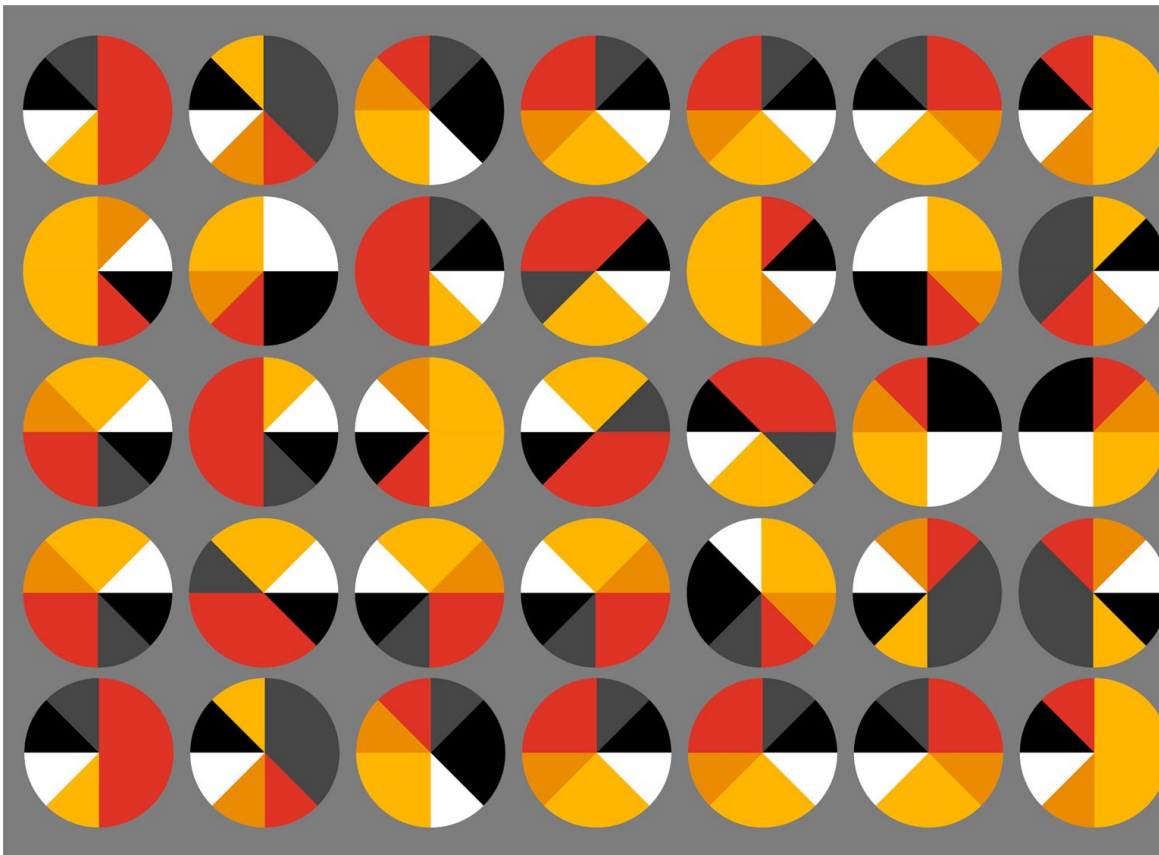


United Arab Emirates: Public clarifications on the amendment and redetermination of penalties, and Cabinet Resolution on amending provisions for requesting a tax waiver

June 2021



In brief

On 28 April 2021, the UAE Cabinet issued the Decision No. 51 of 2021 to amend certain provisions related to the request for waiver of penalties as stipulated under the Cabinet Decision No. 36 on the Executive Regulations of Federal Law No. 7 of 2017 on Tax Procedures.

On 25 and 27 May 2021, the Federal tax Authority ("FTA") issued two Public Clarifications "TAXP001" "TAXP002" providing illustrative examples on the reduction and redetermination of penalties further to the Cabinet Resolution No. 49/2021 issued earlier last month to amend the provisions of Cabinet Resolution No. 40/2017 relating to administrative penalties imposed for violation of Tax Laws in the UAE.

In detail

1. Public Clarification "TAXP001" on amendments of the penalties regime

This Public Clarification provides further details of the new penalty rates applied and discusses in more details practical examples of the amended penalty rates. Below is a summary of the explanations provided:

Late payment penalties [Violation 9 of the penalty schedule]

In cases of voluntary disclosure and tax assessment, the late payment penalties shall be imposed on the amount of unsettled tax as follows:

- In case of voluntary disclosure(s), **on the first day following the 20th business day** from the **submission date of the voluntary disclosure**.
- In case of tax assessment, **on the first day following the 20th business day** from the date of **receipt of the tax assessment**.

