refer to the following link:
https://www.tax.gov.ae/pdf/VATP006-Tax-Invoices.pdf

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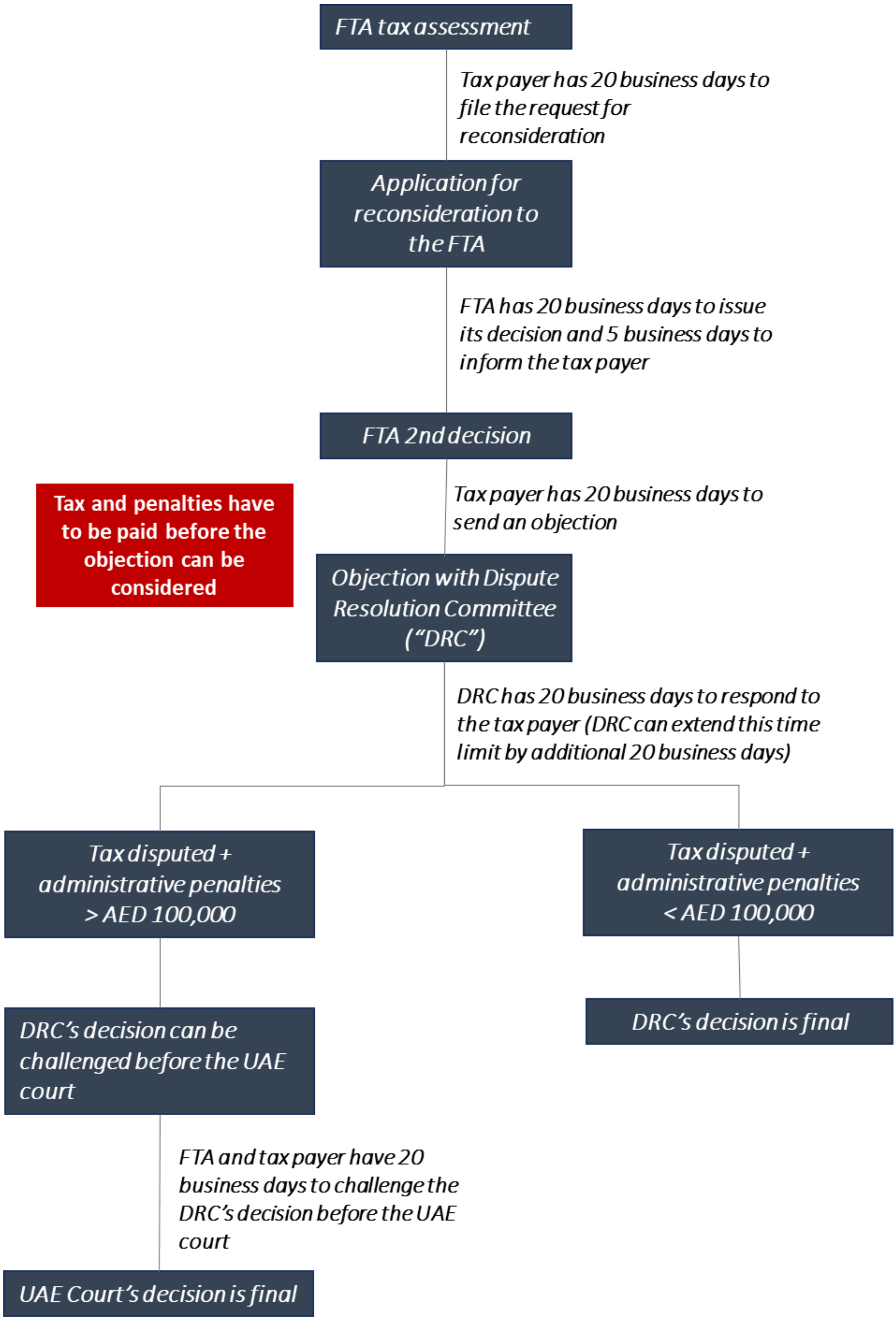
Appendix 1: Reconsideration and objection procedure flow chart



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Appendix 2: Voluntary Disclosure flow chart