TAXP002

Tax Procedures Public Clarification

Redetermination of Administrative Penalties Levied Prior to the Effective Date of Cabinet Decision No. 49 of 2021

Issue

On 28 April 2021, the Cabinet issued Decision No. 49 of 2021 on Amending some Provisions of Cabinet Decision No. 40 of 2017 on Administrative Penalties for Violations of Tax Laws in the UAE (“Cabinet Decision No. 49 of 2021”). Cabinet Decision No. 49 of 2021 amended some of the administrative penalties applicable to certain violations and allows for a redetermination of some of the penalties already imposed.

This Public Clarification provides detailed information on the redetermination of some of the penalties already imposed.

Details relating to the amendments to administrative penalties in accordance with the First Article of Cabinet Decision No. 49 of 2021 are discussed in the Tax Procedures Public Clarification “TAXP001 - Amendments to the Penalties Regime”, available on the FTA’s website.

In the context of clarifying the modifications to the administrative penalties imposed prior to the effective date of Cabinet Decision No. 49 of 2021, this Public Clarification provides detailed information on the redetermination of some of the penalties already imposed.

The amendments to the administrative penalties in accordance with the First Article of Cabinet Decision No. 49 of 2021 are discussed in the Tax Procedures Public Clarification “TAXP001 - Amendments to the Penalties Regime”, available on the FTA’s website.
ملخص
ينص قرار مجلس الوزراء رقم (49) لسنة 2021 على إمكانية إعادة تحديد الغرامات المنفزمة قبل تاريخ سريانه (أي قبل 28 يونيو 2021) في حال تم فرض الغرامات بموجب قرار مجلس الوزراء رقم (40) لسنة 2017، واستيفاء شروط معينة في هذا الشأن. ويطبق هذا القرار على كافة الغرامات الإدارية المنفزمة بموجب قرار مجلس الوزراء رقم (40) لسنة 2017 سواء المتعلقة بالإجراءات الضريبية أو ضريبة القيمة المضافة أو الضريبة الانتقائية.

شرح تفصيلي
خلفية الموضوع
طبقت الإمارات العربية المتحدة ("الدولة") الضريبة الانتقائية في 1 أكتوبر 2017 وضريبة القيمة المضافة في 1 يناير 2018.

لمضمان الاتساق في إدارة مختلف أنواع الضرائب، تم وضع مجموعة من الإجراءات الضريبية الموحدة فيما يتعلق بحقوق والالتزامات كل من الهيئة الاتحادية للضرائب ("الهيئة")، ودافعي الضريبة وتحديدها في تشريعات الإجراءات الضريبية الاتحادية، بما في ذلك في القانون الاتحادي رقم (7) لسنة 2017 بشأن الإجراءات الضريبية ("قانون الإجراءات الضريبية"). وتُطبق هذه الإجراءات الضريبية الاتحادية على كافة الضرائب الاتحادية الواقعة ضمن اختصاص الهيئة.

إحدى ذلك المادة (25) من قانون الإجراءات الضريبية عددا من المخالفات التي تضع للغرامات الإدارية. كما توجه المادة مجلس الوزراء لإصدار قرار تحدد بموجب الفرامات الإدارية لكل من المخالفات الواردة في المادة المذكورة على

Summary
Cabinet Decision No. 49 of 2021 provides for the ability to redetermine penalties imposed before its effective date (i.e. before 28 June 2021) where the penalties were imposed according to Cabinet Decision No. 40 of 2017 and certain conditions are met. This decision is applicable on all administrative penalties imposed as per Cabinet Decision No. 40 of 2017 whether in respect of tax procedures, VAT or Excise Tax.

Detailed discussion
Background
The UAE introduced Excise Tax and VAT with effect from 1 October 2017 and 1 January 2018, respectively.

In order to offer consistency in the administration of different taxes, a set of common tax procedures concerning the rights and obligations of the FTA and taxpayers has been developed and prescribed in the Federal tax procedures legislation, including in Federal Law No. 7 of 2017 on Tax Procedures ("FTP Law"). These Federal tax procedures apply to all Federal taxes under the jurisdiction of the FTA.

Article 25 of the FTP Law² specifies a number of violations which are subject to administrative penalties. This Article also directs the Cabinet to issue a decision that specifies administrative
penalties for each of the violations listed in the Article, on condition that each such penalty cannot be less than AED 500 for any violation and cannot exceed three times the amount of tax in respect of which the penalty was levied.

