

The United Arab Emirates and Tax Evasion

What is the definition of tax evasion in your country and what are the consequences if it is detected by the authorities?

Tax evasion as a concept in the United Arab Emirates was first introduced in 2017 when the UAE introduced federal taxes for the first time. The concept was introduced in the VAT law. Tax evasion was defined to mean¹ “the use of illegal means resulting in the reduction of the amount of the Due Tax, non-payment thereof, or a refund of a tax that a person does not have the right to have refunded under any Tax Law”. Tax Law is further defined as any federal law pursuant to which a tax is imposed. Currently, in the UAE this means excise taxes, VAT, and the recently introduced tax on business profits of corporations and certain business activities of individuals.

Tax evasion is an extremely serious offense, and the UAE Federal Tax Authority (‘FTA’) is very proactive to discourage such behaviour and to penalize when tax evasion is identified. Although the UAE tax system is still young, multiple criminal prosecution cases and judgements in tax evasion cases are available.

Where intent to avoid taxes leads to tax evasion, if convicted, the accused may face both criminal charges and fines.

The penalty for evasion isn’t limited to the person who carried out the evasion as tax evasion penalties can be attached to accomplices as defined in the Penal law statute. This approach follows the UAE criminal law rules which deem an accomplice is punishable with the same penalty as the perpetrator unless stipulated otherwise by the law.

If an accomplice is found criminally responsible for a tax evasion offense, that person will be held jointly and severally liable with the taxpayer for the tax evasion penalties and outstanding tax

How do authorities usually find out about tax evasion?

The FTA continuously monitors tax returns of taxable persons to identify breaches of compliance.

Tax evasion can be detected during a tax audit or when the FTA receives leads for suspected tax evasion, such as when a registrant lists false information in a tax return, or a taxable person evades tax by failing to register for tax or through a whistleblowing mechanism.

In April 2022 to improve efficiency in UAE tax collections, the FTA launched ‘Raqeeb’, a whistleblower programme under which individuals can report tax violations and evasion. Any person can report tax irregularities or non-compliances through the Raqeeb program. The programme aims to raise the level of tax compliance and reduce tax evasion in the UAE by granting monetary rewards to the “informant” whose report leads to the collection of tax amounts worth more than AED50,000 (approx.\$14,000).

The FTA may use information provided by the informant to detect violations and tax evasion. The FTA requires the informant to provide proof, verification, and documentation which doing so is intended to reduce the duration for potential evasion investigations. Using that additional evidence, the Authority tests the taxpayer’s records.

¹ Federal Decree-Law No. 28 of 2022 – Issued 30 Sep 2022 (Effective 1 Mar 2023)

What are the possibilities to amend tax declarations or declare additional income?

If as a taxpayer identifies an error in its corporate tax return or VAT return, it may submit a voluntary disclosure which discloses errors in submitted tax declaration and provides the FTA with the additional information used by the taxpayer to calculate the tax shortfall. A voluntary disclosure applies tax evasion as much as it does to avoidance or a simple return error. The main benefit for the taxpayer of making a voluntary disclosure is that it should expect a less stringent penalty or, in certain circumstances, a penalty waiver.

What are the conditions for voluntary disclosure of tax evasion?

Tax evasion typically involves intention and deliberate actions, and such cases may trigger imprisonment and a monetary penalty not less than the amount of evaded tax and not exceeding (3) three times the tax sought to avoid.

Strictly speaking, the non-payment of due taxes and administrative penalties or deliberately not disclosing errors in tax submission constitutes evasion so making voluntary disclosure is strongly encouraged to avoid more stringent monetary penalties and imprisonment.

In a decision of the Federal Supreme Court in 2020, it was held that a voluntary disclosure rectifying mistakes in tax submissions may mitigate criminal charges and even help avoid criminal prosecution.

The FTA is expanding the instances in which a voluntary disclosure is required. In a recent decision², the FTA explained that it now requires the filing of a voluntary disclosure as a way to correct a tax return even if there is no tax impact and underpayment of tax (for example, zero-rated and exempt supplies). This widening of the voluntary disclosure circumstances is designed to ensure compliance with the tax laws even where there is no tax leakage.

What are the consequences of voluntary disclosure of tax evasion?