Fixed penalties for submission of incorrect tax returns [Violation 10 of the penalty schedule]

- A fixed penalty of AED 1,000 for the first violation and AED 2,000 for any repeated instance.
- As an exception to the above, if the tax difference is less than the fixed penalty, the fixed penalty shall be **equal to the tax difference but not less than AED 500**.
- Importantly, the fixed penalty **will not be imposed** if the tax return is corrected **prior to the due date for submission of the return**.

Percentage based penalty upon submission of voluntary disclosure [Violation 11 of the penalty schedule]

The percentage based penalty is:

- Imposed in case **1)** the **payable tax** amount as per the submitted tax return or tax assessment is **less than the tax amount required** to be calculated as per the relevant tax legislation; or **2)** the tax which the person is **entitled to recover** is calculated at a value **higher than what they are entitled to** as per the tax legislation.
- Applicable on the **difference** between the tax declared and the tax due and the **penalty rate varies** depending on **when** the **amendment** of the previously submitted VAT return is **performed**. The percentage of the penalty ranges from 5% in case of submission of the voluntary disclosure within one (1) year from the due date of the tax return or tax assessment or refund application and may reach up to 40% in case of submission of the voluntary disclosure after the 4th year.

Mechanism to specify the date of imposition of certain penalties applied on a monthly basis

- Monthly penalties are applicable for the purpose of imposing penalties on violations No. 4, 9, and 14 of Table 1 of the Resolution;
- The date on which the penalty shall be imposed in the following month is determined as follows:

- On the day of the month corresponding to the day of the month on which the penalty was originally imposed on. For example, if the date of imposition of the monthly penalty was 30 May, the corresponding day in the following month shall be 30 June.
- On the first day of the following month if the current month does not have a corresponding date. For example, if the date of imposition of the monthly penalty was 30 January, the corresponding day in the following month shall be 1 March.

Please refer to the Public Clarification “TAXP001” for further details on the application of new penalties.

2. Public Clarification “TAXP002” on redetermination of administrative penalties

This Public Clarification provides further explanation on the application of the discount on penalties imposed before the effective date of the Cabinet Resolution 49/2021 i.e. 28 June 2021.

The FTA explained the conditions to benefit from this discount as follows:

1. The unsettled penalty was imposed based on the Cabinet Decision No. 40 of 2017 i.e. the old Cabinet Resolution on the Administrative Penalties for Violations of Tax Laws in the UAE;
2. The unsettled penalty was imposed in full before 28 June 2021; and
3. The taxable person has undertaken all of the following
 - a. Paid the total amounts of the **payable tax** by 31 December 2021 i.e. no payable tax remains outstanding to the FTA and the FTA have received the amounts by 31 December 2021 notwithstanding whether the tax amount is payable before or after 28 June 2021; and
 - b. Paid 30% of the total amounts of the unsettled **administrative penalties** imposed before 28 June 2021, no later than 31 December 2021.

Where the above conditions are satisfied, the FTA will redetermine **at the end of 2021** that the unsettled part of the administrative penalties, i.e. equivalent to 70% of the total amount of penalties imposed, **shall no longer be required to be paid**.

The FTA will link the redetermination process to the registered taxable person’s e-Services account who will be able to access the information relating to the process as of 28 June 2021.

Please refer to the Public Clarification “TAXP002” for further details on the application of the discount on penalties.

2. Amending certain provisions related to requests for waiver of penalties

The Cabinet Decision No. 51 of 2021 amended certain provisions under Article 26 of the Cabinet Decision No. 36 on the Executive Regulations of Federal Law No. 7 of 2017 on Tax Procedures.

Article 26 stipulates the required conditions for a taxable person to request from the FTA a waiver or reduction of the administrative penalties imposed. The new Decision introduced the following changes on the qualifying conditions:

- The requirement that the taxable person has not been subject to any administrative penalties in the 2 years preceding the application **has been abolished**.
- The timeframe for submitting the application for reduction or exemption of penalties has been extended from 10 working days to **40 workings days**.

In addition, the timeframe for the FTA to make its decision in respect of the reduction or waiver of the administrative penalties has been extended from 20 business days to **40 business days**.

The new Decision introduced a formal process to apply for the reduction or waiver which should be submitted through a form to be determined by the FTA.

Key takeaway

Taxable persons should evaluate whether the conditions stipulated in the Public Clarification “TAXP002” on redetermination of administrative penalties imposed before 28 June 2021 are satisfied to benefit from the redetermination (discount) of any previously imposed penalties and pay the VAT liabilities and penalties due before 31 December 2021.

As of 28 June 2021 the new penalty structure and rates apply and taxable persons should understand how this change will impact their VAT affairs, assess the potential penalties applicable as per the new rates and take any required corrective measures.

Taxable persons who have been subject to penalties in the past are now eligible to request a waiver or reduction of Penalties.

Going forward, any application for waiver or reduction of penalties should be made via the official form (once issued by the FTA).

Let's talk

For a deeper discussion of how these changes might affect your business, please contact:

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