The specific administrative penalties for each violation are prescribed in the Cabinet Decision No. 40 of 2017, which was issued on 24 September 2017. These penalties have been applied to violations since the introduction of the VAT and Excise Taxes.

On 28 April 2021, the Cabinet has issued the Cabinet Decision No. 49 of 2021, which amends some of the administrative penalties applicable on the violations stated in Tables appended to Cabinet Decision No. 40 of 2017. Cabinet Decision No. 49 of 2021 in its Third Article also included concessionary measures in respect of the administrative penalties imposed on them prior to the effective date of Cabinet Decision No. 49 of 2021. This Public Clarification discusses such measures in detail.

**Redetermination of Administrative Penalties Imposed Prior to the Effective Date of Cabinet Decision No. 49 of 2021**

As a concessionary measure aimed to help businesses, Cabinet Decision No. 49 of 2021 gives the FTA ability to redetermine the amounts of unsettled payable administrative penalties, which were determined based on the administrative penalties enacted in Cabinet Decision No. 40 of 2017. This Public Clarification discusses such measures in detail.

وقد تم تحديد الغرامات الإدارية لكل مخالفة في قرار مجلس الوزراء رقم (40) لسنة 2017، والذي صدر بتاريخ 24 سبتمبر 2017، وتمّ فرض هذه الغرامات على المخالفات منذ تطبيق ضريبة القيمة المضافة والضريبة الانتقائية.

By 28 April 2021, Cabinet Decision No. 49 of 2021, which amends some of the administrative penalties applicable on the violations stated in Tables appended to Cabinet Decision No. 40 of 2017. Cabinet Decision No. 49 of 2021 in its Third Article also included concessionary measures in respect of the administrative penalties imposed on them prior to the effective date of Cabinet Decision No. 49 of 2021. This Public Clarification discusses such measures in detail.

**Redetermination of Administrative Penalties Imposed Prior to the Effective Date of Cabinet Decision No. 49 of 2021**

As a concessionary measure aimed to help businesses, Cabinet Decision No. 49 of 2021 gives the FTA ability to redetermine the amounts of unsettled payable administrative penalties, which were determined based on the administrative penalties enacted in Cabinet Decision No. 40 of 2017. This Public Clarification discusses such measures in detail.

**Redetermination of Administrative Penalties Imposed Prior to the Effective Date of Cabinet Decision No. 49 of 2021**

As a concessionary measure aimed to help businesses, Cabinet Decision No. 49 of 2021 gives the FTA ability to redetermine the amounts of unsettled payable administrative penalties, which were determined based on the administrative penalties enacted in Cabinet Decision No. 40 of 2017. This Public Clarification discusses such measures in detail.
were imposed on registrants on the basis of the penalty rules listed in Cabinet Decision No. 40 of 2017.

To benefit from the redetermination, all of the following conditions have to be met:

1. Any of the administrative penalties set out in Cabinet Decision No. 40 of 2017 have been imposed on the person before the effective date of Cabinet Decision No. 49 of 2021 (i.e. before 28 June 2021);

2. The person has not settled all the administrative penalties imposed on it as per Cabinet Decision No. 40 of 2017 in full before 28 June 2021.

3. The taxable person has undertaken all of the following:
   - Settled all payable tax, i.e. the registrant shall ensure that by 31 December 2021, no payable tax is still outstanding whether such tax was payable before or after 28 June 2021, and that all such amounts have been received by the FTA by 31 December 2021; and
   - Settled 30% of the total unsettled administrative penalties referenced above which were imposed before 28 June 2021, no later than 31 December 2021.

Where the above conditions are met, the FTA will, at the end of 2021, redetermine that the

المفروضة على المسجلين على أساس قواعد الغرامات الواردة في قرار مجلس الوزراء رقم (40) لسنة 2017.

وللاستفادة من إعادة التحديد، فإنه يجب استيفاء جميع الشروط الآتية:

1. أن تكون قد فرضت على الشخص أي من الغرامات الإدارية المنصوص عليها في قرار مجلس الوزراء رقم (40) لسنة 2017 المشار إليه أعلاه قبل تاريخ سريان قرار مجلس الوزراء رقم (49) لسنة 2021 (أي قبل 28 يونيو 2021)؛

2. لم يقم الشخص بسداد كامل الغرامات الإدارية المفروضة عليه وفق قرار مجلس الوزراء رقم (40) لسنة 2017 قبل 28 يونيو 2021.