The penalties applying will be at a reduced rate if the voluntary disclosure is filed before the FTA identifies the evasion through an audit. The voluntary disclosure program also encourages a taxpayer to disclose and correct errors sooner in order to attract less harsh penalties, e.g. if a taxpayer submits a voluntary disclosure within one year from the original submission date of the tax return in which the 5% VAT should have been charged, the penalty is limited to 5% of the VAT amount which should have been charged. The percentage increases progressively if the voluntary disclosure is submitted in each subsequent year.

A taxpayer can also request the FTA to waive a penalty if it is able to demonstrate that it corrected voluntarily the errors in previous submissions where typically such errors are due to omissions or incorrect application of the law and not due to intent to evade taxes and also that the circumstances which occurred which resulted in the underpayment of tax neatly fit into one of the specified categories.

² Federal Tax Authority Decision No. 8 of 2024 – Issued 1 November 2024 – (Effective from 1 January 2025)

When is a voluntary disclosure of tax evasion no longer possible?

Voluntary disclosure can be filed at any time before a tax audit is initiated by the FTA. If a taxpayer does not submit a voluntary disclosure and the error is discovered during an audit, then a different and higher set of penalties are potentially applicable.

For example, if the taxpayer does not submit a voluntary disclosure and the absence of payment comes to light during an audit then the penalty which the tax auditors may impose is 50% of the VAT amount (not 5% if the disclosure is made before an audit). A penalty of 4% per month of the tax shortfall will also be imposed for every month or part of the month from the date the payment is due for the relevant tax period until the date of receipt by the FTA of the shortfall amount.

What are the main fields in which voluntary disclosure of tax evasion plays a major role?

The latest FTA and court practices demonstrate that any error in tax compliance may result in penalties and even criminal charges for alleged tax evasion.

The FTA confirmed the importance of accurate tax compliance in the recent decision requiring voluntary disclosure of any errors in a tax return or in information submitted even if doing so did not result in the underpayment of taxes.

What is often overlooked by foreigners, but is considered as tax evasion?

Anyone conducting a business in the UAE should be aware of the circumstances which may give rise of tax evasion. The UAE Tax Procedures Law stipulates the following instances constitute tax evasion:

1. Deliberately failing to settle any Payable Tax.
2. Deliberately understating the actual value of the Business or revenues or failing to consolidate related Businesses (intentional fragmentation to allow each so-called separate business to access the AED375,000 (approx. \$100,000) tax free threshold as specified in the Tax Law.
3. Deliberately imposing and collecting amounts as Tax without being registered for VAT.
4. Deliberately decreasing the Due Tax or participating in any form of Tax Evasion.
5. Deliberately committing or omitting any other act which may constitute Tax Evasion under this Decree-Law or the Tax Law.

More stringent penalties (including a fine of up to AED1m) apply for the following offenses:

1. Deliberately providing false information, data and incorrect documents to the Authority.
2. Deliberately concealing or destroying documents, information and data or other material that the taxpayer is required to keep and provide to the Authority.
3. Stealing documents or other materials that are in the possession of the Authority or deliberately misusing or destroying them.

4. Deliberately preventing or hindering the Authority's employees' from performing their duties.

What do you recommend to clients who have committed tax evasion and how do you have to act as a professional in this case?

The tax laws in the UAE are relatively new and tax auditors' practice as well as case law are still evolving. Nonetheless, the FTA has demonstrated that it fights tax evasion very seriously and in the case of suspected tax evasion, may initiate and conduct a tax audit within 15 years from the end of the tax period during which the suspected tax evasion occurred (as opposed to the normal 5-year statute of limitation).

Therefore, engaging a tax consultant as early as possible will help not only to ensure accurate compliance when returns are filed but also to minimize exposure to monetary penalties and criminal charges.

The Federal Supreme Court (cassation appeal 227/2020) wrote that "the taxpayer is obliged to rectify mistakes in his tax return to maintain the interests of the state or else will be criminally liable for tax evasion crime and thus the voluntary disclosure by the taxpayer is to rectify his personal mistake shielding him from criminal liability". It follows from this that one main benefit of making a voluntary disclosure of a potentially evasion offense is that the taxpayer (and his accomplices) can avoid prosecution.

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