3. قام الخاضع للضريبة بجميع الآتي:
   - سداد كامل الضريبة المستحقة الدفع، أي أنه على المسجل ضمان أنه بحلول 31 ديسمبر 2021، لم تتبقي أي ضريبة مستحقة الدفع غير مسددة سواء استحققت قبل 28 يونيو 2021 أو بعده، وأن تكون الهيئة قد استلمت تلك المبالغ بحد أقصى 31 ديسمبر 2021؛ و
   - سداد (30%) من إجمالي الغرامات الإدارية غير المسددة المشار إليها أعلاه والتي فرضت قبل 28 يونيو 2021، في موعد لا يجاوز 31 ديسمبر 2021.

في حال تم استيفاء الشروط الواردة أعلاه، تقوم الهيئة بعد نهاية 31 ديسمبر 2021 بإعادة تحديد أن الغرامات الإدارية
administrative penalties payable and not settled by 28 June 2021 equal 30% of that unsettled part. Hence, the Person shall not be required to pay the remaining part (i.e. 70%).

Examples

Example 1:

At beginning of April 2021, a penalty of AED 12,000 was imposed on a Registrant as per Cabinet Decision No. 40 of 2017. The Registrant settled AED 2,000 of this penalty on 15 April 2021. On 28 June 2021, AED 10,000 penalties remain unsettled. The Registrant settled all payable tax including that relating to the last return due in 2021 and 30% of the penalties unsettled (i.e. AED 3,000) by 31 December 2021. In this case, the Registrant qualified for redetermination, and the FTA redetermined its penalties. Consequently, the Registrant will no longer be required to pay the remaining AED 7,000 of the administrative penalties, and the administrative penalty imposed before 28 June 2021 shall equal AED 3,000 that was already settled by the Registrant.

Example 2:

At beginning of April 2021, a penalty of AED 12,000 was imposed on a Registrant as per Cabinet Decision No. 40 of 2017. The Registrant settled AED 2,000 of this penalty on 15 April 2021. On 28 June 2021, AED 10,000 penalties remain unsettled. The

Example 1:

At beginning of April 2021, a penalty of AED 12,000 was imposed on a Registrant as per Cabinet Decision No. 40 of 2017. The Registrant settled AED 2,000 of this penalty on 15 April 2021. On 28 June 2021, AED 10,000 penalties remain unsettled. The Registrant settled all payable tax including that relating to the last return due in 2021 and 30% of the penalties unsettled (i.e. AED 3,000) by 31 December 2021. In this case, the Registrant qualified for redetermination, and the FTA redetermined its penalties. Consequently, the Registrant will no longer be required to pay the remaining AED 7,000 of the administrative penalties, and the administrative penalty imposed before 28 June 2021 shall equal AED 3,000 that was already settled by the Registrant.

Example 2:

At beginning of April 2021, a penalty of AED 12,000 was imposed on a Registrant as per Cabinet Decision No. 40 of 2017. The Registrant settled AED 2,000 of this penalty on 15 April 2021. On 28 June 2021, AED 10,000 penalties remain unsettled. The
Registrant settled 30% of the penalties unsettled (i.e. AED 3,000) but did not settle all payable tax. In this case, the Registrant does not qualify for redetermination as it has not settled all payable tax. Consequently, the Registrant is still required to pay the remaining AED 7,000 of the administrative penalties.

Procedures Relating to the Redetermination of Administrative Penalties

To facilitate the procedures for registrants, the FTA will link the redetermination process and the relevant data to the registrants’ e-Services accounts. The registrants will be able to view further information relating to the process as of 28 June 2021.

This Public Clarification issued by the FTA is meant to clarify certain aspects related to the implementation of Cabinet Decision No. 49 of 2021 on Amending some Provisions of Cabinet Decision No. 40 of 2017 on Administrative Penalties for Violations of Tax Laws in the UAE. This Public Clarification states the position of the FTA and neither amends nor seeks to amend any provision of the aforementioned legislation. Therefore, it is effective as of the date of implementation of the relevant legislation, unless stated otherwise.

2. Article 25 of the FTP Law stated that:
   1. The Authority shall issue an Administrative Penalties Assessment for a Person and notify him within (5) five business days for any of the following violations:

   2. تنص المادة (25) من قانون الإجراءات الضريبية على أن:
   1. على الهيئة إصدار تقيم الغرامات الإدارية لشخص وتبليغه به خلال (5) خمسة أيام عمل وذلك في أي من المخالفات الآتية:
a. The failure of the Person conducting Business to keep the required records and other information specified in this Law and the Tax Law.

b. The failure of the Person conducting Business to submit the data, records and documents related to Tax in Arabic to the Authority when requested.

c. The failure of the Taxable Person to submit a registration application within the timeframe specified in the Tax Law.

d. The failure of the Registrant to submit a deregistration application within the timeframe specified in the Tax Law.

e. The failure of the Registrant to inform the Authority of any circumstance that requires the amendment of the information pertaining to his tax record kept by the Authority.

f. The failure of the Person appointed as a Legal Representative for the Taxable Person to file a Tax Return within the specified timeframe, in which case, the penalties will be due from the Legal Representative’s own funds.

g. The failure of the Person appointed as a Legal Representative for the Taxable Person to inform the Authority of his appointment within the specified timeframe, in which case, the penalties will be due from the Legal Representative’s own funds.

h. The failure of the Registrant to submit the Tax Return within the timeframe specified in the Tax Law.

i. The failure of the Taxable Person to settle the Payable Tax stated in the submitted Tax Return or Tax Assessment he was notified of, within the timeframe specified in the Tax Law.

j. The submittal of an incorrect Tax Return by the Registrant.

k. The voluntarily disclosure by the Person of errors occurring in the Tax Return, Tax Assessment or Refund Application pursuant to Article 10 (1) and (2) of this Law.

l. The failure of the Taxable Person to voluntarily disclose errors in the Tax Return, Tax Assessment or Refund Application pursuant to Article 10 (1) and (2) of this Law.
Article 10 (1) and (2) of this Law before being notified that he will be subject to a Tax Audit.

m. The failure of the Person conducting Business to facilitate the work of the Tax Auditor in violation of the provisions of Article (21) of this Law.

n. The failure of the Registrant to calculate Tax on behalf of another Person when the registered Taxable Person is obligated to do so under the Tax Law.

o. Any other violation for which a Cabinet Decision is issued.

2. The Executive Regulation of this Law shall specify the information and data that must be included in the Administrative Penalties Assessment.

3. The Cabinet shall issue a resolution that specifies the Administrative Penalties for each of the violations listed in Clause (1) of this Article. Such Administrative Penalties shall be no less than 500 Dirhams for any violation and shall not exceed three times the amount of Tax in respect of which the Administrative Penalty was levied.

4. The imposition of any Administrative Penalty pursuant to the provisions of this Law or any other law shall not exempt any Person of his liability to settle the Due Tax in accordance with the provisions of this Law or the Tax Law.

3 The Third Article of the Cabinet Decision No. 49 of 2021 states that:

1. The Authority shall determine the Administrative Penalties levied on the Registrant prior to the effective date of this Decision and that have not been settled, to be equal to 30% of the total unpaid penalties where all of the following conditions are met:

   a. Any of the Administrative Penalties set forth in the above referred Cabinet Decision No. 40 of 2017 has been imposed on the Registrant prior to the effective date of this Decision and were not settled in full;

   b. The Registrant has settled each of the following:

   a. Any of the Administrative Penalties set forth in the above referred Cabinet Decision No. 40 of 2017 has been imposed on the Registrant prior to the effective date of this Decision and were not settled in full;
<table>
<thead>
<tr>
<th></th>
<th>Payable Tax in full, no later than 31 December 2021.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>كامل الضريبة المستحقة الدفع عليه، وذلك بحد أقصى 31 ديسمبر 2021.</td>
</tr>
<tr>
<td>2</td>
<td>30% of the total Administrative Penalties payable and not paid up to the effective date of this Decision, no later than 31 December 2021.</td>
</tr>
<tr>
<td></td>
<td>(30%) من إجمالي الغرامات الإدارية المستحقة الدفع غير المدفوعة حتى تاريخ سريان هذا القرار، وذلك بحد أقصى 31 ديسمبر 2021.</td>
</tr>
</tbody>
</table>

2. The Authority shall determine the procedures for implementing the provisions of this Article.

2. تقوم الهيئة بتحديد الإجراءات لتطبيق أحكام هذه المادة.